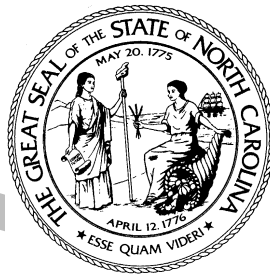


Biennial Report
To The
General Assembly
Of North Carolina
2021-2023



THE GENERAL STATUTES COMMISSION

DRAFT

**REPORT OF THE
GENERAL STATUTES COMMISSION
2021-2023**

TO THE GENERAL ASSEMBLY OF NORTH CAROLINA:

The General Assembly adopted the General Statutes as the general law in North Carolina in 1943 and at the time assigned to the Division of Legislative Drafting and Codification of Statutes of the Attorney General's Office the duty of keeping the laws as clear and concise as possible by means of continuous statutory research and correction.

The General Statutes Commission was created by the General Assembly in 1945 for the purpose of advising the Division of Legislative Drafting in its continuous statutory research and correction, in the publication of the General Statutes, and in making a continuing study of all matters involved in the preparation and publication of modern codes of law. In 1951, the General Assembly expressly authorized the General Statutes Commission to recommend substantive changes in the law. In 1981, the General Assembly expressly authorized the General Statutes Commission to receive and consider proposed changes in the law recommended by The American Law Institute, by the National Conference of Commissioners on Uniform State Laws (also known as the Uniform Law Commission), or by other learned bodies.

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

MEMBERSHIP AND MEETINGS OF THE COMMISSION DURING THE BIENNIUM

Seven members were reappointed during the biennium. Mr. Peter G. Pappas of Greensboro was reappointed by the President of the North Carolina Bar Association. Representative Ted Davis, Jr., of Wilmington was reappointed by the Speaker of the House. Mr. Marc D. Bishop of Greensboro was reappointed by the Governor. Mr. Carlton M. Mansfield of Pembroke was reappointed by the Governor. Professor John J. Korzen of Kernersville was reappointed by the Dean of Wake Forest University School of Law. Ms. Sabra J. Faires of Cary was reappointed by the General Statutes Commission. Professor Lewis Moore Everett of Durham was reappointed by the Dean of The University of North Carolina School of Law.

Six new members were appointed during the biennium. Senator Amy S. Galey of Burlington was appointed by the President Pro Tempore of the Senate to replace Senator Chuck Edwards of Flat Rock. Professor Shelly Bibb DeAdder of Durham was appointed by the Dean of the North Carolina Central University School of Law to replace Professor Susan E. Hauser of Raleigh. Professor Michael B. Kent of Cary was appointed by the Dean of Campbell University

School of Law to replace Professor Richard T. Bowser of Raleigh. Professor Sarah H. Ludington of Durham was appointed by the Dean of Duke University School of Law to replace Professor Jane R. Wettach of Durham. Professor Andrew J. Haile of Summerfield was appointed by the Dean of Elon University School of Law to replace Professor Vanessa R. Zboreak of Winston-Salem. Mr. Joseph J. Kalo IV of Burlington was appointed by the President of the North Carolina State Bar to replace Mr. Starkey Sharp of Kitty Hawk.

The General Statutes Commission meets regularly on the first Friday of each month except July and August. Special meetings may be called by the chair or by any two members of the Commission whenever the work of the Commission requires. The Commission's policies are available through the Revisor of Statutes, Bill Drafting Division, North Carolina General Assembly, 300 N. Salisbury Street, Suite 401, Raleigh, North Carolina 27603-5925; telephone (919) 733-6660; email address David.Unwin@ncleg.gov.

PUBLICATION OF THE GENERAL STATUTES

A 2021 replacement set of the General Statutes of North Carolina, consisting of 28 volumes plus two index volumes (volumes 29 and 30), was published in December 2021. The 28 volumes in the 2021 replacement set include one additional volume that resulted from the splitting of former volume 26 into new volumes 26 and 27 to reduce the size of the volumes. The 2021 replacement set contains the general laws of a permanent nature enacted by the General Assembly through Session Laws 2021-162.

A 2022 edition of the Annotated Rules of North Carolina, consisting of two volumes, was published in December 2021, and a supplement was published in May 2022.

A 2022 Special Supplement to the 2021 replacement set of the General Statutes of North Carolina, consisting of two volumes, was published in April 2022. The 2022 Special Supplement is a cumulative supplement that contains the general laws of a permanent nature enacted by the General Assembly from Session Laws 2021-163 through 2021-192.

