

HOUSE COMMITTEE ON JUDICIARY IV
2015-2016 SESSION

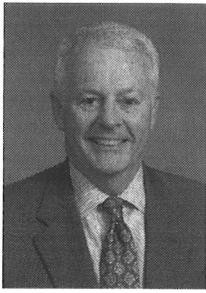
| <u>MEMBER</u> | | <u>ASSISTANT</u> | <u>PHONE</u> | <u>OFFICE</u> | <u>SEAT</u> |
|-----------------------------|------------|--|--------------|---------------|-------------|
| BLACKWELL, Hugh | Chair | Dixie Riehm | 733-5805 | 541 | 102 |
| BRYAN, Rob | Chair | Kevin Wilkinson Committee Assistant | 733-5607 | 536 | 74 |
| SCHAFFER, Jacqueline | Chair | Sharon Sullivan Committee Assistant | 733-5886 | 2213 | 65 |
| HAMILTON, Susi | Vice-Chair | Ruth Merkle | 733-5754 | 1313 | 48 |
| ADAMS, Jay | | Susan Phillips | 733-5988 | 2215 | 98 |
| AGER, John | | Meredith Graf | 733-5746 | 1315 | 115 |
| BISHOP, Dan | | David Larson | 715-3009 | 607 | 86 |
| DOLLAR, Nelson | | Candace Slate | 715-0795 | 307 | 4 |
| HAGER, Mike | | Baxter Knight | 733-5749 | 304 | 30 |
| HUNTER, Howard, III | | Brenda Bennett | 733-5780 | 1307 | 106 |
| JOHNSON, Ralph | | Mildred Alston | 733-5902 | 1219 | 116 |
| JONES, Bert | | Brenda Olls | 733-5779 | 416A | 54 |
| RICHARDSON, Bobbie | | Anna Meadows | 715-3032 | 1217 | 93 |
| RIDDELL, Dennis | | Polly Riddell | 733-5905 | 533 | 99 |
| SETZER, Mitchell | | Margaret Herring | 733-4948 | 2204 | 7 |
| TERRY, Evelyn | | Franklin Terry | 733-5777 | 1015 | 92 |
| TINE, Paul | | Katy Kingsbury | 733-5906 | 529 | 79 |
| TORBETT, John | | Viddia Torbett | 733-5868 | 538 | 41 |
| WARREN, Harry | | Cristy Yates | 733-5784 | 611 | 62 |
| WILLINGHAM, Shelly | | Johnna Smith | 715-3024 | 501 | 108 |

Committee Counsel:

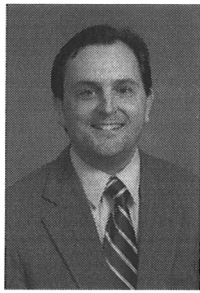
Kara McCraw
LOB Room 545
Kelly Quick Tornow
LOB Room 200
Tel: 733-2578

HOUSE COMMITTEE ON JUDICIARY IV
2015 SESSION

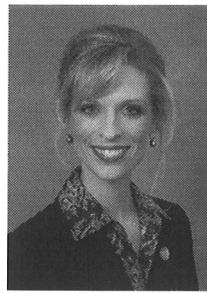
Clerks: Sharon Sullivan, Kevin Wilkinson



Rep. Blackwell
Chair



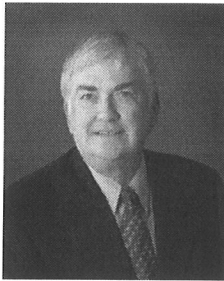
Rep. Bryan
Chair



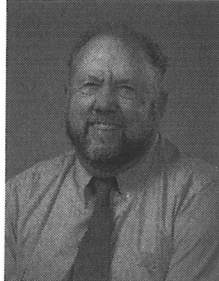
Rep. Schaffer
Chair



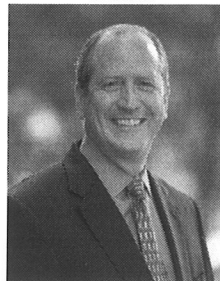
Rep. Hamilton
Vice Chair



Rep. Adams



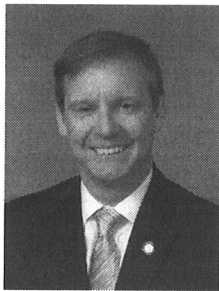
Rep. Ager



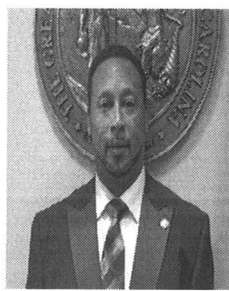
Rep. Bishop



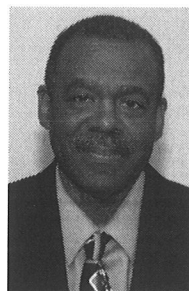
Rep. Dollar



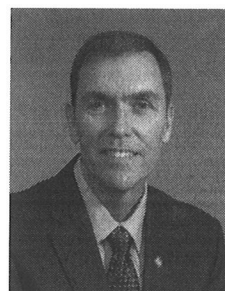
Rep. Hager



Rep. Hunter



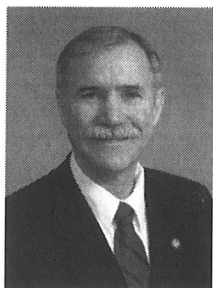
Rep. R. Johnson



Rep. Jones



Rep. Richardson



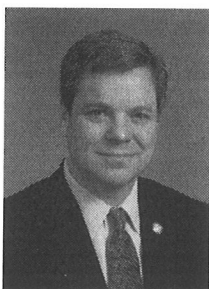
Rep. Riddell



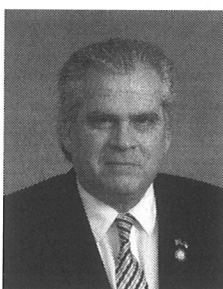
Rep. Setzer



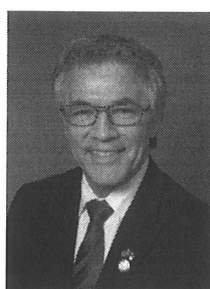
Rep. Terry



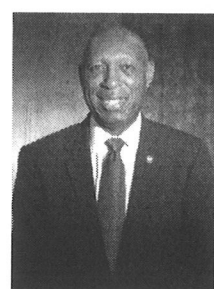
Rep. Tine



Rep. Torbett



Rep. Warren



Rep. Willingham

ATTENDANCE

HOUSE COMMITTEE ON JUDICIARY IV

2015-2016 SESSION

| DATES | 3/15/15 | 3/25/15 | 4/1/15 | 4/15/15 | 4/22/15 | 4/29/15 | 6/10/15 | 7/15/15 | 8/5/15 | 3/23/16 | | | | |
|------------------------------|---------|---------|--------|---------|---------|---------|---------|---------|--------|---------|--|--|--|--|
| BLACKWELL, Hugh CHAIR | | | ✓ | | | ✓ | ✓ | | ✓ | | | | | |
| BRYAN, Rob CHAIR | | | ✓ | | | ✓ | ✓ | | ✓ | | | | | |
| SCHAFFER, Jacqueline CHAIR | | | ✓ | | | ✓ | | | ✓ | | | | | |
| HAMILTON, Susi VICE-CHAIR | | | ✓ | | | ✓ | | | | | | | | |
| ADAMS, Jay | | | ✓ | | | ✓ | ✓ | | ✓ | | | | | |
| AGER, John | | | ✓ | | | ✓ | ✓ | | | | | | | |
| BISHOP, Dan | | | | | | ✓ | | | ✓ | | | | | |
| DOLLAR, Nelson | | | | | | ✓ | | | | | | | | |
| HAGER, Mike | | | ✓ | | | ✓ | | | ✓ | | | | | |
| HUNTER, Howard, III | | | ✓ | | | ✓ | | | ✓ | | | | | |
| JOHNSON, Ralph | | | ✓ | | | ✓ | ✓ | | ✓ | | | | | |
| JONES, Bert | | | | | | ✓ | | | | | | | | |
| RICHARDSON, Bobbie | | | ✓ | | | ✓ | ✓ | | ✓ | | | | | |
| RIDDELL, Dennis | | | ✓ | | | ✓ | ✓ | | ✓ | | | | | |
| SETZER, Mitchell | | | | | | ✓ | ✓ | | ✓ | | | | | |
| TERRY, Evelyn | | | ✓ | | | ✓ | ✓ | | ✓ | | | | | |
| TINE, Paul | | | ✓ | | | ✓ | ✓ | | ✓ | | | | | |
| TORBETT, John | | | ✓ | | | ✓ | ✓ | | ✓ | | | | | |
| WARREN, Harry | | | ✓ | | | ✓ | ✓ | | ✓ | | | | | |
| WILLINGHAM, Shelly | | | ✓ | | | ✓ | ✓ | | ✓ | | | | | |
| Staff | | | | | | | | | | | | | | |
| Layla Cummings - Counsel | | | ✓ | | | ✓ | ✓ | | | | | | | |
| Kara McCraw - Counsel | | | ✓ | | | ✓ | ✓ | | ✓ | | | | | |
| Kelly Quick Tornow - Counsel | | | ✓ | | | ✓ | | | ✓ | | | | | |
| Sharon Sullivan - Clerk | | | ✓ | | | ✓ | ✓ | | ✓ | | | | | |
| Kevin Wilkinson - Clerk | | | ✓ | | | ✓ | ✓ | | | | | | | |

House Committee on Judiciary IV
Wednesday, April 1, 2015 at 10:00 AM
Room 1228/1327 of the Legislative Building

MINUTES

The House Committee on Judiciary IV met at 10:00 AM on April 1, 2015 in Room 1228/1327 of the Legislative Building. Representatives Blackwell, Chair, Bryan, Chair, Schaffer, Chair, Hamilton, Vice-chair, Adams, Ager, Hager, Hunter, Johnson, Richardson, Riddell, Terry, Tine, Torbett, Warren and Willingham attended. Also present were staff members Layla Cummings, Kara McGraw, Kelly Quick Tornow and Committee Clerks Kevin Wilkinson and Sharon Sullivan. An attendance sheet is attached and made part of these minutes.

Representative Jacqueline M. Schaffer presided. Chairwoman Schaffer called the meeting to order at 10:03 AM. The Chairwoman recognized the Sergeants-at-Arms and introduced the pages.

The following bills were considered:

HB 174 Landlord/Tenant-Foreclosure & Evict. Changes. (Representatives Bradford, Stam)

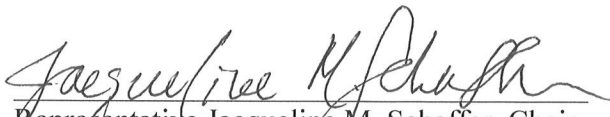
A motion was made to bring the Proposed Committee substitute before the committee, and the motion passed. Chairwoman Schaffer recognized Representative Bradford to present the bill. Representative Stam was also recognized to present part of the bill. There was discussion between committee members about the bill. Representative Hager made the motion for a favorable report for the Proposed Committee Substitute, with an unfavorable report for the original bill. The motion carried, and the committee substitute received a favorable report.

HB 283 Supreme Court Sessions in Morganton. (Representatives Bishop, Blackwell)

Representative Blackwell was recognized to present the bill. Representative Torbett made a motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

The meeting adjourned at 10:30 AM.

Respectfully submitted,


Representative Jacqueline M. Schaffer, Chair
Presiding


Sharon Sullivan, Committee Clerk

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2015-2016 SESSION**

You are hereby notified that the **House Committee on Judiciary IV** will meet as follows:

DAY & DATE: Wednesday, April 1, 2015

TIME: 10:00 AM

LOCATION: 1228/1327 LB

COMMENTS: Rep. Jacqueline M. Schaffer, presiding Chair.

The following bills will be considered:

| BILL NO. | SHORT TITLE | SPONSOR |
|-----------------|--|---|
| HB 174 | Landlord/Tenant-Foreclosure & Evict. Changes. | Representative Bradford Representative Stam |
| HB 283 | Supreme Court Sessions in Morganton. | Representative Bishop Representative Blackwell |

Respectfully,

Representative Hugh Blackwell, Co-Chair
Representative Rob Bryan, Co-Chair
Representative Jacqueline Michelle Schaffer, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 10:15 AM on Monday, March 30, 2015.

____ Principal Clerk
____ Reading Clerk – House Chamber

Sharon Sullivan (Committee Assistant)

**House Committee on Judiciary IV
Wednesday, April 1, 2015, 10:00 AM
1228/1327 Legislative Building**

AGENDA

Welcome and Opening Remarks

Chaired by Rep. Jacqueline M. Schaffer

Introduction of Sergeants-at-Arms

Introduction of Pages

Bills

BILL NO. SHORT TITLE

SPONSOR

HB 174 Landlord/Tenant-Foreclosure &
 Evict. Changes.

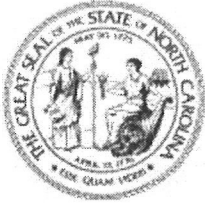
Representative Bradford
Representative Stam

HB 283 Supreme Court Sessions in
 Morganton.

Representative Bishop
Representative Blackwell

Other Business

Adjournment



HOUSE BILL 174: Landlord/Tenant-Foreclosure & Evict. Changes

2015-2016 General Assembly

Committee: House Judiciary IV
Introduced by: Reps. Bradford, Stam
Analysis of: PCS to First Edition
H174-CSTS

Date: April 1, 2015
Prepared by: Layla Cummings
Committee Counsel

SUMMARY: *House Bill 174 would amend and enhance certain notice requirements and protections for tenants of real properties in foreclosure, allow for purchasers of real property under option contracts to pursue monetary damages separately from summary ejectment proceedings, and make other changes to the Homeowner and Homebuyer Protection Act.*

The PCS would make the following changes:

- (1) Clarify the notice of sale to occupants of single-family residential real property of a residence in foreclosure and increase the time for termination of a lease by a tenant of residential property in foreclosure, while limiting terminations when the default is cured.*
- (2) Clarify the intent to allow certain tenants to remain in a residence if the purchaser will not use the property as a primary residence, clarify when tenants must be given 90 days' notice before application for an order of possession, limit application of the section to the lease portion of an option contract executed with a lease, and provide that the purchaser is not required to honor the lease if the property is not habitable at the time of purchase.*
- (3) Provide that the definition of option contract is limited to single-family residential real property under Chapter 47G.*
- (4) Make a technical correction to keep the existing exemptions from prohibited foreclosure rescue transactions.*

CURRENT LAW AND BILL ANALYSIS:

Section 1: Notice for Termination of Rental Agreements in Foreclosure

CURRENT LAW: – Tenants of residential real property with less than 15 rental units may terminate the lease early if the residence is in foreclosure, by providing notice of termination effective at least 10 days after the notice of sale. An occupant will receive the notice of sale 20 days in advance of a foreclosure sale.

BILL ANALYSIS: Section 1(a) would clarify that any occupant of single-family residential real property in foreclosure receives a notice of sale. Section 1(b) would allow tenants of residential real property with less than 15 rental units to provide the landlord with a written notice of termination is effective at least 10 days but no more than 90 days after the date contained in the notice of sale. The notice of termination would not be effective if the mortgagor has cured the default. Section 1(c) would make a conforming change.

Section 2: Effect of Foreclosure on Preexisting Tenancy

CURRENT LAW: The federal Protecting Tenants at Foreclosure Act of 2009 allowed a tenant in a residence in foreclosure to remain in the residence until the end of the lease if the purchaser of the

O. Walker Reagan
Director



Research Division
(919) 733-2578

House Bill 174

Page 2

property did not use the property as his or her primary residence. If no lease existed, it provided the tenant with a 90 day notice before the purchaser could seek to evict the tenant. The federal law expired on December 31, 2014.

BILL ANALYSIS: Would require the following for foreclosures on preexisting tenancies in single-family residences:

- Allow a tenant with a lease meeting certain conditions to remain in the residence unless the purchaser will use the residence as his or her primary residence.
 - The tenant may remain until the end of the term of the lease or one year, whichever is shorter.
 - The lease must meet the following conditions: (1) the tenant is not the debtor or the child, spouse or parent of the debtor; and (2) the lease is in writing and requires the receipt of rent that is not substantially below fair market value if the rent has not been reduced by a federal or state subsidy.
- Requires the tenant be provided with a 90-day notice before the purchaser can apply for an order of possession if the tenant does not have a lease that conforms to the criteria above or if the purchaser will occupy the property as his or her primary residence.
- This section does not apply to the option to purchase terms of a lease or to a lease of a residence with "imminently dangerous conditions" at the time of purchase as defined by G.S. 42-42(a)(8) that would make the home uninhabitable.

Section 3: Leases with Option to Purchase

CURRENT LAW: Option contracts are regulated by Chapter 47G of the General Statutes and are defined as contracts containing an option to purchase real property which includes, or is combined with, or executed in conjunction with a residential lease agreement. Every option contract must be in writing and contain all the terms agreed to by the parties.

BILL ANALYSIS: Would amend various provisions of Chapter 47G regarding option to purchase contracts executed with lease agreements as follows:

- Clarify that option contracts regulated by the Chapter are limited to single-family residential real property.
- Clarify that provisions of Chapter 42 (Landlord and Tenant Law) apply to covered lease agreements unless otherwise covered by the Chapter.
- Provide that the judgment in an action to recover possession of the property does not prejudice either party in a subsequent action for monetary damages or other remedies related to default and forfeit of an option contract.
- Provide that an option seller may initiate an action for summary ejectment if an option purchaser defaults on the lease and the option purchaser may counterclaim for damages in the summary ejectment proceeding.
- Eliminate the provision that a violation of this Chapter constitutes an unfair trade practice under G.S. 75-1.1.

Section 4: Contracts for Deed

CURRENT LAW: A contract for deed is an agreement in which the seller agrees to sell an interest in property to the purchaser, the purchaser agrees to pay the purchase price in five or more payments exclusive of the down payment, and the seller retains title to the property as security for the purchaser's obligation under the agreement. Chapter 47H specifies the minimum required contents of a contract for

House Bill 174

Page 3

deed and requires that the contract be recorded with the register of deeds in the county in which the property is located.

BILL ANALYSIS: Section 4(a) would amend G.S. 47H-2 regarding the minimum contents for a contract for deed as follows:

- Eliminate the requirement that a contract for deed contain a description of conditions of property by replacing it with a new requirement that a contract for deed include a completed residential property disclosure statement.
- Eliminate the requirement that the contents for a contract for deed include a statement of the amount of the lien, and the amount and due date of periodic payments if the property being sold is encumbered by a lien.

Section 4(b) would amend G.S. 47H-8 to eliminate the provision that a violation of this Chapter constitutes an unfair trade practice under G.S. 75-1.1.

Section 5: Foreclosure Rescue Transactions

CURRENT LAW: G.S. 75-120 prohibits foreclosure rescue transactions by anyone other than the transferor for financial gain or with the expectation of financial gain. A foreclosure rescue transaction is a transfer of residential real property, including a manufactured home, which includes all of the following:

- The real property is the principal residence of the transferor.
- The transferor is in default or legal proceedings have been initiated on a mortgage loan obligation secured by the transferor's principal residence.
- The transferor follows the representations of the transferee that the transfer of the residential property will allow the transferor to prevent, postpone, or reverse the effect of foreclosure.
- The transferor retains an interest in the property conveyed by written or oral agreement, including any legal, equitable, or possessory interest.

The prohibition against foreclosure rescue transactions does not apply to (i) a member of the transferor's family; (ii) a state, federal or local government agency or organization; (iii) a bank, savings institution, or credit union; or a (iv) a licensed mortgage lender or mortgage servicer.

BILL ANALYSIS: Section 5(a) would amend G.S. 75-120 as follows:

- Modify the definition of "foreclosure rescue transaction" to eliminate the requirement that the transferor be in default or legal proceedings have been initiated to foreclose on transferor's property.
- Make a conforming change to delete the definition of "default."
- Clarify the definition of "foreclosure rescue transaction" so that it applies expressly in instances in which the transferor retains a tenancy interest, lease with option to purchase agreement, or an option to reacquire the property.

Section 5(b) would amend G.S. 75-121 as follows:

- Provide that a certified appraiser must determine fair market value of the property.
- Allow 120 days for the appraisal to be performed.
- Change the delivery requirement for the appraisal to no less than 7 days prior to the time the transferor becomes obligated to perform the agreement.

EFFECTIVE DATE: This act becomes effective October 1, 2015. Section 1 applies to notice of sale issued on or after that date. Section 2 applies to orders for possession entered on or after that date. Sections 3, 4, and 5 apply to transactions entered into on or after that date.

minutes
4-1-15

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

D

HOUSE BILL 174
PROPOSED COMMITTEE SUBSTITUTE H174-PCS40271-TS-1

Short Title: Landlord/Tenant-Foreclosure & Evict. Changes.

(Public)

Sponsors:

Referred to:

March 10, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND AND ENHANCE CERTAIN NOTICE REQUIREMENTS AND
3 PROTECTIONS FOR TENANTS OF REAL PROPERTIES IN FORECLOSURE AND
4 TO ALLOW FOR PURCHASERS OF REAL PROPERTY UNDER OPTION
5 CONTRACTS TO PURSUE MONETARY DAMAGES SEPARATELY FROM
6 SUMMARY EJECTMENT PROCEEDINGS AND OTHER AMENDMENTS TO THE
7 HOMEBUYER PROTECTION ACT.

8 The General Assembly of North Carolina enacts:

9 SECTION 1.(a) G.S. 45-21.17 reads as rewritten:
10 "§ 45-21.17. Posting and publishing notice of sale of real property.

11 ...
12 (4) The notice of sale shall be mailed by first-class mail at least 20 days prior to
13 the date of sale to each party entitled to notice of the hearing provided by
14 G.S. 45-21.16 whose address is known to the trustee or mortgagee and in
15 addition shall also be mailed by first-class mail to any party desiring a copy
16 of the notice of sale who has complied with G.S. 45-21.17A. If the property
17 is residential and contains less than 15 rental units, including single-family
18 residential real property, the notice of sale shall also be mailed to any person
19 who occupies the property pursuant to a residential rental agreement by
20 name, if known, at the address of the property to be sold. If the name of the
21 person who occupies the property is not known, the notice shall be sent to
22 "occupant" at the address of the property to be sold. Notice of the hearing
23 required by G.S. 45-21.16 shall be sufficient to satisfy the requirement of
24 notice under this section provided such notice contains the information
25 required by G.S. 45-21.16A.

26"

27 SECTION 1.(b) G.S. 42-45.2 reads as rewritten:
28 "§ 42-45.2. Early termination of rental agreement by military and tenants residing in
29 certain foreclosed property.

30 Any tenant who resides in residential real property containing less than 15 rental units that
31 is being sold in a foreclosure proceeding under Article 2A of Chapter 45 of the General Statutes
32 may terminate the rental agreement for the dwelling unit after receiving notice pursuant to
33 G.S. 45-21.17(4) by providing the landlord with a written notice of termination to be effective
34 on a date stated in the notice of termination that is at least 10 ~~days~~-days, but no more than 90
35 days, after the sale date of contained in the notice of sale-sale, provided that the mortgagor has
36 not cured the default at the time the tenant provides the notice of termination. Upon termination



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of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at the time that would have been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due only to the early termination of the tenancy."

SECTION 1.(c) G.S. 45-21.16A(b) reads as rewritten:

"§ 45-21.16A. Contents of notice of sale.

...

(b) In addition to the requirements contained in subsection (a) of this section, the notice of sale of residential real property with less than 15 rental units shall also state all of the following:

- (1) That an order for possession of the property may be issued pursuant to G.S. 45-21.29 in favor of the purchaser and against the party or parties in possession by the clerk of superior court of the county in which the property is sold.
- (2) Any person who occupies the property pursuant to a rental agreement entered into or renewed on or after October 1, 2007, may, after receiving the notice of sale, terminate the rental agreement ~~upon 10 days' by providing~~ written notice of termination to the landlord, to be effective on a date stated in the notice that is at least 10 days, but no more than 90 days, after the sale date contained in the notice of sale, provided that the mortgagor has not cured the default at the time the tenant provides the notice of termination. The notice shall also state that upon termination of a rental agreement, the tenant is liable for rent due under the rental agreement prorated to the effective date of the termination."

SECTION 2.(a) G.S. 45-21.29(k) reads as rewritten:

"§ 45-21.29. Orders for possession.

...

(k) Orders for possession of real property sold pursuant to this Article, in favor of the purchaser and against any party or parties in possession at the time of application therefor, may be issued by the clerk of the superior court of the county in which the property is sold if all of the following apply:

- (1) The property has been sold in the exercise of the power of sale contained in any mortgage, deed of trust, leasehold mortgage, leasehold deed of trust, or a power of sale authorized by any other statutory provisions.
- (2) Repealed by Session Laws 1993, c. 305, s. 18.
- (2a) The provisions of this Article have been complied with.
- (3) The sale has been consummated, and the purchase price has been paid.
- (4) The purchaser has acquired title to and is entitled to possession of the real property sold.
- (5) Ten days' notice has been given to the party or parties who remain in possession at the time application is made, or, in the case of residential property containing 15 or more rental units, 30 days' notice has been given to the party or parties who remain in possession at the time the application is made.
- (5a) If the property is single-family residential and occupied pursuant to a lease, written or oral, the provisions of G.S. 45-21.33A have been satisfied.
- (6) Application is made by petition to the clerk by the mortgagee, the trustee, the purchaser of the property, or any authorized representative of the mortgagee, trustee, or purchaser of the property."

SECTION 2.(b) Part 2 of Article 2A of Chapter 45 of the General Statutes is amended by adding a new section to read:

"§ 45-21.33A. Effect of foreclosure on preexisting tenancy.

(a) For the purposes of this section, "purchaser" means any purchaser or successor in interest who has acquired title to single-family residential real property pursuant to this Article.

(b) Unless a purchaser will occupy the premises as a primary residence, the purchaser shall assume title subject to the rights of any tenant to occupy the premises until the end of the remaining term of the lease or one calendar year from the date the purchaser acquires title, whichever is shorter. In no event shall the purchaser be required to renew the existing lease.

(c) Subsection (b) of this section shall apply only to a lease that meets all of the following criteria:

(1) The tenant is not the debtor under the security instrument foreclosed or the child, spouse, or parent of the debtor.

(2) The lease is in writing, is not terminable at will, and requires the receipt of rent that is not substantially less than fair market rent for the property, provided that the rent has not been reduced or subsidized due to a federal or State subsidy.

(d) A purchaser shall provide a tenant in possession of the single-family residential real property notice to vacate at least 90 days before making an application for possession pursuant to G.S. 45-21.29(k) in any of the following circumstances:

(1) The tenant is the debtor under the security instrument foreclosed or the child, spouse, or parent of debtor.

(2) The tenant has an oral lease or the lease is terminable at will.

(3) The purchaser will occupy the premises as a primary residence.

(e) This section shall not apply to the following:

(1) The option to purchase terms of an option contract as defined in G.S. 47G-1(4).

(2) A lease of residential real property where there is an "imminently dangerous condition" as defined in G.S. 42-42(a)(8) on the premises as of the date of acquisition of title by the purchaser.

(f) Nothing in this section shall be construed to limit the remedies available to the purchaser for breaches of the lease terms by the tenant."

SECTION 3. Chapter 47G of the General Statutes reads as rewritten:

"Chapter 47G.**"Option to Purchase Contracts Executed With Lease Agreements.****"§ 47G-1. Definitions.**

The following definitions apply in this Chapter:

...

(4) Option contract or contract. — An option contract for the purchase of single-family residential real property that includes or is combined with, or is executed in conjunction with, a covered lease agreement.

...

"§ 47G-2. Minimum contents of option contracts; recordation.

...

(f) Instrument Ineffective. — No instrument purporting to extinguish the equity of redemption that is executed as a condition of the transaction or prior to a default will be effective.

"§ 47G-3. Application of Landlord Tenant Law.

~~The~~ Unless otherwise provided for by this Chapter, the provisions of Chapter 42 of the General Statutes apply to covered lease agreements.

...

"§ 47G-5. Notice of default and intent to forfeit.

(a) A notice of default and intent to forfeit shall specify the nature of the default, the amount of the default if the default is in the payment terms, the date after which the contract will be forfeited if the purchaser does not cure the default, and the name and address of the seller or the attorney for the seller. The period specified in the notice after which the contract will be forfeited may not be less than 30 days after the notice of default and intent to forfeit is served, or before judgment is given in any action brought to recover the possession of the leased premises pursuant to Article 3 of Chapter 42 of the General Statutes, whichever is earlier. A judgment rendered in an action to recover possession of the premises shall not prejudice either party in a subsequent action to recover monetary damages or other remedies.

...
"§ 47G-7. Remedies.

(a) ~~A violation of any provision of this Chapter constitutes an unfair trade practice under G.S. 75-1.1.~~ An option purchaser may bring an action for the recovery of damages, to void a transaction executed in violation of this Chapter, as well as for declaratory or equitable relief for a violation of this Chapter. The rights and remedies provided herein are cumulative to, and not a limitation of, any other rights and remedies provided by law or equity. Nothing in this Chapter shall be construed to subject an individual homeowner selling his or her primary residence directly to an option purchaser to liability under G.S. 75-1.1.

(b) In the event of default by the option purchaser under the terms of the lease agreement, the option seller may initiate a summary ejectment action to recover damages and possession of the leased premises pursuant to Article 3 of Chapter 42 of the General Statutes. The magistrate shall retain jurisdiction over the summary ejectment proceeding.

(c) The option purchaser may counterclaim for damages in any summary ejectment proceeding. In accordance with G.S. 7A-219 of the General Statutes, no counterclaim which would make the amount in controversy exceed the jurisdictional limits shall be permitted. If a counterclaim in a summary ejectment proceeding is barred pursuant to G.S. 7A-219, the option purchaser shall not be estopped from asserting that claim in a separate action."

SECTION 4.(a) G.S. 47H-2(b) reads as rewritten:

"§ 47H-2. Minimum contents for contracts for deed; recordation.

...
(b) Contents. – A contract for deed ~~contract~~ shall contain at least all of the following:

...
(14) ~~A description of conditions of the property that includes whether the property, including any structures thereon, has water, sewer, septic, and electricity service, whether the property is in a floodplain, whether anyone else has a legal interest in the property, and whether restrictive covenants prevent building or installing a dwelling. If restrictive covenants are in place that affect the property, a copy of the restrictive covenants shall be made available to the purchaser at or before the execution of the contract.~~

(14a) A completed residential property disclosure statement that complies with Chapter 47E of the General Statutes, provided that the seller does not choose the option of making "No Representation" as to any characteristic or condition of the property.

...
(16) ~~If the property being sold is encumbered by a deed of trust, mortgage, or other encumbrance evidencing or securing a monetary obligation which constitutes a lien on the property, and the seller is not a licensed general contractor within the meaning of Chapter 87 of the General Statutes, or a licensed manufactured home dealer within the meaning of Article 9A of Chapter 143 of the General Statutes, a statement of the amount of the lien, and the amount and due date, if any, of any periodic payments.~~

...."

SECTION 4.(b) G.S. 47H-8 reads as rewritten:

"§ 47H-8. Remedies.

~~A violation of any provision of this Chapter constitutes an unfair trade practice under G.S. 75-1.1.~~ A purchaser may bring an action for the recovery of damages, to rescind a transaction, as well as for declaratory or equitable relief, for a violation of this Chapter. The rights and remedies provided herein are cumulative to, and not a limitation of, any other rights and remedies provided by law or equity. Nothing in this Chapter shall be construed to subject an individual homeowner selling his or her primary residence directly to a buyer to liability under G.S. 75-1.1."

SECTION 5.(a) G.S. 75-120 reads as rewritten:

"§ 75-120. Definitions.

The following definitions shall apply in this Article:

(1) ~~Default. Whenever a property owner is more than 60 days delinquent on any loan or debt that is secured by the property, including real estate taxes.~~

...

(3) Foreclosure rescue transaction. – A transfer of residential real property, including a manufactured home that is permanently attached to the real property, which includes all of the following features:

- a. The real property is the principal residence of the transferor.
- b. ~~The transferor is in default or legal proceedings have been initiated to foreclose on the transferor's property.~~
- c. The transferee, an agent of the transferee, or others acting in concert with the transferee make representations that the transfer of the residential property will enable the transferor to prevent, postpone, or reverse the effect of foreclosure and to remain in the residence.
- d. The transferor retains ~~an interest in the property conveyed, including a tenancy interest, an interest under a lease purchase agreement, lease with option to purchase agreement, or an option to reacquire the property, or any other legal, equitable, or possessory interest in the property conveyed property.~~

...."

SECTION 5.(b) G.S. 75-121 reads as rewritten:

"§ 75-121. Foreclosure rescue transactions prohibited; exceptions; violation.

(a) It is unlawful for a person or entity other than the transferor to engage in, promise to engage in, arrange, offer, promote, solicit, assist with, or carry out a foreclosure rescue transaction for financial gain or with the expectation of financial gain, unless prior to or at the time of transfer, the transferee pays the transferor at least fifty percent (50%) of the fair market value of the property as determined by a ~~licensed-certified~~ appraiser. An appraisal to determine the fair market value of the property must be performed no more than ~~90-120~~ days prior to the transfer. The appraisal shall be delivered to the transferor ~~no more than three days after the appraisal is performed and~~ no less than seven days prior to the ~~transfer of the property. time the transferor becomes obligated to perform the agreement.~~ This section does not apply to exempt transactions.

(b) Every contract to effectuate a foreclosure rescue transaction in which the transferee pays at least 50% of the fair market value of the property, shall be in writing, shall be signed and acknowledged by all parties to it, and shall contain all the terms to which the parties have agreed. The contract shall contain at least all of the following:

...

(5) The fair market value of the property as determined by a ~~licensed-certified~~ appraiser.

1
2
3
4

...."

SECTION 6. This act becomes effective October 1, 2015. Section 1 applies to notice of sale issued on or after that date. Section 2 applies to orders for possession entered on or after that date. Sections 3, 4, and 5 apply to transactions entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

1

HOUSE BILL 174

Short Title: Landlord/Tenant-Foreclosure & Evict. Changes.

(Public)

Sponsors: Representatives Bradford and Stam (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary IV.

March 10, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND AND ENHANCE CERTAIN NOTICE REQUIREMENTS AND PROTECTIONS FOR TENANTS OF REAL PROPERTIES IN FORECLOSURE AND TO ALLOW FOR PURCHASERS OF REAL PROPERTY UNDER OPTION CONTRACTS TO PURSUE MONETARY DAMAGES SEPARATELY FROM SUMMARY EJECTMENT PROCEEDINGS AND OTHER AMENDMENTS TO THE HOMEBUYER PROTECTION ACT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 42-45.2 reads as rewritten:

"§ 42-45.2. Early termination of rental agreement by military and tenants residing in certain foreclosed property.

~~Any~~ Upon expiration of the upset bid period provided by G.S. 45-21.27, a tenant who resides in residential real property containing less than 15 rental units that is being sold in a foreclosure proceeding under Article 2A of Chapter 45 of the General Statutes may terminate the rental agreement for the dwelling unit ~~after receiving notice pursuant to G.S. 45-21.17(4) by~~ providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 10 ~~days~~ days, but no more than 90 days, after the date of the ~~notice of sale~~ expiration of the upset bid period. Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at the time that would have been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due only to the early termination of the tenancy."

SECTION 1.(b) G.S. 45-21.16A(b) reads as rewritten:

"§ 45-21.16A. Contents of notice of sale.

...

(b) In addition to the requirements contained in subsection (a) of this section, the notice of sale of residential real property with less than 15 rental units shall also state all of the following:

- (1) That an order for possession of the property may be issued pursuant to G.S. 45-21.29 in favor of the purchaser and against the party or parties in possession by the clerk of superior court of the county in which the property is sold.
- (2) Any person who occupies the property pursuant to a rental agreement entered into or renewed on or after October 1, 2007, may, ~~after receiving the notice of sale~~ upon expiration of the upset bid period provided under



G.S. 45-21.27, terminate the rental agreement ~~upon 10 days~~ by providing written notice to the ~~landlord-landlord~~, to be effective on a date stated in the notice that is at least 10 days, but no more than 90 days, after the date of the expiration of the upset bid period. The notice shall also state that upon termination of a rental agreement, the tenant is liable for rent due under the rental agreement prorated to the effective date of the termination."

SECTION 2.(a) G.S. 45-21.29(k) is rewritten to read:

"§ 45-21.29. Orders for possession.

(k) Orders for possession of real property sold pursuant to this Article, in favor of the purchaser and against any party or parties in possession at the time of application therefor, may be issued by the clerk of the superior court of the county in which the property is sold if all of the following apply:

- (1) The property has been sold in the exercise of the power of sale contained in any mortgage, deed of trust, leasehold mortgage, leasehold deed of trust, or a power of sale authorized by any other statutory provisions.
- (2) Repealed by Session Laws 1993, c. 305, s. 18.
- (2a) The provisions of this Article have been complied with.
- (3) The sale has been consummated, and the purchase price has been paid.
- (4) The purchaser has acquired title to and is entitled to possession of the real property sold.
- (5) Ten days' notice has been given to the party or parties who remain in possession at the time application is made, or, in the case of residential property containing 15 or more rental units, 30 days' notice has been given to the party or parties who remain in possession at the time the application is made.
- (5a) If the property is single-family residential and occupied pursuant to a lease, written or oral, the provisions of G.S. 45-21.33A have been satisfied.
- (6) Application is made by petition to the clerk by the mortgagee, the trustee, the purchaser of the property, or any authorized representative of the mortgagee, trustee, or purchaser of the property."

SECTION 2.(b) Part 2 of Article 2A of Chapter 45 of the General Statutes is amended by adding a new section to read:

"§ 45-21.33A. Effect of foreclosure on preexisting tenancy.

(a) Any purchaser or successor in interest who has acquired title to single-family residential real property pursuant to this Article shall assume that interest subject to:

- (1) The provision of a notice to vacate to any tenant at least 90 days before the application for an order of possession pursuant to G.S. 45-21.29(k)(5).
- (2) The rights of any tenant to occupy the premises until the end of the remaining term of the lease; however, a purchaser or successor in interest may terminate a lease effective at least 90 days after the bid amount has been paid and the trustee has tendered the deed to the purchaser if the purchaser or successor in interest will occupy the premises as a primary residence. In that event, the purchaser or successor in interest shall provide to the tenant the notice required under subdivision (1) of this subsection.

(b) Subsection (a) of this section shall apply only to a lease that meets all of the following criteria:

- (1) The tenant is not the debtor under the security instrument foreclosed, or the child, spouse, or parent of the debtor.
- (2) The lease is in writing and requires the receipt of rent that is not substantially less than fair market rent for the property, provided that the rent has not been

reduced or subsidized due to a federal or State subsidy. A tenant in possession of the property pursuant to an oral lease shall be entitled to the notice requirement contained in subdivision (1) of subsection (a) of this section.

(c) Nothing in this section shall be construed to limit the remedies available to the purchaser or successor in interest for breaches of the lease terms by the tenant."

SECTION 3. Chapter 47G of the General Statutes is rewritten to read:

"Chapter 47G.

Option to Purchase Contracts Executed With Lease Agreements.

"§ 47G-1. Definitions.

The following definitions apply in this Chapter:

(4) Option contract or contract. – An option contract for the purchase of property that includes or is combined with, or is executed in conjunction with, a covered lease agreement. The term does not include a contract which obligates the buyer to purchase the property even though the obligation may be subject to one or more contingencies or unilateral rights to terminate the contract.

"§ 47G-2. Minimum contents of option contracts; recordation.

(f) Instrument Ineffective. – No instrument purporting to extinguish the equity of redemption that is executed as a condition of the transaction or prior to a default will be effective.

"§ 47G-3. Application of Landlord Tenant Law.

~~The~~ Unless otherwise provided for by this Chapter, the provisions of Chapter 42 of the General Statutes apply to covered lease agreements.

"§ 47G-5. Notice of default and intent to forfeit.

(a) A notice of default and intent to forfeit shall specify the nature of the default, the amount of the default if the default is in the payment terms, the date after which the contract will be forfeited if the purchaser does not cure the default, and the name and address of the seller or the attorney for the seller. The period specified in the notice after which the contract will be forfeited may not be less than 30 days after the notice of default and intent to forfeit is served, or before judgment is given in any action brought to recover the possession of the leased premises pursuant to Article 3 of Chapter 42 of the General Statutes, whichever is earlier. A judgment rendered in an action to recover possession of the premises shall not prejudice either party in a subsequent action to recover monetary damages or other remedies.

"§ 47G-7. Remedies.

~~(a) A violation of any provision of this Chapter constitutes an unfair trade practice under G.S. 75-1.1.~~ An option purchaser may bring an action for the recovery of damages, to void a transaction executed in violation of this Chapter, as well as for declaratory or equitable relief for a violation of this Chapter. The rights and remedies provided herein are cumulative to, and not a limitation of, any other rights and remedies provided by law or equity. Nothing in this Chapter shall be construed to subject an individual homeowner selling his or her primary residence directly to an option purchaser to liability under G.S. 75-1.1.

(b) In the event of default by the option purchaser under the terms of the lease agreement, the option seller may initiate a summary ejectment action to recover damages and possession of the leased premises pursuant to Article 3 of Chapter 42 of the General Statutes. The magistrate shall retain jurisdiction over the summary ejectment proceeding.

(c) The option purchaser may counterclaim for damages in any summary ejectment proceeding. In accordance with G.S. 7A-219 of the General Statutes, no counterclaim which would make the amount in controversy exceed the jurisdictional limits shall be permitted. If a counterclaim in a summary ejectment proceeding is barred pursuant to G.S. 7A-219, the option purchaser shall not be estopped from asserting that claim in a separate action."

SECTION 4.(a) G.S. 47H-2(b) reads as rewritten:

"§ 47H-2. Minimum contents for contracts for deed; recordation.

(b) Contents. – A contract for deed ~~contract~~ shall contain at least all of the following:

(14) ~~A description of conditions of the property that includes whether the property, including any structures thereon, has water, sewer, septic, and electricity service, whether the property is in a floodplain, whether anyone else has a legal interest in the property, and whether restrictive covenants prevent building or installing a dwelling. If restrictive covenants are in place that affect the property, a copy of the restrictive covenants shall be made available to the purchaser at or before the execution of the contract.~~

(14a) A completed residential property disclosure statement that complies with Chapter 47E of the General Statutes, provided that the seller does not choose the option of making "No Representation" as to any characteristic or condition of the property.

(16) ~~If the property being sold is encumbered by a deed of trust, mortgage, or other encumbrance evidencing or securing a monetary obligation which constitutes a lien on the property, and the seller is not a licensed general contractor within the meaning of Chapter 87 of the General Statutes, or a licensed manufactured home dealer within the meaning of Article 9A of Chapter 143 of the General Statutes, a statement of the amount of the lien, and the amount and due date, if any, of any periodic payments.~~

...."

SECTION 4.(b) G.S. 47H-8 reads as rewritten:

"§ 47H-8. Remedies.

~~A violation of any provision of this Chapter constitutes an unfair trade practice under G.S. 75-1.1. A purchaser may bring an action for the recovery of damages, to rescind a transaction, as well as for declaratory or equitable relief, for a violation of this Chapter. The rights and remedies provided herein are cumulative to, and not a limitation of, any other rights and remedies provided by law or equity. Nothing in this Chapter shall be construed to subject an individual homeowner selling his or her primary residence directly to a buyer to liability under G.S. 75-1.1."~~

SECTION 5.(a) G.S. 75-120 reads as rewritten:

"§ 75-120. Definitions.

The following definitions shall apply in this Article:

(1) ~~Default. — Whenever a property owner is more than 60 days delinquent on any loan or debt that is secured by the property, including real estate taxes.~~

(3) Foreclosure rescue transaction. – A transfer of residential real property, including a manufactured home that is permanently attached to the real property, which includes all of the following features:

a. The real property is the principal residence of the transferor.

b. ~~The transferor is in default or legal proceedings have been initiated to foreclose on the transferor's property.~~

- 1 c. The transferee, an agent of the transferee, or others acting in concert
2 with the transferee make representations that the transfer of the
3 residential property will enable the transferor to prevent, postpone, or
4 reverse the effect of foreclosure and to remain in the residence.
5 d. The transferor retains ~~an interest in the property conveyed, including~~
6 ~~a tenancy interest, an interest under a lease-purchase agreement, lease~~
7 ~~with option to purchase agreement, or an option to reacquire the~~
8 ~~property, or any other legal, equitable, or possessory interest in the~~
9 ~~property conveyed property.~~

10"

11 SECTION 5.(b) G.S. 75-121 reads as rewritten:

12 "§ 75-121. Foreclosure rescue transactions prohibited; exceptions; violation.

13 (a) It is unlawful for a person or entity other than the transferor to engage in, promise to
14 engage in, arrange, offer, promote, solicit, assist with, or carry out a foreclosure rescue
15 transaction for financial gain or with the expectation of financial gain, unless prior to or at the
16 time of transfer, the transferee pays the transferor at least fifty percent (50%) of the fair market
17 value of the property as determined by a ~~licensed-certified~~ appraiser. An appraisal to determine
18 the fair market value of the property must be performed no more than ~~90-120~~ days prior to the
19 transfer. The appraisal shall be delivered to the transferor ~~no more than three days after the~~
20 ~~appraisal is performed and~~ no less than seven days prior to the ~~transfer of the property.~~ This
21 ~~section does not apply to exempt transactions.~~ time the transferor becomes obligated to perform
22 the agreement.

23 (b) Every contract to effectuate a foreclosure rescue transaction in which the transferee
24 pays at least 50% of the fair market value of the property, shall be in writing, shall be signed
25 and acknowledged by all parties to it, and shall contain all the terms to which the parties have
26 agreed. The contract shall contain at least all of the following:

27 ...

- 28 (5) The fair market value of the property as determined by a ~~licensed-certified~~
29 appraiser.

30"

31 SECTION 6. This act becomes effective October 1, 2015. Section 1 applies to
32 upset bid periods expiring on or after that date. Section 2 applies to orders for possession
33 entered on or after that date. Sections 3, 4, and 5 apply to transactions entered into on or after
34 that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

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HOUSE BILL 174
PROPOSED COMMITTEE SUBSTITUTE H174-CSTS-1 [v.12]

3/31/2015 3:12:46 PM

Short Title: Landlord/Tenant-Foreclosure & Evict. Changes.

(Public)

Sponsors:

Referred to:

March 10, 2015

A BILL TO BE ENTITLED
AN ACT TO AMEND AND ENHANCE CERTAIN NOTICE REQUIREMENTS AND
PROTECTIONS FOR TENANTS OF REAL PROPERTIES IN FORECLOSURE AND
TO ALLOW FOR PURCHASERS OF REAL PROPERTY UNDER OPTION
CONTRACTS TO PURSUE MONETARY DAMAGES SEPARATELY FROM
SUMMARY EJECTMENT PROCEEDINGS AND OTHER AMENDMENTS TO THE
HOMEBUYER PROTECTION ACT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 45-21.17 reads as rewritten:

"§ 45-21.17. Posting and publishing notice of sale of real property.

...

- (4) The notice of sale shall be mailed by first-class mail at least 20 days prior to the date of sale to each party entitled to notice of the hearing provided by G.S. 45-21.16 whose address is known to the trustee or mortgagee and in addition shall also be mailed by first-class mail to any party desiring a copy of the notice of sale who has complied with G.S. 45-21.17A. If the property is residential and contains less than 15 rental units, including single-family residential real property, the notice of sale shall also be mailed to any person who occupies the property pursuant to a residential rental agreement by name, if known, at the address of the property to be sold. If the name of the person who occupies the property is not known, the notice shall be sent to "occupant" at the address of the property to be sold. Notice of the hearing required by G.S. 45-21.16 shall be sufficient to satisfy the requirement of notice under this section provided such notice contains the information required by G.S. 45-21.16A.

SECTION 1.(b) G.S. 42-45.2 reads as rewritten:

"§ 42-45.2. Early termination of rental agreement by military and tenants residing in certain foreclosed property.

Any tenant who resides in residential real property containing less than 15 rental units that is being sold in a foreclosure proceeding under Article 2A of Chapter 45 of the General Statutes may terminate the rental agreement for the dwelling unit after receiving notice pursuant to G.S. 45-21.17(4) by providing the landlord with a written notice of termination to be effective on a date stated in the notice of termination that is at least 10 ~~days~~days, but no more than 90 days, after the sale date ~~of contained in the notice of sale~~, sale, provided that the mortgagor has not cured the default at the time the tenant provides the notice of termination. Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental



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1 agreement prorated to the effective date of the termination payable at the time that would have
2 been required by the terms of the rental agreement. The tenant is not liable for any other rent or
3 damages due only to the early termination of the tenancy."

4 **SECTION 1.(c)** G.S. 45-21.16A(b) reads as rewritten:

5 **"§ 45-21.16A. Contents of notice of sale.**

6 ...

7 (b) In addition to the requirements contained in subsection (a) of this section, the notice
8 of sale of residential real property with less than 15 rental units shall also state all of the
9 following:

10 (1) That an order for possession of the property may be issued pursuant to
11 G.S. 45-21.29 in favor of the purchaser and against the party or parties in
12 possession by the clerk of superior court of the county in which the property
13 is sold.

14 (2) Any person who occupies the property pursuant to a rental agreement
15 entered into or renewed on or after October 1, 2007, may, after receiving the
16 notice of sale, terminate the rental agreement ~~upon 10 days~~ by providing
17 written notice of termination to the ~~landlord~~ landlord, to be effective on a
18 date stated in the notice that is at least 10 days, but no more than 90 days,
19 after the sale date contained in the notice of sale, provided that the
20 mortgagor has not cured the default at the time the tenant provides the notice
21 of termination. The notice shall also state that upon termination of a rental
22 agreement, the tenant is liable for rent due under the rental agreement
23 prorated to the effective date of the termination."

24 **SECTION 2.(a)** G.S. 45-21.29(k) reads as rewritten:

25 **"§ 45-21.29. Orders for possession.**

26 ...

27 (k) Orders for possession of real property sold pursuant to this Article, in favor of the
28 purchaser and against any party or parties in possession at the time of application therefor, may
29 be issued by the clerk of the superior court of the county in which the property is sold if all of
30 the following apply:

31 (1) The property has been sold in the exercise of the power of sale contained in
32 any mortgage, deed of trust, leasehold mortgage, leasehold deed of trust, or a
33 power of sale authorized by any other statutory provisions.

34 (2) Repealed by Session Laws 1993, c. 305, s. 18.

35 (2a) The provisions of this Article have been complied with.

36 (3) The sale has been consummated, and the purchase price has been paid.

37 (4) The purchaser has acquired title to and is entitled to possession of the real
38 property sold.

39 (5) Ten days' notice has been given to the party or parties who remain in
40 possession at the time application is made, or, in the case of residential
41 property containing 15 or more rental units, 30 days' notice has been given to
42 the party or parties who remain in possession at the time the application is
43 made.

44 (5a) If the property is single-family residential and occupied pursuant to a lease,
45 written or oral, the provisions of G.S. 45-21.33A have been satisfied.

46 (6) Application is made by petition to the clerk by the mortgagee, the trustee,
47 the purchaser of the property, or any authorized representative of the
48 mortgagee, trustee, or purchaser of the property."

49 **SECTION 2.(b)** Part 2 of Article 2A of Chapter 45 of the General Statutes is
50 amended by adding a new section to read:

51 **"§ 45-21.33A. Effect of foreclosure on preexisting tenancy.**

(a) For the purposes of this section, "purchaser" means any purchaser or successor in interest who has acquired title to single-family residential real property pursuant to this Article.

(b) Unless a purchaser will occupy the premises as a primary residence, the purchaser shall assume title subject to the rights of any tenant to occupy the premises until the end of the remaining term of the lease or one calendar year from the date the purchaser acquires title, whichever is shorter. In no event shall the purchaser be required to renew the existing lease.

(c) Subsection (b) of this section shall apply only to a lease that meets all of the following criteria:

(1) The tenant is not the debtor under the security instrument foreclosed, or the child, spouse, or parent of the debtor.

(2) The lease is in writing, is not terminable at will, and requires the receipt of rent that is not substantially less than fair market rent for the property, provided that the rent has not been reduced or subsidized due to a federal or State subsidy.

(d) A purchaser shall provide a tenant in possession of the single-family residential real property notice to vacate at least 90 days before making an application for possession pursuant to G.S. 45-21.29(k) in any of the following circumstances:

(1) The tenant is the debtor under the security instrument foreclosed, or the child, spouse, or parent of debtor.

(2) The tenant has an oral lease or the lease is terminable at will.

(3) The purchaser will occupy the premises as a primary residence.

(e) This section shall not apply to the following:

(1) The option to purchase terms of an option contract as defined in G.S. 47G-1(4).

(2) A lease of residential real property where there is an "imminently dangerous condition" as defined in G.S. 42-42(a)(8) on the premises as of the date of acquisition of title by the purchaser.

(f) Nothing in this section shall be construed to limit the remedies available to the purchaser for breaches of the lease terms by the tenant."

SECTION 3. Chapter 47G of the General Statutes reads as rewritten:

"Chapter 47G.

Option to Purchase Contracts Executed With Lease Agreements.

"§ 47G-1. Definitions.

The following definitions apply in this Chapter:

...

(4) Option contract or contract. – An option contract for the purchase of single-family residential real property that includes or is combined with, or is executed in conjunction with, a covered lease agreement.

...

"§ 47G-2. Minimum contents of option contracts; recordation.

...

(f) Instrument Ineffective. – No instrument purporting to extinguish the equity of redemption that is executed as a condition of the transaction or prior to a default will be effective.

"§ 47G-3. Application of Landlord Tenant Law.

The Unless otherwise provided for by this Chapter, the provisions of Chapter 42 of the General Statutes apply to covered lease agreements.

...

"§ 47G-5. Notice of default and intent to forfeit.

(a) A notice of default and intent to forfeit shall specify the nature of the default, the amount of the default if the default is in the payment terms, the date after which the contract

will be forfeited if the purchaser does not cure the default, and the name and address of the seller or the attorney for the seller. The period specified in the notice after which the contract will be forfeited may not be less than 30 days after the notice of default and intent to forfeit is served, or before judgment is given in any action brought to recover the possession of the leased premises pursuant to Article 3 of Chapter 42 of the General Statutes, whichever is earlier. A judgment rendered in an action to recover possession of the premises shall not prejudice either party in a subsequent action to recover monetary damages or other remedies.

...

"§ 47G-7. Remedies.

(a) ~~A violation of any provision of this Chapter constitutes an unfair trade practice under G.S. 75-1.1.~~ An option purchaser may bring an action for the recovery of damages, to void a transaction executed in violation of this Chapter, as well as for declaratory or equitable relief for a violation of this Chapter. The rights and remedies provided herein are cumulative to, and not a limitation of, any other rights and remedies provided by law or equity. Nothing in this Chapter shall be construed to subject an individual homeowner selling his or her primary residence directly to an option purchaser to liability under G.S. 75-1.1.

(b) In the event of default by the option purchaser under the terms of the lease agreement, the option seller may initiate a summary ejectment action to recover damages and possession of the leased premises pursuant to Article 3 of Chapter 42 of the General Statutes. The magistrate shall retain jurisdiction over the summary ejectment proceeding.

(c) The option purchaser may counterclaim for damages in any summary ejectment proceeding. In accordance with G.S. 7A-219 of the General Statutes, no counterclaim which would make the amount in controversy exceed the jurisdictional limits shall be permitted. If a counterclaim in a summary ejectment proceeding is barred pursuant to G.S. 7A-219, the option purchaser shall not be estopped from asserting that claim in a separate action."

SECTION 4.(a) G.S. 47H-2(b) reads as rewritten:

"§ 47H-2. Minimum contents for contracts for deed; recordation.

...

(b) Contents. – A contract for deed ~~contract~~ shall contain at least all of the following:

...

(14) ~~A description of conditions of the property that includes whether the property, including any structures thereon, has water, sewer, septic, and electricity service, whether the property is in a floodplain, whether anyone else has a legal interest in the property, and whether restrictive covenants prevent building or installing a dwelling. If restrictive covenants are in place that affect the property, a copy of the restrictive covenants shall be made available to the purchaser at or before the execution of the contract.~~

(14a) A completed residential property disclosure statement that complies with Chapter 47E of the General Statutes, provided that the seller does not choose the option of making "No Representation" as to any characteristic or condition of the property.

...

(16) ~~If the property being sold is encumbered by a deed of trust, mortgage, or other encumbrance evidencing or securing a monetary obligation which constitutes a lien on the property, and the seller is not a licensed general contractor within the meaning of Chapter 87 of the General Statutes, or a licensed manufactured home dealer within the meaning of Article 9A of Chapter 143 of the General Statutes, a statement of the amount of the lien, and the amount and due date, if any, of any periodic payments.~~

...."

SECTION 4.(b) G.S. 47H-8 reads as rewritten:

"§ 47H-8. Remedies.

~~A violation of any provision of this Chapter constitutes an unfair trade practice under G.S. 75-1.1. A purchaser may bring an action for the recovery of damages, to rescind a transaction, as well as for declaratory or equitable relief, for a violation of this Chapter. The rights and remedies provided herein are cumulative to, and not a limitation of, any other rights and remedies provided by law or equity. Nothing in this Chapter shall be construed to subject an individual homeowner selling his or her primary residence directly to a buyer to liability under G.S. 75-1.1."~~

SECTION 5.(a) G.S. 75-120 reads as rewritten:

"§ 75-120. Definitions.

The following definitions shall apply in this Article:

(1) ~~Default. — Whenever a property owner is more than 60 days delinquent on any loan or debt that is secured by the property, including real estate taxes.~~

...

(3) Foreclosure rescue transaction. — A transfer of residential real property, including a manufactured home that is permanently attached to the real property, which includes all of the following features:

a. The real property is the principal residence of the transferor.

b. ~~The transferor is in default or legal proceedings have been initiated to foreclose on the transferor's property.~~

c. The transferee, an agent of the transferee, or others acting in concert with the transferee make representations that the transfer of the residential property will enable the transferor to prevent, postpone, or reverse the effect of foreclosure and to remain in the residence.

d. ~~The transferor retains an interest in the property conveyed, including a tenancy interest, an interest under a lease-purchase agreement, lease with option to purchase agreement, or an option to reacquire the property, or any other legal, equitable, or possessory interest in the property conveyed property.~~

...."

SECTION 5.(b) G.S. 75-121 reads as rewritten:

"§ 75-121. Foreclosure rescue transactions prohibited; exceptions; violation.

(a) It is unlawful for a person or entity other than the transferor to engage in, promise to engage in, arrange, offer, promote, solicit, assist with, or carry out a foreclosure rescue transaction for financial gain or with the expectation of financial gain, unless prior to or at the time of transfer, the transferee pays the transferor at least fifty percent (50%) of the fair market value of the property as determined by a ~~licensed-certified~~ appraiser. An appraisal to determine the fair market value of the property must be performed no more than ~~90-120~~ days prior to the transfer. The appraisal shall be delivered to the transferor ~~no more than three days after the appraisal is performed and~~ no less than seven days prior to the ~~transfer of the property. time the transferor becomes obligated to perform the agreement.~~ This section does not apply to exempt transactions.

(b) Every contract to effectuate a foreclosure rescue transaction in which the transferee pays at least 50% of the fair market value of the property, shall be in writing, shall be signed and acknowledged by all parties to it, and shall contain all the terms to which the parties have agreed. The contract shall contain at least all of the following:

...

(5) The fair market value of the property as determined by a ~~licensed-certified~~ appraiser.

...."

1 **SECTION 6.** This act becomes effective October 1, 2015. Section 1 applies to
2 notice of sale issued on or after that date. Section 2 applies to orders for possession entered on
3 or after that date. Sections 3, 4, and 5 apply to transactions entered into on or after that date.



HOUSE BILL 283: Supreme Court Sessions in Morganton

2015-2016 General Assembly

| | | | |
|-----------------------|-------------------------|---------------------|-------------------|
| Committee: | House Judiciary IV | Date: | April 1, 2015 |
| Introduced by: | Reps. Bishop, Blackwell | Prepared by: | Kelly Tornow |
| Analysis of: | First Edition | | Committee Counsel |

SUMMARY: *House Bill 283 would authorize sessions of the North Carolina Supreme Court to be held in the City of Morganton not more than twice per year.*

[As introduced, this bill was identical to S161, as introduced by Sen. Daniel, which is also currently in this committee.]

CURRENT LAW: G.S. 7A-10(a) provides that sessions of the North Carolina Supreme Court must be held in the City of Raleigh, except that the Court may hold sessions not more than twice per year in the Old Chowan County Courthouse in the Town of Edenton.

BILL ANALYSIS: Senate Bill 161 authorizes the North Carolina Supreme Court to hold sessions in the City of Morganton not more than twice per year. The Court must meet in the Old Burke County Courthouse unless the Court identifies a more suitable site.

EFFECTIVE DATE: The act is effective when it becomes law.

BACKGROUND: Session Law 1997-56 authorized the North Carolina Supreme Court to hold sessions in the Old Chowan County Courthouse in the Town of Edenton.

Brad Krehely, counsel to Senate Judiciary I, substantially contributed to this summary.

O. Walker Reagan
Director



Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

1

HOUSE BILL 283*

Short Title: Supreme Court Sessions in Morganton.

(Public)

Sponsors: Representatives Bishop and Blackwell (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary IV.

March 19, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW GOVERNING SESSIONS OF THE SUPREME COURT
3 TO AUTHORIZE SESSIONS TO BE HELD IN MORGANTON.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 7A-10(a) reads as rewritten:

6 "(a) The Supreme Court shall consist of a Chief Justice and six associate justices, elected
7 by the qualified voters of the State for terms of eight years. Before entering upon the duties of
8 his office, each justice shall take an oath of office. Four justices shall constitute a quorum for
9 the transaction of the business of the court. Except as otherwise provided in this subsection,
10 sessions of the court shall be held in the city of Raleigh, and scheduled by rule of court so as to
11 discharge expeditiously the court's business. The court may by rule hold sessions not more than
12 twice annually in the Old Chowan County Courthouse (1767) in the Town of Edenton, which is
13 a State-owned court facility that is designated as a National Historic Landmark by the United
14 States Department of the Interior. The court may by rule hold sessions not more than twice
15 annually in the City of Morganton; unless a more suitable site is identified by the court, the
16 court shall meet in the Old Burke County Courthouse, the location of summer sessions of the
17 Supreme Court from 1847-1862."

18 **SECTION 2.** This act is effective when it becomes law.



minutes
4-1-15

**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**JUDICIARY IV COMMITTEE REPORT
Representative Hugh Blackwell, Co-Chair
Representative Rob Bryan, Co-Chair
Representative Jacqueline Michelle Schaffer, Co-Chair**

FAVORABLE

HB 283

Supreme Court Sessions in Morganton.

| | |
|-----------------------|-----------|
| Draft Number: | None |
| Serial Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |
| Floor Manager: | Blackwell |

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB 174

Landlord/Tenant-Foreclosure & Evict. Changes.

| | |
|-----------------------|--------------------|
| Draft Number: | H174-PCS40271-TS-1 |
| Serial Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |
| Floor Manager: | Bradford |

TOTAL REPORTED: 2



* C M R 1 1 4 - V - 1 *

Committee Sergeants at Arms

NAME OF COMMITTEE House Committee on Judiciary IV

DATE: 4.1.2015

Room: 1228

House Sgt-At Arms:

1. Name: Carlton Adams

2. Name: Joe Austin

Name: Martha Gadison

4. Name: _____

5. Name: _____

Senate Sgt-At Arms:

1. Name: _____

2. Name: _____

3. Name: _____

4. Name: _____

Name: _____

Wednesday, April 1
JUDICIARY IV

Room
1228/1327

Time
10:00 am

| Name | County | Sponsor |
|----------------------|---------------|----------------|
| Raymond Chen | Orange | Verla Insko |
| Dawson Claire McHarg | Wilson | Susan Martin |

VISITOR REGISTRATION SHEET

House Committee on Judiciary IV 4.1.2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

| | |
|------------------|--------------------------|
| Bill Rame | NC Justice Center |
| Todd Balin | NC Advocates for Justice |
| Kim Branch | NCBA |
| Levy Gupin | SoH |
| Tonya Horton | TSS |
| Chris Sgro | Equality North Carolina |
| Alup Miller | KLG |
| Lauren Whaley | CCU |
| Mildred Spearman | NCAOC |
| David Ferrell | VB |
| Jale Col | NCC |

VISITOR REGISTRATION SHEET

House Committee on Judiciary IV 4.1.2015

Name of Committee

Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Dong Lassita

NCS & A

Colleen Kochavek

AAAC

Doug Miskew

PSG

Henry Huta FA

N.C. 8A.

VISITOR REGISTRATION SHEET

House Committee on Judiciary IV 4.1.2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

| | |
|---------------------|----------------------|
| J Goodman | N/C CHAMBER |
| Trey Polan | NA |
| Steve Mange | NCRLA |
| Annaliese Dolph | NL |
| Sarah Preston | ACLU - NC |
| Isabel Villar-Liron | NCAR |
| Jan Kennedy | CSC - New Hanover Co |
| Michelle Frazier | MF+S |
| Lisa Martin | Capitol ALU |
| Nathan Balts | NCBA |
| | |

House Committee on Judiciary IV
Wednesday, April 29, 2015 at 10:00 AM
Room 1228/1327 of the Legislative Building

MINUTES

The House Committee on Judiciary IV met at 10:00 AM on April 29, 2015 in Room 1228/1327 of the Legislative Building. Representatives Blackwell, Chair, Bryan, Chair, Schaffer, Chair, Hamilton, Vice-chair, Adams, Ager, Bishop, Dollar, Hager, Hunter, Johnson, Jones, Richardson, Riddell, Setzer, Terry, Tine, Torbett, Warren and Willingham attended. Also present were staff members Layla Cummings, Kara McGraw, Kelly Quick Tornow and Committee Clerks Kevin Wilkinson and Sharon Sullivan. An attendance sheet is attached and made part of these minutes.

Representative Jacqueline M. Schaffer presided. Chairwoman Schaffer called the meeting to order at 10:04 AM. The Chairwoman recognized the Sergeants-at-Arms and introduced the pages. Chairwoman Schaffer also reminded those in attendance about the new occupancy rules.

The following bills were considered:

HB 4 Clarify Unmanned Aircraft System Law. (Representative Torbett)

Representative Torbett was recognized to present the bill. There was discussion between committee members about the bill. Representative Hager made a motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

HB 548 Zoning/Modernize & Reorganize. (Representatives Bishop, Stam, Bryan, Hamilton)

Chairwoman Schaffer recognized Rep. Stam to present the bill to the committee. Rep. Stam introduced HB 548's original Proposed Committee Substitute for discussion only and explained that a second PCS had been drafted for the committee to review today. Rep. Setzer motioned for the second Proposed Committee Substitute to be before the committee and the motion carried. Rep. Bryan was recognized to offer an amendment to the second Proposed Committee Substitute. There was discussion among the committee about the amendment and the bill. Rep. Setzer motioned to adopt the amendment and the motion passed. With no other questions or debate about the PCS, Rep. Hager made the motion for a favorable report for the Proposed Committee Substitute, as amended, with an unfavorable report to the original bill. The motion carried, and the committee substitute received a favorable report.

HB 460 Reporting of Animal Incidents (Representative Warren)

A motion was made by Representative Hager to bring the Proposed Committee Substitute before the committee, and the motion passed. Chairwoman Schaffer recognized Representative Warren to present the bill. There was discussion between committee members about the bill. Representative Blackwell offered an amendment to the bill. Rep. Hager motioned for a favorable report on the bill and the amendment was adopted. There was continued discussion between committee members about the bill. Representative Setzer made the motion for a favorable report for the Proposed

Committee Substitute, as amended, with an unfavorable report to the original bill. The motion carried, and the committee substitute received a favorable report.

HB 881 Landlord/Tenant-Alias & Pluries Summary Eject (Representatives Jordan, Bradford, Bryan Earle)

A motion was made by Representative Jones to bring the Proposed Committee substitute before the committee, and the motion passed. Chairwoman Schaffer recognized Representative Jordan to present the bill. Representative Bradford also presented the bill. There was discussion between committee members about the bill. Four members of the public were given time to speak. The Speakers were: Eddie Cauldwell of the N.C. Sheriff's Association, Colleen Kochanek of the Apartment Association of N.C., Asa Buck, Carteret County Sheriff, and Katie Thomas of the N.C. Association of Realtors. Representative Bryan made the motion for a favorable report for the Proposed Committee Substitute, with an unfavorable report to the original bill. The motion carried and the committee substitute received a favorable report following a hand count vote of 11 yea and 9 no.

The meeting adjourned at 10:48 AM.

Respectfully submitted,


Representative Jacqueline M. Schaffer,
Presiding Chair


Sharon Sullivan, Committee Clerk

Corrected #1: Add H 460 and H 829

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2015-2016 SESSION**

You are hereby notified that the **House Committee on Judiciary IV** will meet as follows:

DAY & DATE: Wednesday, April 29, 2015

TIME: 10:00 AM

LOCATION: 1228/1327 LB

COMMENTS: Representative Jacqueline M. Schaffer, presiding.

The following bills will be considered:

| BILL NO. | SHORT TITLE | SPONSOR |
|-----------------|--|---|
| HB 4 | Clarify Unmanned Aircraft System Law. | Representative Torbett |
| HB 548 | Zoning/Modernize & Reorganize. | Representative Bishop Representative Stam Representative Bryan Representative Hamilton |
| HB 881 | Landlord/Tenant-Alias & Pluries Summary Eject. | Representative Jordan Representative Bryan Representative Bradford Representative Earle |
| HB 460 | Reporting of Animal Incidents. | Representative Warren |
| HB 829 | Automatic License Plate Readers. | Representative B. Turner Representative Speciale Representative Hardister Representative Glazier |

Respectfully,

Representative Hugh Blackwell, Co-Chair
Representative Rob Bryan, Co-Chair
Representative Jacqueline Michelle Schaffer, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 5:15 PM on Tuesday, April 28, 2015.

____ Principal Clerk
____ Reading Clerk – House Chamber

Sharon Sullivan (Committee Assistant)

House Committee on Judiciary IV
Wednesday, April 29, 2015, 10:00 AM
1228/1327 Legislative Building

AGENDA

Welcome and Opening Remarks

Introduction of Pages and Sergeant at Arms

Bills

| BILL NO. | SHORT TITLE | SPONSOR |
|-----------------|---|---|
| HB 4 | Clarify Unmanned Aircraft System Law. | Representative Torbett |
| HB 548 | Zoning/Modernize & Reorganize. | Representative Bishop Representative Stam Representative Bryan Representative Hamilton |
| HB 881 | Landlord/Tenant-Alias & Pluries Summiary Eject. | Representative Jordan Representative Bryan Representative Bradford Representative Earle |
| HB 460 | Reporting of Animal Incidents. | Representative Warren |
| HB 829 | Automatic License Plate Readers. | Representative B. Turner Representative Speciale Representative Hardister Representative Glazier |

Other Business

Adjournment



HOUSE BILL 4: Clarify Unmanned Aircraft System Law

2015-2016 General Assembly

Committee: House Judiciary IV
Introduced by: Rep. Torbett
Analysis of: Second Edition

Date: April 29, 2015
Prepared by: Kelly Tornow
Committee Counsel

SUMMARY: *House Bill 4 would clarify that agents or agencies of the State or a political subdivision of the State have the authority to procure and operate unmanned aircraft systems upon approval of the State CIO and would modify the regulation of unmanned aircraft systems to comply with federal guidelines.*

CURRENT LAW & BILL ANALYSIS:

Section 1

CURRENT LAW: Until December 31, 2015, no State or local governmental entity or officer can procure or operate an unmanned aircraft system or disclose personal information about any person acquired through the operation of an unmanned aircraft system unless the State Chief Information Officer (CIO) approves an exception specifically granting disclosure, use, or purchase. Any exceptions to the prohibition must be immediately reported to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division.

BILL ANALYSIS: Section 1 would clarify and expand the authority of the State CIO to approve or disapprove of the procurement and operation of an unmanned aircraft system by agents or agencies of the State or a political subdivision of the State and the disclosure of personal information acquired through the operation of an unmanned aircraft system by agents or agencies of the State or a political subdivision of the State. The State CIO would be able to consult with the Division of Aviation of the Department of Transportation (Division) when making such decisions. Agents or agencies of the State that receive approval from the State CIO would be able to procure or operate an unmanned aircraft system prior to the implementation of the knowledge and skills test required by G.S. 63-95. Agents or agencies of the State or a political subdivision of the State who submit requests on or after the date of implementation of the knowledge and skills test would be required to have both CIO approval (until December 31, 2015) and pass the knowledge and skills test.

Section 2

CURRENT LAW: Currently an inconsistency exists between one provision that prohibits agents or agencies of the State or a political subdivision of the State from operating an unmanned aircraft system until the knowledge and skills test required by G.S. 63-95 is implemented, and another provision that requires approval by the State CIO for procurement or operation of an unmanned aircraft system by agents or agencies of the State or a political subdivision of the State until December 31, 2015.

O. Walker Reagan
Director



Research Division
(919) 733-2578

House Bill 4

Page 2

BILL ANALYSIS: Section 2 would resolve the inconsistency by authorizing the State CIO to approve the procurement and operation of unmanned aircraft systems by agents or agencies of the State or a political subdivision of the State before the knowledge and skills test is implemented.

Section 3

CURRENT LAW: The Division is required to develop a knowledge and skills test for operating an unmanned aircraft system and provide for administration of the test.

BILL ANALYSIS: Because proposed federal regulations would already require operators of unmanned aircraft systems to pass a knowledge test of federal regulations, Section 3 would clarify that the State test must ensure that the operator of an unmanned aircraft system is knowledgeable of the State statutes and regulations regarding the operation of unmanned aircraft systems.

Section 4

CURRENT LAW: G.S. 63-96 requires a license for the commercial operation of unmanned aircraft systems. To be issued a license, a person must be at least 18 years old, possess a valid drivers license, pass the knowledge test, and satisfy other applicable requirements.

BILL ANALYSIS: To align with federal regulations, Section 4 would replace the term "license" with "permit", reduce the age at which a person can receive a permit, and make conforming changes.

Section 5

CURRENT LAW: G.S. 63-96 requires commercial operators to pass the knowledge test before operating an unmanned aircraft system.

BILL ANALYSIS: Section 5 would provide that prior to implementation of the knowledge test, any person authorized by the FAA for commercial operation of an unmanned aircraft system in this State is not in violation of G.S. 63-96 as long as he or she applies for a State permit for commercial operation within 60 days of the full implementation of the permitting process and is subsequently issued a State commercial operation permit.

EFFECTIVE DATE: This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

2

HOUSE BILL 4
Committee Substitute Favorable 4/16/15

Short Title: Clarify Unmanned Aircraft System Law.

(Public)

Sponsors:

Referred to:

January 29, 2015

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT AGENTS OR AGENCIES OF THE STATE OR A
POLITICAL SUBDIVISION OF THE STATE SHALL HAVE AUTHORITY TO
PROCURE AND OPERATE UNMANNED AIRCRAFT SYSTEMS UPON APPROVAL
OF THE STATE CHIEF INFORMATION OFFICER AND TO MODIFY THE
REGULATION OF UNMANNED AIRCRAFT SYSTEMS TO CONFORM TO FAA
GUIDELINES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7.16(e) of S.L. 2013-360, as amended by Section 7.11(a) of
S.L. 2014-100, reads as rewritten:

"SECTION 7.16.(e) Until December 31, 2015, ~~no State or local governmental entity or officer may procure or operate an unmanned aircraft system or disclose personal information about any person acquired through the operation of an unmanned aircraft system unless the State CIO approves an exception specifically granting disclosure, use, or purchase. Any exceptions to the prohibition in this subsection shall be reported immediately the State CIO shall have the authority to approve or disapprove (i) the procurement or operation of an unmanned aircraft system by agents or agencies of the State or a political subdivision of the State and (ii) the disclosure of personal information about any person acquired through the operation of an unmanned aircraft system by agents or agencies of the State or a political subdivision of the State. When making a decision under this subsection, the State CIO may consult with the Division of Aviation of the Department of Transportation. The State CIO shall immediately report to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division. Division on all decisions made under this subsection. Notwithstanding G.S. 63-95(c), agents or agencies of the State or a political subdivision of the State that receive State CIO approval under this subsection may procure or operate an unmanned aircraft system prior to the implementation of the knowledge test required by G.S. 63-95. In addition to receiving approval from the State CIO under this subsection, agents or agencies of the State or a political subdivision of the State who submit a request on or after the date of implementation of the knowledge test required by G.S. 63-95 shall also be subject to the provisions of that section.~~ The following definitions apply in this section:

- (1) "Unmanned aircraft" means an aircraft that is operated without the possibility of human intervention from within or on the aircraft.
- (2) "Unmanned aircraft system" means an unmanned aircraft and associated elements, including communication links and components that control the unmanned aircraft that are required for the pilot in command to operate safely and efficiently in the national airspace system."



SECTION 2. Section 34.30(j) of S.L. 2014-100 reads as rewritten:

"SECTION 34.30.(j) ~~No~~Except as authorized under Section 7.16(e) of S.L. 2013-360, as amended by Section 7.11(a) of S.L. 2014-100, no operation of unmanned aircraft systems by agents or agencies of the State, or agents or agencies of State or a political subdivision of the State, State shall be authorized in this State until the knowledge ~~and skills test~~ required by G.S. 63-95, as enacted in subsection (g) of this section, has been implemented.

No operation of unmanned aircraft systems for commercial purposes shall be authorized in this State until the FAA has authorized commercial operations and the licensing system required by G.S. 63-96, as enacted in subsection (g) of this section, has been implemented."

SECTION 3. G.S. 63-95(b) reads as rewritten:

"(b) The Division shall develop a knowledge ~~and skills test~~ for operating an unmanned aircraft system that complies with all applicable State and federal regulations and shall provide for administration of the test. The test shall ensure that the operator of an unmanned aircraft system is knowledgeable of the State statutes and regulations regarding the operation of unmanned aircraft systems. The Division may permit a person, including an agency of this State, an agency of a political subdivision of this State, an employer, or a private training facility, to administer the test developed pursuant to this subsection, provided the test is the same as that administered by the Division and complies with all applicable State and federal regulations."

SECTION 4. G.S. 63-96 reads as rewritten:

"§ 63-96. ~~License-Permit~~ **required for commercial operation of unmanned aircraft systems.**

(a) No person shall operate an unmanned aircraft system, as defined in G.S. 15A-300.1, in this State for commercial purposes unless the person is in possession of a ~~license-permit~~ issued by the Division valid for the unmanned aircraft system being operated. Application for such ~~license-permit~~ shall be made in the manner provided by the Division. Unless suspended or revoked, the ~~license-permit~~ shall be effective for a period to be established by the Division not exceeding eight years.

(b) No person shall be issued a ~~license-permit~~ under this section unless all of the following apply:

- (1) The person is at least ~~18~~17 years of age.
- (2) The person possesses a valid drivers license issued by any state or territory of the United States or the District of Columbia.
- (3) The person has passed the knowledge ~~and skills test~~ for operating an unmanned aircraft system as prescribed in G.S. 63-95(b).
- (4) The person has satisfied all other applicable requirements of this Article or federal regulation.

(c) A ~~license-permit~~ to operate an unmanned aircraft system for commercial purposes shall not be issued to a person while the person's license ~~or permit~~ to operate an unmanned aircraft system is suspended, revoked, or cancelled in any state.

(d) The Division shall develop and administer a program that complies with all applicable federal regulations to license-issue permits to operators of unmanned aircraft systems for commercial purposes. The program must include the following components:

- (1) A system for classifying unmanned aircraft systems based on characteristics determined to be appropriate by the Division.
- (2) A fee structure for ~~licenses~~permits.
- (3) A ~~license-permit~~ application process.
- (4) Technical guidance for complying with program requirements.
- (5) Criteria under which the Division may suspend or revoke a ~~license-permit~~.
- (6) Criteria under which the Division may waive ~~license~~permitting requirements for applicants currently holding a valid license ~~or permit~~ to

- 1 operate unmanned aircraft systems issued by another state or territory of the
2 United States, the District of Columbia, or the United States.
- 3 (7) A designation of the geographic area within which a ~~licensee-permittee~~ shall
4 be authorized to operate an unmanned aircraft system.
- 5 (8) Requirements pertaining to the collection, use, and retention of data by
6 ~~licensees-permittees~~ obtained through the operation of unmanned aircraft
7 systems, to be established in consultation with the State Chief Information
8 Officer.
- 9 (9) Requirements for the marking of each unmanned aircraft system operated
10 pursuant to a ~~license-permit~~ issued under this section sufficient to ~~permit~~
11 allow identification of the owner of the system and the person ~~licensed~~
12 issued a permit to operate it.
- 13 (10) A system for providing agencies that conduct other operations within
14 regulated airspace with the identity and contact information of ~~licensees~~
15 ~~permittees~~ and the geographic areas within which the ~~licensee-permittee~~ is
16 ~~permitted-authorized~~ to operate an unmanned aircraft system.
- 17 (e) A person who operates an unmanned aircraft system for commercial purposes other
18 than as ~~permitted-authorized~~ under this section shall be guilty of a Class 1 misdemeanor.
- 19 (f) The Division may issue rules and regulations to implement the provisions of this
20 section."

21 **SECTION 5.** Prior to the implementation of the knowledge test and permitting
22 process required by G.S. 63-96, any person authorized by the FAA for commercial operation of
23 an unmanned aircraft system in this State shall not be in violation of that statute, provided that
24 they make application for a State permit for commercial operation within 60 days of the full
25 implementation of the permitting process and are issued a State commercial operation permit in
26 due course.

27 **SECTION 6.** This act is effective when it becomes law.



HOUSE BILL 548: Zoning/Modernize & Reorganize

2015-2016 General Assembly

Committee: House Judiciary IV
Introduced by: Reps. Bishop, Stam, Bryan, Hamilton
Analysis of: PCS to First Edition
H548-CSTH-17

Date: April 29, 2015
Prepared by: Kelly Tornow
Committee Counsel

SUMMARY: *The proposed committee substitute for House Bill 548 would establish the Zoning Modernization Legislative Task Force to make recommendations to the General Assembly on whether to consolidate the current land use regulation statutes.*

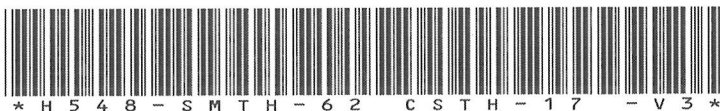
CURRENT LAW: Counties (Article 18 of Chapter 153A) and cities (Article 19 of Chapter 160A) are authorized to adopt land use regulation ordinances to govern the development of property within their jurisdiction. The statutes are substantially the same in most instances, but do contain some differences. Land use regulations may include any of the following:

- Extraterritorial jurisdiction (cities only)
- Subdivision ordinances
- Zoning ordinances
- Zoning regulation for manufactured homes
- Historical districts
- Building inspections & minimum housing codes
- Blighted areas
- Development agreements
- Cell towers
- Acquisition of open space
- Stormwater management

BILL ANALYSIS: The PCS for House Bill 548 would establish the Zoning Modernization Legislative Task Force to make recommendations on whether to consolidate and modernize Article 19 of Chapter 160A and Article 18 of Chapter 153A. Specifically, the Task Force would study and examine the provisions of House Bill 548, posted on the Committee's website (<http://www.ncleg.net/gascripts/DocumentSites/browseDocSite.asp?nID=278>). The Task Force would consist of 16 members, six of whom would be members of the General Assembly and ten of whom would be stakeholders and interested parties.

EFFECTIVE DATE: This act is effective when it becomes law.

O. Walker Reagan
Director



Research Division
(919) 733-2578

House Bill 548

Page 2



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 548

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H548-ATH-18 [v.1]


Page 1 of 1

Amends Title [NO]
H548-CSTH-17

Date April 29, 2015

Representative Bryan

- 1 moves to amend the bill on page 1, line 16, by deleting the words "A home builder
2 recommended by" and substituting "A representative of".

SIGNED 
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



* H 5 4 8 - A T H - 1 8 - V - 1 *

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

D

HOUSE BILL 548
PROPOSED COMMITTEE SUBSTITUTE H548-CSTH-17 [v.5]

4/27/2015 12:58:41 PM

Short Title: Zoning/Modernize & Reorganize.

(Public)

Sponsors:

Referred to:

April 2, 2015

A BILL TO BE ENTITLED
AN ACT TO ESTABLISH THE ZONING MODERNIZATION LEGISLATIVE TASK
FORCE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Establishment. – The North Carolina Zoning Modernization
Legislative Task Force is established.

SECTION 1.(b) Membership. – The Task Force shall be composed of 16 members
as follows:

(1) Eight members appointed by the Speaker of the House of Representatives as
follows:

- a. Three persons who are members of the House of Representatives at
the time of appointment, at least one of whom represents the minority
party. The Speaker shall designate one of the members as cochair.
- b. A member of the Zoning, Planning, & Land Use Section of the North
Carolina Bar Association.
- c. A home builder recommended by the North Carolina Home Builders
Association.
- d. A person employed in the field of zoning administration or zoning
enforcement recommended by the North Carolina Association of
Zoning Officials.
- e. A representative from the North Carolina League of Municipalities.
- f. A realtor recommended by the North Carolina Association of
Realtors.