A 2022 Interim Supplement to the 2021 replacement set of the General Statutes of North Carolina, consisting of two volumes, and a 2022 Replacement Index, consisting of two volumes, were published in November 2022. The 2022 Interim Supplement is a cumulative supplement that contains the acts of a general and permanent nature enacted by the General Assembly in Session Laws 2021-163 through 2021-192 and Session Laws 2022-1 through 2022-75.

A 2023 edition of the Annotated Rules of North Carolina, consisting of two volumes, was published in December 2022, and a supplement will be published in May 2023.

TRUSTS DRAFTING COMMITTEE

The General Statutes Commission originally created the Trusts Drafting Committee in 1973 to draft a revision of the trust laws of the State. The Committee's initial project was a revision

of Chapter 36 of the General Statutes, containing the trust statutes of North Carolina, which was enacted as Chapter 685 of the 1977 Session Laws. Since that time, the Committee has continually provided the General Statutes Commission with expertise in the areas of estates, trusts, and property and has prepared legislative proposals for the Commission's consideration; many of these have been enacted by the General Assembly. Members of the Committee during the biennium were Ms. Erica A. Ferranti, Professor John F. DeStefano, and Professor Rosa Newman-Ruffin. The Revisor of Statutes serves as an ex officio member of the Committee.

COOPERATION WITH OTHER GROUPS

The General Statutes Commission has cooperated and coordinated with the North Carolina General Assembly, North Carolina Bar Association, Duke University School of Law's First Amendment Clinic, North Carolina Administrative Office of the Courts, North Carolina Conference of Clerks of Superior Court, North Carolina Advocates for Justice, North Carolina Justice Center, North Carolina Chamber, North Carolina Creditors Bar Association, North Carolina Home Builders Association, University of North Carolina School of Government, North Carolina Bankers Association, North Carolina Department of Health and Human Services, North Carolina Department of Justice, North Carolina Office of the Commissioner of Banks, and others. The Commission continues its interest in the work of the Uniform Law Commission and The American Law Institute.

The General Statutes Commission has continued its efforts to circulate its proposals among individuals and groups believed to be interested in the various topics considered by the Commission.

The General Statutes Commission welcomes and solicits recommendations from any source as to areas for further legislation. Recommendations may be brought to the attention of the Revisor of Statutes, Bill Drafting Division, North Carolina General Assembly, 300 North Salisbury Street, Suite 401, Raleigh, North Carolina 27603-5925; telephone (919) 733-6660; email address David.Unwin@ncleg.gov. The Revisor of Statutes may also be contacted for legislative history of the Commission's legislative proposals.

LEGISLATION RECOMMENDED TO THE 2021 GENERAL ASSEMBLY

The following chart shows bills recommended by the General Statutes Commission to the 2021 General Assembly and their disposition:

General Statutes Commission – Recommended Bill Chart 2021-2022				
Bill Number	Short Title	GSC Docket	Long Title	Session Law
<u>HB 68</u>	GSC Licensing Boards and	DN 19-2	An act to eliminate provisions that broadly criminalize violations of rules of certain licensing boards and commissions and to	2021-84

Bill Number	Short Title	GSC Docket	Long Title	Session Law
	Comm'n's/ Rule Crimes		make technical and conforming amendments in the surrounding language, as recommended by the General Statutes Commission.	
SB 197	GSC Trusts & Estates Amendments	DN 20-2, 20-3, and 20-6	An act to (i) remove the location requirement for holographic wills to align North Carolina with all other states recognizing holographic wills, (ii) update the definitions of "terms of a trust" and "trust instrument" and revise the article on power holders of trusts, and (iii) clarify the trust exclusion to the rule against perpetuities and make technical changes in the surrounding language, as recommended by the General Statutes Commission.	2021-85
HB 67	GSC Technical Corrections 2021	DN 21-1	An act to make technical corrections to the General Statutes and Session Laws, as recommended by the General Statutes Commission.	2021-88
SB 196	GSC Sale of Property Amendments/ Delay Prosec Split	DN 18-5, 18-6, 20-5, and 21-4	An act to (i) update the mailing method of notice to a judgment debtor of an execution sale of real property, (ii) clarify the effects of a default bid in private judicial sales and public or private partition sales, (iii) amend the tax foreclosure statutes and make technical changes, (iv) make amendments affecting the validity of notarial acts, (v) make amendments affecting real property, as recommended by the General Statutes Commission, and (vi) to delay the reassignment of District 36, Burke, Caldwell, and Catawba Counties, into two separate prosecutorial districts. ¹	2021-91
SB 198	GSC Good Funds Settlement/ Comm. Receivership	DN 18-9	An act to provide that a settlement agent may disburse settlement proceeds in reliance on a check drawn on the account of or issued by a licensed mortgage lender, to make amendments relating to the North Carolina Commercial Receivership Act, and to make technical changes to various laws regulating	2021-93

¹ The first five parts of this bill were recommended by the General Statutes Commission. Part VI of the bill was added by the House before enactment.