(2) Eight members appointed by the President Pro Tempore of the Senate as
follows:

- a. Three persons who are members of the Senate at the time of
appointment, at least one of whom represents the minority party. The
President Pro Tempore shall designate one of the members as
cochair.
- b. A certified professional planner recommended by the North Carolina
Chapter of the American Planning Association.
- c. A representative from the North Carolina Association of County
Commissioners.
- d. A Board Certified Professional Engineer recommended by the North
Carolina Section of the American Society of Civil Engineers.
- e. A licensed architect recommended by the North Carolina Chapter of
the American Institute of Architects.
- f. A faculty member at the University of North Carolina School of
Government.



* H 5 4 8 - C S T H - 1 7 - V - 5 *

1 Appointments shall be made by September 1, 2015, and the first meeting shall be
2 held on or before October 1, 2015. The Task Force shall meet upon the call of the cochairs.
3 Vacancies shall be filled by the appointing authority. A quorum of the Task Force shall be a
4 majority of the members.

5 **SECTION 1.(c) Duties.** – The Task Force shall make recommendations on whether
6 to consolidate and modernize Article 19 of Chapter 160A of the General Statutes and Article 18
7 of Chapter 153A of the General Statutes. Specifically, the Task Force shall study and examine
8 the provisions of House Bill 548 from the 2015 Regular Session of the 2015 General Assembly.

9 **SECTION 1.(d) Compensation; Administration.** – Members of the Task Force
10 shall receive subsistence and travel allowances at the rates set forth in G.S. 120-3.1, 138-5, or
11 138-6, as appropriate. The Legislative Services Officer shall assign professional and clerical
12 staff to assist in the work of the Task Force. The Task Force may hold its meetings in the State
13 Legislative Building or the Legislative Office Building. The Task Force, while in the discharge
14 of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19
15 and G.S. 120-19.1 through G.S. 120-19.4, including the power to request all officers, agents,
16 agencies, and departments of the State to provide any information, data, or documents within
17 their possession, ascertainable from their records or otherwise available to them, and the power
18 to subpoena witnesses.

19 **SECTION 1.(e) Report.** – The Task Force shall report its findings and
20 recommendations to the 2016 Regular Session of the 2015 General Assembly upon its
21 convening. The Task Force shall terminate on May 1, 2016, or upon the filing of its final
22 report, whichever occurs first.

23 **SECTION 2.** This act is effective when it becomes law.



HOUSE BILL 460: Reporting of Animal Incidents

2015-2016 General Assembly

Committee: House Judiciary IV
Introduced by: Rep. Warren
Analysis of: PCS to First Edition
H460-CSTS-9

Date: April 29, 2015
Prepared by: Kelly Quick Tornow
Layla Cummings
Committee Counsel

SUMMARY: *The Proposed Committee Substitute (PCS) to House Bill 480 would provide for the reporting of injuries inflicted on humans by domestic or wild animals.*

The PCS would require the law enforcement agency to forward the report of a domestic or wild mammal bite to the Local Health Director for rabies control measures.

CURRENT LAW: Chapter 67 of the General Statutes regulates dogs, including owner's liability and dangerous dogs.

BILL ANALYSIS: The bill would allow a person injured by a domestic or wild animal to notify the appropriate local law enforcement agency. If the incident results in death, or the person injured is otherwise unable to make the request, a witness to the incident may notify the appropriate local law enforcement agency.

A law enforcement agency receiving notification shall investigate the incident within 24 hours and make a written report. The law enforcement officer that prepares the report must forward the report to the law enforcement agency. The report may be used as evidence in any civil or criminal trial as permitted by the rules of evidence.

The law enforcement agency will also be required to forward any report of a domestic or wild mammal bite to the Local Health Director for appropriate rabies control measures.

EFFECTIVE DATE: This act would become effective October 1, 2015, and applies to incidents occurring on or after that date.

O. Walker Reagan
Director



* H 4 6 0 - S M T S - 2 3 C S T S - 9 - V 3 *

Research Division
(919) 733-2578



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 460

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H460-ATC-32 [v.1]

Page 1 of 1

Amends Title [NO]
H460-CSTS-9

Date _____, 2015

Representative Blackwell

1 moves to amend the bill on page 1, lines 14-15, by rewriting those lines to read:
2

3 "the incident occurred in a city or town, the appropriate law enforcement agency is the police
4 department of that city or town, or, if there is no police department for that city or town, either
5 the sheriff's department or any county police department for that county. If the attack occurred
6 outside a city or town, the appropriate".

SIGNED _____


Amendment Sponsor

SIGNED _____

Committee Chair if Senate Committee Amendment

ADOPTED _____

FAILED _____

TABLED _____



* H 4 6 0 - A T C - 3 2 - V - 1 *

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

D

HOUSE BILL 460
PROPOSED COMMITTEE SUBSTITUTE H460-PCS30370-TS-9

Short Title: Reporting of Animal Incidents.

(Public)

Sponsors:

Referred to:

April 2, 2015

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR THE REPORTING OF INJURIES INFLICTED ON HUMANS
BY DOMESTIC OR WILD ANIMALS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 67 of the General Statutes is amended by adding a new
Article to read:

"Article 7.

"Reports of Animal Incidents.

**"§ 67-37. Reports of incidents involving injuries inflicted on humans by domestic or wild
animals.**

(a) A person who has suffered a bite, scratch, or other injury directly inflicted by a
domestic animal not owned by the person or by a wild animal may notify the appropriate law
enforcement agency that such an incident has occurred and that personal injury has resulted. If
the incident occurred in a city or town, the appropriate law enforcement agency is the police
department of that city or town, or, if there is no police department for that city or town, either
the sheriff's department or any county police department for that county. If the attack occurred
outside a city or town, the appropriate law enforcement agency is either the sheriff's department
or any county police department for that county. If the incident results in the death of the
person, or if that person is otherwise unable to make the request, a person who witnessed the
incident may make the notification.

(b) A law enforcement agency receiving notification under subsection (a) of this section
shall investigate the incident within 24 hours of receiving the notification and shall make a
written report summarizing the incident and describing the injury inflicted on the person by the
animal. The law enforcement officer who prepares the written report shall forward it to that
officer's law enforcement agency. A report made pursuant to this subsection may be used in any
manner as evidence, or for any other purpose, in any civil or criminal trial, as permitted under
the rules of evidence. Any report of a domestic or wild mammal bite received by a law
enforcement agency shall be immediately forwarded to the Local Health Director for
appropriate rabies control measures in accordance with Chapter 130A of the General Statutes."

SECTION 2. This act becomes effective October 1, 2015, and applies to incidents
occurring on or after that date.



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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

1

HOUSE BILL 460

Short Title: Reporting of Animal Incidents. (Public)

Sponsors: Representative Warren (Primary Sponsor).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Wildlife Resources, if favorable, Judiciary IV.

April 2, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE REPORTING OF INJURIES INFLICTED ON HUMANS
3 BY DOMESTIC OR WILD ANIMALS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Chapter 67 of the General Statutes is amended by adding a new
6 Article to read:

7 "Article 7.

8 "Reports of Animal Incidents.

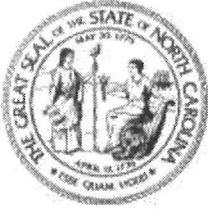
9 "**§ 67-37. Reports of incidents involving injuries inflicted on humans by domestic or wild**
10 **animals.**

11 A person who has suffered a bite, scratch, or other injury directly inflicted by a domestic
12 animal not owned by the person or by a wild animal may notify the appropriate law
13 enforcement agency that such an incident has occurred and that personal injury has resulted. If
14 the incident occurred in a city or town, the appropriate law enforcement agency is the police
15 department of that city or town. If the attack occurred outside a city or town, the appropriate
16 law enforcement agency is either the sheriff's department or any county police department for
17 that county. If the incident results in the death of the person, or if that person is otherwise
18 unable to make the request, a person who witnessed the incident may make the notification.

19 A law enforcement agency receiving notification under this section shall investigate the
20 incident within 24 hours of receiving the notification and shall make a written report
21 summarizing the incident and describing the injury inflicted on the person by the animal. The
22 law enforcement officer who prepares the written report shall forward it to that officer's law
23 enforcement agency. A report made pursuant to this section may be used in any manner as
24 evidence, or for any other purpose, in any civil or criminal trial, as permitted under the rules of
25 evidence."

26 **SECTION 2.** This act becomes effective October 1, 2015, and applies to incidents
27 occurring on or after that date.





HOUSE BILL 881: Landlord/Tenant-Alias & Pluries Summary Eject

2015-2016 General Assembly

| | | | |
|-----------------------|--------------------------------------|---------------------|-------------------|
| Committee: | House Judiciary IV | Date: | April 29, 2015 |
| Introduced by: | Reps. Jordan, Bryan, Bradford, Earle | Prepared by: | Kara McCraw |
| Analysis of: | PCS to First Edition | | Layla Cummings |
| | H881-CSTS-6 | | Committee Counsel |

SUMMARY: *The Proposed Committee Substitute (PCS) to House Bill 881 would allow for the following in summary ejectment proceedings: (1) the severance of summary ejectment and monetary claims in small claims actions when service of process only meets summary ejectment standards; (2) the severed monetary claim to be continued with an alias and pluries summons; (3) in certain counties, the clerk of court may issue a summons to the plaintiff and the plaintiff may cause service to be made by a private process server.*

The PCS makes the following changes: (1) limits private process service of summons in summary ejectment proceedings to counties with 200,000 or more residents; (2) defines the terms "process server" and "officer"; and (3) provides the process for private process service of summons in summary ejectment proceedings.

CURRENT LAW: G.S. 7A-217 describes how a small claims court may obtain jurisdiction over a defendant. That includes (1) personal service (delivering a copy of the summons and of the complaint to the defendant or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some resident of suitable age and discretion), (2) registered or certified mail, signature confirmation, or designated delivery service, (3) defendant's written acceptance of service or by voluntary appearance and (4) in summary ejectment cases only, service as provided in G.S. 42-29 is also authorized.

G.S. 42-29 sets forth the procedure for summary ejectment cases. The sheriff is responsible for attempting to effect service on the defendants. It requires the officer to mail a copy of the summons and complaint to each defendant in the stamped envelope provided by the plaintiff "no later than the end of the next business day or as soon as practicable at the defendant's last known address." In addition to mailing a copy of the summons and complaint to each defendant, the officer, within five days from summons issuance, may either attempt to call the defendants to arrange for service, or if unsuccessful, then the officer must "make at least one visit to the place of abode of the defendant within five days of the issuance of the summons, but at least two days prior to the day the defendant is required to appear." The officer must either deliver a copy of the summons and complaint to the defendants personally at their dwelling or leave copies with a resident of suitable age and discretion. If no one can be found at the dwelling, then the officer is to "affix copies to some conspicuous part of the premises claimed."

BILL ANALYSIS:

Section 1 would provide that in any small claims action for summary ejectment and monetary damages, and where service of process has been achieved solely by first class mail and affixing the summons and complaint to the premises pursuant to G.S. 42-29, the plaintiff, or an agent may ask that the claim for summary ejectment be severed from the claim for monetary damages. If the magistrate finds that that personal service was not achieved for one or more defendants, the magistrate must sever the claim for monetary damages and proceed with the claim for summary ejectment.

O. Walker Reagan
Director



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(919) 733-2578

House Bill 881

Page 2

If the magistrate severs the claim for monetary damages, the plaintiff may extend the action for monetary damages in accordance with G.S. 1A-1, Rule 4(d) (i.e. 90 days after the issuance of the original summons or 90 days after the last extension). The judgment of the magistrate in the severed claim for summary ejectment must not prejudice the claims or defenses of any party in the severed claim for monetary damages.

Section 2 would provide that Rule 4(h1) will apply to actions subject to summary ejectment procedures. This would provide that when a proper officer returns a summons unexecuted, the plaintiff, or plaintiff's agent or attorney may cause service to be made by anyone who is not less than 21 years of age, not a party to the action, and not related by blood or marriage to a party or a person upon whom service is to be made.

Section 3 would provide that in an action for summary ejectment in counties with 200,000 or more residents, after the summons is issued, the summons may be returned to the plaintiff or forwarded to the sheriff for service. If the magistrate severs the claim for monetary damages as provided by Section 1 of the bill, the plaintiff may extend the action for monetary damages in accordance with G.S. 1A-1, Rule 4(d) (i.e. 90 days after the issuance of the original summons or 90 days after the last extension).

Section 4 would provide that in an action of summary ejectment in counties with 200,000 or more residents, the term "officer" as used in service for summary ejectment proceedings will mean the sheriff and the term "process server" will mean any person over the age of 21 years who is not a party to the action, is not related by blood or marriage to a party or a person upon whom service is to be made, and is hired by the plaintiff or the plaintiff's agent or attorney for the purpose of serving the summons and complaint.

In counties with 200,000 or more residents, a process server may serve the summons and complaint by mailing a copy of the issued summons and signed complaint to the defendant at the defendant's last known address by the end of the next business day after receipt or as soon as practicable. The process server will then deliver a copy of the summons and complaint to the defendant by affixing copies to a conspicuous part of the defendant's premises. The process server will certify an affidavit of service that states the time, place, and manner service was completed in compliance with this section.

EFFECTIVE DATE: This act would become effective October 1, 2015.

BACKGROUND: As of the 2010 U.S. Census, the following North Carolina counties have more than 200,000 residents: Mecklenburg, Wake, Guilford, Forsyth, Cumberland, Durham, Buncombe, New Hanover, Union, and Gaston.

Source: U.S. Census Bureau, U.S. Department of Commerce, Annual Estimates of Resident Population, <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmmk>.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

D

HOUSE BILL 881
PROPOSED COMMITTEE SUBSTITUTE H881-PCS30371-TS-6

Short Title: Landlord/Tenant-Alias & Pluries Summary Eject.

(Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED
AN ACT TO ALLOW FOR SEVERANCE OF SUMMARY EJECTMENT AND
MONETARY CLAIMS IN SMALL CLAIMS ACTIONS WHEN SERVICE OF
PROCESS ONLY MEETS SUMMARY EJECTMENT STANDARDS AND TO ALLOW
FOR THE SEVERED MONETARY CLAIM TO BE CONTINUED WITH ALIAS AND
PLURIES SUMMONS AND TO PROVIDE FOR AN ELECTION BY THE PLAINTIFF
TO UTILIZE A PRIVATE PROCESS SERVER IN COUNTIES WITH POPULATIONS
OF TWO HUNDRED THOUSAND OR GREATER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-223 reads as rewritten:

"§ 7A-223. Practice and procedure in small claim actions for summary ejectment.

(a) In any small claim action demanding summary ejectment or past due rent, or both, the complaint may be signed by an agent acting for the plaintiff who has actual knowledge of the facts alleged in the complaint. If a small claim action demanding summary ejectment is assigned to a magistrate, the practice and procedure prescribed for commencement, form and service of process, assignment, pleadings, and trial in small claim actions generally are observed, except that if the defendant by written answer denies the title of the plaintiff, the action is placed on the civil issue docket of the district court division for trial before a district judge. In such event, the clerk withdraws assignment of the action from the magistrate and immediately gives written notice of withdrawal, by any convenient means, to the plaintiff and the magistrate to whom the action has been assigned. The plaintiff, within five days after receipt of the notice, and the defendant, in his answer, may request trial by jury. Failure to request jury trial within the time limited is a waiver of the right to trial by jury.

(b) If either party in a small claim action for summary ejectment moves for a continuance, the magistrate shall render a decision on the motion in accordance with Rule 40(b) of the Rules of Civil Procedure. The magistrate shall not continue a matter for more than five days or until the next session of small claims court, whichever is longer, without the consent of both parties.

(b1) In any small claim action demanding summary ejectment and monetary damages, and where service of process has been achieved solely by first-class mail and affixing the summons and complaint to the premises pursuant to G.S. 42-29, the plaintiff, or an agent pursuant to subsection (a) of this section, may request that the claim for summary ejectment be severed from the claim for monetary damages. Upon a finding that personal service was not achieved for one or more defendants, the magistrate shall sever the claim for monetary damages and proceed with the claim for summary ejectment. If the magistrate severs the claim for monetary damages, the plaintiff may extend the action in accordance with G.S. 1A-1, Rule



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1 4(d). The judgment of the magistrate in the severed claim for summary ejectment shall not
2 prejudice the claims or defenses of any party in the severed claim for monetary damages.

3 (c) The Administrative Office of the Courts is directed to develop a form for parties in
4 small claim actions for summary ejectment to inform them of the time line and process in
5 summary ejectment actions. The clerk of superior court shall make the form available to the
6 parties."

7 **SECTION 2.** G.S. 1A-1, Rule 4(h1), reads as rewritten:

8 **"Rule 4. Process.**

9 ...

10 (h1) Summons – When process returned unexecuted. – If a proper officer returns a
11 summons or other process unexecuted, the plaintiff or his agent or attorney may cause service
12 to be made by anyone who is not less than 21 years of age, who is not a party to the action, and
13 who is not related by blood or marriage to a party to the action or to a person upon whom
14 service is to be made. This subsection shall not apply to executions pursuant to Article 28 of
15 ~~Chapter 1 or summary ejectment pursuant to Article 3 of Chapter 42 of the General~~
16 ~~Statutes.~~ Chapter 1 of the General Statutes."

17 **SECTION 3.** G.S. 42-28 reads as rewritten:

18 **"§ 42-28. Summons issued by clerk.**

19 (a) When the lessor or his assignee files a complaint pursuant to G.S. 42-26 or 42-27,
20 and asks to be put in possession of the leased premises, the clerk of superior court shall issue a
21 summons requiring the defendant to appear at a certain time and place not to exceed seven days
22 from the issuance of the summons, excluding weekends and legal holidays, to answer the
23 complaint. The plaintiff may claim rent in arrears, and damages for the occupation of the
24 premises since the cessation of the estate of the lessee, not to exceed the jurisdictional amount
25 established by G.S. 7A-210(1), but if he omits to make such claim, he shall not be prejudiced
26 thereby in any other action for their recovery.

27 (b) In counties with 200,000 or more residents as of the most recent decennial federal
28 census, after the summons is issued, at the election of the plaintiff, the clerk shall either (i)
29 return the summons to the plaintiff or (ii) forward the summons to the sheriff for service. If the
30 magistrate severs the claim for monetary damages pursuant to G.S. 7A-223(b1), the plaintiff
31 may extend the action in accordance with G.S. 1A-1, Rule 4(d)."

32 **SECTION 4.** G.S. 42-29 reads as rewritten:

33 **"§ 42-29. Service of summons.**

34 (a) The officer receiving the summons shall mail a copy of the summons and complaint
35 to the defendant no later than the end of the next business day or as soon as practicable at the
36 defendant's last known address in a stamped addressed envelope provided by the plaintiff to the
37 action. The officer may, within five days of the issuance of the summons, attempt to telephone
38 the defendant requesting that the defendant either personally visit the officer to accept service,
39 or schedule an appointment for the defendant to receive delivery of service from the officer. If
40 the officer does not attempt to telephone the defendant or the attempt is unsuccessful or does
41 not result in service to the defendant, the officer shall make at least one visit to the place of
42 abode of the defendant within five days of the issuance of the summons, but at least two days
43 prior to the day the defendant is required to appear to answer the complaint, excluding legal
44 holidays, at a time reasonably calculated to find the defendant at the place of abode to attempt
45 personal delivery of service. He then shall deliver a copy of the summons together with a copy
46 of the complaint to the defendant, or leave copies thereof at the defendant's dwelling house or
47 usual place of abode with some person of suitable age and discretion then residing therein. If
48 such service cannot be made the officer shall affix copies to some conspicuous part of the
49 premises claimed and make due return showing compliance with this section.

50 (b) As used in this Article, and only with respect to service for summary ejectment
51 proceedings in counties with 200,000 or more residents as of the most recent decennial federal

1 census, the term "process server" shall mean any person over the age of 21 years who is not a
2 party to the action, who is not related by blood or marriage to a party to the action or to a
3 person upon whom service is to be made, and who is hired by the plaintiff or the plaintiff's
4 agent or attorney for the purpose of serving the summons and complaint for summary
5 ejectment; and the term "officer" shall mean the sheriff of the county where the subject
6 premises is situated.

7 (c) As used in this Article, and only with respect to service for summary ejectment
8 proceedings in counties with 200,000 or more residents as of the most recent decennial federal
9 census, a process server may effectuate proper service upon a defendant solely for purposes of
10 summary ejectment by mailing a copy of the issued summons and signed complaint to the
11 defendant no later than the end of the next business day after receipt of said summons and
12 complaint or as soon as practicable at the defendant's last known address in a stamped
13 addressed envelope provided by the plaintiff to the action. The process server shall then deliver
14 a copy of the summons together with a copy of the complaint to the defendant by affixing
15 copies of same to some conspicuous part of the premises claimed and make due return showing
16 compliance with this section in the form of an affidavit of service. Said affidavit of service
17 shall set forth the time, place, and manner by which the requirements set forth herein were
18 completed."

19 **SECTION 5.** This act becomes effective October 1, 2015.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

D

HOUSE BILL 881
PROPOSED COMMITTEE SUBSTITUTE H881-CSTS-6 [v.5]

4/28/2015 8:41:08 PM

Short Title: Landlord/Tenant-Alias & Pluries Summary Eject.

(Public)

Sponsors:

Referred to:

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOR SEVERANCE OF SUMMARY EJECTMENT AND
MONETARY CLAIMS IN SMALL CLAIMS ACTIONS WHEN SERVICE OF
PROCESS ONLY MEETS SUMMARY EJECTMENT STANDARDS AND TO ALLOW
FOR THE SEVERED MONETARY CLAIM TO BE CONTINUED WITH ALIAS AND
PLURIES SUMMONS AND TO PROVIDE FOR AN ELECTION BY THE PLAINTIFF
TO UTILIZE A PRIVATE PROCESS SERVER IN COUNTIES WITH POPULATIONS
OF ONE HUNDRED THOUSAND OR GREATER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-223 reads as rewritten:

"§ 7A-223. Practice and procedure in small claim actions for summary ejectment.

(a) In any small claim action demanding summary ejectment or past due rent, or both, the complaint may be signed by an agent acting for the plaintiff who has actual knowledge of the facts alleged in the complaint. If a small claim action demanding summary ejectment is assigned to a magistrate, the practice and procedure prescribed for commencement, form and service of process, assignment, pleadings, and trial in small claim actions generally are observed, except that if the defendant by written answer denies the title of the plaintiff, the action is placed on the civil issue docket of the district court division for trial before a district judge. In such event, the clerk withdraws assignment of the action from the magistrate and immediately gives written notice of withdrawal, by any convenient means, to the plaintiff and the magistrate to whom the action has been assigned. The plaintiff, within five days after receipt of the notice, and the defendant, in his answer, may request trial by jury. Failure to request jury trial within the time limited is a waiver of the right to trial by jury.

(b) If either party in a small claim action for summary ejectment moves for a continuance, the magistrate shall render a decision on the motion in accordance with Rule 40(b) of the Rules of Civil Procedure. The magistrate shall not continue a matter for more than five days or until the next session of small claims court, whichever is longer, without the consent of both parties.

(b1) In any small claim action demanding summary ejectment and monetary damages, and where service of process has been achieved solely by first-class mail and affixing the summons and complaint to the premises pursuant to G.S. 42-29, the plaintiff, or an agent pursuant to subsection (a) of this section, may request that the claim for summary ejectment be severed from the claim for monetary damages. Upon a finding that personal service was not achieved for one or more defendants, the magistrate shall sever the claim for monetary damages and proceed with the claim for summary ejectment. If the magistrate severs the claim for monetary damages, the plaintiff may extend the action in accordance with G.S. 1A-1, Rule



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1 4(d). The judgment of the magistrate in the severed claim for summary ejectment shall not
2 prejudice the claims or defenses of any party in the severed claim for monetary damages.

3 (c) The Administrative Office of the Courts is directed to develop a form for parties in
4 small claim actions for summary ejectment to inform them of the time line and process in
5 summary ejectment actions. The clerk of superior court shall make the form available to the
6 parties."

7 **SECTION 2.** G.S. 1A-1, Rule 4(h1), reads as rewritten:

8 **"Rule 4. Process.**

9 ...

10 (h1) Summons – When process returned unexecuted. – If a proper officer returns a
11 summons or other process unexecuted, the plaintiff or his agent or attorney may cause service
12 to be made by anyone who is not less than 21 years of age, who is not a party to the action, and
13 who is not related by blood or marriage to a party to the action or to a person upon whom
14 service is to be made. This subsection shall not apply to executions pursuant to Article 28 of
15 ~~Chapter 1 or summary ejectment pursuant to Article 3 of Chapter 42 of the General~~
16 ~~Statutes.~~ Chapter 1 of the General Statutes."

17 **SECTION 3.** G.S. 42-28 reads as rewritten:

18 **"§ 42-28. Summons issued by clerk.**

19 (a) When the lessor or his assignee files a complaint pursuant to G.S. 42-26 or 42-27,
20 and asks to be put in possession of the leased premises, the clerk of superior court shall issue a
21 summons requiring the defendant to appear at a certain time and place not to exceed seven days
22 from the issuance of the summons, excluding weekends and legal holidays, to answer the
23 complaint. The plaintiff may claim rent in arrears, and damages for the occupation of the
24 premises since the cessation of the estate of the lessee, not to exceed the jurisdictional amount
25 established by G.S. 7A-210(1), but if he omits to make such claim, he shall not be prejudiced
26 thereby in any other action for their recovery.

27 (b) In counties with 200,000 or more residents as of the most recent decennial federal
28 census, after the summons is issued, at the election of the plaintiff, the clerk shall either (i)
29 return the summons to the plaintiff or (ii) forward the summons to the sheriff for service. If the
30 magistrate severs the claim for monetary damages pursuant to G.S. 7A-223(b1), the plaintiff
31 may extend the action in accordance with G.S. 1A-1, Rule 4(d)."

32 **SECTION 4.** G.S. 42-29 reads as rewritten:

33 **"§ 42-29. Service of summons.**

34 (a) The officer receiving the summons shall mail a copy of the summons and complaint
35 to the defendant no later than the end of the next business day or as soon as practicable at the
36 defendant's last known address in a stamped addressed envelope provided by the plaintiff to the
37 action. The officer may, within five days of the issuance of the summons, attempt to telephone
38 the defendant requesting that the defendant either personally visit the officer to accept service,
39 or schedule an appointment for the defendant to receive delivery of service from the officer. If
40 the officer does not attempt to telephone the defendant or the attempt is unsuccessful or does
41 not result in service to the defendant, the officer shall make at least one visit to the place of
42 abode of the defendant within five days of the issuance of the summons, but at least two days
43 prior to the day the defendant is required to appear to answer the complaint, excluding legal
44 holidays, at a time reasonably calculated to find the defendant at the place of abode to attempt
45 personal delivery of service. He then shall deliver a copy of the summons together with a copy
46 of the complaint to the defendant, or leave copies thereof at the defendant's dwelling house or
47 usual place of abode with some person of suitable age and discretion then residing therein. If
48 such service cannot be made the officer shall affix copies to some conspicuous part of the
49 premises claimed and make due return showing compliance with this section.

50 (b) As used in this Article, and only with respect to service for summary ejectment
51 proceedings in counties with 200,000 or more residents as of the most recent decennial federal

1 census, the term "process server" shall mean any person over the age of 21 years who is not a
2 party to the action, who is not related by blood or marriage to a party to the action or to a
3 person upon whom service is to be made, and who is hired by the plaintiff or the plaintiff's
4 agent or attorney for the purpose of serving the summons and complaint for summary
5 ejectment; and the term "officer" shall mean the sheriff of the county where the subject
6 premises is situated.

7 (c) As used in this Article, and only with respect to service for summary ejectment
8 proceedings in counties with 200,000 or more residents as of the most recent decennial federal
9 census, a process server may effectuate proper service upon a defendant solely for purposes of
10 summary ejectment by mailing a copy of the issued summons and signed complaint to the
11 defendant no later than the end of the next business day after receipt of said summons and
12 complaint or as soon as practicable at the defendant's last known address in a stamped
13 addressed envelope provided by the plaintiff to the action. The process server shall then deliver
14 a copy of the summons together with a copy of the complaint to the defendant by affixing
15 copies of same to some conspicuous part of the premises claimed and make due return showing
16 compliance with this section in the form of an affidavit of service. Said affidavit of service
17 shall set forth the time, place and manner by which the requirements set forth herein were
18 completed."

19 **SECTION 5.** This act becomes effective October 1, 2015.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2015

H

1

HOUSE BILL 881

Short Title: Landlord/Tenant-Alias & Pluries Summary Eject. (Public)

Sponsors: Representatives Jordan, Bryan, Bradford, and Earle (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary II.

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOR SEVERANCE OF SUMMARY EJECTMENT AND
MONETARY CLAIMS IN SMALL CLAIMS ACTIONS WHEN SERVICE OF
PROCESS ONLY MEETS SUMMARY EJECTMENT STANDARDS AND TO ALLOW
FOR THE SEVERED MONETARY CLAIM TO BE CONTINUED WITH ALIAS AND
PLURIES SUMMONS AND TO PROVIDE FOR AN ELECTION BY THE PLAINTIFF
TO UTILIZE A PRIVATE PROCESS SERVER IN COUNTIES WITH POPULATIONS
OF ONE HUNDRED THOUSAND OR GREATER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-223 reads as rewritten:

"§ 7A-223. Practice and procedure in small claim actions for summary ejectment.

(a) In any small claim action demanding summary ejectment or past due rent, or both, the complaint may be signed by an agent acting for the plaintiff who has actual knowledge of the facts alleged in the complaint. If a small claim action demanding summary ejectment is assigned to a magistrate, the practice and procedure prescribed for commencement, form and service of process, assignment, pleadings, and trial in small claim actions generally are observed, except that if the defendant by written answer denies the title of the plaintiff, the action is placed on the civil issue docket of the district court division for trial before a district judge. In such event, the clerk withdraws assignment of the action from the magistrate and immediately gives written notice of withdrawal, by any convenient means, to the plaintiff and the magistrate to whom the action has been assigned. The plaintiff, within five days after receipt of the notice, and the defendant, in his answer, may request trial by jury. Failure to request jury trial within the time limited is a waiver of the right to trial by jury.

(b) If either party in a small claim action for summary ejectment moves for a continuance, the magistrate shall render a decision on the motion in accordance with Rule 40(b) of the Rules of Civil Procedure. The magistrate shall not continue a matter for more than five days or until the next session of small claims court, whichever is longer, without the consent of both parties.

(b1) In any small claim action demanding summary ejectment and monetary damages, and where service of process has been achieved solely by first-class mail and affixing the summons and complaint to the premises pursuant to G.S. 42-29, the plaintiff, or an agent pursuant to subsection (a) of this section, may request that the claim for summary ejectment be severed from the claim for monetary damages. Upon a finding that personal service was not achieved for one or more defendants, the magistrate shall sever the claim for monetary damages and proceed with the claim for summary ejectment. If the magistrate severs the claim



1 for monetary damages, the plaintiff may extend the action in accordance with G.S. 1A-1, Rule
2 4(d). The judgment of the magistrate in the severed claim for summary ejectment shall not
3 prejudice the claims or defenses of any party in the severed claim for monetary damages.

4 (c) The Administrative Office of the Courts is directed to develop a form for parties in
5 small claim actions for summary ejectment to inform them of the time line and process in
6 summary ejectment actions. The clerk of superior court shall make the form available to the
7 parties."

8 **SECTION 2.** G.S. 1A-1, Rule 4(h1), reads as rewritten:

9 **"Rule 4. Process.**

10 ...

11 (h1) Summons – When process returned unexecuted. – If a proper officer returns a
12 summons or other process unexecuted, the plaintiff or his agent or attorney may cause service
13 to be made by anyone who is not less than 21 years of age, who is not a party to the action, and
14 who is not related by blood or marriage to a party to the action or to a person upon whom
15 service is to be made. This subsection shall not apply to executions pursuant to Article 28 of
16 ~~Chapter 1 or summary ejectment pursuant to Article 3 of Chapter 42 of the General~~
17 ~~Statutes.~~ Chapter 1 of the General Statutes."

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19 **"§ 42-28. Summons issued by clerk.**

20 (a) When the lessor or his assignee files a complaint pursuant to G.S. 42-26 or 42-27,
21 and asks to be put in possession of the leased premises, the clerk of superior court shall issue a
22 summons requiring the defendant to appear at a certain time and place not to exceed seven days
23 from the issuance of the summons, excluding weekends and legal holidays, to answer the
24 complaint. The plaintiff may claim rent in arrears, and damages for the occupation of the
25 premises since the cessation of the estate of the lessee, not to exceed the jurisdictional amount
26 established by G.S. 7A-210(1), but if he omits to make such claim, he shall not be prejudiced
27 thereby in any other action for their recovery.

28 (b) In counties with 100,000 or more residents as of the most recent decennial federal
29 census, after the summons is issued, at the election of the plaintiff, the clerk shall either (i)
30 return the summons to the plaintiff or (ii) forward the summons to the sheriff for service. If the
31 magistrate severs the claim for monetary damages pursuant to G.S. 7A-223(b1), the plaintiff
32 may extend the action in accordance with G.S. 1A-1, Rule 4(d)."

33 **SECTION 4.** G.S. 42-29 reads as rewritten:

34 **"§ 42-29. Service of summons.**

35 (a) The officer receiving the summons shall mail a copy of the summons and complaint
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37 defendant's last known address in a stamped addressed envelope provided by the plaintiff to the
38 action. The officer may, within five days of the issuance of the summons, attempt to telephone
39 the defendant requesting that the defendant either personally visit the officer to accept service,
40 or schedule an appointment for the defendant to receive delivery of service from the officer. If
41 the officer does not attempt to telephone the defendant or the attempt is unsuccessful or does
42 not result in service to the defendant, the officer shall make at least one visit to the place of
43 abode of the defendant within five days of the issuance of the summons, but at least two days
44 prior to the day the defendant is required to appear to answer the complaint, excluding legal
45 holidays, at a time reasonably calculated to find the defendant at the place of abode to attempt
46 personal delivery of service. He then shall deliver a copy of the summons together with a copy
47 of the complaint to the defendant, or leave copies thereof at the defendant's dwelling house or
48 usual place of abode with some person of suitable age and discretion then residing therein. If
49 such service cannot be made the officer shall affix copies to some conspicuous part of the
50 premises claimed and make due return showing compliance with this section.

1 (b) As used in this Article, and only with respect to service for summary ejectment
2 proceedings, in counties with 100,000 or more residents as of the most recent decennial federal
3 census, the term "officer" shall mean either (i) any person over the age of 21 years who is not a
4 party to the action and who is hired by the plaintiff or the plaintiff's agent or attorney for the
5 purpose of serving the summons and complaint for summary ejectment or (ii) the sheriff of the
6 county where the subject premises is situated."

7 **SECTION 5.** This act becomes effective October 1, 2015.

**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**JUDICIARY IV COMMITTEE REPORT
Representative Hugh Blackwell, Co-Chair
Representative Rob Bryan, Co-Chair
Representative Jacqueline Michelle Schaffer, Co-Chair**

FAVORABLE

HB 4 (CS#1) Clarify Unmanned Aircraft System Law.
Draft Number: None
Serial Referral: None
Recommended Referral: None
Long Title Amended: No
Floor Manager: Torbett

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB 460 Reporting of Animal Incidents.
Draft Number: H460-PCS30370-TS-9
Serial Referral: None
Recommended Referral: None
Long Title Amended: No
Floor Manager: Warren

HB 548 Zoning/Modernize & Reorganize.
Draft Number: H548-PCS10376-TH-17
Serial Referral: None
Recommended Referral: None
Long Title Amended: Yes
Floor Manager: Bishop

HB 881 Landlord/Tenant-Alias & Pluries Summary Eject.
Draft Number: H881-PCS30371-TS-6
Serial Referral: None
Recommended Referral: None
Long Title Amended: Yes
Floor Manager: Jordan

TOTAL REPORTED: 4



* C M R 3 1 5 - V - 1 *

Committee Sergeants at Arms

House Judiciary IV

NAME OF COMMITTEE

DATE: 04.29.2015

Room: 1228

House Sgt-At Arms:

Carlton Adams

1. Name: _____

2. Name: Martha Gadison

Name: Joe Austin

4. Name: _____

5. Name: _____

Senate Sgt-At Arms:

1. Name: _____

2. Name: _____

3. Name: _____

4. Name: _____

Name: _____

Wednesday, April 29
JUDICIARY III

Room
1228/1327

Time
10:00 am

| Name | County | Sponsor |
|------------------|---------------|----------------|
| Princeton Porter | Onslow | Phil Shepard |
| Savannah Shockey | Lee | Brad Salmon |
| Julia Wakeman | Mecklenburg | John A. Fraley |

VISITOR REGISTRATION SHEET

House Judiciary IV

04.29.2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

| | |
|------------------------|--|
| Chris Francis | Rutherford County Sheriff's Office 198 N. Washington St. Rutherford, N.C. 28139 |
| Kenneth Sesley | Robeson Co Sheriff 120 Legend Road, Lumberton, NC 28358 |
| James E. Clemmons, Jr | Richmond County Sheriff's Office 1 Court St. Rockingham, N.C. 28379 |
| Reston Jones | NC DOT |
| Kelly Thomas | DMV |
| Jim Aoud | NCBA |
| TOM TERRELL | NCBA |
| Mike Carpenter | NCBA |
| Steven Uebis | NCBA |
| Derrick Palmer | Sheriff, Cherokee County |
| Sheriff Alan Cluninger | Sheriff Rutherford County |

VISITOR REGISTRATION SHEET

House Judiciary IV

04.29.2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

| | |
|---------------------|------------------------------|
| <i>John Patullo</i> | <i>NCHMA</i> |
| Erin Wynia | NCLM |
| David Craenford | <i>AIA NC</i> |
| Lisa Martin | <i>Cap Advantage</i> |
| <i>John DeBorja</i> | <i>Brubaker & Assoc.</i> |
| Phoebe Landon | Brooks Pierce |
| Rick Zechini | WM |
| <i>Aug By</i> | MWC |
| <i>Denn Bunko</i> | MWC |
| <i>[Signature]</i> | <i>Krac</i> |
| Lt. Chris Taylor | McDonnell S.O. |

Dudley Greene
CHRIS SHEW

McDonnell County Sheriff
WILKES COUNTY SHERIFF

Isabel Villa-Garcia
Laurie Amerio
Val Pierce

NCAR

LOLLC

LOLLC

Cady Thomas

Folio CAROLINA

Will Brownlee

AANC

Josh Ehrlich

JDC

Sam Page

Rockingham Co. Sheriff

Kathy Page

Gunnard Page LLC

Richard Webster

Chatham Co. Sheriff

Ken Szymanski

Apt. Ass'n. of NC

Colleen Kochanek

"

VISITOR REGISTRATION SHEET

House Judiciary IV

04.29.2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

| | |
|------------------|--------------------------|
| Asa Buch | Carter County Sheriff |
| Bill Schatzman | Forsythe County Sheriff |
| Eddie Caldwell | NC Sheriffs' Assn. |
| Chris Watkins | Sheriff of Montgomery Co |
| Meghan Cook | OITS |
| Richard Stevens | SA |
| Gene Byall | NC Jury Policy Council |
| Erwan Carmichael | Wrecklenburg Co. Sheriff |
| Jan Kennedy | CSC - INH Co. |
| Barbara Moore | Conf of Clerks of SC Ct |
| Anna Roberts | PSG |

VISITOR REGISTRATION SHEET

House Judiciary IV

04.29.2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

| | |
|-----------------|----------------------------|
| Patrick Buffkin | NC's electric cooperatives |
| Adam Sholar | DHHS |
| Janison Dietz | NCBA |
| Rob Brisley | Meck County Sheriff Office |
| Doug Lassiter | NCSTA |
| Bill Rowe | NC Justice Center |
| Tommy Hearn | TSS |
| Sam Skinner | NCACE |
| David Ferrell | VB |
| Doug Miskew | Psh |
| Bill Scoggins | JS |
| Wendy Kelly | Focus Cooling |

VISITOR REGISTRATION SHEET

House Judiciary IV

04.29.2015

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

| | |
|------------------------|--|
| Josha Covert | NSS |
| Amanda Fynn | JDA |
| Neil Godfrey | Sheriff- Moore County |
| Ed McMahon | New Hanover Co Sheriff |
| TERRY Wright | FRANKLIN County Sheriff's Office |
| Rudy Baker | Franklin County Sheriff's Office |
| Kent Winstead | Sheriff Franklin Co. |
| Sheriff Edward C. Welf | Rowan Co Sheriff's Office |
| Sheriff Kevin L. Auten | Rowan County Sheriff's Office 232 N. Main St., Salisbury NC 28144 |
| Capt. John Lifford | ROWAN CO. SHERIFF'S OFFICE 232 N. MAIN ST., SALISBURY NC 28144 |
| Sheriff Larry Pierce | Wayne Co. Sheriff Office 207 Chestnut St. Goldsboro, NC 27530 |

VISITOR REGISTRATION SHEET

Judiciary IV
Name of Committee

4/29/2015
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

| | |
|---------------|------------------------------|
| Maana Jenkins | DCR |
| Cindy Palmer | Cherokee Co Sheriff's Office |
| Mike Rhy | none |
| Jason Deans | SDTH |
| John McMillan | ref + s |
| ANDY STEVENS | GRNC |
| JEFF BARNHART | MWC |
| Harry Lyd | MWC |
| | |
| | |
| | |

House Judiciary IV

04.29.2015

Date _____

NAME _____

FIRM OR AGENCY AND ADDRESS

[illegible]

VISITOR REGISTRATION SHEET

Name of Committee

Judiciary IV

Date

4/29/2015

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME FIRM OR AGENCY AND ADDRESS

Todd Balow

NE Advocates for Youth

Josh Hansen

House Law Firm, PLLC

House Committee on Judiciary IV
Wednesday, June 10, 2015 at 10:00 AM
Room 1228/1327 of the Legislative Building

MINUTES

The House Committee on Judiciary IV met at 10:00 AM on June 10, 2015 in Room 1228/1327 of the Legislative Building. Representatives Blackwell, Chair, Bryan, Chair Adams, Ager, Johnson, Richardson, Riddell, Setzer, Terry, Tine, Torbett, Warren and Willingham attended. Also present were staff members Layla Cummings, Kara McGraw and Committee Clerks Kevin Wilkinson and Sharon Sullivan. An attendance sheet is attached and made part of these minutes.

Representative Hugh Blackwell presided. Chairman Blackwell called the meeting to order at 10:05. The following bills were considered:

SB 161 Supreme Court Sessions in Morganton. (Senator Daniel)

Representative Bryan presided as Chair during the presentation of this bill. Representative Blackwell was recognized to present the bill. Rep. Torbett asked several questions that were answered by Rep. Blackwell regarding the bill. Representative Setzer made a motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.


SB 462 Public Authorities/Nonprofit Corporations (Senator Hartsell)

A motion was made by Representative Warren to bring the Proposed Committee substitute before the committee, and the motion passed. Chairman Blackwell recognized Senator Hartsell to present the bill. There was discussion between committee members about the bill. Members of the public were given an opportunity to address the Committee, and the Members heard from David Heinen from the N.C. Center for Nonprofits. The visitor's sheet is attached and made part of these minutes. Representative Johnson moved for adoption of an amendment to the bill. Rep. Torbett moved to modify the amendment's wording and the motion carried. Representative Tine made the motion for a favorable report to the Proposed House Committee Substitute, as amended, with an unfavorable report to the original bill. The motion carried, and the committee substitute received a favorable report.

The Chairman recognized the Sergeants-at-Arms and introduced the pages.

The meeting adjourned at 10:39 AM.

Respectfully submitted,



Representative Hugh Blackwell,
Presiding Chair



Sharon Sullivan, Committee Clerk

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2015-2016 SESSION**

You are hereby notified that the **House Committee on Judiciary IV** will meet as follows:

DAY & DATE: Wednesday, June 10, 2015
TIME: 10:00 AM
LOCATION: 1228/1327 LB
COMMENTS: Rep. Blackwell will preside.

The following bills will be considered:

| BILL NO. | SHORT TITLE | SPONSOR |
|-----------------|--|------------------|
| SB 161 | Supreme Court Sessions in Morganton. | Senator Daniel |
| SB 462 | Public Authorities/Nonprofit Corporations. | Senator Hartsell |

Respectfully,

Representative Hugh Blackwell, Co-Chair
Representative Rob Bryan, Co-Chair
Representative Jacqueline Michelle Schaffer, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 2:51 PM on Tuesday, June 09, 2015.

____ Principal Clerk
____ Reading Clerk – House Chamber

Sharon Sullivan (Committee Assistant)

**House Committee on Judiciary IV
Wednesday, June 10, 2015, 10:00 AM
1228/1327 Legislative Building**

AGENDA

Welcome and Opening Remarks

Chaired by Rep. Blackwell

Introduction of Pages and Sergeant at Arms

Bills

| BILL NO. | SHORT TITLE | SPONSOR |
|-----------------|--|------------------|
| SB 161 | Supreme Court Sessions in Morganton. | Senator Daniel |
| SB 462 | Public Authorities/Nonprofit Corporations. | Senator Hartsell |

Other Business

Adjournment

**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**JUDICIARY IV COMMITTEE REPORT
Representative Hugh Blackwell, Co-Chair
Representative Rob Bryan, Co-Chair
Representative Jacqueline Michelle Schaffer, Co-Chair**

FAVORABLE

SB 161

Supreme Court Sessions in Morganton.

Draft Number: None

Serial Referral: None

Recommended Referral: None

Long Title Amended: No

Floor Manager: Blackwell

TOTAL REPORTED: 1



* C M R 4 4 2 - V - 1 *

**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**JUDICIARY IV COMMITTEE REPORT
Representative Hugh Blackwell, Co-Chair
Representative Rob Bryan, Co-Chair
Representative Jacqueline Michelle Schaffer, Co-Chair**

FAVORABLE HOUSE COM SUB, UNFAVORABLE SENATE COM SUB

SB 462 (CS#1)

Public Authorities/Nonprofit Corporations.

| | |
|-----------------------|---------------------|
| Draft Number: | S462-PCS45376-TC-44 |
| Serial Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | Yes |
| Floor Manager: | Blackwell |

TOTAL REPORTED: 1



* C M R 4 3 7 - V - 1 *

VISITOR REGISTRATION SHEET

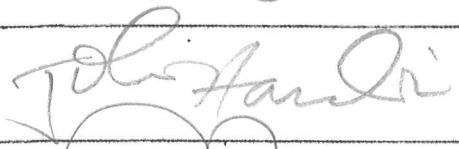
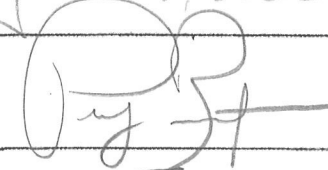
Judiciary IV

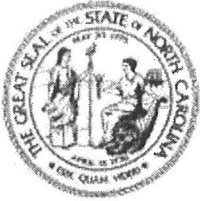
Name of Committee

5/10/2015

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| NAME | FIRM OR AGENCY AND ADDRESS |
|---|----------------------------|
| BOB RIDDELL | |
|  | MFS |
|  | MWC |
| Jordan Flemming | Dep. Bobbie Richardson |
| Mike Smellwood | UNC SOB |
| Tom Munn | NCAOC |
| Judge Warren | NCAOC |
| David Harkin | NC Center for Nonprofits |
| Mildred Spearman | NCAOC |
| | |
| | |



SENATE BILL 161: Supreme Court Sessions in Morganton

2015-2016 General Assembly

Committee: House Judiciary IV
Introduced by: Sen. Daniel
Analysis of: First Edition

Date: June 10, 2015
Prepared by: Kara McCraw
Layla Cummings
Committee Counsel

SUMMARY: *Senate Bill 161 authorizes sessions of the North Carolina Supreme Court to be held in the City of Morganton not more than twice per year.*

[As introduced, this bill was identical to H283, as introduced by Reps. Bishop, Blackwell, which is currently in Senate Judiciary I.]

CURRENT LAW: G.S. 7A-10(a) provides that sessions of the North Carolina Supreme Court must be held in the city of Raleigh, except that the Court may hold sessions not more than twice per year in the Old Chowan County Courthouse in the Town of Edenton.

BILL ANALYSIS: Senate Bill 161 authorizes the North Carolina Supreme Court to hold sessions in the City of Morganton not more than twice per year. The Court must meet in the Old Burke County Courthouse unless the Court identifies as more suitable site.

EFFECTIVE DATE: The act is effective when it becomes law.

Brad Krehely, counsel to Senate Judiciary I, contributed substantially to this summary.

O. Walker Reagan
Director



* S 1 6 1 - S M T S - 3 2 E 1 - V 1 *

Research Division
(919) 733-2578

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S

1

SENATE BILL 161

Short Title: Supreme Court Sessions in Morganton. (Public)

Sponsors: Senator Daniel (Primary Sponsor).

Referred to: Rules and Operations of the Senate.

March 4, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW GOVERNING SESSIONS OF THE SUPREME COURT
3 TO AUTHORIZE SESSIONS TO BE HELD IN MORGANTON.

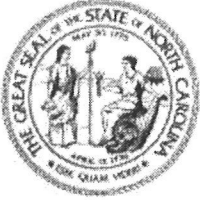
4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 7A-10(a) reads as rewritten:

6 "(a) The Supreme Court shall consist of a Chief Justice and six associate justices, elected
7 by the qualified voters of the State for terms of eight years. Before entering upon the duties of
8 his office, each justice shall take an oath of office. Four justices shall constitute a quorum for
9 the transaction of the business of the court. Except as otherwise provided in this subsection,
10 sessions of the court shall be held in the city of Raleigh, and scheduled by rule of court so as to
11 discharge expeditiously the court's business. The court may by rule hold sessions not more than
12 twice annually in the Old Chowan County Courthouse (1767) in the Town of Edenton, which is
13 a State-owned court facility that is designated as a National Historic Landmark by the United
14 States Department of the Interior. The court may by rule hold sessions not more than twice
15 annually in the City of Morganton; unless a more suitable site is identified by the court, the
16 court shall meet in the Old Burke County Courthouse, the location of summer sessions of the
17 Supreme Court from 1847-1862."

18 SECTION 2. This act is effective when it becomes law.





SENATE BILL 462: Public Authorities/Nonprofit Corporations

2015-2016 General Assembly

Committee: House Judiciary IV
Introduced by: Sen. Hartsell
Analysis of: PCS to Second Edition
S462-CSTC-44

Date: June 10, 2015
Prepared by: Kara McCraw
Committee Counsel,
Samantha Yarborough,
Legal Extern

SUMMARY: *Senate Bill 462 would authorize a public authority to establish, own, and operate a nonprofit corporation with tax-exempt status.*

The PCS would make the following changes:

- *Allow a public authority to control, rather than own, a nonprofit.*
- *Require the nonprofit be created to further the authorized purposes of the public authority.*
- *Prohibit the established nonprofit from having regulatory or enforcement powers.*

CURRENT LAW: "Public authority" is defined in Article 3 of Chapter 159, the Local Government Budget and Fiscal Control Act (LGBFCA), as:

- a municipal corporation (other than a unit of local government) that is not subject to the State Budget Act (Chapter 143C of the General Statutes), or
- a local governmental authority, board, commission, council, or agency that: (i) is not a municipal corporation, (ii) is not subject to the State Budget Act, and (iii) operates on an area, regional, or multi-unit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government. G.S. 159-7(10).

The LGBFCA requires units of local government to conform to certain standards on financial matters, with oversight provided by the Local Government Commission. It does not currently authorize a public authority to establish, control, or operate a nonprofit corporation with tax-exempt status.

BILL ANALYSIS: The PCS to Senate Bill 462 would authorize a public authority to establish, control, and operate a nonprofit corporation that is created under Chapter 55A of the General Statutes and is a tax-exempt organization under the Internal Revenue Code. The purposes of the nonprofit corporation would be limited to those that further the authorized purposes of the public authority, and the nonprofit corporations would not be permitted to have regulatory or enforcement powers.

EFFECTIVE DATE: SB 462 would become effective when it becomes law.

BACKGROUND: Types of public authorities include:

- Housing Authorities: G.S. Chapter 157, Article 1
- Water and Sewer Authorities: G.S. Chapter 162A, Article 1
- Parking Authorities: G.S. Chapter 160A, Article 24
- Public Transportation Authorities: G.S. Chapter 160A, Article 25
- Public Health Authorities: G.S. Chapter 130A, Article 2, Part 1B
- Hospital Authorities: G.S. Chapter 131E, Art. 2, Part 2

O. Walker Reagan
Director



Research Division
(919) 733-2578



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 462

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S462-ATC-60 [v.1]

Page 1 of 1

Amends Title [NO]
Second Edition

Date _____, 2015

Representative R. Johnson

- 1 moves to amend the bill on page 1, line 14, by rewriting that line to read:
2
3 "powers and shall not engage in political activity or lobbying".
- partisan*
- 1 1

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ☒ FAILED _____ TABLED _____



* S 4 6 2 - A T C - 6 0 - V - 1 *



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 462

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

Page 1 of 1

S462-ATC-60 [v.1]

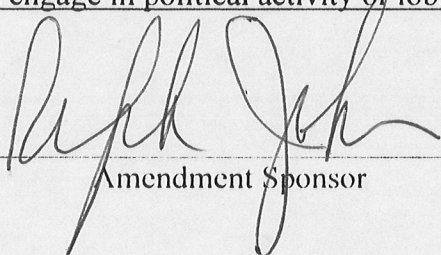
Amends Title [NO]
Second Edition

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- 1 moves to amend the bill on page 1, line 14, by rewriting that line to read:
2
3 "powers and shall not engage in political activity or lobbying.".

SIGNED _____


Amendment Sponsor

SIGNED _____

Committee Chair if Senate Committee Amendment

ADOPTED _____

FAILED _____

TABLED _____



* S 4 6 2 - A T C - 6 0 - V - 1 *

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S

D

SENATE BILL 462
Judiciary II Committee Substitute Adopted 4/14/15
PROPOSED HOUSE COMMITTEE SUBSTITUTE S462-PCS45376-TC-44

Short Title: Public Authorities/Nonprofit Corporations. (Public)

Sponsors:

Referred to:

March 26, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THAT A PUBLIC AUTHORITY MAY ESTABLISH, CONTROL,
3 AND OPERATE A NONPROFIT CORPORATION WITH TAX EXEMPT STATUS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 3 of Chapter 159 of the General Statutes is amended by
6 adding a new Part to read as follows:

7 "PART 8. NONPROFIT CORPORATION ESTABLISHED BY PUBLIC AUTHORITY.

8 "**§ 159-42.1. Establishment of nonprofit corporation by public authority authorized.**

9 A public authority may establish, control, and operate a nonprofit corporation that is created
10 under Chapter 55A of the General Statutes and is a tax-exempt organization under the Internal
11 Revenue Code to further the authorized purposes of the public authority. A nonprofit
12 corporation established as provided in this section shall not have regulatory or enforcement
13 powers and shall not engage in partisan political activity."

14 **SECTION 2.** This act is effective when it becomes law.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S

D

SENATE BILL 462
Judiciary II Committee Substitute Adopted 4/14/15
PROPOSED HOUSE COMMITTEE SUBSTITUTE S462-CSTC-44 [v.3]
6/9/2015 1:08:59 PM

Short Title: Public Authorities/Nonprofit Corporations. (Public)

Sponsors:

Referred to:

March 26, 2015

A BILL TO BE ENTITLED
AN ACT TO CLARIFY THAT A PUBLIC AUTHORITY MAY ESTABLISH, CONTROL,
AND OPERATE A NONPROFIT CORPORATION WITH TAX EXEMPT STATUS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 159 of the General Statutes is amended by
adding a new Part to read as follows:

"PART 8.

"NONPROFIT CORPORATION ESTABLISHED BY PUBLIC AUTHORITY.

"§ 159-42.1. Establishment of nonprofit corporation by public authority authorized.

A public authority may establish, control, and operate a nonprofit corporation that is created
under Chapter 55A of the General Statutes and is a tax-exempt organization under the Internal
Revenue Code to further the authorized purposes of the public authority. A nonprofit
corporation established as provided in this section shall not have regulatory or enforcement
powers."

SECTION 2. This act is effective when it becomes law.



* S 4 6 2 - C S T C - 4 4 - V - 3 *

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S

2

SENATE BILL 462
Judiciary II Committee Substitute Adopted 4/14/15

Short Title: Public Authorities/Nonprofit Corporations. (Public)

Sponsors:

Referred to:

March 26, 2015

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2 AN ACT TO CLARIFY THAT A PUBLIC AUTHORITY MAY ESTABLISH, OWN, AND
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10 A public authority may establish, own, and operate a nonprofit corporation that is created
11 under Chapter 55A of the General Statutes and is a tax-exempt organization under the Internal
12 Revenue Code."

13 **SECTION 2.** This act is effective when it becomes law.



House Committee on Judiciary IV
Wednesday, August 5, 2015 at 10:00 AM
Room 1228/1327 of the Legislative Building

MINUTES

The House Committee on Judiciary IV met at 10:00 AM on August 5, 2015 in Room 1228/1327 of the Legislative Building. Representatives Blackwell, Chair, Bryan, Chair, Schaffer, Chair, Adams, Bishop, Hager, Hunter, Johnson, Richardson, Riddell, Setzer, Terry, Tine, Torbett, Warren and Willingham attended. Also present were staff members Kara McGraw, Kelly Quick Tornow and Committee Clerk Sharon Sullivan. An attendance sheet is attached and made part of these minutes.

Representative Jacqueline Schaffer presided. Chairwoman Schaffer called the meeting to order at 10:07. The Chairwoman recognized the Sergeants-at-Arms and introduced the pages. The following bills were considered:

SB 120 DOI License Processing Fees. (Senator Hartsell)

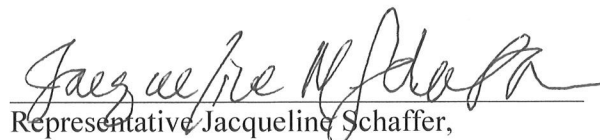
After discussion with other chairs and staff, it was decided that this bill would be deferred to the following Judiciary IV meeting.

SB 429 Labor/2015 Technical & Conforming Changes. (Senator Brock)

A motion was made by Rep. Setzer to bring the Proposed Committee substitute before the committee, and the motion passed. Chairwoman Schaffer recognized Rep. Bryan to present the bill. There was discussion between committee members about the bill. Members of the public were given an opportunity to address the Committee, and the Members heard from Jennifer Haigwood from the N.C. Department of Labor and Andy Ellen from the N.C. Retail Merchants Association. The visitor's sheet is attached and made part of these minutes. Representative Blackwell offered an amendment to the bill and the amendment was adopted. Representative Hager made the motion for a favorable report to the Proposed House Committee Substitute, as amended, with an unfavorable report to the original bill. The motion carried, and the committee substitute received a favorable report.

The meeting adjourned at 10:30 AM.

Respectfully submitted,


Representative Jacqueline Schaffer,
Presiding Chair


Sharon Sullivan, Committee Clerk

Corrected #1: SB 566 Removed from Calendar

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2015-2016 SESSION**

You are hereby notified that the **House Committee on Judiciary IV** will meet as follows:

DAY & DATE: Wednesday, August 5, 2015

TIME: 10:00 AM

LOCATION: 1228/1327 LB

COMMENTS: Rep. Schaffer will preside.

The following bills will be considered:

| BILL NO. | SHORT TITLE | SPONSOR |
|-----------------|--|------------------|
| SB 120 | DOI License Processing Fees. | Senator Hartsell |
| SB 429 | Labor/2015 Technical & Conforming Changes. | Senator Brock |

Respectfully,

Representative Hugh Blackwell, Co-Chair
Representative Rob Bryan, Co-Chair
Representative Jacqueline Michelle Schaffer, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 1:46 PM on Tuesday, August 04, 2015.

____ Principal Clerk
____ Reading Clerk – House Chamber

Sharon Sullivan (Committee Assistant)

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2015-2016 SESSION**

You are hereby notified that the **House Committee on Judiciary IV** will meet as follows:

DAY & DATE: Wednesday, August 5, 2015

TIME: 10:00 AM

LOCATION: 1228/1327 LB

COMMENTS: Rep. Schaffer will preside.

The following bills will be considered:

| BILL NO. | SHORT TITLE | SPONSOR |
|-----------------|--|------------------|
| SB 120 | DOI License Processing Fees. | Senator Hartsell |
| SB 429 | Labor/2015 Technical & Conforming Changes. | Senator Brock |
| SB 566 | Disposition of Minimal Property Tax Refunds. | Senator Tarte |

Respectfully,

Representative Hugh Blackwell, Co-Chair
Representative Rob Bryan, Co-Chair
Representative Jacqueline Michelle Schaffer, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 11:11 AM on Tuesday, August 04, 2015.

____ Principal Clerk
____ Reading Clerk – House Chamber

Sharon Sullivan (Committee Assistant)

House Committee on Judiciary IV
Wednesday, August 5, 2015, 10:00 AM
1228/1327 Legislative Building

AGENDA

Welcome and Opening Remarks
Chaired by Rep. Schaffer

Introduction of Sergeant at Arms and Pages

Bills

| BILL NO. | SHORT TITLE | SPONSOR |
|-----------------|--|------------------|
| SB 120 | DOI License Processing Fees. | Senator Hartsell |
| SB 429 | Labor/2015 Technical & Conforming Changes. | Senator Brock |

Adjournment



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 429

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S429-ATH-56 [v.1]

Page 1 of 1

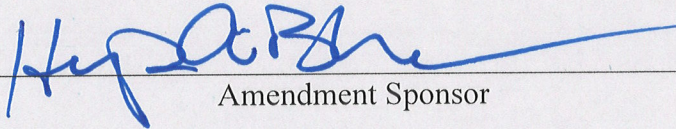
Amends Title [NO]
S429-CSTC-54

Date _____, 2015

Representative Blackwell

- 1 moves to amend the bill on page 5, line 45, by inserting "for sale of alcoholic beverages"
2 between the words "except" and "at" on that line.

SIGNED


Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED

FAILED

TABLED



* S 4 2 9 - A T H - 5 6 - V - 1 *

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S

D

SENATE BILL 429
PROPOSED HOUSE COMMITTEE SUBSTITUTE S429-PCS35304-TC-54

Short Title: Labor/2015 Technical & Conforming Changes.

(Public)

Sponsors:

Referred to:

March 26, 2015

A BILL TO BE ENTITLED
AN ACT MAKING TECHNICAL, CONFORMING, AND OTHER CHANGES TO THE
LABOR LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL AND CONFORMING CHANGES

SECTION 1.1. G.S. 95-3 reads as rewritten:

"§ 95-3. Divisions of Department; Commissioner; administrative officers.

The Department of Labor shall consist of the following officers, divisions and sections:

A Commissioner of Labor.

A Division of Standards and Inspections.

A Division of ~~Statistics~~ Occupational Safety and Health.

Each division shall be in the charge of a chief administrative officer and shall be organized under such rules and regulations as the Commissioner of Labor and the head of the division ~~concerned, with the approval of the Governor, concerned~~ shall prescribe and promulgate. The Commissioner of Labor, ~~with the approval of the Governor, Labor~~ may make provision for one person to act as chief administrative officer of two or more divisions, when such is deemed advisable. The chief administrative officers of the several divisions shall be appointed by the Commissioner of Labor ~~with the approval of the Governor, Labor~~. The Commissioner of Labor, ~~with the approval of the Governor, Labor~~ may combine or consolidate the activities of two or more of the divisions of the Department, or provide for the setting up of other divisions when such action shall be deemed advisable for the more efficient and economical administration of the work and duties of the Department."

SECTION 1.2. G.S. 95-4 reads as rewritten:

"§ 95-4. Authority, powers and duties of Commissioner.

The Commissioner of Labor shall be the executive and administrative head of the Department of Labor. In addition to the other powers and duties conferred upon the Commissioner of Labor by this Article, the said Commissioner shall have authority and be charged with the duty:

- (1) To appoint and assign to duty such clerks, stenographers, and other employees in the various divisions of the Department, ~~with approval of said director of division,~~ as may be necessary to perform the work of the Department, and fix their compensation, subject to the approval of the Department of Administration. The Commissioner of Labor may assign or transfer stenographers, or clerks, from one division to another, or inspectors from one division to another, or combine the clerical force of two or more



* S 4 2 9 - P C S 3 5 3 0 4 - T C - 5 4 *

divisions, or require from one division assistance in the work of another division, as he may consider necessary and advisable: Provided, however, the provisions of this subdivision shall not apply to the Industrial Commission, or the Division of Workers' Compensation.

(2) To make such rules and regulations with reference to the work of the Department and of the several divisions thereof as shall be necessary to properly carry out the duties imposed upon the said Commissioner and the work of the ~~Department; such rules and regulations to be made subject to the approval of the Governor.~~ Department.

(3) To take and preserve testimony, examine witnesses, administer oaths, and under proper restriction enter any public institution of the State, any factory, store, workshop, laundry, public eating house or mine, and interrogate any person employed therein or connected therewith, or the proper officer of a corporation, or file a written or printed list of interrogatories and require full and complete answers to the same, to be returned under oath within 30 days of the receipt of said list of questions.

(4) To secure the enforcement of all laws relating to the inspection of factories, mercantile establishments, mills, workshops, public eating places, and commercial institutions in the State. To aid him in the work, he shall have power to appoint factory inspectors and other assistants. The duties of such inspectors and other assistants shall be prescribed by the Commissioner of Labor.

(5) To visit and inspect, personally or through his assistants and factory inspectors, at reasonable hours, as often as practicable, the factories, mercantile establishments, mills, workshops, public eating places, and commercial institutions in the State, where goods, wares, or merchandise are manufactured, purchased, or sold, at wholesale or retail.

(6) To enforce the provisions of this section and to prosecute all violations of laws relating to the inspection of factories, mercantile establishments, mills, workshops, public eating houses, and commercial institutions in this State before any court of competent jurisdiction. It shall be the duty of the district attorney of the proper district upon the request of the Commissioner of Labor, or any of his assistants or deputies, to prosecute any violation of a law, which it is made the duty of the said Commissioner of Labor to enforce."

SECTION 1.3. G.S. 95-69.11 reads as rewritten:

"§ 95-69.11. Powers and duties of Commissioner.

The Commissioner of Labor is hereby charged, directed, and empowered:

(1) To adopt, modify, or revoke rules governing the construction, operation, and use of boilers and pressure vessels, including, where necessary, requirements for fencing to prevent unauthorized persons from coming in contact with boilers and pressure vessels or the systems they are connected to.

(2) To delegate to the Chief Inspector any powers, duties, and responsibilities that the Commissioner determines will best serve the public interest in the safe operation of boilers and pressure vessels, and to supervise the Chief Inspector in the performance of those duties.

(3) To enforce rules adopted under authority of this Article.

(4) To inspect boilers and pressure vessels covered under this Article.

(5) To issue inspection certificates to those boilers and pressure vessels found in compliance with this Article.

- (6) To enjoin violations of this Article in the civil and criminal courts of this State.
- (7) To keep adequate records of the type, dimensions, age, conditions, pressure allowed upon, location, and date of the last inspection of all boilers and pressure vessels to which this Article applies.
- (8) To require such periodic reports from inspectors, owners, and operators of boilers and pressure vessels as he deems appropriate in carrying out the purposes of this Article.
- (9) To have free access, without notice, to any location in this State, during reasonable hours, where a boiler or pressure vessel is being built, installed, or operated for the purpose of ascertaining whether such boiler or pressure vessel is built, installed, or operated in accordance with the provisions of this Article.
- (10) To investigate serious accidents involving boilers and pressure vessels to determine the causes of the accidents, and to have full subpoena powers in conducting the investigation.
- (11) To establish reasonable fees for the inspection and issuance of inspection certificates for boilers and pressure vessels that are in use.
- (12) To establish reasonable fees for the examination and certification of inspectors.
- ~~(13) To appoint qualified individuals to the Board of Boiler and Pressure Vessel Rules.~~
- (14) To perform inspections and audits relating to the construction and repair of boilers and pressure vessels and to establish and collect fees for these activities.
- (15) To order the payment of civil penalties provided by this section.
- (16) To require that before any boiler or pressure vessel that is subject to this Article is transferred into the State, or is moved from one location to another within the State, the owner or the owner's authorized agent shall file with the Commissioner a written notice of intent to do so and the type of device involved and provide a copy of the specifications, previous inspection documents, or other information that the Commissioner deems necessary to determine whether the boiler or pressure vessel is in compliance with the provisions of this Article and the rules adopted under this Article.
- (17) To grant exceptions from the requirements of the rules and regulations adopted under authority of this Article and to permit the use of other devices when such exceptions and uses will not expose the public to an unsafe condition likely to result in serious personal injury or property damage.
- (18) To devise and proctor examinations covering this Article and the rules adopted under this Article to applicants seeking a commission as inspectors of boilers and pressure vessels in this State.
- (19) To act as proctors during the administration of the National Board commissioning examination.
- (20) To issue, suspend, or revoke inspector's commissions as inspectors of boilers and pressure vessels within this State. Whenever action is taken under this section to suspend or revoke a commission, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act."

SECTION 1.4. G.S. 95-69.17(c) reads as rewritten:

"(c) ~~Whenever action is taken under this section, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act. Any action taken under this section by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person against whom such action was taken takes exception to the determination, in which event the final determination of the action shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.~~"

SECTION 1.5. G.S. 95-110.6(c) reads as rewritten:

"(c) ~~Whenever action is taken under this section, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act. Any action taken under this section by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person against whom such action was taken takes exception to the determination, in which event the final determination of the action shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.~~"

SECTION 1.6. G.S. 95-111.6(c) reads as rewritten:

"(c) ~~Whenever action is taken under this section, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act. Any action taken under this section by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person against whom such action was taken takes exception to the determination, in which event the final determination of the action shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.~~"

PART II. STATUTORY UPDATING/REPEALS

SECTION 2.1. G.S. 95-5 is repealed.

SECTION 2.2. G.S. 95-6 is repealed.

SECTION 2.3 G.S. 95-7 reads as rewritten:

"§ 95-7. Power of Commissioner to compel the giving of such information; refusal as contempt.

The Commissioner of Labor, or his authorized representative, ~~for the purpose of securing the statistical details referred to in G.S. 95-6,~~ shall have power to examine witnesses on oath, to compel the attendance of witnesses and the giving of such testimony and production of such papers as shall be necessary to enable him to gain the necessary information. Upon the refusal of any witness to comply with the requirements of the Commissioner of Labor or his representative in this respect, it shall be the duty of any judge of the superior court, upon the application of the Commissioner of Labor, or his representative, to order the witness to show cause why he should not comply with the requirements of the said Commissioner, or his representative, if in the discretion of the judge such requirement is reasonable and proper. Refusal to comply with the order of the judge of the superior court shall be dealt with as for contempt of court."

SECTION 2.4. G.S. 95-11 is repealed.

1 **SECTION 2.5.** G.S. 95-12 is repealed.

2 **SECTION 2.6.** G.S. 95-69.13 is repealed.

3 **SECTION 2.7.** G.S. 95-69.9(a) is repealed.

4 **SECTION 2.8.** G.S. 95-69.14 reads as rewritten:

5 **"§ 95-69.14. Rules and regulations governing the construction, operation and use of**
6 **boilers and pressure vessels.**

7 The ~~Commissioner, after consultation with the Board,~~ Commissioner may adopt, modify, or
8 revoke any rules and regulations governing the construction, installation, repair, alteration,
9 inspection, use, and operation of boilers and pressure vessels as the Commissioner deems
10 appropriate to insure the safe operation and avoidance of injury to person or property from
11 boilers and pressure vessels. The rules and regulations will conform as nearly as possible to the
12 standards of the American Society of Mechanical Engineers and the amendments and
13 interpretations of those engineering standards.

14 The procedure for the adoption, modification, or revocation of the rules and regulations
15 shall be in accordance with Chapter 150B of the General Statutes, the Administrative Procedure
16 Act."

17 **SECTION 2.9.** G.S. 95-69.16 reads as rewritten:

18 **"§ 95-69.16. Inspection certificate required.**

19 All boilers and pressure vessels subject to the provisions of this Article shall be inspected
20 by a commissioned inspector. The Commissioner may determine both the frequency and the
21 method of inspection. In determining the frequency of inspection, the Commissioner shall give
22 due consideration to the hazard involved and the need for the protection of the public. The
23 method of inspection must provide an adequate procedure to insure the safety of individuals
24 likely to be injured by an explosion or accident involving a boiler or pressure vessel.

25 No boiler or pressure vessel may be operated without an inspection certificate, except
26 pressure vessels being operated under an owner-user provision where administrative procedures
27 of equal safety and competency have been approved by the ~~Board and~~ Commissioner. No more
28 than 60 days grace period may be granted beyond the certificate expiration date."

29
30 **PART III. YOUTH EMPLOYMENT EXCEPTION FOR POINT OF SALE FOR**
31 **OFF-PREMISES CONSUMPTION**

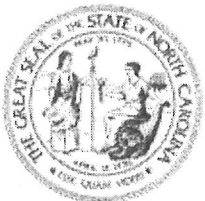
32 **SECTION 3.1** G.S. 95-25.5(j) reads as rewritten:

33 "(j) No person who holds any ABC permit issued pursuant to the provisions of Chapter
34 18B of the General Statutes for the on-premises sale or consumption of alcoholic beverages,
35 including any mixed beverages, shall employ a youth:

- 36 (1) Under 16 years of age on the premises for any purpose, unless the youth is at
37 least 14 years of age and each of the following conditions is met:
38 a. The person obtains the written consent of a parent or guardian of the
39 youth.
40 b. The youth is employed to work on the outside grounds of the
41 premises for a purpose that does not involve the preparation, serving,
42 dispensing, or sale of alcoholic beverages.
43 (2) Under 18 years of age to prepare, serve, dispense or sell any alcoholic
44 beverages, including mixed ~~beverages~~ beverages, except for sale of alcoholic
45 beverages at the point-of-sale for only off-premises consumption."

46
47 **PART IV. EFFECTIVE DATE**

48 **SECTION 4.1.** This act is effective when it becomes law.



SENATE BILL 429: Labor/2015 Technical & Conforming Changes

2015-2016 General Assembly

| | | | |
|-----------------------|--------------------------------------|---------------------|-------------------|
| Committee: | House Judiciary IV | Date: | August 5, 2015 |
| Introduced by: | Sen. Brock | Prepared by: | Kara McCraw |
| Analysis of: | PCS to First Edition S429-CSTC-54 | | Committee Counsel |

SUMMARY: *Senate Bill 429 makes technical and conforming changes to various provisions in Chapter 95 of the General Statutes (Department of Labor and Labor Regulations).*

The PCS for SB 429:

- *Makes additional conforming changes related to the repeal of reporting statutes and the Board of Boiler and Pressure Vessels Rules.*
- *Creates an exception to the prohibition on youth employment of those under 18 years of age to prepare, serve, dispense or sell any alcoholic beverages at an establishment permitted for on-premises sale or consumption of alcohol, to permit youth employment at the point-of-sale for only off-premises consumption.*

BILL ANALYSIS: Senate Bill 429 makes the following changes to labor-related statutes:

- Deletes Statistics as one of the Divisions of the Department of Labor and replaces it with Occupational Safety and Health.
- Deletes requirement that the Governor approve certain organizational decisions of the Commissioner of Labor.
- Repeals the Board of Boiler and Pressure Vessels Rules and makes conforming changes related to that repeal. The following powers of the Board are added to the list of powers the Commissioner of Labor has under the Uniform Boiler and Pressure Vessel Act:
 - To devise and proctor exams for inspectors of boilers and pressure vessels.
 - To act as proctor for administration of the National Board commissioning exam.
 - To issue, suspend, or revoke boiler and pressure vessel inspector commissions.
- Amends language regarding appeals of determinations of noncomplying devices in three statutes (for boilers and pressure vessels, elevators, and amusement devices) to say that actions are final unless the person against whom the action is taken takes exception to the determination within 15 days. Previously the statute provided for the process under the Administrative Procedures Act, which allows 60 days for the filing of a petition in a contested case (G.S. 150B-23(f)).
- Deletes the following statutory sections:
 - G.S. 95-5 (Annual report to the Governor). – This report requires the Commissioner of Labor to annually report on the activities of the Department of Labor to the Governor.
 - G.S. 95-6 (Statistical report to the Governor) – This report requires the Commissioner to report on statistical details related to labor to the Governor.

O. Walker Reagan
Director



Research Division
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Senate Bill 429

Page 2

- G.S. 95-11 (Division of Standards and Inspection) – This statute establishes studies, information, research, and rules to be made by the Division of Standards and Inspections.
- G.S. 95-12 (Division of Statistics) – This statute established that the Chief Statistician is in charge of the Division of Statistics and establishes that positions' job duties.
- Amends G.S. 95-25.5, which prohibits employment of those under 18 years of age to prepare, serve, dispense or sell any alcoholic beverages at an establishment permitted for on-premises sale or consumption of alcohol, to allow employment of those under 18 at the point-of-sale for only off-premises consumption.

EFFECTIVE DATE: The bill is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 429
PROPOSED HOUSE COMMITTEE SUBSTITUTE S429-CSTC-54 [v.2]

8/4/2015 7:19:02 PM

Short Title: Labor/2015 Technical & Conforming Changes.

(Public)

Sponsors:

Referred to:

March 26, 2015

A BILL TO BE ENTITLED
AN ACT MAKING TECHNICAL, CONFORMING, AND OTHER CHANGES TO THE
LABOR LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL AND CONFORMING CHANGES

SECTION 1.1. G.S. 95-3 reads as rewritten:

"§ 95-3. Divisions of Department; Commissioner; administrative officers.

The Department of Labor shall consist of the following officers, divisions and sections:

A Commissioner of Labor.

A Division of Standards and Inspections.

A Division of ~~Statistics~~ Occupational Safety and Health.

Each division shall be in the charge of a chief administrative officer and shall be organized under such rules and regulations as the Commissioner of Labor and the head of the division concerned, ~~with the approval of the Governor,~~ shall prescribe and promulgate. The Commissioner of Labor, ~~with the approval of the Governor,~~ may make provision for one person to act as chief administrative officer of two or more divisions, when such is deemed advisable. The chief administrative officers of the several divisions shall be appointed by the Commissioner of Labor ~~with the approval of the Governor.~~ Labor. The Commissioner of Labor, ~~with the approval of the Governor,~~ may combine or consolidate the activities of two or more of the divisions of the Department, or provide for the setting up of other divisions when such action shall be deemed advisable for the more efficient and economical administration of the work and duties of the Department."

SECTION 1.2. G.S. 95-4 reads as rewritten:

"§ 95-4. Authority, powers and duties of Commissioner.

The Commissioner of Labor shall be the executive and administrative head of the Department of Labor. In addition to the other powers and duties conferred upon the Commissioner of Labor by this Article, the said Commissioner shall have authority and be charged with the duty:

- (1) To appoint and assign to duty such clerks, stenographers, and other employees in the various divisions of the Department, ~~with approval of said director of division,~~ as may be necessary to perform the work of the Department, and fix their compensation, subject to the approval of the Department of Administration. The Commissioner of Labor may assign or transfer stenographers, or clerks, from one division to another, or inspectors from one division to another, or combine the clerical force of two or more



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divisions, or require from one division assistance in the work of another division, as he may consider necessary and advisable: Provided, however, the provisions of this subdivision shall not apply to the Industrial Commission, or the Division of Workers' Compensation.

(2) To make such rules and regulations with reference to the work of the Department and of the several divisions thereof as shall be necessary to properly carry out the duties imposed upon the said Commissioner and the work of the Department; ~~such rules and regulations to be made subject to the approval of the Governor.~~ Department.

(3) To take and preserve testimony, examine witnesses, administer oaths, and under proper restriction enter any public institution of the State, any factory, store, workshop, laundry, public eating house or mine, and interrogate any person employed therein or connected therewith, or the proper officer of a corporation, or file a written or printed list of interrogatories and require full and complete answers to the same, to be returned under oath within 30 days of the receipt of said list of questions.

(4) To secure the enforcement of all laws relating to the inspection of factories, mercantile establishments, mills, workshops, public eating places, and commercial institutions in the State. To aid him in the work, he shall have power to appoint factory inspectors and other assistants. The duties of such inspectors and other assistants shall be prescribed by the Commissioner of Labor.

(5) To visit and inspect, personally or through his assistants and factory inspectors, at reasonable hours, as often as practicable, the factories, mercantile establishments, mills, workshops, public eating places, and commercial institutions in the State, where goods, wares, or merchandise are manufactured, purchased, or sold, at wholesale or retail.

(6) To enforce the provisions of this section and to prosecute all violations of laws relating to the inspection of factories, mercantile establishments, mills, workshops, public eating houses, and commercial institutions in this State before any court of competent jurisdiction. It shall be the duty of the district attorney of the proper district upon the request of the Commissioner of Labor, or any of his assistants or deputies, to prosecute any violation of a law, which it is made the duty of the said Commissioner of Labor to enforce."

SECTION 1.3. G.S. 95-69.11 reads as rewritten:

"§ 95-69.11. Powers and duties of Commissioner.

The Commissioner of Labor is hereby charged, directed, and empowered:

(1) To adopt, modify, or revoke rules governing the construction, operation, and use of boilers and pressure vessels, including, where necessary, requirements for fencing to prevent unauthorized persons from coming in contact with boilers and pressure vessels or the systems they are connected to.

(2) To delegate to the Chief Inspector any powers, duties, and responsibilities that the Commissioner determines will best serve the public interest in the safe operation of boilers and pressure vessels, and to supervise the Chief Inspector in the performance of those duties.

(3) To enforce rules adopted under authority of this Article.

(4) To inspect boilers and pressure vessels covered under this Article.

(5) To issue inspection certificates to those boilers and pressure vessels found in compliance with this Article.

- (6) To enjoin violations of this Article in the civil and criminal courts of this State.
- (7) To keep adequate records of the type, dimensions, age, conditions, pressure allowed upon, location, and date of the last inspection of all boilers and pressure vessels to which this Article applies.
- (8) To require such periodic reports from inspectors, owners, and operators of boilers and pressure vessels as he deems appropriate in carrying out the purposes of this Article.
- (9) To have free access, without notice, to any location in this State, during reasonable hours, where a boiler or pressure vessel is being built, installed, or operated for the purpose of ascertaining whether such boiler or pressure vessel is built, installed, or operated in accordance with the provisions of this Article.
- (10) To investigate serious accidents involving boilers and pressure vessels to determine the causes of the accidents, and to have full subpoena powers in conducting the investigation.
- (11) To establish reasonable fees for the inspection and issuance of inspection certificates for boilers and pressure vessels that are in use.
- (12) To establish reasonable fees for the examination and certification of inspectors.
- ~~(13) To appoint qualified individuals to the Board of Boiler and Pressure Vessel Rules.~~
- (14) To perform inspections and audits relating to the construction and repair of boilers and pressure vessels and to establish and collect fees for these activities.
- (15) To order the payment of civil penalties provided by this section.
- (16) To require that before any boiler or pressure vessel that is subject to this Article is transferred into the State, or is moved from one location to another within the State, the owner or the owner's authorized agent shall file with the Commissioner a written notice of intent to do so and the type of device involved and provide a copy of the specifications, previous inspection documents, or other information that the Commissioner deems necessary to determine whether the boiler or pressure vessel is in compliance with the provisions of this Article and the rules adopted under this Article.
- (17) To grant exceptions from the requirements of the rules and regulations adopted under authority of this Article and to permit the use of other devices when such exceptions and uses will not expose the public to an unsafe condition likely to result in serious personal injury or property damage.
- (18) To devise and proctor examinations covering this Article and the rules adopted under this Article to applicants seeking a commission as inspectors of boilers and pressure vessels in this State.
- (19) To act as proctors during the administration of the National Board commissioning examination.
- (20) To issue, suspend, or revoke inspector's commissions as inspectors of boilers and pressure vessels within this State. Whenever action is taken under this section to suspend or revoke a commission, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act."

SECTION 1.4. G.S. 95-69.17(c) reads as rewritten:

"(c) ~~Whenever action is taken under this section, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act. Any action taken under this section by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person against whom such action was taken takes exception to the determination, in which event the final determination of the action shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.~~"

SECTION 1.5. G.S. 95-110.6(c) reads as rewritten:

"(c) ~~Whenever action is taken under this section, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act. Any action taken under this section by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person against whom such action was taken takes exception to the determination, in which event the final determination of the action shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.~~"

SECTION 1.6. G.S. 95-111.6(c) reads as rewritten:

"(c) ~~Whenever action is taken under this section, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act. Any action taken under this section by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail with return receipt, by signature confirmation as provided by the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, or via hand delivery, the person against whom such action was taken takes exception to the determination, in which event the final determination of the action shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.~~"

PART II. STATUTORY UPDATING/REPEALS

SECTION 2.1. G.S. 95-5 is repealed.

SECTION 2.2. G.S. 95-6 is repealed.

SECTION 2.3 G.S. 95-7 reads as rewritten:

"§ 95-7. Power of Commissioner to compel the giving of such information; refusal as contempt.

The Commissioner of Labor, or his authorized representative, ~~for the purpose of securing the statistical details referred to in G.S. 95-6,~~ shall have power to examine witnesses on oath, to compel the attendance of witnesses and the giving of such testimony and production of such papers as shall be necessary to enable him to gain the necessary information. Upon the refusal of any witness to comply with the requirements of the Commissioner of Labor or his representative in this respect, it shall be the duty of any judge of the superior court, upon the application of the Commissioner of Labor, or his representative, to order the witness to show cause why he should not comply with the requirements of the said Commissioner, or his representative, if in the discretion of the judge such requirement is reasonable and proper. Refusal to comply with the order of the judge of the superior court shall be dealt with as for contempt of court.

SECTION 2.4. G.S. 95-11 is repealed.

1 **SECTION 2.5.** G.S. 95-12 is repealed.

2 **SECTION 2.6.** G.S. 95-69.13 is repealed.

3 **SECTION 2.7.** G.S. 95-69.9(a) is repealed.

4 **SECTION 2.8.** G.S. 95-69.14 reads as rewritten:

5 **"§ 95-69.14. Rules and regulations governing the construction, operation and use of**
6 **boilers and pressure vessels.**

7 The ~~Commissioner, after consultation with the Board,~~ Commissioner may adopt, modify, or
8 revoke any rules and regulations governing the construction, installation, repair, alteration,
9 inspection, use, and operation of boilers and pressure vessels as the Commissioner deems
10 appropriate to insure the safe operation and avoidance of injury to person or property from
11 boilers and pressure vessels. The rules and regulations will conform as nearly as possible to the
12 standards of the American Society of Mechanical Engineers and the amendments and
13 interpretations of those engineering standards.

14 The procedure for the adoption, modification, or revocation of the rules and regulations
15 shall be in accordance with Chapter 150B of the General Statutes, the Administrative Procedure
16 Act."

17 **SECTION 2.9.** G.S. 95-69.16 reads as rewritten:

18 **"§ 95-69.16. Inspection certificate required.**

19 All boilers and pressure vessels subject to the provisions of this Article shall be inspected
20 by a commissioned inspector. The Commissioner may determine both the frequency and the
21 method of inspection. In determining the frequency of inspection, the Commissioner shall give
22 due consideration to the hazard involved and the need for the protection of the public. The
23 method of inspection must provide an adequate procedure to insure the safety of individuals
24 likely to be injured by an explosion or accident involving a boiler or pressure vessel.

25 No boiler or pressure vessel may be operated without an inspection certificate, except
26 pressure vessels being operated under an owner-user provision where administrative procedures
27 of equal safety and competency have been approved by the ~~Board and~~ Commissioner. No more
28 than 60 days grace period may be granted beyond the certificate expiration date."

29
30 **PART III. YOUTH EMPLOYMENT EXCEPTION FOR POINT OF SALE FOR OFF-**
31 **PREMISES CONSUMPTION**

32 **SECTION 3.1** G.S. 95-25.5(j) reads as rewritten:

33 "(j) No person who holds any ABC permit issued pursuant to the provisions of Chapter 18B
34 of the General Statutes for the on-premises sale or consumption of alcoholic beverages,
35 including any mixed beverages, shall employ a youth:

36 (1) Under 16 years of age on the premises for any purpose, unless the youth is at
37 least 14 years of age and each of the following conditions is met:

38 a. The person obtains the written consent of a parent or guardian of the
39 youth.

40 b. The youth is employed to work on the outside grounds of the
41 premises for a purpose that does not involve the preparation, serving,
42 dispensing, or sale of alcoholic beverages.

43 (2) Under 18 years of age to prepare, serve, dispense or sell any alcoholic
44 beverages, including mixed ~~beverages~~ beverages, except at the point-of-sale
45 for only off-premises consumption."

46
47 **PART IV. EFFECTIVE DATE**

48 **SECTION 4.1.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 429

Short Title: Labor/2015 Technical & Conforming Changes. (Public)
Sponsors: Senator Brock (Primary Sponsor).
Referred to: Rules and Operations of the Senate.

March 26, 2015

1 A BILL TO BE ENTITLED
2 AN ACT MAKING TECHNICAL AND CONFORMING CHANGES TO THE LABOR
3 LAWS OF NORTH CAROLINA.

4 The General Assembly of North Carolina enacts:

5
6 PART I. TECHNICAL AND CONFORMING CHANGES

7 SECTION 1.1. G.S. 95-3 reads as rewritten:

8 "§ 95-3. Divisions of Department; Commissioner; administrative officers.

9 The Department of Labor shall consist of the following officers, divisions and sections:

10 A Commissioner of Labor.

11 A Division of Standards and Inspections.

12 A Division of ~~Statistics~~ Occupational Safety and Health.

13 Each division shall be in the charge of a chief administrative officer and shall be organized
14 under such rules and regulations as the Commissioner of Labor and the head of the division
15 concerned, ~~with the approval of the Governor,~~ shall prescribe and promulgate. The
16 Commissioner of Labor, ~~with the approval of the Governor,~~ may make provision for one person
17 to act as chief administrative officer of two or more divisions, when such is deemed advisable.
18 The chief administrative officers of the several divisions shall be appointed by the
19 Commissioner of ~~Labor with the approval of the Governor.~~ Labor. The Commissioner of
20 Labor, ~~with the approval of the Governor,~~ may combine or consolidate the activities of two or
21 more of the divisions of the Department, or provide for the setting up of other divisions when
22 such action shall be deemed advisable for the more efficient and economical administration of
23 the work and duties of the Department."

24 SECTION 1.2. G.S. 95-4 reads as rewritten:

25 "§ 95-4. Authority, powers and duties of Commissioner.

26 The Commissioner of Labor shall be the executive and administrative head of the
27 Department of Labor. In addition to the other powers and duties conferred upon the
28 Commissioner of Labor by this Article, the said Commissioner shall have authority and be
29 charged with the duty:

- 30 (1) To appoint and assign to duty such clerks, stenographers, and other
31 employees in the various divisions of the Department, ~~with approval of said~~
32 ~~director of division,~~ as may be necessary to perform the work of the
33 Department, and fix their compensation, subject to the approval of the
34 Department of Administration. The Commissioner of Labor may assign or
35 transfer stenographers, or clerks, from one division to another, or inspectors
36 from one division to another, or combine the clerical force of two or more



divisions, or require from one division assistance in the work of another division, as he may consider necessary and advisable: Provided, however, the provisions of this subdivision shall not apply to the Industrial Commission, or the Division of Workers' Compensation.

- (2) To make such rules and regulations with reference to the work of the Department and of the several divisions thereof as shall be necessary to properly carry out the duties imposed upon the said Commissioner and the work of the ~~Department; such rules and regulations to be made subject to the approval of the Governor.~~ Department.
- (3) To take and preserve testimony, examine witnesses, administer oaths, and under proper restriction enter any public institution of the State, any factory, store, workshop, laundry, public eating house or mine, and interrogate any person employed therein or connected therewith, or the proper officer of a corporation, or file a written or printed list of interrogatories and require full and complete answers to the same, to be returned under oath within 30 days of the receipt of said list of questions.
- (4) To secure the enforcement of all laws relating to the inspection of factories, mercantile establishments, mills, workshops, public eating places, and commercial institutions in the State. To aid him in the work, he shall have power to appoint factory inspectors and other assistants. The duties of such inspectors and other assistants shall be prescribed by the Commissioner of Labor.
- (5) To visit and inspect, personally or through his assistants and factory inspectors, at reasonable hours, as often as practicable, the factories, mercantile establishments, mills, workshops, public eating places, and commercial institutions in the State, where goods, wares, or merchandise are manufactured, purchased, or sold, at wholesale or retail.
- (6) To enforce the provisions of this section and to prosecute all violations of laws relating to the inspection of factories, mercantile establishments, mills, workshops, public eating houses, and commercial institutions in this State before any court of competent jurisdiction. It shall be the duty of the district attorney of the proper district upon the request of the Commissioner of Labor, or any of his assistants or deputies, to prosecute any violation of a law, which it is made the duty of the said Commissioner of Labor to enforce."

SECTION 1.3. G.S. 95-69.11 reads as rewritten:

"§ 95-69.11. Powers and duties of Commissioner.

The Commissioner of Labor is hereby charged, directed, and empowered:

- (1) To adopt, modify, or revoke rules governing the construction, operation, and use of boilers and pressure vessels, including, where necessary, requirements for fencing to prevent unauthorized persons from coming in contact with boilers and pressure vessels or the systems they are connected to.
- (2) To delegate to the Chief Inspector any powers, duties, and responsibilities that the Commissioner determines will best serve the public interest in the safe operation of boilers and pressure vessels, and to supervise the Chief Inspector in the performance of those duties.
- (3) To enforce rules adopted under authority of this Article.
- (4) To inspect boilers and pressure vessels covered under this Article.
- (5) To issue inspection certificates to those boilers and pressure vessels found in compliance with this Article.

- (6) To enjoin violations of this Article in the civil and criminal courts of this State.
- (7) To keep adequate records of the type, dimensions, age, conditions, pressure allowed upon, location, and date of the last inspection of all boilers and pressure vessels to which this Article applies.
- (8) To require such periodic reports from inspectors, owners, and operators of boilers and pressure vessels as he deems appropriate in carrying out the purposes of this Article.
- (9) To have free access, without notice, to any location in this State, during reasonable hours, where a boiler or pressure vessel is being built, installed, or operated for the purpose of ascertaining whether such boiler or pressure vessel is built, installed, or operated in accordance with the provisions of this Article.
- (10) To investigate serious accidents involving boilers and pressure vessels to determine the causes of the accidents, and to have full subpoena powers in conducting the investigation.
- (11) To establish reasonable fees for the inspection and issuance of inspection certificates for boilers and pressure vessels that are in use.
- (12) To establish reasonable fees for the examination and certification of inspectors.
- (13) To appoint qualified individuals to the Board of Boiler and Pressure Vessel Rules.
- (14) To perform inspections and audits relating to the construction and repair of boilers and pressure vessels and to establish and collect fees for these activities.
- (15) To order the payment of civil penalties provided by this section.
- (16) To require that before any boiler or pressure vessel that is subject to this Article is transferred into the State, or is moved from one location to another within the State, the owner or the owner's authorized agent shall file with the Commissioner a written notice of intent to do so and the type of device involved and provide a copy of the specifications, previous inspection documents, or other information that the Commissioner deems necessary to determine whether the boiler or pressure vessel is in compliance with the provisions of this Article and the rules adopted under this Article.
- (17) To grant exceptions from the requirements of the rules and regulations adopted under authority of this Article and to permit the use of other devices when such exceptions and uses will not expose the public to an unsafe condition likely to result in serious personal injury or property damage.
- (18) To devise and proctor examinations covering this Article and the rules adopted under this Article to applicants seeking a commission as inspectors of boilers and pressure vessels in this State.
- (19) To act as proctors during the administration of the National Board commissioning examination.
- (20) To issue, suspend, or revoke inspector's commissions as inspectors of boilers and pressure vessels within this State. Whenever action is taken under this section to suspend or revoke a commission, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Chapter 150B of the General Statutes, the Administrative Procedure Act."

SECTION 1.4. G.S. 95-69.17(c) reads as rewritten:

1 "(c) ~~Whenever action is taken under this section, the affected party shall be given notice~~
2 ~~of the availability of an administrative hearing and of judicial review in accordance with~~
3 ~~Chapter 150B of the General Statutes, the Administrative Procedure Act.~~Any action taken
4 under this section by the Commissioner shall be final, unless within 15 days after receipt of
5 notice thereof by certified mail with return receipt, by signature confirmation as provided by
6 the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. §
7 7502(f)(2) with delivery receipt, or via hand delivery, the person against whom such action was
8 taken takes exception to the determination, in which event the final determination of the action
9 shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter
10 150B of the General Statutes, the Administrative Procedure Act."

11 **SECTION 1.5.** G.S. 95-110.6(c) reads as rewritten:

12 "(c) ~~Whenever action is taken under this section, the affected party shall be given notice~~
13 ~~of the availability of an administrative hearing and of judicial review in accordance with~~
14 ~~Chapter 150B of the General Statutes, the Administrative Procedure Act.~~Any action taken
15 under this section by the Commissioner shall be final, unless within 15 days after receipt of
16 notice thereof by certified mail with return receipt, by signature confirmation as provided by
17 the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. §
18 7502(f)(2) with delivery receipt, or via hand delivery, the person against whom such action was
19 taken takes exception to the determination, in which event the final determination of the action
20 shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter
21 150B of the General Statutes, the Administrative Procedure Act."

22 **SECTION 1.6.** G.S. 95-111.6(c) reads as rewritten:

23 "(c) ~~Whenever action is taken under this section, the affected party shall be given notice~~
24 ~~of the availability of an administrative hearing and of judicial review in accordance with~~
25 ~~Chapter 150B of the General Statutes, the Administrative Procedure Act.~~Any action taken
26 under this section by the Commissioner shall be final, unless within 15 days after receipt of
27 notice thereof by certified mail with return receipt, by signature confirmation as provided by
28 the U.S. Postal Service, by a designated delivery service authorized pursuant to 26 U.S.C. §
29 7502(f)(2) with delivery receipt, or via hand delivery, the person against whom such action was
30 taken takes exception to the determination, in which event the final determination of the action
31 shall be made in an administrative proceeding and in a judicial proceeding pursuant to Chapter
32 150B of the General Statutes, the Administrative Procedure Act."

33 34 **PART II. STATUTORY UPDATING/REPEALS**

35 **SECTION 2.1.** G.S. 95-5 reads as rewritten:

36 "~~§ 95-5. Annual report to Governor; recommendation as to legislation needed.~~

37 ~~The Commissioner of Labor shall annually, on or before the first day of January, file with~~
38 ~~the Governor a report covering the activities of the Department, and the report so made on or~~
39 ~~before January 1 of the years in which the General Assembly shall be in session shall be~~
40 ~~accompanied by recommendations of the Commissioner with reference to such changes in the~~
41 ~~law applying to or affecting industrial and labor conditions as the Commissioner may deem~~
42 ~~advisable. The report of the Commissioner of Labor shall be printed and distributed in such~~
43 ~~manner and form as the Director of the Budget shall authorize."~~

44 **SECTION 2.2.** G.S. 95-6 reads as rewritten:

45 "~~§ 95-6. Statistical report to Governor; publication of information given by employers.~~

46 ~~It shall be the duty of the Commissioner of Labor to collect in the manner herein provided~~
47 ~~for, and to assort, systematize, and present to the Governor as a part of the report provided for~~
48 ~~in G.S. 95-5, statistical details relating to all divisions of labor in the State, and particularly~~
49 ~~concerning the following: the extent of unemployment, the hours of labor, the number of~~
50 ~~employees and sex thereof, and the daily wages earned; the conditions with respect to labor in~~
51 ~~all manufacturing establishments, hotels, stores, and workshops; and the industrial, social,~~

1 educational, moral, and sanitary conditions of the labor classes, in the productive industries of
2 the State. Such statistical details shall include the names of firms, companies, or corporations,
3 where the same are located, the kind of goods produced or manufactured, the period of
4 operation of each year, the number of employees, male or female, the number engaged in
5 clerical work and the number engaged in manual labor, with the classification of the number of
6 each sex engaged in such occupation and the average daily wage paid each: Provided, that the
7 Commissioner shall not, nor shall anyone connected with his office, publish or give or permit
8 to be published or given to any person the individual statistics obtained from any employer, and
9 all such statistics, when published, shall be published in connection with other similar statistics
10 and be set forth in aggregates and averages."

11 SECTION 2.3. G.S. 95-11 reads as rewritten:

12 **~~"§ 95-11. Division of Standards and Inspection.~~**

13 (a) ~~The chief administrative officer of the Division of Standards and Inspection shall be~~
14 ~~known as the Director of the Division. It shall be his duty, under the direction and supervision~~
15 ~~of the Commissioner of Labor, and under rules and regulations to be adopted by the~~
16 ~~Department as herein provided, to make or cause to be made all necessary inspections to see~~
17 ~~that all laws, rules and regulations concerning the safety and well-being of labor are promptly~~
18 ~~and effectively carried out.~~

19 (b) ~~The Division shall make studies and investigations of special problems connected~~
20 ~~with the labor of women and children, and create the necessary organization, and appoint an~~
21 ~~adequate number of investigators, with the consent of the Commissioner of Labor and the~~
22 ~~approval of the Governor; and the Director of said Division, under the supervision and~~
23 ~~direction of the Commissioner of Labor and under such rules and regulations as shall be~~
24 ~~prescribed by said Commissioner, with the approval of the Governor, shall perform all duties~~
25 ~~devolving upon the Department of Labor, or the Commissioner of Labor with relation to the~~
26 ~~enforcement of laws, rules, and regulations governing the employment of women and children.~~

27 (c) ~~The Director shall report annually to the Commissioner of Labor the activities of the~~
28 ~~Division, with such recommendations as may be considered advisable for the improvement of~~
29 ~~the working conditions for women and children.~~

30 (d) ~~The Division shall collect and collate information and statistics concerning the~~
31 ~~location, estimated and actual horsepower and condition of valuable water powers, developed~~
32 ~~and undeveloped, in this State; also concerning farmlands and farming, the kinds, character,~~
33 ~~and quantity of the annual farm products in this State; also of timber lands and timbers, truck~~
34 ~~gardening, dairying, and such other information and statistics concerning the agricultural and~~
35 ~~industrial welfare of the citizens of this State as may be deemed to be of interest and benefit to~~
36 ~~the public. The Director shall also perform the duties of mine inspector as prescribed in the~~
37 ~~Chapter on Mines and Quarries.~~

38 (e) ~~The Division shall conduct such research and carry out such studies as will~~
39 ~~contribute to the health, safety, and general well-being of the working classes of the State. The~~
40 ~~finding of such investigations, with the approval of the Commissioner of Labor and the~~
41 ~~Governor and the cooperation of the chief administrative officer of the Division or Divisions~~
42 ~~directly concerned, shall be promulgated as rules and regulations governing work places and~~
43 ~~working conditions. All recommendations and suggestions pertaining to health, safety, and~~
44 ~~well-being of employees shall be transmitted to the Commissioner of Labor in an annual report~~
45 ~~which shall cover the work of the Division of Standards and Inspection.~~

46 (f) ~~The Division shall make, promulgate and enforce rules and regulations for the~~
47 ~~protection of employees from accident and from occupational disease; and shall upon request,~~
48 ~~and after such investigation as it deems proper, issue certificates of compliance to such~~
49 ~~employers as are found by it to be in compliance with the rules and regulations made and~~
50 ~~promulgated in accordance with the provisions of this paragraph."~~

51 SECTION 2.4. G.S. 95-12 reads as rewritten:

1 ~~"§ 95-12. Division of Statistics.~~

2 ~~The Division of Statistics shall be in charge of a Chief Statistician. It shall be his duty,~~
3 ~~under the direction and supervision of the Commissioner of Labor, to collect, assort,~~
4 ~~systematize, and print all statistical details relating to all divisions of labor in this State as is~~
5 ~~provided in G.S. 95-6."~~

6 SECTION 2.5. G.S. 95-69.13 reads as rewritten:

7 ~~"§ 95-69.13. Board of Boiler and Pressure Vessels Rules created; appointment, terms,~~
8 ~~compensation and duties.~~

9 (a) ~~There is hereby created the North Carolina Board of Boiler and Pressure Vessels~~
10 ~~Rules consisting of nine members appointed by the Commissioner for a term of five years each.~~
11 ~~Of these nine appointed members, one shall be a representative of the owners and users of~~
12 ~~steam boilers within this State, one a representative of boiler manufacturers within this State,~~
13 ~~one a representative of boilermakers within this State who has had not less than five years'~~
14 ~~practical experience as a boilermaker, one shall be a representative of the owners or users of~~
15 ~~pressure vessels within the State, one shall be a representative of the pressure vessel~~
16 ~~manufacturers within the State, one a representative of boiler inspection and insurance~~
17 ~~companies authorized to insure boilers and pressure vessels within the State, one a~~
18 ~~representative of the antique boiler owners and operators in this State, one a contractor holding~~
19 ~~a Group I North Carolina Heating License, and one a mechanical engineer on the faculty of a~~
20 ~~recognized engineering college or a licensed professional engineer having boiler and pressure~~
21 ~~vessel experience. The Commissioner of Labor shall serve as chair. The Chief Inspector shall~~
22 ~~serve on the Board and in the absence of the Commissioner shall serve as chair.~~

23 (b) ~~The Board shall meet at least twice annually and shall be responsible for:~~

24 (1) ~~Studying and proposing rules and regulations, for adoption, modification or~~
25 ~~revocation by the Commissioner, governing the construction, installation,~~
26 ~~inspection, repair, alteration, use and operation of boilers and pressure~~
27 ~~vessels in this State. The rules and regulations so formulated shall conform~~
28 ~~as nearly as possible to the standards of the American Society of Mechanical~~
29 ~~Engineers.~~

30 (2) ~~Devise and proctor examinations covering this Article and the rules adopted~~
31 ~~under this Article to applicants seeking a commission as inspectors of boilers~~
32 ~~and pressure vessels in this State.~~

33 (2a) ~~Act as proctors during the administration of the National Board~~
34 ~~commissioning examination.~~

35 (3) ~~Issue, suspend, or revoke inspector's commissions as inspectors of boilers~~
36 ~~and pressure vessels within this State. Whenever action is taken under this~~
37 ~~section to suspend or revoke a commission, the affected party shall be given~~
38 ~~notice of the availability of an administrative hearing and of judicial review~~
39 ~~in accordance with Chapter 150B of the General Statutes, the Administrative~~
40 ~~Procedure Act.~~

41 (c) ~~The members of the Board shall serve without salary but shall be paid a subsistence~~
42 ~~and travel allowance as established in accordance with Chapter 138 of the General Statutes."~~

43
44 PART III. EFFECTIVE DATE

45 SECTION 3.1. This act is effective when it becomes law.

**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**JUDICIARY IV COMMITTEE REPORT
Representative Hugh Blackwell, Co-Chair
Representative Rob Bryan, Co-Chair
Representative Jacqueline Michelle Schaffer, Co-Chair**

FAVORABLE HOUSE COM SUB, UNFAVORABLE ORIGINAL BILL

SB 429

Labor/2015 Technical & Conforming Changes.

Draft Number: S429-PCS35304-TC-54

Serial Referral: None

Recommended Referral: None

Long Title Amended: Yes

Floor Manager: Bryan

TOTAL REPORTED: 1



* C M R 5 5 7 - V - 1 *

VISITOR REGISTRATION SHEET

Judiciary IV Committee

Name of Committee

08/05/2015

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

| | |
|----------------|---------------|
| DAN CRAWFORD | NCLCV |
| Sim Harrell | Bole Harrell |
| Ken Melton | K. M. A. |
| Phoebe Landon | Brooks Pierce |
| Ruian Merwald | WM |
| Sarah Preston | ACLU-NC |
| Frank Gray | NMHA |
| Sam Hockett | NCA |
| Hugh Johnson | NCAAC |
| Andy Chase | RMA |
| Kevin Howell | DCR |
| Martha Jenkins | DCR |

VISITOR REGISTRATION SHEET

Judiciary IV Committee

Name of Committee

08/05/2015

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

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| | |
|--------------------|-------------------------|
| Donna B. Clark | Una DG |
| Lisa Martin | Cap. Ad |
| Jay Stem | NCAA |
| Al Ripley | NZJC |
| Courtney Lakkany | Randolph Clark & Assoc. |
| Lexi Arthur | NCRMA |
| Elizabeth Robinson | NCRMA |
| Andy Ellen | NCRMA |
| Lara Townsend | Gov. office |
| TJ Bunbee | NP |
| Trent Womble | DHHS |
| Tom Nung | NCOR |

House Committee on Judiciary IV
Wednesday, March 23, 2016 at During First Recess
Room 643 of the Legislative Office Building

MINUTES

The House Committee on Judiciary IV met at 11:00 a.m. on March 23, 2016 in Room 643 of the Legislative Office Building. Representatives Blackwell, Bryan, Hamilton, Adams, Ager, Bishop, Dollar, Hager, Hunter, Jones, Richardson, Riddell, Setzer, Tine, Torbett, Warren, and Willingham attended.


Representative Hugh Blackwell presided.

The first order of business was **HB 2: Public Facilities Privacy & Security Act**. Representative Bishop and Stam, the bill sponsors, were recognized to speak on the bill. After a brief explanation of the bill, Representative Blackwell welcomed questions from the committee. Following discussion of the bill, Representative Blackwell opened the committee for public comment.

Chris Sgro, Director of Equality NC spoke in opposition of the bill. Chloe Jefferson, student at Greenville Christian Academy spoke in favor of the bill. Sarah Preston, Director of ACLU-NC spoke in opposition of the bill. Eliana Smith, North Carolina resident spoke in favor of the bill. Angela Bridgman, North Carolina resident spoke in opposition of the bill. John Amanchukwo, Director of Upper Room Christian Academy spoke in favor of the bill. Madeline L. Goss, North Carolina resident spoke in opposition of the bill. Tami Fitzgerald, Director of NC Values coalition spoke in favor of the bill. Tracy Hollister, Program Manager of MEUSA spoke in opposition of the bill. John Rustin, President of North Carolina Family Policy Council spoke in favor of the bill. Vivian Taylor, Advocate of Believe Out Loud spoke in opposition of the bill. Heather Garofolo, North Carolina business owner spoke in favor of the bill.

Following further committee discussion of the bill, Representative Warren was recognized to make a motion for a favorable report to the original bill, the motion carried.

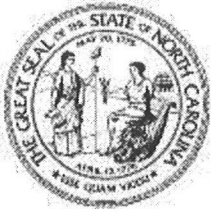
The meeting adjourned at 12:08 p.m.


Representative Hugh Blackwell, Chair
Presiding


Kevin Wilkinson, Committee Clerk

2015-2016 SESSION

[illegible]



HOUSE BILL 2: Public Facilities Privacy & Security Act.

2016-2017 General Assembly

| | | | |
|-----------------------|---------------------------------------|---------------------|----------------------|
| Committee: | House Judiciary IV | Date: | March 23, 2016 |
| Introduced by: | Reps. Bishop, Stam, Howard, Steinburg | Prepared by: | Kara McCraw |
| Analysis of: | Filed Edition | | Committee Co-Counsel |

SUMMARY: House Bill 2 would:

- 1. Require single sex multiple occupancy bathrooms and changing facilities in public schools and public agencies.*
- 2. Supersede and preempt all local ordinances, regulations, or resolutions imposing any requirements on employers pertaining to compensation of employees, with certain exceptions.*
- 3. Prohibit cities and counties from requiring private contractors to abide by regulations or controls on employment practices or mandate or prohibit provision of goods, services, or accommodations to any member of the public, except as required by State law.*
- 4. Supersede and preempt any local ordinance, regulation, or resolution that regulates or imposes any requirements on employers pertaining to regulation of discriminatory practices in employment.*
- 5. Create a state law pertaining to discrimination in public accommodations. Supersede and preempt any local ordinance, regulation, or resolution that regulates or imposes any requirements pertaining to regulation of discriminatory practices in a place of public accommodation.*

BILL ANALYSIS: House Bill 2 would make the following changes:

PART I: SINGLE SEX MULTIPLE OCCUPANCY BATHROOM AND CHANGING FACILITIES

Sections 1.1, 1.2, and 1.3: Require local boards of education and public agencies to designate and require use of single sex multiple occupancy bathroom and changing facilities based on a person's biological sex, as stated on that person's birth certificate.

- Local boards of education and public agencies would be permitted to provide accommodations upon request due to special circumstances, but such accommodations could not include use of a single sex multiple occupancy bathroom or changing facility designated for the opposite biological sex.
- Exceptions to the requirements include the following: custodial use, maintenance or inspection, medical assistance, assistance in facility, and use of a facility temporarily designated for use by that biological sex.

PART 2: STATEWIDE CONSISTENCY IN LAWS RELATED TO EMPLOYMENT AND CONTRACTING

Section 2.1: As part of the State Wage and Hour Act, would supersede and preempt ordinances, regulations, resolutions, or policies adopted or imposed by any unit of local government or other political subdivision regulating or imposing any requirements on employers pertaining to compensation



House Bill 2

Page 2

of employees. Local governments would not be prohibited from regulating or imposing employee compensation requirements in the following areas:

- Employees of the local government.
- Economic development incentives awarded under the One North Carolina Fund.
- Economic development incentives awarded under the Local Development Act of 1925.
- Federal community development block grants.
- Community development programs and activities established by cities and counties under G.S. 153A-376 or G.S. 160A-456.

Section 2.2 and 2.3: Current law authorizes counties and cities to contract for any public purpose, but prohibits contract provisions that create restrictions the county could not impose on all employers in the county.

Section 2.2 and 2.3 would instead prohibit counties and cities from requiring private contractors to abide by the following, except as otherwise required by State law:

- Regulations or controls on the contractor's employment practices.
- Mandates or prohibitions on the provision of goods, services, or accommodations to any member of the public.

PART III: PROTECTION OF RIGHTS IN EMPLOYMENT AND PUBLIC ACCOMMODATIONS

Section 3.1: Current state law declares the public policy of the State to protect and safeguard the right and opportunities of all persons to employment without discrimination on the basis of race, religion, color, national origin, age, sex, or handicap by employers of 15 or more.

Sec. 3.1 would clarify the protected class of sex as "biological sex".

Sec. 3.1 would declare the regulation of discriminatory practices in employment an issue of general statewide concern, and supersede and preempt ordinances, regulations, resolutions, or policies adopted or imposed by any unit of local government or other political subdivision regulating or imposing any requirements on employers relating to regulation of discriminatory practices in employment, except regulations related to that body's own personnel that do not otherwise conflict with State law.

Section 3.2: Would state that neither statutory nor common law private rights of action are created by the Equal Employment Practices Article, and no person may bring a civil action based on the public policy expressed in that Article.

Section 3.3: Would establish a new Article, "Equal Access to Public Accommodations," declaring the public policy of the State to protect and safeguard the right and opportunities of all individuals to enjoy fully and equally places of public accommodation without discrimination on the basis of race, religion, color, national origin, or biological sex.

An exception would allow the provision of multiple or single occupancy bathrooms or changing rooms based on biological sex.

Sec. 3.3 would also declare the regulation of discriminatory practices in a place of public accommodation an issue of general statewide concern, and supersede and preempt ordinances, regulations, resolutions, or policies adopted or imposed by any unit of local government or other political subdivision regulating or imposing any requirements on employers relating to regulation of discriminatory practices in a place of public accommodation.

House Bill 2

Page 3

Sec. 3.3 would authorize the Human Relations Commission in the Department of Administration to receive, investigate, and conciliate complaints of discrimination in public accommodations and use best efforts to affect amicable resolutions.

Sec. 3.3 would also state that neither statutory nor common law private rights of action are created by the Equal Access to Public Accommodations Article, and no person may bring a civil action based on the public policy expressed in that Article.

Section 4 would provide for severability of each provision of the act.

EFFECTIVE DATE: House Bill 2 would become effective when it becomes law, and would apply to any action taken on or after that date, to any ordinance, resolution, regulation, or policy adopted or amended on or after that date, and to any contract entered on or after that date. Sections 2.1, 2.2, 2.3, 3.1, 3.2, and 3.3 of the act would supersede and preempt any ordinance or resolution adopted prior to the effective date of the act that purports to regulate a subject matter preempted by this act or that violates or is not consistent with the act, and such ordinances, resolutions, regulations, or policies would be null and void as of the effective date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SECOND EXTRA SESSION 2016

H

1

HOUSE BILL 2

Short Title: Public Facilities Privacy & Security Act. (Public)

Sponsors: Representatives Bishop, Stam, Howard, and Steinburg (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to:

March 23, 2016

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR SINGLE-SEX MULTIPLE OCCUPANCY BATHROOM AND
CHANGING FACILITIES IN SCHOOLS AND PUBLIC AGENCIES AND TO CREATE
STATEWIDE CONSISTENCY IN REGULATION OF EMPLOYMENT AND PUBLIC
ACCOMMODATIONS.

Whereas, the North Carolina Constitution directs the General Assembly to provide for
the organization and government of all cities and counties and to give cities and counties such
powers and duties as the General Assembly deems advisable in Section 1 of Article VII of the
North Carolina Constitution; and

Whereas, the North Carolina Constitution reflects the importance of statewide laws
related to commerce by prohibiting the General Assembly from enacting local acts regulating
labor, trade, mining, or manufacturing in Section 24 of Article II of the North Carolina
Constitution; and

Whereas, the General Assembly finds that laws and obligations consistent statewide for
all businesses, organizations, and employers doing business in the State will improve intrastate
commerce; and

Whereas, the General Assembly finds that laws and obligations consistent statewide for
all businesses, organizations, and employers doing business in the State benefit the businesses,
organizations, and employers seeking to do business in the State and attracts new businesses,
organizations, and employers to the State; Now, therefore,
The General Assembly of North Carolina enacts:

**PART I. SINGLE-SEX MULTIPLE OCCUPANCY BATHROOM AND CHANGING
FACILITIES**

SECTION 1.1. G.S. 115C-47 is amended by adding a new subdivision to read:

**"(63) To Establish Single-Sex Multiple Occupancy Bathroom and Changing
Facilities.** – Local boards of education shall establish single-sex multiple
occupancy bathroom and changing facilities as provided in G.S. 115C-521.2."

SECTION 1.2. Article 37 of Chapter 115C of the General Statutes is amended by
adding a new section to read:

"§ 115C-521.2. Single-sex multiple occupancy bathroom and changing facilities.

(a) Definitions. – The following definitions apply in this section:

(1) Biological sex. – The physical condition of being male or female, which is
stated on a person's birth certificate.



- (2) Multiple occupancy bathroom or changing facility. – A facility designed or designated to be used by more than one person at a time where students may be in various states of undress in the presence of other persons. A multiple occupancy bathroom or changing facility may include, but is not limited to, a school restroom, locker room, changing room, or shower room.
- (3) Single occupancy bathroom or changing facility. – A facility designed or designated to be used by only one person at a time where students may be in various states of undress. A single occupancy bathroom or changing facility may include, but is not limited to, a single stall restroom designated as unisex or for use based on biological sex.
- (b) Single-Sex Multiple Occupancy Bathroom and Changing Facilities. – Local boards of education shall require every multiple occupancy bathroom or changing facility that is designated for student use to be designated for and used only by students based on their biological sex.
- (c) Accommodations Permitted. – Nothing in this section shall prohibit local boards of education from providing accommodations such as single occupancy bathroom or changing facilities or controlled use of faculty facilities upon a request due to special circumstances, but in no event shall that accommodation result in the local boards of education allowing a student to use a multiple occupancy bathroom or changing facility designated under subsection (b) of this section for a sex other than the student's biological sex.
- (d) Exceptions. – This section does not apply to persons entering a multiple occupancy bathroom or changing facility designated for use by the opposite sex:
- (1) For custodial purposes.
 - (2) For maintenance or inspection purposes.
 - (3) To render medical assistance.
 - (4) To accompany a student needing assistance when the assisting individual is an employee or authorized volunteer of the local board of education or the student's parent or authorized caregiver.
 - (5) To receive assistance in using the facility.
 - (6) To accompany a person other than a student needing assistance.
 - (7) That has been temporarily designated for use by that person's biological sex."

SECTION 1.3. Chapter 143 of the General Statutes is amended by adding a new

Article to read:

"Article 81.

"Single-Sex Multiple Occupancy Bathroom and Changing Facilities.

"§ 143-760. Single-sex multiple occupancy bathroom and changing facilities.

(a) Definitions. – The following definitions apply in this section:

- (1) Biological sex. – The physical condition of being male or female, which is stated on a person's birth certificate.
- (2) Executive branch agency. – Agencies, boards, offices, departments, and institutions of the executive branch, including The University of North Carolina and the North Carolina Community College System.
- (3) Multiple occupancy bathroom or changing facility. – A facility designed or designated to be used by more than one person at a time where persons may be in various states of undress in the presence of other persons. A multiple occupancy bathroom or changing facility may include, but is not limited to, a restroom, locker room, changing room, or shower room.
- (4) Public agency. – Includes any of the following:
 - a. Executive branch agencies.
 - b. All agencies, boards, offices, and departments under the direction and control of a member of the Council of State.
 - c. "Unit" as defined in G.S. 159-7(b)(15).

- 1 d. "Public authority" as defined in G.S. 159-7(b)(10).
2 e. A local board of education.
3 f. The judicial branch.
4 g. The legislative branch.
5 h. Any other political subdivision of the State.
6 (5) Single occupancy bathroom or changing facility. – A facility designed or
7 designated to be used by only one person at a time where persons may be in
8 various states of undress. A single occupancy bathroom or changing facility
9 may include, but is not limited to, a single stall restroom designated as unisex
10 or for use based on biological sex.
11 (b) Single-Sex Multiple Occupancy Bathroom and Changing Facilities. – Public agencies
12 shall require every multiple occupancy bathroom or changing facility to be designated for and only
13 used by persons based on their biological sex.
14 (c) Accommodations Permitted. – Nothing in this section shall prohibit public agencies
15 from providing accommodations such as single occupancy bathroom or changing facilities upon a
16 person's request due to special circumstances, but in no event shall that accommodation result in
17 the public agency allowing a person to use a multiple occupancy bathroom or changing facility
18 designated under subsection (b) of this section for a sex other than the person's biological sex.
19 (d) Exceptions. – This section does not apply to persons entering a multiple occupancy
20 bathroom or changing facility designated for use by the opposite sex:
21 (1) For custodial purposes.
22 (2) For maintenance or inspection purposes.
23 (3) To render medical assistance.
24 (4) To accompany a person needing assistance.
25 (5) That has been temporarily designated for use by that person's biological sex."
26

27 **PART II. STATEWIDE CONSISTENCY IN LAWS RELATED TO EMPLOYMENT AND** 28 **CONTRACTING**

29 **SECTION 2.1.** G.S. 95-25.1 reads as rewritten:

30 **"§ 95-25.1. Short title and legislative ~~purpose~~; ~~purpose~~; local governments preempted.**

- 31 (a) This Article shall be known and may be cited as the "Wage and Hour Act."
32 (b) The public policy of this State is declared as follows: The wage levels of employees,
33 hours of labor, payment of earned wages, and the well-being of minors are subjects of concern
34 requiring legislation to promote the general welfare of the people of the State without jeopardizing
35 the competitive position of North Carolina business and industry. The General Assembly declares
36 that the general welfare of the State requires the enactment of this law under the police power of
37 the State.
38 (c) The provisions of this Article supersede and preempt any ordinance, regulation,
39 resolution, or policy adopted or imposed by a unit of local government or other political
40 subdivision of the State that regulates or imposes any requirement upon an employer pertaining to
41 compensation of employees, such as the wage levels of employees, hours of labor, payment of
42 earned wages, benefits, leave, or well-being of minors in the workforce. This subsection shall not
43 apply to any of the following:
44 (1) A local government regulating, compensating, or controlling its own
45 employees.
46 (2) Economic development incentives awarded under Part 2H of Article 10 of
47 Chapter 143B of the General Statutes.
48 (3) Economic development incentives awarded under Article 1 of Chapter 158 of
49 the General Statutes.
50 (4) A requirement of federal community development block grants.
51 (5) Programs established under G.S. 153A-376 or G.S. 160A-456."

SECTION 2.2. G.S. 153A-449(a) reads as rewritten:

"(a) Authority. – A county may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the county is authorized by law to engage in. A county may not require a private contractor under this section to abide by ~~any restriction that the county could not impose on all employers in the county, such as paying minimum wage or providing paid sick leave to its employees, regulations or controls on the contractor's employment practices or mandate or prohibit the provision of goods, services, or accommodations to any member of the public as a condition of bidding on a contract.~~ contract or a qualification-based selection, except as otherwise required by State law."

SECTION 2.3. G.S. 160A-20.1(a) reads as rewritten:

"(a) Authority. – A city may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the city is authorized by law to engage in. A city may not require a private contractor under this section to abide by ~~any restriction that the city could not impose on all employers in the city, such as paying minimum wage or providing paid sick leave to its employees, regulations or controls on the contractor's employment practices or mandate or prohibit the provision of goods, services, or accommodations to any member of the public as a condition of bidding on a contract.~~ contract or a qualification-based selection, except as otherwise required by State law."

PART III. PROTECTION OF RIGHTS IN EMPLOYMENT AND PUBLIC ACCOMMODATIONS

SECTION 3.1. G.S. 143-422.2 reads as rewritten:

"§ 143-422.2. Legislative declaration.

(a) It is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, biological sex or handicap by employers which regularly employ 15 or more employees.

(b) It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment foments domestic strife and unrest, deprives the State of the fullest utilization of its capacities for advancement and development, and substantially and adversely affects the interests of employees, employers, and the public in general.

(c) The General Assembly declares that the regulation of discriminatory practices in employment is properly an issue of general, statewide concern, such that this Article and other applicable provisions of the General Statutes supersede and preempt any ordinance, regulation, resolution, or policy adopted or imposed by a unit of local government or other political subdivision of the State that regulates or imposes any requirement upon an employer pertaining to the regulation of discriminatory practices in employment, except such regulations applicable to personnel employed by that body that are not otherwise in conflict with State law."

SECTION 3.2. G.S. 143-422.3 reads as rewritten:

"§ 143-422.3. Investigations; conciliations.

The Human Relations Commission in the Department of Administration shall have the authority to receive charges of discrimination from the Equal Employment Opportunity Commission pursuant to an agreement under Section 709(b) of Public Law 88-352, as amended by Public Law 92-261, and investigate and conciliate charges of discrimination. Throughout this process, the agency shall use its good offices to effect an amicable resolution of the charges of discrimination. This Article does not create, and shall not be construed to create or support, a statutory or common law private right of action, and no person may bring any civil action based upon the public policy expressed herein."

SECTION 3.3. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 49B.

"Equal Access to Public Accommodations.""§ 143-422.10. Short title."

This Article shall be known and may be cited as the Equal Access to Public Accommodations Act.

"§ 143-422.11. Legislative declaration."

(a) It is the public policy of this State to protect and safeguard the right and opportunity of all individuals within the State to enjoy fully and equally the goods, services, facilities, privileges, advantages, and accommodations of places of public accommodation free of discrimination because of race, religion, color, national origin, or biological sex, provided that designating multiple or single occupancy bathrooms or changing facilities according to biological sex, as defined in G.S. 143-760(a)(1), (3), and (5), shall not be deemed to constitute discrimination.

(b) The General Assembly declares that the regulation of discriminatory practices in places of public accommodation is properly an issue of general, statewide concern, such that this Article and other applicable provisions of the General Statutes supersede and preempt any ordinance, regulation, resolution, or policy adopted or imposed by a unit of local government or other political subdivision of the State that regulates or imposes any requirement pertaining to the regulation of discriminatory practices in places of public accommodation.

"§ 143-422.12. Places of public accommodation – defined."

For purposes of this Article, places of public accommodation has the same meaning as defined in G.S. 168A-3(8), but shall exclude any private club or other establishment not, in fact, open to the public.

"§ 143-422.13. Investigations; conciliations."

The Human Relations Commission in the Department of Administration shall have the authority to receive, investigate, and conciliate complaints of discrimination in public accommodations. Throughout this process, the Human Relations Commission shall use its good offices to effect an amicable resolution of the complaints of discrimination. This Article does not create, and shall not be construed to create or support, a statutory or common law private right of action, and no person may bring any civil action based upon the public policy expressed herein."

PART IV. SEVERABILITY

SECTION 4. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable. If any provision of this act is temporarily or permanently restrained or enjoined by judicial order, this act shall be enforced as though such restrained or enjoined provisions had not been adopted, provided that whenever such temporary or permanent restraining order or injunction is stayed, dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

PART V. EFFECTIVE DATE

SECTION 5. This act is effective when it becomes law and applies to any action taken on or after that date, to any ordinance, resolution, regulation, or policy adopted or amended on or after that date, and to any contract entered into on or after that date. The provisions of Sections 2.1, 2.2, 2.3, 3.1, 3.2, and 3.3 of this act supersede and preempt any ordinance, resolution, regulation, or policy adopted prior to the effective date of this act that purports to regulate a subject matter preempted by this act or that violates or is not consistent with this act, and such ordinances, resolutions, regulations, or policies shall be null and void as of the effective date of this act.

VISITOR REGISTRATION SHEET

J-4
(Committee Name)

3-23
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE
CLERK

| <u>NAME</u> | <u>FIRM OR AGENCY AND ADDRESS</u> |
|-------------------|--------------------------------------|
| Jim Burton | 101 Virex St Chapel Hill |
| Sarah Bales | Brubaker CASSO |
| Jonathan Brubaker | " " |
| Dana Fenton | City of Charlotte |
| J T Knott | Knightdale N.C. |
| Stacey Hardee | Wake Forest, NC |
| Don Laonipon | Rainbow Community Cares, Raleigh, NC |
| J Zirbel | Rainbow Community Cares, Raleigh |
| Kelsey Ann White | no affiliation; Chapel Hill, NC |
| Alexander Adams | no affiliation; Greensboro, NC |
| Joanna Davidson | no affiliation; Hillsborough, NC |
| L.T | |
| Catherine Coats | QueerNC; Raleigh, NC |
| Giulia Curcelli | no affiliation; Chapel Hill, NC |
| Brennan Lewis | QueerNC, Apex, NC |
| Finn Loendorf | no affiliation, Denver, NC |
| Zoe Hummings | No AFFILIATION, Cary, NC |

VISITOR REGISTRATION SHEET

J-4

(Committee Name)

3-23

Date

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| <u>NAME</u> | <u>FIRM OR AGENCY AND ADDRESS</u> |
|------------------------------|-----------------------------------|
| Steve Minge | NCRLA |
| Shannon Beckham | Duke Univ. student |
| Angela Bridgman | Wendell, NC |
| Jackson Coconip | NSS |
| Lisa Martin | Cap. Adv. |
| Meghan Cook | DIT |
| Leah Purns | NC Gov's office |
| Drew Morte | JNC GA |
| Emily Atkinson | ORCC |
| Cindy Brandon | NC DPS |
| Bill Morris | Bill Morris for NC House |
| Marge Freeman | NCAE |
| Chloe Jefferson | GCA |
| Kathleen Miller | Mueller Corp, LLC |
| Heather Gorkle | small bus owner chadwick |
| Whitney Campbell Christensen | Ward & Smith, PA |
| Anne Arp | Citizen |

VISITOR REGISTRATION SHEET

J-4

(Committee Name)

3-23

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| <u>NAME</u> | <u>FIRM OR AGENCY AND ADDRESS</u> |
|------------------|--|
| Liam M. Hooper | Parkway UCC |
| Rev. Mykal Slack | UU Fellowship of Raleigh |
| Joanne Spataro | Joanne Spataro |
| Lara Nazario | Lara Nazario |
| Mike Mend | ACLU - NC |
| Jen Wolfe | ACLU - NC |
| Mani Arsl | NCPC |
| Jamie Brown | COR |
| Kay Castillo | NASW-NC |
| J Jenkins | Otsuka |
| Jen Ferrell | Candidate for NC36 & mother |
| Susan Geurire | Teacher |
| Jamie Sohn | 605 Jones Ferry Rd Self - Carrboro, NC, 27510 |
| JOHN GOLCHIN | |
| Emily Boyd | Planned Parenthood S. Atlantic |
| Melissa Reed | Planned Parenthood S. Atlantic |
| Caleb Patterson | Real Facts NC |

VISITOR REGISTRATION SHEET

J-4

(Committee Name)

3-23

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| <u>NAME</u> | <u>FIRM OR AGENCY AND ADDRESS</u> |
|---------------------|-----------------------------------|
| GRAYSON GRECO | NC VALUES COALITION |
| PETRINA WILLIAMS | NC VALUES COALITION |
| Emma O'Brien | |
| Christine Long | NIA |
| MARK L. BIBBS | LLPC |
| John Rastin | NC FPC |
| John Branchukov | WGA |
| Bill Rowe | NC Justice Center |
| Rick Glazier | " " " |
| Alex Miller | AMGA |
| Sarah Wolfe | MWC |
| Gillian Pena | MWC |
| Suzanna Birdsong | ACU |
| Samuel Taylor | Believe Out Loud |
| Rev. Earnest Graham | Episcopal Diocese of NC |
| Al Ripley | NC JC |
| Sarah Preston | ACLU-NC |

VISITOR REGISTRATION SHEET

Judiciary 4

(Committee Name)

3-23

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| <u>NAME</u> | <u>FIRM OR AGENCY AND ADDRESS</u> |
|---------------------|--|
| Walt Sorenson | Am PBM |
| R. J. J. J. | Misc |
| J. W. Jayner | New Frame |
| Jack Sipe | NC Farm Policy Council |
| Barclay Roney | |
| Dana & Cathy Miller | |
| ASANDRA HOEKSTRA | NCACC |
| Hugh Johnson | NCACC |
| Robert Morrison | retired |
| Deborah Thomson | |
| Shylah Anderson | |
| Mara Keisling | NATIONAL Center for Transgender Equality |
| E.A. TIMM | PO Box 573 WALNUT COVE, NC 27052 |
| Ramona D. Timm | Stokes Co. concerned citizen |
| Rev. MARK CREECH | CAL |
| Tami Fitzgerald | NC Values Coalition |
| William Cooper III | Cooper Consulting |

VISITOR REGISTRATION SHEET

J-4

(Committee Name)

3-23

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| <u>NAME</u> | <u>FIRM OR AGENCY AND ADDRESS</u> |
|---------------------|-----------------------------------|
| Vickie McPhatter | Citizen |
| Nod McPhatter | Citizen |
| Jere Royall | NCFPC |
| Kellie Fiedorek | ADF |
| Mike Lopez | Citizen |
| Graham Barefoot | Citizen |
| Andrew Hardy | Citizen |
| Philip Meeks | Citizen |
| Hel | transgender person |
| Mary Maclean Asbill | SELF |
| Lee Tague | NC PCSA |
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J-4

323

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE
CLERK

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VISITOR REGISTRATION SHEET

J-4

(Committee Name)

3-23

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

| <u>NAME</u> | <u>FIRM OR AGENCY AND ADDRESS</u> |
|----------------|-----------------------------------|
| Bobby Anderson | viewer / Greensboro NC. |
| Jenny Palmer | SHIFT NC Durham |
| Owen Avman | VISITOR, RALEIGH, NC |
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HOUSE COMMITTEE ON JUDICIARY IV
2016 SESSION

| <u>MEMBER</u> | | <u>ASSISTANT</u> | <u>PHONE</u> | <u>OFFICE</u> | <u>SEAT</u> |
|----------------------------|------------|-------------------------|---------------------|----------------------|--------------------|
| BLACKWELL, Hugh | Chair | Dixie Riehm | 733-5805 | 541 | 102 |
| | | Sharon Sullivan-clerk | 733-5886 | | |
| BRYAN, Rob | Chair | Kevin Wilkinson-clerk | 733-5607 | 536 | 74 |
| BASKERVILLE, Nathan | Vice-Chair | Anita Bennett | 733-5824 | 1004 | 105 |
| HAMILTON, Susi | Vice-Chair | Ruth Merkle | 733-5754 | 1313 | 48 |
| ADAMS, Jay | | Susan Phillips | 733-5988 | 2215 | 98 |
| AGER, John | | Meredith, Graf | 733-5746 | 1315 | 115 |
| BISHOP, Dan | | David Larson | 715-3009 | 607 | 86 |
| DOLLAR, Nelson | | Candace Slate | 715-0795 | 307 | 4 |
| HAGER, Mike | | Baxter Knight | 733-5749 | 304 | 30 |
| HUNTER, Howard, III | | Brenda Bennett | 733-5780 | 1307 | 106 |
| JONES, Bert | | Brenda olls | 733-5779 | 416A | 54 |
| RICHARDSON, Bobbie | | Anna Meadows | 715-3032 | 1217 | 93 |
| RIDDELL, Dennis | | Polly Riddell | 733-5905 | 533 | 99 |
| SETZER, Mitchell | | Margaret Herring | 733-4948 | 2204 | 7 |
| TERRY, Evelyn | | Franklin Terry | 733-5777 | 1015 | 92 |
| TINE, Paul | | Katy Kingsbury | 733-5906 | 529 | 79 |
| TORBETT, John | | Viddia Torbett | 733-5868 | 538 | 41 |
| WARREN, Harry | | Cristy Yates | 733-5784 | 611 | 62 |
| WILLINGHAM, Shelly | | Johanna Smith | 715-3024 | 501 | 108 |

Committee Counsel

Kara McCaw/Layla Cummings

LOB Room 545

Nick Giddings

LOB Room 200

Tel: 733-2578

[illegible]

House Committee on Judiciary IV
Wednesday, June 8, 2016 at 10:00 AM
Room 1228/1327 of the Legislative Building

MINUTES

The House Committee on Judiciary IV met at 10:00 AM on June 8, 2016 in Room 1228/1327 of the Legislative Building. Representatives Blackwell, Chair, Bryan, Chair, Baskerville, Vice-Chair, Hamilton, Vice-Chair, Adams, Ager, Hager, Hunter, Richardson, Torbett, Warren and Willingham attended. Also present were staff members Layla Cummings, Kara McGraw, and Nick Giddings and Committee Clerks Kevin Wilkinson and Sharon Sullivan. An attendance sheet is attached and made part of these minutes.

Representative Hugh Blackwell presided. Chairman Blackwell called the meeting to order at 10:00. The Chairman recognized the Sergeant-at-Arms and introduced the pages. The following bills were considered:

HB 1060 Conform Full-payment Check Law to UCC. (Representative Bryan)

Chairman Blackwell recognized Rep. Bryan to present the bill. There was discussion between committee members about the bill. Members of the public were given an opportunity to address the Committee, and the Members heard from Professor James Beckman of the N.C. Central School of Law. Representative Hager made a motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

HB 1061 Preserve Tenancy by the Entirety. (Representative Bryan)

A motion was made by Representative Hager to bring the Proposed Committee substitute before the committee, and the motion passed. Chairman Blackwell recognized Representative Bryan to present the bill. There was discussion between committee members about the bill. Representative Warren made the motion for a favorable report to the Proposed House Committee Substitute, with an unfavorable report to the original bill. The motion carried, and the committee substitute received a favorable report.

HB 1062 Fiduciary Access to Digital Assets. (Representative Bryan)

Chairman Blackwell recognized Rep. Bryan to present the bill. There was discussion between committee members about the bill. Representative Hager made a motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

The meeting adjourned at 10:45 AM.

Respectfully submitted,



Representative Hugh Blackwell,
Presiding Chair



Sharon Sullivan, Committee Clerk

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2015-2016 SESSION**

You are hereby notified that the **House Committee on Judiciary IV** will meet as follows:

DAY & DATE: Wednesday, June 8, 2016
TIME: 10:00 AM
LOCATION: 1228/1327 LB
COMMENTS: Rep. Rob Bryan will preside.

The following bills will be considered:

| BILL NO. | SHORT TITLE | SPONSOR |
|-----------------|--|----------------------|
| HB 1060 | Conform Full-payment Check Law to UCC. | Representative Bryan |
| HB 1061 | Preserve Tenancy by the Entirety. | Representative Bryan |
| HB 1062 | Fiduciary Access to Digital Assets. | Representative Bryan |

Respectfully,

Representative Hugh Blackwell, Co-Chair
Representative Rob Bryan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 12:02 PM on Wednesday, June 08, 2016.

____ Principal Clerk
____ Reading Clerk – House Chamber

Sharon Sullivan (Committee Assistant)

Agenda

House Select Committee on Judiciary IV

Wednesday, June 8, 2016: 10:00am – 12:00pm

Representative Rob Bryan, Chair

- Introductions and Welcome from Chair
- HB 1060 Conform Full-payment Check Law to UCC
- HB 1061 Preserve Tenancy by the Entirety
- HB 1062 Fiduciary Access to Digital Assets
- Committee Discussion and Closing Remarks

House Judiciary IV
Notes for Agenda Items
June 8, 2016, 10:00 a.m.
Rep. Blackwell, Chair

HB 1060 Conform Full-payment Check Law to UCC

Representative Bryan

- Nick is handling this bill.
- The bill is a 1st Edition
- **This bill was recommended by the GSC, and Bly Hall and Floyd Lewis, staff from Bill Drafting who also staff the GSC, are available to explain the bill and for questions.**
- **James Beckwith (Professor, NC Central School of Law) is also available to speak on the bill.**

*If there are no amendments to the BILL,
THE MOTION (IF FAVORABLE) SHOULD BE: FAVORABLE TO THE BILL.*

*If there are amendments to the BILL,
THE MOTION (IF FAVORABLE) SHOULD BE: FAVORABLE TO THE BILL AS AMENDED, ROLLED INTO A PROPOSED COMMITTEE SUBSTITUTE, WITH A FAVORABLE REPORT TO THE COMMITTEE SUBSTITUTE AND AN UNFAVORABLE REPORT TO THE ORIGINAL BILL.*

B 1061 Preserve Tenancy by the Entirety

p. Bryan

- Layla is handling this bill.
- There is a PCS.
- **This bill was recommended by the GSC, and Bly Hall and Floyd Lewis, staff from Bill Drafting who also staff the GSC, are available to explain the bill and for questions.**
- The following individuals are also available to speak on the bill:
 - Amy Britt (Real Property Section, NC Bar Association)
 - Dave Holm (Real Property Section, NC Bar Association)
 - Tonya Powell (Possible) (ad hoc committee, real property practice)
 - Linda Johnson (Estate Planning and Fiduciary Law Section, NC Bar Association)
 - Philip Isley (NC Bar Association's acting Director of Governmental Affairs)
 - Andy Haile (Chairman, General Statutes Commission)

*If there are no amendments to the PCS,
THE MOTION (IF FAVORABLE) SHOULD BE: FAVORABLE TO THE PROPOSED COMMITTEE SUBSTITUTE AND AN UNFAVORABLE REPORT TO THE ORIGINAL BILL.*

*If there are amendments to the PCS,
THE MOTION (IF FAVORABLE) SHOULD BE: FAVORABLE TO THE PROPOSED COMMITTEE SUBSTITUTE AS AMENDED, ROLLED INTO A NEW PROPOSED COMMITTEE SUBSTITUTE, WITH A FAVORABLE REPORT TO THE NEW COMMITTEE SUBSTITUTE AND AN UNFAVORABLE REPORT TO THE ORIGINAL BILL.*

HB 1062 Fiduciary Access to Digital Assets

Representative Bryan

- Kara is handling this bill.
- The bill is a 1st Edition
- **This bill was recommended by the GSC, and Bly Hall and Floyd Lewis, staff from Bill Drafting who also staff the GSC, are available to explain the bill and for questions.**
- **The following individuals will also be available to speak on the bill:**
 - Linda Johnson (Estate and Fiduciary Law Section, NC Bar Association)
 - Whitney Christensen (Facebook)
 - Doug Miskew (Possible) (Google)

*If there are no amendments to the BILL,
THE MOTION (IF FAVORABLE) SHOULD BE: FAVORABLE TO THE BILL.*

*If there are amendments to the BILL,
THE MOTION (IF FAVORABLE) SHOULD BE: FAVORABLE TO THE BILL AS AMENDED, ROLLED
INTO A PROPOSED COMMITTEE SUBSTITUTE, WITH A FAVORABLE REPORT TO THE COMMITTEE
SUBSTITUTE AND AN UNFAVORABLE REPORT TO THE ORIGINAL BILL.*



HOUSE BILL 1060: Conform Full-payment Check Law to UCC.

2016-2017 General Assembly

Committee: House Judiciary IV
Introduced by: Rep. Bryan
Analysis of: First Edition

Date: June 2, 2016
Prepared by: Nicholas Giddings
Committee Co-Counsel

SUMMARY: *House Bill 1060 would provide an option for claimants to repay monies received as full satisfaction of a claim within 90 days of receipt to maintain their claim against the debtor for full payment. This change was recommended by the General Statutes Commission and will allow for North Carolina to mirror the Uniform Commercial Code ("UCC").*

CURRENT LAW: G.S. 25-3-311 allows a debtor to settle an unliquidated debt or a debt disputed in good faith if they tender payment to the creditor with conspicuous language, either on the payment instrument or in an accompanying statement, noting the payment is in full satisfaction of the claim. If the creditor deposits the payment, the debt is discharged.

One exception to discharge is provided to organizations that can prove it sent a conspicuous statement to the debtor within a reasonable time before payment asserting that any debt disputes and full satisfaction payments must be sent to a designated person, office or place and that designated person, office or place did not receive the payment instrument or dispute communication.

BILL ANALYSIS: House Bill 1060 would rewrite G.S. 25-3-311(c) to include an additional exception to discharge in cases where the claimant, whether or not an organization, can prove that within 90 days of receipt of the satisfaction instrument, it tendered repayment of the monies back to the debtor. This exception would not apply to organizations that sent a statement to the debtor asserting that any full satisfaction payments or communications concerning disputed debts must be sent to a designated person, office or place and the debtor sent the instrument or communication to that designated entity.

This change will fully conform G.S. 25-3-311 to mirror the UCC. For additional information, see the General Statutes Commission's memo on House Bill 1060.

EFFECTIVE DATE: This act becomes effective October 1, 2016, and applies to negotiable instruments tendered in full satisfaction of a claim on or after that date.

BACKGROUND: The UCC is a model body of laws governing commercial transactions. As it is a model code, states are free to adopt, reject or modify the UCC language when enacting its own statutes.

In 1995, the North Carolina General Assembly adopted the current language of G.S. 25-3-311. In adopting the UCC language it deleted the 90-day repayment exception. The language was deleted at that time because of some opposition from individual legislators, at least one being unsympathetic to automated check processing; thus, as a compromise, the language was removed.

aren Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



GENERAL STATUTES COMMISSION

300 N. Salisbury Street, Suite 401
Raleigh, NC 27603-5925
Tel. 919-733-6660 Fax 919-715-5459

Floyd M. Lewis
Revisor of Statutes

P. Bly Hall
Assistant Revisor of Statutes

To: House Committee on Judiciary IV
From: General Statutes Commission
Re: HB 1060 (Conform Full-payment Check Law to UCC)
Date: June 3, 2016

General Comments

This bill conforms G.S. 25-3-311(c) to the corresponding provision of Section 3-311 of the Uniform Commercial Code.

Background

Under case law, a debtor can settle an unliquidated¹ debt or a debt disputed in good faith by sending the person to whom the debt is owed a check marked "paid in full" or similar language or accompanied by a written communication that makes it clear that the check is being tendered in full satisfaction of the debt. The check and the notation or communication are treated as an informal offer to settle the dispute. If the creditor cashes the check, the creditor is treated as having accepted the offer and the debt is discharged even if the check is for less money than the amount claimed by the creditor.

This case law principle was expressly incorporated in 1990 into Revised Article 3 (Negotiable Instruments) of the Uniform Commercial Code in Section 3-311(a) and (b).

The Uniform Law Commission, however, provided two exceptions to the case law principle. First, Section 3-311(c)(1) allows organizations to establish a person, office, or place to receive this type of payment. If the organization has notified the debtor about the designated person, office, or place, the check and any accompanying document must be sent there or the debt will not be treated as discharged. Second, Section 3-311(c)(2) allows any creditor that has not designated a person, office, or place under subdivision (c)(1) to repay the amount of the check within 90 days and reinstate the debt (including the dispute). As a whole, Section 3-311(c) is designed to allow a creditor that uses a modern high-volume automated check processing system to avoid an inadvertent accord and satisfaction.

When Revised Article 3 was introduced in this State at the recommendation of the General Statutes Commission in 1995, the bill encountered some opposition from individual legislators. At least one of these was unsympathetic to automated check processing. As a compromise, it was agreed to remove the 90-day repayment option in subdivision (c)(2), and that provision was not enacted as part of G.S. 25-3-311(c).

Twenty-one years later, this State's version of Section 3-311(c) is an anomaly and a trap for the unwary business that operates across state lines. The North Carolina Bar Association's Business Law Section and Commercial Law Committee requested the General Statutes Commission to recommend conforming G.S. 25-3-311(c) to Section 3-311 of the Uniform Act in the interest of uniformity of the law in this area. The General Statutes Commission

¹ An unliquidated debt is one in which the existence of the debt is not disputed but the amount is uncertain or disputed.

noted the passage of time and the more wide-spread acceptance of automated processing systems and agreed that the requested amendment should be recommended.

Specific Comments

Section 1 amends G.S. 25-3-311(c) to designate as subdivision (1) the existing exception, which allows the designation of a person, office, or place for a debtor to send a check tendered in full payment of an unliquidated or disputed debt, and to incorporate as subdivision (2) the Uniform Act's additional exception allowing a creditor 90 days to repay a check tendered in full satisfaction of such a debt and reinstate the debt.

Section 2 provides an effective date of October 1, 2016, and provides for the act to apply to negotiable instruments tendered in full satisfaction of a claim on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 1060*

Short Title: Conform Full-payment Check Law to UCC.

(Public)

Sponsors: Representative Bryan.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary IV

May 11, 2016

A BILL TO BE ENTITLED

AN ACT TO CONFORM TO THE COMPARABLE PROVISION OF THE UNIFORM
COMMERCIAL CODE THIS STATE'S LAW ON ACCORD AND SATISFACTION OF A
DISPUTED DEBT THROUGH THE TENDERING OF A NEGOTIABLE INSTRUMENT
AS FULL PAYMENT OF THE DEBT, AS RECOMMENDED BY THE GENERAL
STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 25-3-311 reads as rewritten:

"§ 25-3-311. Accord and satisfaction by use of instrument.

(a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

(b) Unless subsection (c) of this section applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(c) Subject to subsection (d) of this section, a claim is not discharged under subsection (b) of this section ~~when the claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and (ii) the instrument or accompanying communication was not received by that designated person, office, or place; if either of the following applies:~~

(1) The claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place and (ii) the instrument or accompanying communication was not received by that designated person, office, or place.

(2) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This subdivision does not apply if the claimant is an organization that sent a statement complying with clause (i) of subdivision (1) of this subsection.



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1 (d) A claim is discharged if the person against whom the claim is asserted proves that
2 within a reasonable time before collection of the instrument was initiated, the claimant, or an agent
3 of the claimant having direct responsibility with respect to the disputed obligation, knew that the
4 instrument was tendered in full satisfaction of the claim."

5 **SECTION 2.** This act becomes effective October 1, 2016, and applies to negotiable
6 instruments tendered in full satisfaction of a claim on or after that date.



HOUSE BILL 1061: Preserve Tenancy by the Entirety.

2016-2017 General Assembly

Committee: House Judiciary IV
Introduced by: Rep. Bryan
Analysis of: PCS to First Edition
H1061-CSTS-18

Date: June 8, 2016
Prepared by: Layla Cummings
Staff Attorney

SUMMARY: *House Bill 1061 makes conforming changes to clarify that tenancy by the entirety is preserved in this State in light of Obergefell v. Hodges, as recommended by the General Statutes Commission.*

The Proposed Committee Substitute (PCS) adds Part II which amends two laws regarding purchase money mortgages or deeds of trust.

[As introduced, this bill was identical to S806, as introduced by Sen. Hartsell, which is currently in Senate Rules and Operations of the Senate.]

BILL ANALYSIS:

Part I: See the Memorandum from the General Statutes Commission to the House Committee on Judiciary IV in your packet.

Part II: Would amend two laws regarding purchase money mortgages or deeds of trust as follows:

- G.S. 39-13. Spouse need not join in purchase-money mortgage.
 - The current law states: "The purchaser of real estate who does not pay the whole of the purchase money at the time when he or she takes a deed for title may make a mortgage or deed of trust for securing the payment of such purchase money, or such part thereof as may remain unpaid, which shall be good and effectual against his or her spouse as well as the purchaser, without requiring the spouse to join in the execution of such mortgage or deed of trust."
 - **Section 7** of the PCS would state: "A mortgage or deed of trust given by the purchaser of real property to secure a loan, the proceeds of which were used to pay all or a portion of the purchase price of the encumbered real property, regardless of whether the secured party is the seller of the real property or a third party lender, shall be good and effectual against his or her spouse as well as the purchaser, without requiring the spouse to join in the execution of such mortgage or deed of trust."
- G.S. 29-30(g), Article 8 of Chapter 29, Election to Take Life Interest in Lieu of Intestate Share.
 - The current law states: "(g) Neither the household furnishings in the dwelling house nor the life estates taken by election under this section shall be subject to the payment of debts due from the estate of the deceased spouse, except those debts secured by such property as follows:

in Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House PCS 1061

Page 2

- (1) By a mortgage or deed of trust in which the surviving spouse has waived the surviving spouse's rights by joining with the other spouse in the making thereof; or
 - (2) By a purchase money mortgage or deed of trust, or by a conditional sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage; or
 - (3) By a mortgage or deed of trust made prior to the marriage; or
 - (4) By a mortgage or deed of trust constituting a lien on the property at the time of its acquisition by the deceased spouse either before or during the marriage."
- **Section 8** of the PCS would amend subsection (2) of G.S. 29-30(g) above to state: "By a mortgage or deed of trust given by the deceased spouse to secure a loan, the proceeds of which were used to pay all or a portion of the purchase price of the encumbered real property, regardless of whether the secured party is the seller of the real property or a third-party lender, or by a condition sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage."

EFFECTIVE DATE: Part I of the PCS would become effective when it becomes law and applies to conveyances made on or after October 10, 2014. Part II of the PCS would become effective when it becomes law and applies to purchase money mortgages entered into on or after that date.



GENERAL STATUTES COMMISSION

300 N. Salisbury Street, Suite 401
Raleigh, NC 27603-5925
Tel. 919-733-6660 Fax 919-715-5459

Floyd M. Lewis
Revisor of Statutes

P. Bly Hall
Assistant Revisor of Statutes

MEMORANDUM

To: House Committee on Judiciary IV
From: General Statutes Commission
Re: HB 1061 (Preserve Tenancy by the Entirety)
Date: June 7, 2016

General Comments

Part I of this bill, if enacted, will preserve the centuries-old traditional form of property-holding for married couples in this State by adjusting the wording of our statutes on that subject in light of the definitional changes by *Obergefell v. Hodge*, 135 S.Ct. 2584 (2015). It will provide stability and certainty to the thousands of married couples in North Carolina who currently own their homes as tenants by the entirety.

Tenancy by the entirety is a traditional form of owning real property, derived from common law, that is available only to married couples. Unless another form of tenancy is specified, a tenancy by the entirety is created when real property is deeded in one deed to two people who are husband and wife at the time they take the property. Both spouses own the entire property rather than a fractional interest in it, and when one spouse dies, the survivor continues to own the entire property. Neither spouse can unilaterally defeat or in any way affect the other spouse's right of survivorship.¹ For example, one spouse cannot validly sell a share of the property without the consent of the other spouse during the other spouse's lifetime, and property held in a tenancy by the entirety is not subject to a partition proceeding. Although a creditor can levy on the property for debts owed jointly by the couple (a typical example being a mortgage the couple takes out to buy the property), the creditors of only one spouse cannot do so.² The result is that each spouse, and therefore the family unit as a whole, is protected against the individual liabilities of the other spouse.³

For many married couples, their home is their major asset. According to figures from the 2010 United States Census, North Carolina had 3,745,155 households, of which 48.4% were husband-wife households. These households resided in 3,745,155 housing units, of which 66.7% were owner-occupied. Although the General Statutes Commission does not have any figures on the number of properties held in tenancies by the entirety, it is clear from the census figures that they number in the thousands.

The problem that has arisen, and the reason for this bill, is that the wording of this State's statutes on tenancy by the entirety may no longer pass muster against an equal protection challenge in light of the United States Supreme Court's decision in *Obergefell*. For example, G.S. 39-13.6, the primary statute on the subject, refers to "spouses" but also begins "[a] husband and wife" This wording raises the question whether a same-sex couple in a valid marriage can take real property in this State in a tenancy by the entirety. Given that *Obergefell* effectively mandated recognition of

¹ A divorce converts a tenancy by the entirety to a tenancy in common, with no survivorship rights or protection against the ex-spouse's creditors.

² The federal government with respect to a federal tax lien is an exception. *U.S. v. Craft*, 535 U.S. 274, 122 S.Ct. 1414 (2002).

³ See 1 WEBSTER'S REAL ESTATE LAW IN NORTH CAROLINA §§ 7.04 and 7.15-7.19 (6th ed. 2011 & Supp. 2015).

marriages between persons of the same sex, it is foreseeable that the question will eventually be raised in a court unless the General Assembly acts first.

Courts that have found gender-specific provisions in the law to be unconstitutional have taken a variety of approaches in dealing with the result. For example, the growth of married women's property protections in state laws and state constitutions during the 1800s resulted in challenges to the existence of tenancies by the entirety. Because the married women's property protections granted married women the right to have and control their own property, just as though they were single, while the common law vested control over property held in a tenancy by the entirety in the husband, some courts saw the two as incompatible and judicially abolished tenancy by the entirety as a result. South Carolina is one example, and in the process it decided to recognize a survivorship right created by deed in a tenancy in common.⁴ North Carolina dealt with the issue legislatively, by enacting G.S. 39-13.6.⁵ More recently, equal protection challenges to the common law doctrine of necessities became popular in the 1980s. That common-law doctrine made a husband liable for debts incurred by his wife or minor children for "necessaries," that is, things like food, medicine, etc. North Carolina's Supreme Court dealt with the issue by extending the doctrine to apply to wives as well as husbands;⁶ Alabama's Supreme Court, on the other hand, abolished the doctrine.⁷

Due to the uncertainty caused by *Obergefell* in this area of the law, an ad hoc group, consisting of members of different sections of the North Carolina Bar Association, some title attorneys, and others who practice in property and related fields, identified five sections of the North Carolina General Statutes dealing with tenancy by the entirety that the group felt needed to be amended. The General Statutes Commission reviewed the proposed amendments and agreed that they should be made, with a few stylistic changes.

Accordingly, given the foreseeability of a constitutional challenge to our tenancy by the entirety statutes absent action by the General Assembly, and given the possibility that a court may respond by abolishing this form of property holding, and given that thousands of existing married North Carolinians who currently own their homes as tenants by the entirety would be negatively affected by such a result, the General Statutes Commission decided to recommend this bill to give the General Assembly the opportunity to settle the issue rather than the courts.

Specific Comments

Section 1 amends G.S. 39-13.3 (Conveyances between husband and wife) to replace references to a husband and a wife with references to a "married" grantor or grantee or individual and that person's spouse.

Section 2 amends G.S. 39-13.6 (Control of real property held in tenancy by the entirety) to replace some references to a husband and wife with a reference to two individuals married to each other and to update the format of subsection (b). References to a husband or wife in subdivisions (b)(1), (2), and (3) are not changed because these are historic. Subdivision (b)(2a) is included and subdivision (b)(3) is amended to specifically allow a reference to a "spouse" in a deed.

⁴ E.g., *Davis v. Davis*, 75 S.E.2d 46 (S.C. 1953).

⁵ See Chapter 1245 of the 1981 Session Laws (Reg. Sess. 1982) ("An Act To Equalize Between Married Persons the Right to Income, Possession, and Control in Property Owned Concurrently in Tenancy by the Entirety").

⁶ *North Carolina Baptist Hospitals, Inc. v. Harris*, 319 N.C. 347, 354 S.E.2d 471 (1987).

⁷ *Emanuel v. McGriff*, 596 So.2d 578 (Ala. 1992).

Section 3 amends G.S. 39-13.7 (Tenancy by the entireties trusts in real property) to make the terminology gender neutral.

Section 4 amends G.S. 41-2 (Survivorship in joint tenancy defined; proviso as to partnership; unequal ownership interests) to replace the reference in subsection (b) to a husband and wife with a reference to two individuals married to each other.

Section 5 amends G.S. 41-2.5 (Tenancy by the entirety in mobile homes) to make in subsection (b) the same changes as described in Section 4 and to correct an obvious error in subsection (c), where the reference to "Article" should be to "section."

Section 6(a) explains that the effective date for Part I is derived from the final order in the first case that applied to this State the holding in *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014) (the Fourth Circuit predecessor to *Obergefell*).

Section 6(b) sets an effective date for Part I of October 10, 2014, applicable to conveyances on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

D

HOUSE BILL 1061
PROPOSED COMMITTEE SUBSTITUTE H1061-CSTS-18 [v.6]
06/07/2016 08:08:49 PM

Short Title: Preserve Tenancy by the Entirety.

(Public)

Sponsors:

Referred to:

May 11, 2016

A BILL TO BE ENTITLED

AN ACT TO MAKE CONFORMING AMENDMENTS TO CLARIFY THAT TENANCY BY THE ENTIRETY IS PRESERVED IN THIS STATE IN LIGHT OF THE UNITED STATES SUPREME COURT DECISION IN *OBERGEFELL V. HODGES*, AS RECOMMEND BY THE GENERAL STATUTES COMMISSION, AND TO MAKE OTHER CHANGES TO MORTGAGE DEEDS OF TRUSTS LAWS.

PART I. PRESERVE TENANCY BY THE ENTIRETY

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 39-13.3 reads as rewritten:

"§ 39-13.3. **Conveyances between husband and wife spouses.**

(a) A conveyance from a ~~husband or wife to the other~~ married grantor to that individual's spouse of real property or any interest therein owned by the grantor alone vests ~~such the~~ property or interest in the grantee.

(b) A conveyance of real property, or any interest therein, by a ~~husband or a wife to such husband and wife~~ married grantor to that individual and the individual's spouse vests the same property in the ~~husband and wife~~ grantees as tenants by the entirety unless a contrary intention is expressed in the conveyance.

(c) A conveyance from a ~~husband or a wife to the other~~ married individual to that individual's spouse of real property, or any interest therein, held by ~~such husband and wife the~~ spouses as tenants by the entirety dissolves ~~such the~~ tenancy in the property or interest conveyed and vests ~~such the~~ property or interest formerly held by the entirety in the grantee.

(d) The joinder of the spouse of the grantor in any conveyance made by a ~~husband or a wife~~ married grantor pursuant to the foregoing provisions of this section is not necessary.

(e) Any conveyance authorized by this section is subject to the provisions of G.S. 52-10 or 52-10.1, except that acknowledgment by the spouse of the grantor is not necessary."

SECTION 2. G.S. 39-13.6 reads as rewritten:

"§ 39-13.6. **Control of real property held in tenancy by the entirety.**

(a) ~~A husband and wife~~ Two individuals married to each other shall have an equal right to the control, use, possession, rents, income, and profits of real property held by them in tenancy by the entirety. Neither spouse may bargain, sell, lease, mortgage, transfer, convey or in any manner encumber any property so held without the written joinder of the other spouse. This section shall not be construed to require the spouse's joinder where a different provision is made under G.S. 39-13, G.S. 39-13.3, G.S. 39-13.4, or G.S. 52-10.



* H 1 0 6 1 - C S T S - 1 8 *

(b) ~~A~~ Unless a contrary intention is expressed in the conveyance, a conveyance of real property, or any interest therein, to a husband and wife two individuals then married to each other vests title in them as tenants by the entirety when the conveyance is to:

(1) A named ~~man~~ individual "and wife," or

(2) A named ~~woman~~ individual "and husband," or

(2a) A named individual "and spouse," or

(3) Two named persons, individuals, whether or not identified in the conveyance as being (i) husband and wife, (ii) spouses, or (iii) married to each other, if at the time of conveyance they are legally married; married to each other.

~~unless a contrary intention is expressed in the conveyance.~~

(c) For income tax purposes, each spouse is considered to have received one-half (1/2) the income or loss from property owned by the couple as tenants by the entirety."

SECTION 3. G.S. 39-13.7 reads as rewritten:

"§ 39-13.7. Tenancy by the entireties trusts in real property.

(a) Any real property held by a ~~husband and wife two individuals married to each other~~ as a tenancy by the entireties and conveyed to (i) a joint trust or (ii) in equal shares to two separate trusts; shall no longer be held by ~~the husband and wife them~~ as tenants by the entirety and shall be disposed of by the terms of the trust or trusts, but, subject to the provisions of subsection (b) of this section, the real property shall have the same immunity from the claims of the separate creditors of ~~the husband and wife each spouse~~ as would exist if the spouses had continued to hold the property as tenants by the entireties.

(b) The immunity from the claims of separate creditors provided by subsection (a) of this section shall apply as long as all of the following apply:

(1) ~~The husband and wife two individuals remain married; married to each other.~~

(2) The real property continues to be held in the trust or trusts as provided in subsection (a) of this section.

(3) ~~Both husband and wife spouses~~ are current beneficiaries of the joint trust if the real property is conveyed to that trust or of each separate trust if the real property is conveyed in equal shares to their separate trusts.

(c) After the death of the first of ~~the husband and wife spouse~~ to die, all property held in trust that was immune from the claims of their separate creditors under subsection (a) of this section immediately prior to the individual's death shall continue to have immunity from the claims of the decedent's separate creditors as would have existed if ~~the husband and wife both spouses~~ continued to hold the property conveyed in trust as tenants by the entirety.

(d) The trustee acting under the express provisions of a trust instrument or with the written consent of both ~~the husband and wife spouses~~ may waive the immunity from the claims of separate creditors provided under this section as to any specific creditor or any specifically described property including all separate creditors of a ~~husband and wife spouse~~ or all former tenancy by the entirety property conveyed to the trustee.

(e) For purposes of this section:

(1) The reference to the real property conveyed to or held in the trust shall be deemed to include the proceeds arising from the involuntary conversion of the real property.

(2) The reference to a "joint trust" means a revocable or irrevocable trust of which both ~~the husband and wife spouses~~ are the settlors, and the reference to "separate trusts" means revocable or irrevocable trusts of which ~~the husband one spouse~~ is the settlor of one trust and the ~~wife other spouse~~ is the settlor of the other trust.

(3) ~~The husband and wife two spouses~~ are "beneficiaries" of a trust if they are distributees or permissible distributees of the income or principal of the trust

whether or not other persons are also current or future beneficiaries of the trust."

SECTION 4. G.S. 41-2 reads as rewritten:

"§ 41-2. Survivorship in joint tenancy defined; proviso as to partnership; unequal ownership interests.

...

(b) The interests of the grantees holding property in joint tenancy with right of survivorship shall be deemed to be equal unless otherwise specified in the conveyance. Any joint tenancy interest held by ~~a husband and wife, two individuals then married to each other,~~ unless otherwise specified, shall be deemed to be held by them as a single tenancy by the entirety, which shall be treated as a single party when determining interests in the joint tenancy with right of survivorship. Joint tenancy interests among two or more joint tenants holding property in joint tenancy with right of survivorship are subject to the provisions of G.S. 28A-24-3 upon the death of one or more of the joint tenants.

This subsection shall apply to any conveyance of an interest in property created at any time that explicitly sought to create unequal ownership interests in a joint tenancy with right of survivorship. Distributions made prior to the enactment of this subsection that were made in equal amounts from a joint tenancy with the right of survivorship that sought to create unequal ownership shares shall remain valid and shall not be subject to modification on the basis of this subsection."

SECTION 5. G.S. 41-2.5 reads as rewritten:

"§ 41-2.5. Tenancy by the entirety in mobile homes.

(a) When ~~a husband and wife, two individuals then married to each other~~ become co-owners of a mobile home, in the absence of anything to the contrary appearing in the instrument of title, they become tenants by the entirety with all the incidents of an estate by the entirety in real property, including the right of survivorship in the case of death of either.

(b) For the purpose of this section it shall be immaterial whether the property at any particular time shall be classified for any purpose as either real or personal. The provisions of subsection (a) of this section shall not limit or prohibit any other type of ownership otherwise authorized by law.

(c) For purposes of this section "mobile home" means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. As used in this ~~Article, section,~~ "mobile home" also means a double-wide mobile home which is two or more portable manufactured housing units designed for transportation on their own chassis, which connect on site for placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width.

(d) This section does not repeal or modify any provisions of the law relating to estate or inheritance taxes."

SECTION 6.(a) This Part is intended to reflect rights established by federal law that became effective in this State on October 10, 2014, by application of *General Synod of the United Church of Christ v. Resinger*, 12 F.Supp.3d 790 (W.D. N.C., Oct. 10, 2014).

SECTION 6.(b) This Part is effective when it becomes law and applies to conveyances made on or after October 10, 2014.

PART II. MORTGAGE/DEED OF TRUST CHANGES

SECTION 7. G.S. 39-13 reads as rewritten:

"§ 39-13. Spouse need not join in purchase-money mortgage.

~~The purchaser of real estate who does not pay the whole of the purchase money at the time when he or she takes a deed for title may make a mortgage or deed of trust for securing the~~

1 payment of such purchase money, or such part thereof as may remain unpaid, which A mortgage
2 or deed of trust given by the purchaser of real property to secure a loan, the proceeds of which
3 were used to pay all or a portion of the purchase price of the encumbered real property, regardless
4 of whether the secured party is the seller of the real property or a third party lender, shall be good
5 and effectual against his or her spouse as well as the purchaser, without requiring the spouse to
6 join in the execution of such mortgage or deed of trust."

7 **SECTION 8.** G.S. 29-30(g) reads as rewritten:

8 "(g) Neither the household furnishings in the dwelling house nor the life estates taken by
9 election under this section shall be subject to the payment of debts due from the estate of the
10 deceased spouse, except those debts secured by such property as follows:

11 (1) By a mortgage or deed of trust in which the surviving spouse has waived the
12 surviving spouse's rights by joining with the other spouse in the making thereof;
13 or thereof.

14 (2) By a mortgage or deed of trust given by the deceased spouse to secure a loan,
15 the proceeds of which were used to pay all or a portion of the purchase price of
16 the encumbered real property, regardless of whether the secured party is the
17 seller of the real property or a third-party lender, ~~By a purchase money mortgage~~
18 ~~or deed of trust,~~ or by a conditional sales contract of personal property in which
19 title is retained by the vendor, made prior to or during the ~~marriage;~~ or marriage.

20 (3) By a mortgage or deed of trust made prior to the ~~marriage;~~ or marriage.

21 (4) By a mortgage or deed of trust constituting a lien on the property at the time of
22 its acquisition by the deceased spouse either before or during the marriage."

23 **SECTION 9.** Except as otherwise provided, this act is effective when it becomes law
24 and sections 7 and 8 apply to mortgages and deeds of trust entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

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HOUSE BILL 1061*

Short Title: Preserve Tenancy by the Entirety.

(Public)

Sponsors: Representative Bryan.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary IV

May 11, 2016

A BILL TO BE ENTITLED

AN ACT TO MAKE CONFORMING AMENDMENTS TO CLARIFY THAT TENANCY BY THE ENTIRETY IS PRESERVED IN THIS STATE IN LIGHT OF THE UNITED STATES SUPREME COURT DECISION IN *OBERGEFELL V. HODGES*, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 39-13.3 reads as rewritten:

"§ 39-13.3. Conveyances between ~~husband and wife~~ spouses.

(a) A conveyance from a ~~husband or wife to the other~~ married grantor to that individual's spouse of real property or any interest therein owned by the grantor alone vests ~~such the~~ property or interest in the grantee.

(b) A conveyance of real property, or any interest therein, by a ~~husband or a wife to such husband and wife~~ married grantor to that individual and the individual's spouse vests the ~~same~~ property in the ~~husband and wife~~ grantees as tenants by the entirety unless a contrary intention is expressed in the conveyance.

(c) A conveyance from a ~~husband or a wife to the other~~ married individual to that individual's spouse of real property, or any interest therein, held by ~~such husband and wife the spouses~~ as tenants by the entirety dissolves ~~such the~~ tenancy in the property or interest conveyed and vests ~~such the~~ property or interest formerly held by the entirety in the grantee.

(d) The joinder of the spouse of the grantor in any conveyance made by a ~~husband or a wife~~ married grantor pursuant to the foregoing provisions of this section is not necessary.

(e) Any conveyance authorized by this section is subject to the provisions of G.S. 52-10 or 52-10.1, except that acknowledgment by the spouse of the grantor is not necessary."

SECTION 2. G.S. 39-13.6 reads as rewritten:

"§ 39-13.6. Control of real property held in tenancy by the entirety.

(a) ~~A husband and wife~~ Two individuals married to each other shall have an equal right to the control, use, possession, rents, income, and profits of real property held by them in tenancy by the entirety. Neither spouse may bargain, sell, lease, mortgage, transfer, convey or in any manner encumber any property so held without the written joinder of the other spouse. This section shall not be construed to require the spouse's joinder where a different provision is made under G.S. 39-13, G.S. 39-13.3, G.S. 39-13.4, or G.S. 52-10.

(b) ~~A~~ Unless a contrary intention is expressed in the conveyance, a conveyance of real property, or any interest therein, to a ~~husband and wife~~ two individuals then married to each other vests title in them as tenants by the entirety when the conveyance is to:

(1) A named ~~man~~ individual "and wife," or



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(2) A named ~~woman~~ individual "and husband," or
(2a) A named individual "and spouse," or
(3) Two named ~~persons, individuals,~~ whether or not identified in the conveyance as being (i) husband and wife, (ii) spouses, or (iii) married to each other, if at the time of conveyance they are legally ~~married;~~ married to each other.
~~unless a contrary intention is expressed in the conveyance.~~

(c) For income tax purposes, each spouse is considered to have received one-half (1/2) the income or loss from property owned by the couple as tenants by the entirety."

SECTION 3. G.S. 39-13.7 reads as rewritten:

"§ 39-13.7. Tenancy by the entireties trusts in real property.

(a) Any real property held by ~~a husband and wife~~ two individuals married to each other as a tenancy by the entireties and conveyed to (i) a joint trust or (ii) in equal shares to two separate trusts; shall no longer be held by ~~the husband and wife~~ them as tenants by the entirety and shall be disposed of by the terms of the trust or trusts, but, subject to the provisions of subsection (b) of this section, the real property shall have the same immunity from the claims of the separate creditors of ~~the husband and wife~~ each spouse as would exist if the spouses had continued to hold the property as tenants by the entireties.

(b) The immunity from the claims of separate creditors provided by subsection (a) of this section shall apply as long as all of the following apply:

- (1) ~~The husband and wife~~ two individuals remain ~~married;~~ married to each other.
- (2) The real property continues to be held in the trust or trusts as provided in subsection (a) of this section.
- (3) Both ~~husband and wife~~ spouses are current beneficiaries of the joint trust if the real property is conveyed to that trust or of each separate trust if the real property is conveyed in equal shares to their separate trusts.

(c) After the death of the first of ~~the husband and wife~~ spouse to die, all property held in trust that was immune from the claims of their separate creditors under subsection (a) of this section immediately prior to the individual's death shall continue to have immunity from the claims of the decedent's separate creditors as would have existed if ~~the husband and wife~~ both spouses continued to hold the property conveyed in trust as tenants by the entirety.

(d) The trustee acting under the express provisions of a trust instrument or with the written consent of both ~~the husband and wife~~ spouses may waive the immunity from the claims of separate creditors provided under this section as to any specific creditor or any specifically described property including all separate creditors of a ~~husband and wife~~ spouse or all former tenancy by the entirety property conveyed to the trustee.

(e) For purposes of this section:

- (1) The reference to the real property conveyed to or held in the trust shall be deemed to include the proceeds arising from the involuntary conversion of the real property.
- (2) The reference to a "joint trust" means a revocable or irrevocable trust of which both ~~the husband and wife~~ spouses are the settlors, and the reference to "separate trusts" means revocable or irrevocable trusts of which ~~the husband~~ one spouse is the settlor of one trust and the ~~wife~~ other spouse is the settlor of the other trust.
- (3) The ~~husband and wife~~ two spouses are "beneficiaries" of a trust if they are distributees or permissible distributees of the income or principal of the trust whether or not other persons are also current or future beneficiaries of the trust."

SECTION 4. G.S. 41-2 reads as rewritten:

"§ 41-2. Survivorship in joint tenancy defined; proviso as to partnership; unequal ownership interests.

1 ...
2 (b) The interests of the grantees holding property in joint tenancy with right of
3 survivorship shall be deemed to be equal unless otherwise specified in the conveyance. Any joint
4 tenancy interest held by ~~a husband and wife, two individuals then married to each other,~~ unless
5 otherwise specified, shall be deemed to be held by them as a single tenancy by the entirety, which
6 shall be treated as a single party when determining interests in the joint tenancy with right of
7 survivorship. Joint tenancy interests among two or more joint tenants holding property in joint
8 tenancy with right of survivorship are subject to the provisions of G.S. 28A-24-3 upon the death of
9 one or more of the joint tenants.

10 This subsection shall apply to any conveyance of an interest in property created at any time
11 that explicitly sought to create unequal ownership interests in a joint tenancy with right of
12 survivorship. Distributions made prior to the enactment of this subsection that were made in equal
13 amounts from a joint tenancy with the right of survivorship that sought to create unequal
14 ownership shares shall remain valid and shall not be subject to modification on the basis of this
15 subsection."

16 **SECTION 5.** G.S. 41-2.5 reads as rewritten:

17 **"§ 41-2.5. Tenancy by the entirety in mobile homes.**

18 (a) When ~~a husband and wife~~ two individuals then married to each other become
19 co-owners of a mobile home, in the absence of anything to the contrary appearing in the
20 instrument of title, they become tenants by the entirety with all the incidents of an estate by the
21 entirety in real property, including the right of survivorship in the case of death of either.

22 (b) For the purpose of this section it shall be immaterial whether the property at any
23 particular time shall be classified for any purpose as either real or personal. The provisions of
24 subsection (a) of this section shall not limit or prohibit any other type of ownership otherwise
25 authorized by law.

26 (c) For purposes of this section "mobile home" means a portable manufactured housing
27 unit designed for transportation on its own chassis and placement on a temporary or
28 semipermanent foundation having a measurement of over 32 feet in length and over eight feet in
29 width. As used in this ~~Article, section,~~ "mobile home" also means a double-wide mobile home
30 which is two or more portable manufactured housing units designed for transportation on their
31 own chassis, which connect on site for placement on a temporary or semipermanent foundation
32 having a measurement of over 32 feet in length and over eight feet in width.

33 (d) This section does not repeal or modify any provisions of the law relating to estate or
34 inheritance taxes."

35 **SECTION 6.(a)** This act is intended to reflect rights established by federal law that
36 became effective in this State on October 10, 2014, by application of *General Synod of the United*
37 *Church of Christ v. Resinger*, 12 F.Supp.3d 790 (W.D. N.C., Oct. 10, 2014).

38 **SECTION 6.(b)** This act is effective when it becomes law and applies to conveyances
39 made on or after October 10, 2014.



HOUSE BILL 1062: Fiduciary Access to Digital Assets.

2016-2017 General Assembly

Committee: House Judiciary IV
Introduced by: Rep. Bryan
Analysis of: First Edition

Date: June 8, 2016
Prepared by: Kara McCraw
Committee Co-Counsel

SUMMARY: *HB 1062 would enact a new Chapter in the General Statutes establishing the Revised Uniform Fiduciary Access to Digital Assets Act, which would establish a process for disclosure of a user's digital assets to a fiduciary, personal representative, guardian or trustee.*

BILL ANALYSIS: See attached Memorandum from the General Statutes Commission.

EFFECTIVE DATE: HB 1062 would become effective when it becomes law.

n Cochrane-Brown
Director



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Legislative Analysis
Division
919-733-2578



GENERAL STATUTES COMMISSION

300 N. Salisbury Street, Suite 401
Raleigh, NC 27603-5925
Tel. 919-733-6660 Fax 919-715-5459

Floyd M. Lewis
Revisor of Statutes

P. Bly Hall
Assistant Revisor of Statutes

MEMORANDUM

To: House Committee on Judiciary IV
From: General Statutes Commission
Re: HB 1062 (Fiduciary Access to Digital Assets)
Date: June 3, 2016

General Comments

This bill contains the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADA) that was approved in 2015 by the Uniform Law Commission, with minor changes to conform to the court procedures, legal terminology, and statutory drafting style used in this State.

RUFADA was designed to address a growing problem caused by the increasing use of electronic formats for documents, accounts, pictures, memorabilia, communications, etc., that were formerly kept on paper or in some other tangible form. It is common for at least some of these documents, etc., to be stored as data on a computer server that is accessed via the Internet. Access is often password protected. Examples range from the trivial to things of major importance, including e-mail and e-mail attachments, text messages, photographs and recipes on a Facebook page, digital music, a Paypal account, business records stored "in the cloud," etc. RUFADA uses the term "digital assets" for a person's digital property and electronic communications and the term "custodian" for the companies that store those assets on their servers. Access to digital assets held by a custodian is usually governed by a terms-of-service agreement that may not address who has access if the person becomes incapacitated or dies. The result is a problem for both the custodian and the deceased or incapacitated person's family or other representatives, who have on occasion had difficulty in obtaining access to digital assets. RUFADA addresses this problem by providing procedures for disclosure of digital records to four types of fiduciaries: a personal representative of a decedent's estate, a trustee, a guardian for a minor or an incompetent person, and an attorney-in-fact. "Disclosure" includes obtaining full access, partial access, or copies of digital records.

Generally speaking, the fiduciary must send a request for disclosure of digital assets to the custodian, with a certified copy of the document granting fiduciary authority, for example, letters testamentary, and other specified information if requested by the custodian. The custodian has 60 days after receipt of all required information to comply with a request from a fiduciary to disclose digital assets or terminate an account. If the custodian does not comply, the fiduciary may seek a court order. A custodian is immune from liability for an act or omission done in good faith in compliance with the bill.

The bill makes conforming amendments to various sections of the General Statutes, authorizes the printing of official and drafters' comments, and is effective when it becomes law.

The major stakeholders, including Google and Facebook, participated in the development of RUFADA. Google and Facebook have informed the General Statutes Commission that they do not oppose this bill. The bill is supported by the Estate Planning and Fiduciary Law Section of the North Carolina Bar Association.

Specific Comments

Part I establishes a new Chapter 36F of the General Statutes, consisting of §§ 36F-1 through 36F-18.

§ 36F-1 provides a short title (Revised Uniform Fiduciary Access to Digital Assets Act).

§ 36F-2 defines terms used in the Chapter, including the following key terms:

- User – A person that has an account with a custodian (i.e., account containing digital assets).
- Custodian – A person that carries, maintains, processes, receives, or stores a digital asset of a user.
- Digital asset – An electronic record in which an individual has a right or interest and does not include an underlying asset or liability unless the asset or liability is itself an electronic record.
- Designated recipient – A person named in a designation by a user to the custodian to administer digital assets of the user.
- Electronic communication – A particular type of digital asset that is subject to the privacy protections of the Electronic Communications Privacy Act, 18 U.S.C. § 2510 et seq. The term is defined in 18 U.S.C. § 2510(12) and includes e-mails, text messages, and any other electronic communication between private parties.
- Fiduciary – An original, additional, or successor personal representative, guardian, attorney-in-fact, or trustee.

The terms "guardian" and "ward" are used in preference to RUFADA's "conservator" and "protected person."

§ 36F-3 is an applicability provision. The Chapter applies to personal representatives, attorneys-in-fact, trustees, and guardians, regardless of when their authority became effective. It applies to custodians of digital assets of a user if the user resides in this State or resided in this State at the time of the user's death.

§ 36F-4 establishes the following three-tier priority system for determining the user's intent with respect to the disclosure or nondisclosure of digital assets:

- Top priority is given to a user's designation to the custodian of a representative to whom digital assets may be disclosed (a "designated recipient"). As long as the custodian allows a user to change a designation, the designation will override a contrary direction by the user in a will, trust, power of attorney, or other record.
- If a user does not make a designation with the custodian, legal effect is given to the user's directions as provided in the user's will, trust, power of attorney, or other record.
- If a user provides no other direction, the terms-of-service agreement governing the account will apply.

§ 36F-5 provides that the Chapter does not alter the custodian's or user's rights under a terms-of-service agreement to access and use of digital assets and does not give a fiduciary or designated recipient any rights other than those held by the user.

§ 36F-6 allows a custodian to:

- Grant full access to the user's account.
- Grant partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged.
- Provide a digital or paper copy of the digital assets.

A custodian may refuse to comply with a direction by a user, or a request by a fiduciary for partial disclosure if separating out only a part of the digital assets would impose an "undue" burden on the custodian. The custodian may, but is not required to, seek a court order in this event.

A custodian may charge a reasonable administrative fee for the cost of disclosing digital assets and is not required to disclose a digital asset deleted by the user.

§ 36F-7 addresses the disclosure of the content of electronic communications sent or received by a decedent. If the decedent consented to disclosure or a court orders disclosure, disclosure is required if the personal representative of the decedent's estate gives the custodian a written request for disclosure along with specified documents and certain other specified information if requested by the custodian.

§ 36F-8 addresses the disclosure of a decedent's other digital assets. Unless the decedent prohibited disclosure or a court directs otherwise, disclosure is required if the personal representative of the decedent's estate gives the custodian a written request for disclosure along with specified documents and certain other specified information if requested by the custodian.

§§ 36F-9 and 36F-10 address the disclosure to an attorney-in-fact of the content of electronic communications sent or received by a person who has executed a power of attorney (a "principal") and the principal's other digital assets in essentially the same manner as §§ 36F-7 and 36F-8.

§ 36F-11 requires a custodian to disclose digital assets of an account held in trust, including content of electronic communications, when the trustee is the original user of the account unless the trust instrument or a court order provide otherwise.

§§ 36F-12 and 36F-13 address the disclosure of content of electronic communications and other digital assets held in trust when the trustee is not an original user of an account in essentially the same manner as §§ 36F-7/36F-9 and 36F-8/36F-10.

§ 36F-14 addresses the disclosure of digital assets to a guardian of a ward. A custodian must disclose the catalogue of electronic communications (but not their content) sent or received by a ward and any digital asset in which the ward has a right or interest, if the guardian gives the custodian a written request for disclosure, a certified copy of a court order giving the guardian authority over the ward's digital assets, and certain other specified information if requested by the custodian.

In addition, a guardian with general authority to manage a ward's assets may ask the custodian of the ward's digital assets to suspend or terminate the ward's account for good cause. The request must be accompanied by a certified copy of the court order giving the guardian authority over the ward's property.

§ 36F-15 addresses the duty and authority of fiduciaries. Under this section:

- The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including the duties of care, loyalty, and confidentiality.
- A fiduciary has the right to access any digital asset that is not held by a custodian or subject to a terms-of-service agreement.
- A fiduciary acting within the scope of the fiduciary's duties is an authorized user for the purpose of applicable computer-fraud and unauthorized-computer-access laws.
- A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account.
- A fiduciary may request termination of a user's account.

§ 36F-16 gives a custodian 60 days after receipt of all required information to comply with a request by a fiduciary or a designated recipient to disclose digital assets or terminate an account. If the custodian does not comply, the fiduciary or designated recipient may apply to the court for an order directing compliance. An order under this section must contain a finding that compliance would not violate the Stored Communications Act, 18 U.S.C. § 2702.

§ 36F-16 also allows a custodian to notify a user that a fiduciary has made a request for disclosure of digital assets or account termination and to deny a request if the custodian is aware of any lawful access to the account following receipt of the request.

This section also provides immunity to a custodian and its officers, employees, and agents from liability for an act or omission done in good faith in compliance with Chapter 36F.

§§ 36F-17 and 36F-18 are standard uniform act provisions relating to uniformity of application and to the federal E-SIGN act.

Part II makes conforming amendments to various sections of the General Statutes dealing with the powers of various fiduciaries. In addition, Section 2 amends G.S. 14-458 (Computer trespass; penalty) to provide that a person acting pursuant to Chapter 36F does not violate that section.

Part III authorizes the printing of official and drafters' comments and contains a severability and effective date provision.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 1062*

Short Title: Fiduciary Access to Digital Assets.

(Public)

Sponsors: Representative Bryan.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary IV

May 11, 2016

A BILL TO BE ENTITLED
AN ACT TO ENACT THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL
ASSETS ACT AND MAKE CONFORMING AMENDMENTS TO THE GENERAL
STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.
The General Assembly of North Carolina enacts:

PART I. REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 36F.

"Revised Uniform Fiduciary Access to Digital Assets Act.

"§ 36F-1. Short title.

This Chapter may be cited as the Revised Uniform Fiduciary Access to Digital Assets Act.

"§ 36F-2. Definitions.

The following definitions apply in this Chapter:

- (1) Account. – An arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.
- (2) Agent. – An attorney-in-fact granted authority under a durable or nondurable power of attorney.
- (3) Carries. – Engages in the transmission of an electronic communication.
- (4) Catalogue of electronic communications. – Information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.
- (5) Reserved.
- (6) Content of an electronic communication. – Information concerning the substance or meaning of the communication which meets all of the following:
 - a. Has been sent or received by a user.
 - b. Is in electronic storage by a custodian providing an electronic-communication service to the public or is carried or maintained by a custodian providing a remote-computing service to the public.
 - c. Is not readily accessible to the public.
- (7) Court. – The clerk of superior court or superior court judge, as provided in G.S. 1-7, or other court having competent jurisdiction over the estate, trust,



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- 1 fiduciary, or user, as applicable, or other matters relating to the content of this
2 Chapter.
- 3 (8) Custodian. – A person that carries, maintains, processes, receives, or stores a
4 digital asset of a user.
- 5 (9) Designated recipient. – A person chosen by a user using an online tool to
6 administer digital assets of the user.
- 7 (10) Digital asset. – An electronic record in which an individual has a right or
8 interest. The term does not include an underlying asset or liability unless the
9 asset or liability is itself an electronic record.
- 10 (11) Electronic. – Relating to technology having electrical, digital, magnetic,
11 wireless, optical, electromagnetic, or similar capabilities.
- 12 (12) Electronic communication. – Has the meaning set forth in 18 U.S.C. §
13 2510(12).
- 14 (13) Electronic-communication service. – A custodian that provides to a user the
15 ability to send or receive an electronic communication.
- 16 (14) Fiduciary. – An original, additional, or successor personal representative,
17 guardian, agent, or trustee.
- 18 (14a) Guardian. – A person appointed by a court to manage the estate of a living
19 individual. The term includes a general guardian, a guardian of the estate, an
20 interim guardian, and a standby guardian appointed under Chapter 35A of the
21 General Statutes.
- 22 (15) Information. – Data, text, images, videos, sounds, codes, computer programs,
23 software, databases, or the like.
- 24 (16) Online tool. – An electronic service provided by a custodian that allows the
25 user, in an agreement distinct from the terms-of-service agreement between the
26 custodian and user, to provide directions for disclosure or nondisclosure of
27 digital assets to a third person.
- 28 (17) Person. – An individual, estate, business or nonprofit entity, public corporation,
29 government or governmental subdivision, agency, instrumentality, business
30 trust, partnership, limited liability company, association, joint venture, or any
31 other legal or commercial entity.
- 32 (18) Personal representative. – An executor, administrator, special administrator, or
33 person that performs substantially the same function under a law of this State
34 other than this Chapter.
- 35 (19) Power of attorney. – A record that grants an agent authority to act in the place
36 of a principal.
- 37 (20) Principal. – An individual who grants authority to an agent in a power of
38 attorney.
- 39 (21) Reserved.
- 40 (22) Record. – Information that is inscribed on a tangible medium or that is stored in
41 an electronic or other medium and is retrievable in perceivable form.
- 42 (23) Remote-computing service. – A custodian that provides to a user
43 computer-processing services or the storage of digital assets by means of an
44 electronic-communications system, as defined in 18 U.S.C. § 2510(14).
- 45 (24) Terms-of-service agreement. – An agreement that controls the relationship
46 between a user and a custodian.
- 47 (25) Trustee. – A fiduciary with legal title to property under an agreement or
48 declaration that creates a beneficial interest in another. The term includes an
49 original, additional, and successor trustee, whether or not confirmed by a court.
- 50 (26) User. – A person that has an account with a custodian.

(26a) Ward. – An individual for whom a guardian has been appointed. The term includes an individual for whom an application for the appointment of a guardian is pending.

(27) Will. – Includes a codicil, a testamentary instrument that only appoints an executor, and an instrument that revokes or revises a testamentary instrument.

"§ 36F-3. Applicability.

(a) This Chapter applies to all of the following:

(1) A fiduciary acting under a will or power of attorney executed before, on, or after the effective date of this act.

(2) A personal representative acting for a decedent who died before, on, or after the effective date of this act.

(3) A guardian appointed before, on, or after the effective date of this act.

(4) A trustee acting under a trust created before, on, or after the effective date of this act.

(b) This Chapter applies to a custodian if the user resides in this State or resided in this State at the time of the user's death.

(c) This Chapter does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

"§ 36F-4. User direction for disclosure of digital assets.

(a) A user may use an online tool to direct the custodian to disclose to a designated recipient or not to disclose some or all of the user's digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.

(b) If a user has not used an online tool to give direction under subsection (a) of this section or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

(c) A user's direction under subsection (a) or (b) of this section overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

"§ 36F-5. Terms-of-service agreement.

(a) This Chapter does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

(b) This Chapter does not give a fiduciary or designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

(c) A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction under G.S. 36F-4.

"§ 36F-6. Procedure for disclosing digital assets.

(a) When disclosing digital assets of a user under this Chapter, the custodian may, at its sole discretion, do any of the following:

(1) Grant a fiduciary or designated recipient full access to the user's account.

(2) Grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged.

(3) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(b) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this Chapter.

(c) A custodian need not disclose under this Chapter a digital asset deleted by the user.

(d) If a user directs or a fiduciary requests a custodian to disclose under this Chapter some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose any of the following:

(1) A subset limited by date of the user's digital assets.

(2) All of the user's digital assets to the fiduciary or designated recipient.

(3) None of the user's digital assets.

(4) All of the user's digital assets to the court for review in camera.

"§ 36F-7. Disclosure of content of electronic communications of deceased user.

If a deceased user consented or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the personal representative gives the custodian all of the following:

(1) A written request for disclosure in physical or electronic form.

(2) A certified copy of the death certificate of the user.

(3) A certified copy of letters of administration or letters testamentary of the personal representative, a certified copy of a small estate affidavit filed in accordance with G.S. 28A-25-1(b), a certified copy of a summary administration order described in G.S. 28A-28-3, or a court order.

(4) Unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications.

(5) If requested by the custodian, any of the following:

a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account.

b. Evidence linking the account to the user.

c. A finding by the court of any of the following:

1. That the user had a specific account with the custodian, identifiable by the information specified in sub-subdivision a. of this subdivision.

2. That disclosure of the content of electronic communications of the user would not violate 18 U.S.C. § 2701, et seq., 47 U.S.C. § 222, or other applicable law.

3. That, unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications.

4. That disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

"§ 36F-8. Disclosure of other digital assets of deceased user.

Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user, if the personal representative gives the custodian all of the following:

(1) A written request for disclosure in physical or electronic form.

(2) A certified copy of the death certificate of the user.

(3) A certified copy of letters of administration or letters testamentary of the personal representative, a certified copy of a small estate affidavit filed in accordance with G.S. 28A-25-1(b), a certified copy of a summary administration order described in G.S. 28A-28-3, or a court order.

(4) If requested by the custodian, any of the following:

- a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account.
- b. Evidence linking the account to the user.
- c. An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate.
- d. A finding by the court of any of the following:
 1. That the user had a specific account with the custodian, identifiable by the information specified in sub-subdivision a. of this subdivision.
 2. That disclosure of the user's digital assets is reasonably necessary for administration of the estate.

"§ 36F-9. Disclosure of content of electronic communications of principal.

To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content of an electronic communication if the agent gives the custodian all of the following:

- (1) A written request for disclosure in physical or electronic form.
- (2) An original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal.
- (3) A certification by the agent, under penalty of perjury, that the power of attorney is in effect.
- (4) If requested by the custodian, any of the following:
 - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account.
 - b. Evidence linking the account to the principal.

"§ 36F-10. Disclosure of other digital assets of principal.

Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal, and digital assets, other than the content of communications, of the principal if the agent gives the custodian all of the following:

- (1) A written request for disclosure in physical or electronic form.
- (2) An original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal.
- (3) A certification by the agent, under penalty of perjury, that the power of attorney is in effect.
- (4) If requested by the custodian, any of the following:
 - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account.
 - b. Evidence linking the account to the principal.

"§ 36F-11. Disclosure of digital assets held in trust when trustee is original user.

Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

"§ 36F-12. Disclosure of contents of electronic communications held in trust when trustee not original user.

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian all of the following:

- (1) A written request for disclosure in physical or electronic form.
- (2) A verified copy of the trust instrument, or a certification of the trust under G.S. 36C-10-1013, that includes consent to disclosure of the content of electronic communications to the trustee.
- (3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust.
- (4) If requested by the custodian, any of the following:
 - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account.
 - b. Evidence linking the account to the trust.

"§ 36F-13. Disclosure of other digital assets held in trust when trustee not original user.

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian all of the following:

- (1) A written request for disclosure in physical or electronic form.
- (2) A certified copy of the trust instrument or a certification of the trust under G.S. 36C-10-1013.
- (3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust.
- (4) If requested by the custodian, any of the following:
 - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account.
 - b. Evidence linking the account to the trust.

"§ 36F-14. Disclosure of digital assets to guardian of ward.

(a) After a hearing on a motion in the cause pursuant to G.S. 35A-1207, the court may grant a guardian access to the digital assets of a ward.

(b) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a guardian the catalogue of electronic communications sent or received by a ward and any digital assets, other than the contents of electronic communications, in which the ward has a right or interest if the guardian gives the custodian all of the following:

- (1) A written request for disclosure in physical or electronic form.
- (2) A certified copy of the court order that gives the guardian authority over the digital assets of the ward.
- (3) If requested by the custodian, any of the following:
 - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the ward.
 - b. Evidence linking the account to the ward.

(c) A guardian with general authority to manage the assets of a ward may request a custodian of the digital assets of the ward to suspend or terminate an account of the ward for good cause. A request made under this section must be accompanied by a certified copy of the court order giving the guardian authority over the ward's property.

"§ 36F-15. Fiduciary duty and authority.

(a) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including all of the following:

- (1) The duty of care.
- (2) The duty of loyalty.
- (3) The duty of confidentiality.

(b) All of the following apply to a fiduciary's or designated recipient's authority with respect to a digital asset of a user:

- (1) Except as otherwise provided in G.S. 36F-4, it is subject to the applicable terms of service.
- (2) It is subject to other applicable law, including copyright law.
- (3) In the case of a fiduciary, it is limited by the scope of the fiduciary's duties.
- (4) It shall not be used to impersonate the user.

(c) A fiduciary with authority over the property of a decedent, ward, principal, or settlor has the right to access any digital asset in which the decedent, ward, principal, or settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

(d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, ward, principal, or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including G.S. 14-458.

(e) A fiduciary with authority over the tangible, personal property of a decedent, ward, principal, or settlor:

- (1) Has the right to access the property and any digital asset stored in it; and
- (2) Is an authorized user for the purpose of computer fraud and unauthorized-computer-access laws, including G.S. 14-458.

(f) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

(g) A fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied by all of the following:

- (1) If the user is deceased, a certified copy of the death certificate of the user.
- (2) A certified copy of letters of administration or letters testamentary of the personal representative, a certified copy of a small estate affidavit filed in accordance with G.S. 28A-25.1(b), a certified copy of a summary administration order described in G.S. 28A-28-3, or a court order, power of attorney, or trust giving the fiduciary authority over the account.
- (3) If requested by the custodian, any of the following:
 - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account.
 - b. Evidence linking the account to the user.
 - c. A finding by the court that the user had a specific account with the custodian, identifiable by the information specified in sub-subdivision a. of this subdivision.

"§ 36F-16. Custodian compliance and immunity.

(a) Not later than 60 days after receipt of the information required under G.S. 36F-7 through G.S. 36F-15, a custodian shall comply with a request under this Chapter from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

(b) An order under subsection (a) of this section directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. § 2702.

(c) A custodian may notify the user that a request for disclosure or to terminate an account was made under this Chapter.

(d) A custodian may deny a request under this Chapter from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's or designated recipient's request.

(e) This Chapter does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this Chapter to obtain a court order which does all of the following:

(1) Specifies that an account belongs to the ward or principal.

(2) Specifies that there is sufficient consent from the ward or principal to support the requested disclosure.

(3) Contains a finding required by law other than this Chapter.

(f) A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this Chapter.

"§ 36F-17. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

"§ 36F-18. Relation to Electronic Signatures in Global and National Commerce Act.

This Chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. § 7003(b)."

PART II. CONFORMING AMENDMENTS TO THE GENERAL STATUTES

SECTION 2. G.S. 14-458 reads as rewritten:

"§ 14-458. Computer trespass; penalty.

(a) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network without authority and with the intent to do any of the following:

(1) Temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs, or computer software from a computer or computer network.

(2) Cause a computer to malfunction, regardless of how long the malfunction persists.

(3) Alter or erase any computer data, computer programs, or computer software.

(4) Cause physical injury to the property of another.

(5) Make or cause to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network.

(6) Falsely identify with the intent to deceive or defraud the recipient or forge commercial electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk commercial electronic mail through or into the computer network of an electronic mail service provider or its subscribers.

For purposes of this subsection, a person is "without authority" when (i) the person has no right or permission of the owner to use a computer, or the person uses a computer in a manner exceeding the right or permission, or (ii) the person uses a computer or computer network, or the computer services of an electronic mail service provider to transmit unsolicited bulk commercial

electronic mail in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider.

...
(d) It is not a violation of this section for a person to act pursuant to Chapter 36F of the General Statutes."

SECTION 3. G.S. 28A-13-3(a) reads as rewritten:

"§ 28A-13-3. Powers of a personal representative or fiduciary.

(a) Except as qualified by express limitations imposed in a will of the decedent or a court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to perform in a reasonable and prudent manner every act which a reasonable and prudent person would perform incident to the collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law, including the powers specified in the following subdivisions:

...
(3a) To obtain the decedent's digital assets, as provided in Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets.

...."

SECTION 4. G.S. 32-27 reads as rewritten:

"§ 32-27. Powers which may be incorporated by reference in trust instrument.

The following powers may be incorporated by reference as provided in G.S. 32-26:

...
(32) Obtain Digital Assets. – To obtain any digital assets to the extent permitted by Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets."

SECTION 5. G.S. 32A-1 reads as rewritten:

"§ 32A-1. Statutory Short Form of General Power of Attorney.

The use of the following form in the creation of a power of attorney is lawful, and, when used, it shall be construed in accordance with the provisions of this Chapter.

"NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32A OF THE NORTH CAROLINA GENERAL STATUTES WHICH EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES CONCERNED.

State of _____.

County of _____.

I _____, appoint _____ to be my attorney-in-fact, to act in my name in any way which I could act for myself, with respect to the following matters as each of them is defined in Chapter 32A of the North Carolina General Statutes. (DIRECTIONS: Initial the line opposite any one or more of the subdivisions as to which the principal desires to give the attorney-in-fact authority.)

- | | | |
|------|---|-------|
| (1) | Real property transactions..... | _____ |
| (2) | Personal property transactions | _____ |
| (2a) | Obtain, request, and authorize disclosure of digital assets..... | _____ |
| (3) | Bond, share, stock, securities securities, and commodity transactions..... | _____ |
| (4) | Banking transactions | _____ |
| (5) | Safe deposits | _____ |
| (6) | Business operating transactions | _____ |
| (7) | Insurance transactions | _____ |
| (8) | Estate transactions | _____ |

- 1 (9) Personal relationships and affairs.....
 2 (10) Social security and unemployment
 3 (11) Benefits from military service.....
 4 (12) Tax matters.....
 5 (13) Employment of agents.....
 6 (14) Gifts to charities, and to individuals other than the
 7 attorney-in-fact.....
 8 (15) Gifts to the named attorney-in-fact
 9 (16) Renunciation of an interest in or power over property to
 10 benefit persons other than the attorney-in-fact.....
 11 (17) Renunciation of an interest in or power over property
 12 to benefit persons including the attorney-in-fact

13 (If power of substitution and revocation is to be given, add: 'I also give to such person full
 14 power to appoint another to act as my attorney-in-fact and full power to revoke such
 15 appointment.')

16 (If period of power of attorney is to be limited, add: "This power terminates ____, ____,")

17 (If power of attorney is to be a durable power of attorney under the provision of Article 2 of
 18 Chapter 32A and is to continue in effect after the incapacity or mental incompetence of the
 19 principal, add: "This power of attorney shall not be affected by my subsequent incapacity or mental
 20 incompetence.')

21 (If power of attorney is to take effect only after the incapacity or mental incompetence of the
 22 principal, add: 'This power of attorney shall become effective after I become incapacitated or
 23 mentally incompetent.')

24 (If power of attorney is to be effective to terminate or direct the administration of a custodial
 25 trust created under the Uniform Custodial Trust Act, add: 'In the event of my subsequent
 26 incapacity or mental incompetence, the attorney-in-fact of this power of attorney shall have the
 27 power to terminate or to direct the administration of any custodial trust of which I am the
 28 beneficiary.')

29 (If power of attorney is to be effective to determine whether a beneficiary under the Uniform
 30 Custodial Trust Act is incapacitated or ceases to be incapacitated, add: 'The attorney-in-fact of this
 31 power of attorney shall have the power to determine whether I am incapacitated or whether my
 32 incapacity has ceased for the purposes of any custodial trust of which I am the beneficiary.')

33 Dated _____, _____.
 34 _____ (Seal)

35 _____ Signature
 36 STATE OF _____ COUNTY OF _____

37 On this _____ day of _____, _____, personally appeared before me, the said named
 38 _____ to me known and known to me to be the person described in and who executed the
 39 foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being
 40 duly sworn by me, made oath that the statements in the foregoing instrument are true.

41 My Commission Expires _____.

42 _____
 43 (Signature of Notary Public)
 44 Notary Public (Official Seal)""

45 **SECTION 6.** G.S. 32A-2 reads as rewritten:

46 **"§ 32A-2. Powers conferred by the Statutory Short Form Power of Attorney set out in**
 47 **G.S. 32A-1.**

48 The Statutory Short Form Power of Attorney set out in G.S. 32A-1 confers the following
 49 powers on the attorney-in-fact named therein:

50 ...

(2a) Obtain, Request, and Authorize Disclosure of Digital Assets. – To obtain any digital assets, as provided in Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets.

(3) ~~Bond, Share, Stock, Securities~~ Securities, and Commodity Transactions. – To request, ask, demand, sue for, recover, collect, receive, and hold and possess any bond, share, instrument of similar character, commodity interest or any instrument with respect thereto together with the interest, dividends, proceeds, or other distributions connected therewith, as now are, or shall hereafter become, owned by, or due, owing payable, or belonging to, the principal at the time of execution or in which the principal may thereafter acquire interest, to have, use, and take all lawful means and equitable and legal remedies, procedures, and writs in the name of the principal for the collection and recovery thereof, and to adjust, sell, compromise, and agree for the same, and to make, execute, and deliver for the principal, all endorsements, acquittances, releases, receipts, or other sufficient discharges for the same.

...."

SECTION 7. G.S. 35A-1251 reads as rewritten:

"§ 35A-1251. **Guardian's powers in administering incompetent ward's estate.**

In the case of an incompetent ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

...

(2a) To obtain the ward's digital assets, as provided in Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets.

...."

SECTION 8. G.S. 35A-1252 reads as rewritten:

"§ 35A-1252. **Guardian's powers in administering minor ward's estate.**

In the case of a minor ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

...

(2a) To obtain the ward's digital assets, as provided in Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets.

...."

SECTION 9. G.S. 36C-8-816 reads as rewritten:

"§ 36C-8-816. **Specific powers of trustee.**

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

...

(31) Distribute the assets of an inoperative trust consistent with the authority granted under G.S. 28A-22-110; and

(32) Renounce, in accordance with Chapter 31B of the General Statutes, an interest in or power over property, including property that is or may be burdened with liability for violation of environmental law; and

(33) Obtain any digital assets, as provided in Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets."

**PART III. EFFECTIVE DATE AND AUTHORIZATION FOR THE PRINTING OF
OFFICIAL AND DRAFTERS' COMMENTS**

SECTION 10. The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Comments to the Revised Uniform Fiduciary Access to Digital Assets Act (2015) and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 11. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end, the provisions of this act are severable.

SECTION 12. This act is effective when it becomes law.

**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**JUDICIARY IV COMMITTEE REPORT
Representative Hugh Blackwell, Co-Chair
Representative Rob Bryan, Co-Chair**

FAVORABLE

HB 1060

Conform Full-payment Check Law to UCC.

| | |
|-----------------------|-------|
| Draft Number: | None |
| Serial Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |
| Floor Manager: | Bryan |

HB 1062

Fiduciary Access to Digital Assets.

| | |
|-----------------------|-------|
| Draft Number: | None |
| Serial Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |
| Floor Manager: | Bryan |

TOTAL REPORTED: 2



* C M R 7 0 0 - V - 1 *

**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**JUDICIARY IV COMMITTEE REPORT
Representative Hugh Blackwell, Co-Chair
Representative Rob Bryan, Co-Chair**

FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL

HB 1061

Preserve Tenancy by the Entirety.

| | |
|-----------------------|----------------------|
| Draft Number: | H1061-PCS30518-TS-18 |
| Serial Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | Yes |
| Floor Manager: | Bryan |

TOTAL REPORTED: 1



* C M R 7 O 2 - V - 1 *

**House Committee on Judiciary IV
Wednesday, June 22, 2016 at 10:00 AM
Room 1228/1327 of the Legislative Building**

MINUTES

The House Committee on Judiciary IV met at 10:00 AM on June 22, 2016 in Room 1228/1327 of the Legislative Building. Representatives Blackwell, Chair, Bryan, Chair, Adams, Ager, Bishop, Hunter, Jones, Riddell, Torbett, and Willingham attended. Also present were staff members Layla Cummings, Kara McGraw, and Nick Giddings and Committee Clerks Kevin Wilkinson and Sharon Sullivan. An attendance sheet is attached and made part of these minutes.

Representative Hugh Blackwell presided. Chairman Blackwell called the meeting to order at 10:00. The Chairman recognized the Sergeant-at-Arms and introduced the pages. Chairman Blackwell informed the Members that the bills before the Committee were companion bills, and had been voted on by the Committee two weeks prior. The following bills were considered:

SB 805 Fiduciary Access to Digital Assets. (Senator Hartsell)


Representative Bishop made a motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

SB 807 Conform Full-payment Check Law to UCC. (Senator Hartsell)

Representative Torbett made a motion for a favorable report for the bill. The motion carried, and the bill received a favorable report.

The meeting adjourned at 10:05 AM.

Respectfully submitted,



Representative Hugh Blackwell,
Presiding Chair



Sharon Sullivan, Committee Clerk

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2015-2016 SESSION**

You are hereby notified that the **House Committee on Judiciary IV** will meet as follows:

DAY & DATE: Wednesday, June 22, 2016
TIME: 10:00 AM
LOCATION: 1228/1327 LB
COMMENTS: Rep. Blackwell will preside.

The following bills will be considered:

| BILL NO. | SHORT TITLE | SPONSOR |
|-----------------|--|------------------|
| SB 805 | Fiduciary Access to Digital Assets. | Senator Hartsell |
| SB 807 | Conform Full-payment Check Law to UCC. | Senator Hartsell |

Respectfully,

Representative Hugh Blackwell, Co-Chair
Representative Rob Bryan, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 4:46 PM on Wednesday, July 13, 2016.

____ Principal Clerk
____ Reading Clerk – House Chamber

Sharon Sullivan (Committee Assistant)

House Committee on Judiciary IV
Wednesday, June 22, 2016, 10:00 AM
1228/1327 LB

AGENDA

Welcome and Opening Remarks

Chaired by Rep. Blackwell

Introduction of Pages and Sergeant at Arms

Bills

| BILL NO. | SHORT TITLE | SPONSOR |
|-----------------|--|------------------|
| SB 805 | Fiduciary Access to Digital Assets. | Senator Hartsell |
| SB 807 | Conform Full-payment Check Law to UCC. | Senator Hartsell |

Other Business

Adjournment

House Judiciary IV
Notes for Agenda Items
June 22, 2016, 10:00 a.m.
Rep. Blackwell, Chair

SB 807 Conform Full-payment Check Law to UCC

Senator Hartsell

- Nick is handling this bill.
- The bill is a 1st Edition
- **This bill was recommended by the GSC, and Bly Hall and Floyd Lewis, staff from Bill Drafting who also staff the GSC, are available to explain the bill and for questions.**
- **The bill is identical to HB 1060, which was given a favorable report by the Committee on 6/8/16.**

*If there are no amendments to the BILL,
THE MOTION (IF FAVORABLE) SHOULD BE: FAVORABLE TO THE BILL.*

*If there are amendments to the BILL,
THE MOTION (IF FAVORABLE) SHOULD BE: FAVORABLE TO THE BILL AS AMENDED, ROLLED INTO A PROPOSED COMMITTEE SUBSTITUTE, WITH A FAVORABLE REPORT TO THE COMMITTEE SUBSTITUTE AND AN UNFAVORABLE REPORT TO THE ORIGINAL BILL.*

SB 805 Fiduciary Access to Digital Assets

Senator Hartsell

- Kara is handling this bill.
- The bill is a 1st Edition
- **This bill was recommended by the GSC, and Bly Hall and Floyd Lewis, staff from Bill Drafting who also staff the GSC, are available to explain the bill and for questions.**
- **The bill is identical to HB 1062, which was given a favorable report by the Committee on 6/8/16.**

*If there are no amendments to the BILL,
THE MOTION (IF FAVORABLE) SHOULD BE: FAVORABLE TO THE BILL.*

*If there are amendments to the BILL,
THE MOTION (IF FAVORABLE) SHOULD BE: FAVORABLE TO THE BILL AS AMENDED, ROLLED INTO A PROPOSED COMMITTEE SUBSTITUTE, WITH A FAVORABLE REPORT TO THE COMMITTEE SUBSTITUTE AND AN UNFAVORABLE REPORT TO THE ORIGINAL BILL.*



SENATE BILL 805: Fiduciary Access to Digital Assets.

2016-2017 General Assembly

Committee: House Judiciary IV
Introduced by: Sen. Hartsell
Analysis of: First Edition

Date: June 22, 2016
Prepared by: Kara McCraw
Committee Co-Counsel

SUMMARY: *SUMMARY: SB 805 would enact a new Chapter in the General Statutes establishing the Revised Uniform Fiduciary Access to Digital Assets Act, which would establish a process for disclosure of a user's digital assets to a fiduciary, personal representative, guardian or trustee.*

SB 805 is identical to HB 1062, as introduced by Rep. Bryan, which was considered and given a favorable report by House Judiciary IV on June 8, 2016. HB 1062 is currently in Senate Rules and Operations of the Senate.

BILL ANALYSIS: See attached Memorandum from the General Statutes Commission.

EFFECTIVE DATE: HB 1062 would become effective when it becomes law.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



GENERAL STATUTES COMMISSION

300 N. Salisbury Street, Suite 401
Raleigh, NC 27603-5925
Tel. 919-733-6660 Fax 919-715-5459

Floyd M. Lewis
Revisor of Statutes

P. Bly Hall
Assistant Revisor of Statutes

MEMORANDUM

To: House Committee on Judiciary IV
From: General Statutes Commission
Re: SB 805 (Fiduciary Access to Digital Assets)
Date: June 21, 2016

General Comments

This bill contains the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADA) that was approved in 2015 by the Uniform Law Commission, with minor changes to conform to the court procedures, legal terminology, and statutory drafting style used in this State.

RUFADA was designed to address a growing problem caused by the increasing use of electronic formats for documents, accounts, pictures, memorabilia, communications, etc., that were formerly kept on paper or in some other tangible form. It is common for at least some of these documents, etc., to be stored as data on a computer server that is accessed via the Internet. Access is often password protected. Examples range from the trivial to things of major importance, including e-mail and e-mail attachments, text messages, photographs and recipes on a Facebook page, digital music, a Paypal account, business records stored "in the cloud," etc. RUFADA uses the term "digital assets" for a person's digital property and electronic communications and the term "custodian" for the companies that store those assets on their servers. Access to digital assets held by a custodian is usually governed by a terms-of-service agreement that may not address who has access if the person becomes incapacitated or dies. The result is a problem for both the custodian and the deceased or incapacitated person's family or other representatives, who have on occasion had difficulty in obtaining access to digital assets. RUFADA addresses this problem by providing procedures for disclosure of digital records to four types of fiduciaries: a personal representative of a decedent's estate, a trustee, a guardian for a minor or an incompetent person, and an attorney-in-fact. "Disclosure" includes obtaining full access, partial access, or copies of digital records.

Generally speaking, the fiduciary must send a request for disclosure of digital assets to the custodian, with a certified copy of the document granting fiduciary authority, for example, letters testamentary, and other specified information if requested by the custodian. The custodian has 60 days after receipt of all required information to comply with a request from a fiduciary to disclose digital assets or terminate an account. If the custodian does not comply, the fiduciary may seek a court order. A custodian is immune from liability for an act or omission done in good faith in compliance with the bill.

The bill makes conforming amendments to various sections of the General Statutes, authorizes the printing of official and drafters' comments, and is effective when it becomes law.

The major stakeholders, including Google and Facebook, participated in the development of RUFADA. Google and Facebook have informed the General Statutes Commission that they do not oppose this bill. The bill is supported by the Estate Planning and Fiduciary Law Section of the North Carolina Bar Association.

Specific Comments

Part I establishes a new Chapter 36F of the General Statutes, consisting of §§ 36F-1 through 36F-18.

§ 36F-1 provides a short title (Revised Uniform Fiduciary Access to Digital Assets Act).

§ 36F-2 defines terms used in the Chapter, including the following key terms:

- User – A person that has an account with a custodian (i.e., account containing digital assets).
- Custodian – A person that carries, maintains, processes, receives, or stores a digital asset of a user.
- Digital asset – An electronic record in which an individual has a right or interest and does not include an underlying asset or liability unless the asset or liability is itself an electronic record.
- Designated recipient – A person named in a designation by a user to the custodian to administer digital assets of the user.
- Electronic communication – A particular type of digital asset that is subject to the privacy protections of the Electronic Communications Privacy Act, 18 U.S.C. § 2510 et seq. The term is defined in 18 U.S.C. § 2510(12) and includes e-mails, text messages, and any other electronic communication between private parties.
- Fiduciary – An original, additional, or successor personal representative, guardian, attorney-in-fact, or trustee.

The terms "guardian" and "ward" are used in preference to RUFADA's "conservator" and "protected person."

§ 36F-3 is an applicability provision. The Chapter applies to personal representatives, attorneys-in-fact, trustees, and guardians, regardless of when their authority became effective. It applies to custodians of digital assets of a user if the user resides in this State or resided in this State at the time of the user's death.

§ 36F-4 establishes the following three-tier priority system for determining the user's intent with respect to the disclosure or nondisclosure of digital assets:

- Top priority is given to a user's designation to the custodian of a representative to whom digital assets may be disclosed (a "designated recipient"). As long as the custodian allows a user to change a designation, the designation will override a contrary direction by the user in a will, trust, power of attorney, or other record.
- If a user does not make a designation with the custodian, legal effect is given to the user's directions as provided in the user's will, trust, power of attorney, or other record.
- If a user provides no other direction, the terms-of-service agreement governing the account will apply.

§ 36F-5 provides that the Chapter does not alter the custodian's or user's rights under a terms-of-service agreement to access and use of digital assets and does not give a fiduciary or designated recipient any rights other than those held by the user.

§ 36F-6 allows a custodian to:

- Grant full access to the user's account.
- Grant partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged.
- Provide a digital or paper copy of the digital assets.

A custodian may refuse to comply with a direction by a user, or a request by a fiduciary for partial disclosure if separating out only a part of the digital assets would impose an "undue" burden on the custodian. The custodian may, but is not required to, seek a court order in this event.

A custodian may charge a reasonable administrative fee for the cost of disclosing digital assets and is not required to disclose a digital asset deleted by the user.

§ 36F-7 addresses the disclosure of the content of electronic communications sent or received by a decedent. If the decedent consented to disclosure or a court orders disclosure, disclosure is required if the personal representative of the decedent's estate gives the custodian a written request for disclosure along with specified documents and certain other specified information if requested by the custodian.

§ 36F-8 addresses the disclosure of a decedent's other digital assets. Unless the decedent prohibited disclosure or a court directs otherwise, disclosure is required if the personal representative of the decedent's estate gives the custodian a written request for disclosure along with specified documents and certain other specified information if requested by the custodian.

§§ 36F-9 and 36F-10 address the disclosure to an attorney-in-fact of the content of electronic communications sent or received by a person who has executed a power of attorney (a "principal") and the principal's other digital assets in essentially the same manner as §§ 36F-7 and 36F-8.

§ 36F-11 requires a custodian to disclose digital assets of an account held in trust, including content of electronic communications, when the trustee is the original user of the account unless the trust instrument or a court order provide otherwise.

§§ 36F-12 and 36F-13 address the disclosure of content of electronic communications and other digital assets held in trust when the trustee is not an original user of an account in essentially the same manner as §§ 36F-7/36F-9 and 36F-8/36F-10.

§ 36F-14 addresses the disclosure of digital assets to a guardian of a ward. A custodian must disclose the catalogue of electronic communications (but not their content) sent or received by a ward and any digital asset in which the ward has a right or interest, if the guardian gives the custodian a written request for disclosure, a certified copy of a court order giving the guardian authority over the ward's digital assets, and certain other specified information if requested by the custodian.

In addition, a guardian with general authority to manage a ward's assets may ask the custodian of the ward's digital assets to suspend or terminate the ward's account for good cause. The request must be accompanied by a certified copy of the court order giving the guardian authority over the ward's property.

§ 36F-15 addresses the duty and authority of fiduciaries. Under this section:

- The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including the duties of care, loyalty, and confidentiality.
- A fiduciary has the right to access any digital asset that is not held by a custodian or subject to a terms-of-service agreement.
- A fiduciary acting within the scope of the fiduciary's duties is an authorized user for the purpose of applicable computer-fraud and unauthorized-computer-access laws.
- A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account.
- A fiduciary may request termination of a user's account

§ 36F-16 gives a custodian 60 days after receipt of all required information to comply with a request by a fiduciary or a designated recipient to disclose digital assets or terminate an account. If the custodian does not comply, the fiduciary or designated recipient may apply to the court for an order directing compliance. An order under this section must contain a finding that compliance would not violate the Stored Communications Act, 18 U.S.C. § 2702.

§ 36F-16 also allows a custodian to notify a user that a fiduciary has made a request for disclosure of digital assets or account termination and to deny a request if the custodian is aware of any lawful access to the account following receipt of the request.

This section also provides immunity to a custodian and its officers, employees, and agents from liability for an act or omission done in good faith in compliance with Chapter 36F.

§§ 36F-17 and 36F-18 are standard uniform act provisions relating to uniformity of application and to the federal ESIGN act.

Part II makes conforming amendments to various sections of the General Statutes dealing with the powers of various fiduciaries. In addition, Section 2 amends G.S. 14-458 (Computer trespass; penalty) to provide that a person acting pursuant to Chapter 36F does not violate that section.

Part III authorizes the printing of official and drafters' comments and contains a severability and effective date provision.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 805*

Short Title: Fiduciary Access to Digital Assets. (Public)
Sponsors: Senator Hartsell (Primary Sponsor).
Referred to: Rules and Operations of the Senate

May 4, 2016

A BILL TO BE ENTITLED
AN ACT TO ENACT THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL
ASSETS ACT AND MAKE CONFORMING AMENDMENTS TO THE GENERAL
STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.
The General Assembly of North Carolina enacts:

PART I. REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 36F.

"Revised Uniform Fiduciary Access to Digital Assets Act.

"§ 36F-1. Short title.

This Chapter may be cited as the Revised Uniform Fiduciary Access to Digital Assets Act.

"§ 36F-2. Definitions.

The following definitions apply in this Chapter:

- (1) Account. – An arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.
- (2) Agent. – An attorney-in-fact granted authority under a durable or nondurable power of attorney.
- (3) Carries. – Engages in the transmission of an electronic communication.
- (4) Catalogue of electronic communications. – Information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.
- (5) Reserved.
- (6) Content of an electronic communication. – Information concerning the substance or meaning of the communication which meets all of the following:
 - a. Has been sent or received by a user.
 - b. Is in electronic storage by a custodian providing an electronic-communication service to the public or is carried or maintained by a custodian providing a remote-computing service to the public.
 - c. Is not readily accessible to the public.
- (7) Court. – The clerk of superior court or superior court judge, as provided in G.S. 1-7, or other court having competent jurisdiction over the estate, trust, fiduciary, or user, as applicable, or other matters relating to the content of this Chapter.



- (8) Custodian. – A person that carries, maintains, processes, receives, or stores a digital asset of a user.
- (9) Designated recipient. – A person chosen by a user using an online tool to administer digital assets of the user.
- (10) Digital asset. – An electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.
- (11) Electronic. – Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (12) Electronic communication. – Has the meaning set forth in 18 U.S.C. § 2510(12).
- (13) Electronic-communication service. – A custodian that provides to a user the ability to send or receive an electronic communication.
- (14) Fiduciary. – An original, additional, or successor personal representative, guardian, agent, or trustee.
- (14a) Guardian. – A person appointed by a court to manage the estate of a living individual. The term includes a general guardian, a guardian of the estate, an interim guardian, and a standby guardian appointed under Chapter 35A of the General Statutes.
- (15) Information. – Data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.
- (16) Online tool. – An electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.
- (17) Person. – An individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, business trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity.
- (18) Personal representative. – An executor, administrator, special administrator, or person that performs substantially the same function under a law of this State other than this Chapter.
- (19) Power of attorney. – A record that grants an agent authority to act in the place of a principal.
- (20) Principal. – An individual who grants authority to an agent in a power of attorney.
- (21) Reserved.
- (22) Record. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (23) Remote-computing service. – A custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic-communications system, as defined in 18 U.S.C. § 2510(14).
- (24) Terms-of-service agreement. – An agreement that controls the relationship between a user and a custodian.
- (25) Trustee. – A fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term includes an original, additional, and successor trustee, whether or not confirmed by a court.
- (26) User. – A person that has an account with a custodian.
- (26a) Ward. – An individual for whom a guardian has been appointed. The term includes an individual for whom an application for the appointment of a guardian is pending.

(27) Will. – Includes a codicil, a testamentary instrument that only appoints an executor, and an instrument that revokes or revises a testamentary instrument.

"§ 36F-3. Applicability.

(a) This Chapter applies to all of the following:

(1) A fiduciary acting under a will or power of attorney executed before, on, or after the effective date of this act.

(2) A personal representative acting for a decedent who died before, on, or after the effective date of this act.

(3) A guardian appointed before, on, or after the effective date of this act.

(4) A trustee acting under a trust created before, on, or after the effective date of this act.

(b) This Chapter applies to a custodian if the user resides in this State or resided in this State at the time of the user's death.

(c) This Chapter does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

"§ 36F-4. User direction for disclosure of digital assets.

(a) A user may use an online tool to direct the custodian to disclose to a designated recipient or not to disclose some or all of the user's digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.

(b) If a user has not used an online tool to give direction under subsection (a) of this section or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

(c) A user's direction under subsection (a) or (b) of this section overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

"§ 36F-5. Terms-of-service agreement.

(a) This Chapter does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

(b) This Chapter does not give a fiduciary or designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

(c) A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction under G.S. 36F-4.

"§ 36F-6. Procedure for disclosing digital assets.

(a) When disclosing digital assets of a user under this Chapter, the custodian may, at its sole discretion, do any of the following:

(1) Grant a fiduciary or designated recipient full access to the user's account.

(2) Grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged.

(3) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(b) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this Chapter.

(c) A custodian need not disclose under this Chapter a digital asset deleted by the user.

(d) If a user directs or a fiduciary requests a custodian to disclose under this Chapter some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose any of the following:

- (1) A subset limited by date of the user's digital assets.
- (2) All of the user's digital assets to the fiduciary or designated recipient.
- (3) None of the user's digital assets.
- (4) All of the user's digital assets to the court for review in camera.

"§ 36F-7. Disclosure of content of electronic communications of deceased user.

If a deceased user consented or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the personal representative gives the custodian all of the following:

- (1) A written request for disclosure in physical or electronic form.
- (2) A certified copy of the death certificate of the user.
- (3) A certified copy of letters of administration or letters testamentary of the personal representative, a certified copy of a small estate affidavit filed in accordance with G.S. 28A-25-1(b), a certified copy of a summary administration order described in G.S. 28A-28-3, or a court order.
- (4) Unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications.
- (5) If requested by the custodian, any of the following:
 - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account.
 - b. Evidence linking the account to the user.
 - c. A finding by the court of any of the following:
 1. That the user had a specific account with the custodian, identifiable by the information specified in sub-subdivision a. of this subdivision.
 2. That disclosure of the content of electronic communications of the user would not violate 18 U.S.C. § 2701, et seq., 47 U.S.C. § 222, or other applicable law.
 3. That, unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications.
 4. That disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

"§ 36F-8. Disclosure of other digital assets of deceased user.

Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user, if the personal representative gives the custodian all of the following:

- (1) A written request for disclosure in physical or electronic form.
- (2) A certified copy of the death certificate of the user.
- (3) A certified copy of letters of administration or letters testamentary of the personal representative, a certified copy of a small estate affidavit filed in accordance with G.S. 28A-25-1(b), a certified copy of a summary administration order described in G.S. 28A-28-3, or a court order.

(4) If requested by the custodian, any of the following:

- a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account.
- b. Evidence linking the account to the user.
- c. An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate.
- d. A finding by the court of any of the following:
 1. That the user had a specific account with the custodian, identifiable by the information specified in sub-subdivision a. of this subdivision.
 2. That disclosure of the user's digital assets is reasonably necessary for administration of the estate.

"§ 36F-9. Disclosure of content of electronic communications of principal.

To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content of an electronic communication if the agent gives the custodian all of the following:

- (1) A written request for disclosure in physical or electronic form.
- (2) An original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal.
- (3) A certification by the agent, under penalty of perjury, that the power of attorney is in effect.
- (4) If requested by the custodian, any of the following:
 - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account.
 - b. Evidence linking the account to the principal.

"§ 36F-10. Disclosure of other digital assets of principal.

Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal, and digital assets, other than the content of communications, of the principal if the agent gives the custodian all of the following:

- (1) A written request for disclosure in physical or electronic form.
- (2) An original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal.
- (3) A certification by the agent, under penalty of perjury, that the power of attorney is in effect.
- (4) If requested by the custodian, any of the following:
 - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account.
 - b. Evidence linking the account to the principal.

"§ 36F-11. Disclosure of digital assets held in trust when trustee is original user.

Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

"§ 36F-12. Disclosure of contents of electronic communications held in trust when trustee not original user.

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic

communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian all of the following:

- (1) A written request for disclosure in physical or electronic form.
- (2) A verified copy of the trust instrument, or a certification of the trust under G.S. 36C-10-1013, that includes consent to disclosure of the content of electronic communications to the trustee.
- (3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust.
- (4) If requested by the custodian, any of the following:
 - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account.
 - b. Evidence linking the account to the trust.

"§ 36F-13. Disclosure of other digital assets held in trust when trustee not original user.

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian all of the following:

- (1) A written request for disclosure in physical or electronic form.
- (2) A certified copy of the trust instrument or a certification of the trust under G.S. 36C-10-1013.
- (3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust.
- (4) If requested by the custodian, any of the following:
 - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account.
 - b. Evidence linking the account to the trust.

"§ 36F-14. Disclosure of digital assets to guardian of ward.

(a) After a hearing on a motion in the cause pursuant to G.S. 35A-1207, the court may grant a guardian access to the digital assets of a ward.

(b) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a guardian the catalogue of electronic communications sent or received by a ward and any digital assets, other than the contents of electronic communications, in which the ward has a right or interest if the guardian gives the custodian all of the following:

- (1) A written request for disclosure in physical or electronic form.
- (2) A certified copy of the court order that gives the guardian authority over the digital assets of the ward.
- (3) If requested by the custodian, any of the following:
 - a. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the ward.
 - b. Evidence linking the account to the ward.

(c) A guardian with general authority to manage the assets of a ward may request a custodian of the digital assets of the ward to suspend or terminate an account of the ward for good cause. A request made under this section must be accompanied by a certified copy of the court order giving the guardian authority over the ward's property.

"§ 36F-15. Fiduciary duty and authority.

(a) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including all of the following:

- (1) The duty of care.

- 1 (2) The duty of loyalty.
2 (3) The duty of confidentiality.
3 (b) All of the following apply to a fiduciary's or designated recipient's authority with
4 respect to a digital asset of a user:
5 (1) Except as otherwise provided in G.S. 36F-4, it is subject to the applicable terms
6 of service.
7 (2) It is subject to other applicable law, including copyright law.
8 (3) In the case of a fiduciary, it is limited by the scope of the fiduciary's duties.
9 (4) It shall not be used to impersonate the user.
10 (c) A fiduciary with authority over the property of a decedent, ward, principal, or settlor
11 has the right to access any digital asset in which the decedent, ward, principal, or settlor had a
12 right or interest and that is not held by a custodian or subject to a terms-of-service agreement.
13 (d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the
14 property of the decedent, ward, principal, or settlor for the purpose of applicable computer fraud
15 and unauthorized computer access laws, including G.S. 14-458.
16 (e) A fiduciary with authority over the tangible, personal property of a decedent, ward,
17 principal, or settlor:
18 (1) Has the right to access the property and any digital asset stored in it; and
19 (2) Is an authorized user for the purpose of computer fraud and
20 unauthorized-computer-access laws, including G.S. 14-458.
21 (f) A custodian may disclose information in an account to a fiduciary of the user when the
22 information is required to terminate an account used to access digital assets licensed to the user.
23 (g) A fiduciary of a user may request a custodian to terminate the user's account. A request
24 for termination must be in writing, in either physical or electronic form, and accompanied by all of
25 the following:
26 (1) If the user is deceased, a certified copy of the death certificate of the user.
27 (2) A certified copy of letters of administration or letters testamentary of the
28 personal representative, a certified copy of a small estate affidavit filed in
29 accordance with G.S. 28A-25.1(b), a certified copy of a summary
30 administration order described in G.S. 28A-28-3, or a court order, power of
31 attorney, or trust giving the fiduciary authority over the account.
32 (3) If requested by the custodian, any of the following:
33 a. A number, username, address, or other unique subscriber or account
34 identifier assigned by the custodian to identify the user's account.
35 b. Evidence linking the account to the user.
36 c. A finding by the court that the user had a specific account with the
37 custodian, identifiable by the information specified in sub-subdivision a.
38 of this subdivision.
39 **"§ 36F-16. Custodian compliance and immunity.**
40 (a) Not later than 60 days after receipt of the information required under G.S. 36F-7
41 through G.S. 36F-15, a custodian shall comply with a request under this Chapter from a fiduciary
42 or designated recipient to disclose digital assets or terminate an account. If the custodian fails to
43 comply, the fiduciary or designated recipient may apply to the court for an order directing
44 compliance.
45 (b) An order under subsection (a) of this section directing compliance must contain a
46 finding that compliance is not in violation of 18 U.S.C. § 2702.
47 (c) A custodian may notify the user that a request for disclosure or to terminate an account
48 was made under this Chapter.
49 (d) A custodian may deny a request under this Chapter from a fiduciary or designated
50 recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any

lawful access to the account following the receipt of the fiduciary's or designated recipient's request.

(e) This Chapter does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this Chapter to obtain a court order which does all of the following:

(1) Specifies that an account belongs to the ward or principal.

(2) Specifies that there is sufficient consent from the ward or principal to support the requested disclosure.

(3) Contains a finding required by law other than this Chapter.

(f) A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this Chapter.

"§ 36F-17. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

"§ 36F-18. Relation to Electronic Signatures in Global and National Commerce Act.

This Chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. § 7003(b)."

PART II. CONFORMING AMENDMENTS TO THE GENERAL STATUTES

SECTION 2. G.S. 14-458 reads as rewritten:

"§ 14-458. Computer trespass; penalty.

(a) Except as otherwise made unlawful by this Article, it shall be unlawful for any person to use a computer or computer network without authority and with the intent to do any of the following:

(1) Temporarily or permanently remove, halt, or otherwise disable any computer data, computer programs, or computer software from a computer or computer network.

(2) Cause a computer to malfunction, regardless of how long the malfunction persists.

(3) Alter or erase any computer data, computer programs, or computer software.

(4) Cause physical injury to the property of another.

(5) Make or cause to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network.

(6) Falsely identify with the intent to deceive or defraud the recipient or forge commercial electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk commercial electronic mail through or into the computer network of an electronic mail service provider or its subscribers.

For purposes of this subsection, a person is "without authority" when (i) the person has no right or permission of the owner to use a computer, or the person uses a computer in a manner exceeding the right or permission, or (ii) the person uses a computer or computer network, or the computer services of an electronic mail service provider to transmit unsolicited bulk commercial electronic mail in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider.

...

(d) It is not a violation of this section for a person to act pursuant to Chapter 36F of the General Statutes."

SECTION 3. G.S. 28A-13-3(a) reads as rewritten:

"§ 28A-13-3. Powers of a personal representative or fiduciary.

(a) Except as qualified by express limitations imposed in a will of the decedent or a court order, and subject to the provisions of G.S. 28A-13-6 respecting the powers of joint personal representatives, a personal representative has the power to perform in a reasonable and prudent manner every act which a reasonable and prudent person would perform incident to the collection, preservation, liquidation or distribution of a decedent's estate so as to accomplish the desired result of settling and distributing the decedent's estate in a safe, orderly, accurate and expeditious manner as provided by law, including the powers specified in the following subdivisions:

...

(3a) To obtain the decedent's digital assets, as provided in Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets.

...."

SECTION 4. G.S. 32-27 reads as rewritten:

"§ 32-27. Powers which may be incorporated by reference in trust instrument.

The following powers may be incorporated by reference as provided in G.S. 32-26:

...

(32) Obtain Digital Assets. – To obtain any digital assets to the extent permitted by Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets."

SECTION 5. G.S. 32A-1 reads as rewritten:

"§ 32A-1. Statutory Short Form of General Power of Attorney.

The use of the following form in the creation of a power of attorney is lawful, and, when used, it shall be construed in accordance with the provisions of this Chapter.

"NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32A OF THE NORTH CAROLINA GENERAL STATUTES WHICH EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES CONCERNED.

State of _____.

County of _____.

I _____, appoint _____ to be my attorney-in-fact, to act in my name in any way which I could act for myself, with respect to the following matters as each of them is defined in Chapter 32A of the North Carolina General Statutes. (DIRECTIONS: Initial the line opposite any one or more of the subdivisions as to which the principal desires to give the attorney-in-fact authority.)

- | | | |
|------|---|-------|
| (1) | Real property transactions..... | _____ |
| (2) | Personal property transactions | _____ |
| (2a) | <u>Obtain, request, and authorize disclosure of digital assets.....</u> | _____ |
| (3) | Bond, share, stock, securities <u>securities</u> , and commodity transactions..... | _____ |
| (4) | Banking transactions | _____ |
| (5) | Safe deposits | _____ |
| (6) | Business operating transactions | _____ |
| (7) | Insurance transactions | _____ |
| (8) | Estate transactions | _____ |
| (9) | Personal relationships and affairs..... | _____ |
| (10) | Social security and unemployment | _____ |
| (11) | Benefits from military service..... | _____ |
| (12) | Tax matters..... | _____ |
| (13) | Employment of agents..... | _____ |

- 1 (14) Gifts to charities, and to individuals other than the
 2 attorney-in-fact.....
 3 (15) Gifts to the named attorney-in-fact
 4 (16) Renunciation of an interest in or power over property to
 5 benefit persons other than the attorney-in-fact.....
 6 (17) Renunciation of an interest in or power over property
 7 to benefit persons including the attorney-in-fact
 8 (If power of substitution and revocation is to be given, add: 'I also give to such person full
 9 power to appoint another to act as my attorney-in-fact and full power to revoke such
 10 appointment.')
 11 (If period of power of attorney is to be limited, add: "This power terminates ____, ____")
 12 (If power of attorney is to be a durable power of attorney under the provision of Article 2 of
 13 Chapter 32A and is to continue in effect after the incapacity or mental incompetence of the
 14 principal, add: 'This power of attorney shall not be affected by my subsequent incapacity or mental
 15 incompetence.')
 16 (If power of attorney is to take effect only after the incapacity or mental incompetence of the
 17 principal, add: 'This power of attorney shall become effective after I become incapacitated or
 18 mentally incompetent.')
 19 (If power of attorney is to be effective to terminate or direct the administration of a custodial
 20 trust created under the Uniform Custodial Trust Act, add: 'In the event of my subsequent
 21 incapacity or mental incompetence, the attorney-in-fact of this power of attorney shall have the
 22 power to terminate or to direct the administration of any custodial trust of which I am the
 23 beneficiary.')
 24 (If power of attorney is to be effective to determine whether a beneficiary under the Uniform
 25 Custodial Trust Act is incapacitated or ceases to be incapacitated, add: 'The attorney-in-fact of this
 26 power of attorney shall have the power to determine whether I am incapacitated or whether my
 27 incapacity has ceased for the purposes of any custodial trust of which I am the beneficiary.')
 28

28 Dated _____, _____.
 29 _____

(Seal)

Signature

30 STATE OF _____ COUNTY OF _____
 31

32 On this _____ day of _____, _____, personally appeared before me, the said named
 33 _____ to me known and known to me to be the person described in and who executed the
 34 foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being
 35 duly sworn by me, made oath that the statements in the foregoing instrument are true.

36 My Commission Expires _____.
 37

38 _____
 39 (Signature of Notary Public)

Notary Public (Official Seal)""

40 **SECTION 6.** G.S. 32A-2 reads as rewritten:

41 **"§ 32A-2. Powers conferred by the Statutory Short Form Power of Attorney set out in**
 42 **G.S. 32A-1.**

43 The Statutory Short Form Power of Attorney set out in G.S. 32A-1 confers the following
 44 powers on the attorney-in-fact named therein:

45 ...

46 (2a) Obtain, Request, and Authorize Disclosure of Digital Assets. – To obtain any
 47 digital assets, as provided in Chapter 36F of the General Statutes, including
 48 catalogues and content, and to request and authorize disclosure of the digital
 49 assets.

50 (3) Bond, Share, Stock, ~~Securities~~ Securities, and Commodity Transactions. – To
 51 request, ask, demand, sue for, recover, collect, receive, and hold and possess

any bond, share, instrument of similar character, commodity interest or any instrument with respect thereto together with the interest, dividends, proceeds, or other distributions connected therewith, as now are, or shall hereafter become, owned by, or due, owing payable, or belonging to, the principal at the time of execution or in which the principal may thereafter acquire interest, to have, use, and take all lawful means and equitable and legal remedies, procedures, and writs in the name of the principal for the collection and recovery thereof, and to adjust, sell, compromise, and agree for the same, and to make, execute, and deliver for the principal, all endorsements, acquittances, releases, receipts, or other sufficient discharges for the same.

...."

SECTION 7. G.S. 35A-1251 reads as rewritten:

"§ 35A-1251. Guardian's powers in administering incompetent ward's estate.

In the case of an incompetent ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

...

(2a) To obtain the ward's digital assets, as provided in Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets.

...."

SECTION 8. G.S. 35A-1252 reads as rewritten:

"§ 35A-1252. Guardian's powers in administering minor ward's estate.

In the case of a minor ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

...

(2a) To obtain the ward's digital assets, as provided in Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets.

...."

SECTION 9. G.S. 36C-8-816 reads as rewritten:

"§ 36C-8-816. Specific powers of trustee.

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

...

(31) Distribute the assets of an inoperative trust consistent with the authority granted under G.S. 28A-22-110; ~~and~~

(32) Renounce, in accordance with Chapter 31B of the General Statutes, an interest in or power over property, including property that is or may be burdened with liability for violation of environmental ~~law~~; law; and

(33) Obtain any digital assets, as provided in Chapter 36F of the General Statutes, including catalogues and content, and to request and authorize disclosure of the digital assets."

PART III. EFFECTIVE DATE AND AUTHORIZATION FOR THE PRINTING OF OFFICIAL AND DRAFTERS' COMMENTS

1 **SECTION 10.** The Revisor of Statutes shall cause to be printed, as annotations to the
2 published General Statutes, all relevant portions of the Official Comments to the Revised Uniform
3 Fiduciary Access to Digital Assets Act (2015) and all explanatory comments of the drafters of this
4 act as the Revisor may deem appropriate.

5 **SECTION 11.** If any provision of this act or its application to any person or
6 circumstance is held invalid, the invalidity does not affect other provisions or applications of this
7 act that can be given effect without the invalid provision or application, and to this end, the
8 provisions of this act are severable.

9 **SECTION 12.** This act is effective when it becomes law.



SENATE BILL 807: Conform Full-payment Check Law to UCC.

2016-2017 General Assembly

Committee: House Judiciary IV
Introduced by: Sen. Hartsell
Analysis of: First Edition

Date: June 22, 2016
Prepared by: Nicholas Giddings
Committee Co-Counsel

SUMMARY: *Senate Bill 807 would provide an option for claimants to repay monies received as full satisfaction of a claim within 90 days of receipt to maintain their claim against the debtor for full payment. This change was recommended by the General Statutes Commission and will allow for North Carolina to mirror the Uniform Commercial Code ("UCC").*

CURRENT LAW: G.S. 25-3-311 allows a debtor to settle an unliquidated debt or a debt disputed in good faith if they tender payment to the creditor with conspicuous language, either on the payment instrument or in an accompanying statement, noting the payment is in full satisfaction of the claim. If the creditor deposits the payment, the debt is discharged.

One exception to discharge is provided to organizations that can prove it sent a conspicuous statement to the debtor within a reasonable time before payment asserting that any debt disputes and full satisfaction payments must be sent to a designated person, office or place and that designated person, office or place did not receive the payment instrument or dispute communication.

BILL ANALYSIS: Senate Bill 807 would rewrite G.S. 25-3-311(c) to include an additional exception to discharge in cases where the claimant, whether or not an organization, can prove that within 90 days of receipt of the satisfaction instrument it tendered repayment of the monies back to the debtor. This exception would not apply to organizations that sent a statement to the debtor asserting that any full satisfaction payments or communications concerning disputed debts must be sent to a designated person, office or place and the debtor sent the instrument or communication to that designated entity.

This change will fully conform G.S. 25-3-311 to mirror the UCC. For additional information, see the General Statutes Commission's memo on Senate Bill 807.

EFFECTIVE DATE: This act becomes effective October 1, 2016, and applies to negotiable instruments tendered in full satisfaction of a claim on or after that date.

BACKGROUND: The UCC is a model body of laws governing commercial transactions. As it is a model code, states are free to adopt, reject or modify the UCC language when enacting its own statutes.

In 1995, the North Carolina General Assembly adopted the current language of G.S. 25-3-311. In adopting the UCC language it deleted the 90-day repayment exception. The language was deleted at that time because of some opposition from individual legislators, at least one being unsympathetic to automated check processing; thus, as a compromise, the language was removed.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578



GENERAL STATUTES COMMISSION

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Floyd M. Lewis
Revisor of Statutes

P. Bly Hall
Assistant Revisor of Statute

To: House Committee on Judiciary IV
From: General Statutes Commission
Re: SB 807 (Conform Full-payment Check Law to UCC)
Date: June 21, 2016

General Comments

This bill conforms G.S. 25-3-311(c) to the corresponding provision of Section 3-311 of the Uniform Commercial Code.

Background

Under case law, a debtor can settle an unliquidated¹ debt or a debt disputed in good faith by sending the person to whom the debt is owed a check marked "paid in full" or similar language or accompanied by a written communication that makes it clear that the check is being tendered in full satisfaction of the debt. The check and the notation or communication are treated as an informal offer to settle the dispute. If the creditor cashes the check, the creditor is treated as having accepted the offer and the debt is discharged even if the check is for less money than the amount claimed by the creditor.

This case law principle was expressly incorporated in 1990 into Revised Article 3 (Negotiable Instruments) of the Uniform Commercial Code in Section 3-311(a) and (b).

The Uniform Law Commission, however, provided two exceptions to the case law principle. First, Section 3-311(c)(1) allows organizations to establish a person, office, or place to receive this type of payment. If the organization has notified the debtor about the designated person, office, or place, the check and any accompanying document must be sent there or the debt will not be treated as discharged. Second, Section 3-311(c)(2) allows any creditor that has not designated a person, office, or place under subdivision (c)(1) to repay the amount of the check within 90 days and reinstate the debt (including the dispute). As a whole, Section 3-311(c) is designed to allow a creditor that uses a modern high-volume automated check processing system to avoid an inadvertent accord and satisfaction.

When Revised Article 3 was introduced in this State at the recommendation of the General Statutes Commission in 1995, the bill encountered some opposition from individual legislators. At least one of these was unsympathetic to automated check processing. As a compromise, it was agreed to remove the 90-day repayment option in subdivision (c)(2), and that provision was not enacted as part of G.S. 25-3-311(c).

Twenty-one years later, this State's version of Section 3-311(c) is an anomaly and a trap for the unwary business that operates across state lines. The North Carolina Bar Association's Business Law Section and Commercial Law Committee requested the General Statutes Commission to recommend conforming G.S. 25-3-311(c) to Section 3-311 of the Uniform Act in the interest of uniformity of the law in this area. The General Statutes Commission

¹ An unliquidated debt is one in which the existence of the debt is not disputed but the amount is uncertain or disputed.

noted the passage of time and the more wide-spread acceptance of automated processing systems and agreed that the requested amendment should be recommended.

Specific Comments

Section 1 amends G.S. 25-3-311(c) to designate as subdivision (1) the existing exception, which allows the designation of a person, office, or place for a debtor to send a check tendered in full payment of an unliquidated or disputed debt, and to incorporate as subdivision (2) the Uniform Act's additional exception allowing a creditor 90 days to repay a check tendered in full satisfaction of such a debt and reinstate the debt.

Section 2 provides an effective date of October 1, 2016, and provides for the act to apply to negotiable instruments tendered in full satisfaction of a claim on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 807*

Short Title: Conform Full-payment Check Law to UCC. (Public)

Sponsors: Senator Hartsell (Primary Sponsor).

Referred to: Judiciary I

May 4, 2016

A BILL TO BE ENTITLED

AN ACT TO CONFORM TO THE COMPARABLE PROVISION OF THE UNIFORM
COMMERCIAL CODE THIS STATE'S LAW ON ACCORD AND SATISFACTION OF A
DISPUTED DEBT THROUGH THE TENDERING OF A NEGOTIABLE INSTRUMENT
AS FULL PAYMENT OF THE DEBT, AS RECOMMENDED BY THE GENERAL
STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 25-3-311 reads as rewritten:

"§ 25-3-311. Accord and satisfaction by use of instrument.

(a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

(b) Unless subsection (c) of this section applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(c) Subject to subsection (d) of this section, a claim is not discharged under subsection (b) of this section ~~when the claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and (ii) the instrument or accompanying communication was not received by that designated person, office, or place,~~ if either of the following applies:

- (1) The claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place and (ii) the instrument or accompanying communication was not received by that designated person, office, or place.
- (2) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This subdivision does not apply if the claimant is an organization that sent a statement complying with clause (i) of subdivision (1) of this subsection.



1 (d) A claim is discharged if the person against whom the claim is asserted proves that
2 within a reasonable time before collection of the instrument was initiated, the claimant, or an agent
3 of the claimant having direct responsibility with respect to the disputed obligation, knew that the
4 instrument was tendered in full satisfaction of the claim."

5 **SECTION 2.** This act becomes effective October 1, 2016, and applies to negotiable
6 instruments tendered in full satisfaction of a claim on or after that date.

**NORTH CAROLINA GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES**

**JUDICIARY IV COMMITTEE REPORT
Representative Hugh Blackwell, Co-Chair
Representative Rob Bryan, Co-Chair**

FAVORABLE

SB 805

Fiduciary Access to Digital Assets.

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|-----------------------|-------|
| Draft Number: | None |
| Serial Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |
| Floor Manager: | Bryan |

SB 807

Conform Full-payment Check Law to UCC.

| | |
|-----------------------|-------|
| Draft Number: | None |
| Serial Referral: | None |
| Recommended Referral: | None |
| Long Title Amended: | No |
| Floor Manager: | Bryan |

TOTAL REPORTED: 2



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VISITOR REGISTRATION SHEET

House Committee on Judiciary IV

06/22/2016

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

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| Nathan Batts | NCBA |
| Emily Massey | Ward and Smith |
| Ashley Klein | Ward and Smith, PA |
| Madeline Hurley | Ward and Smith, P.A. |
| Whitney Christensen | Ward and Smith, PA |
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VISITOR REGISTRATION SHEET

House Committee on Judiciary IV

06/22/2016

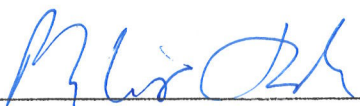
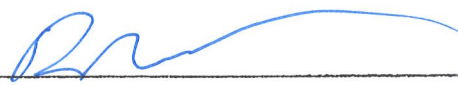
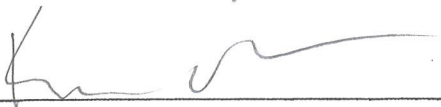
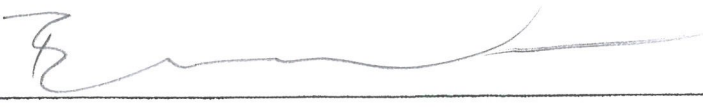
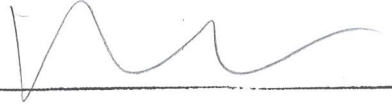
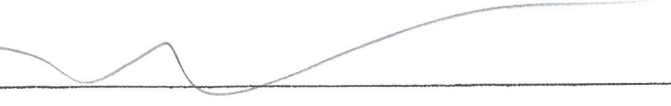
Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

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| Louise C. Puggott | Clerk of Court |
| Mildred Spearman | NCAOC |
| Phoebe Landon | mwcc |
| Caroline Miller | AMGA |
| Carly Weaver | Office of the Governor |
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| Nora Spencer | UNC |
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