Bill Number	Short Title	GSC Docket	Long Title	Session Law
			financial practices, as recommended by the General Statutes Commission.	
SB 769	GSC Postponement /Judicial & Execution Sales	DN 21-2	An act to align certain provisions for the postponement of judicial sales and execution sales with the corresponding provisions for postponement of sales authorized under power of sale and to make technical, conforming, and clarifying changes, as recommended by the General Statutes Commission.	2022-60
SB 768	GSC Technical Corrections 2022/ Additional TC	DN 22-1	An act to update cross-references throughout the General Statutes to conform to the consolidated chapter on land-use laws, to make other technical corrections, as recommended by the General Statutes Commission, and to make an additional technical correction. ²	2022-62
HB 1018	GSC Bar Ass'n Proposals/ Landmark Designation	DN 22-3	An act to (i) make various amendments affecting real property, (ii) strengthen the personal liability protection for limited liability partnerships, (iii) align the authority to transfer venue for judicial review of contested cases with other cases, (iv) make a conforming change to account for special fiduciaries in guardianship proceedings, and (v) clarify and improve the landmark designation procedure, as recommended by the General Statutes Commission.	2022-64
HB 1017	GSC Uniform Public Expression Protection Act	DN 21-3	An act to enact the Uniform Public Expression Protection Act, as recommended by the General Statutes Commission.	Not Enacted

RECOMMENDED LEGISLATION, 2023

During the biennium, the General Statutes Commission has received suggestions for statutory changes from various sources, including practicing attorneys, State officials and agencies, its Trusts Drafting Committee, and its own membership. In addition, the Commission

² The first two parts of this bill were recommended by the General Statutes Commission. Part III of the bill was added by the House before enactment.

has from time to time undertaken studies of specific areas of the law to determine the need for statutory change. The Commission reviewed all suggested changes and docketed those that it believed warranted further consideration. Some have resulted in recommended bills, and others are still under consideration.

The proposals set out below have been considered by the Commission and found to warrant recommendation to the General Assembly. A brief description of each proposal is set out and, in addition, a separate memorandum for each proposal will be made available to the members of the General Assembly.

The Commission, acting pursuant to G.S. 164-13, therefore recommends enactment of proposals in the following areas:

1. **An act to enact the North Carolina Uniform Electronic Wills Act.** This proposal is based on the Uniform Electronic Wills Act, an act recently promulgated by the Uniform Law Commission. The purpose of this proposal is to allow for wills to be executed in electronic form and to be electronically signed. The Act also provides how an electronic will may be revoked, how to execute a self-proved will, and how to create a certified paper copy of an electronic will, which can be probated.

(GSC DN 20-4)

2. **An act to enact the Uniform Public Expression Protection Act.** This proposal enacts the Uniform Public Expression Protection Act, an act recently promulgated by the Uniform Law Commission. The purpose of this Act is to protect people from lawsuits designed to deter or punish the constitutional exercise of the right of free speech and other constitutionally protected forms of public expression. These lawsuits are often referred to as strategic lawsuits against public participation, or "SLAPPs." This Act creates a special motion for expedited relief that stays the lawsuit to allow a court to first determine whether the lawsuit is a SLAPP and, if so, to dismiss it.

(GSC DN 21-3)

3. **An act to conform the General Statutes to the North Carolina Rules of Appellate Procedure by updating obsolete references to "assignments of error" and "exceptions" and to make other technical changes.** This proposal, requested by the Appellate Rules Committee of the North Carolina Bar Association, updates several obsolete references to "assignments of error" and "exceptions" in statutes where appeals to the North Carolina appellate courts are contemplated. These terms are no longer used in the North Carolina Rules of Appellate Procedure. This proposal also makes other technical changes in the language surrounding these references.

(GSC DN 21-6)

4. **An act to enact the Uniform Community Property Disposition at Death Act.** This proposal enacts the Uniform Community Property Disposition at Death Act, an act recently

promulgated by the Uniform Law Commission. This act is an update of the Uniform Disposition of Community Property Rights at Death Act, which was enacted as Chapter 31C of the General Statutes. This act addresses the situation where a married couple acquires community property in a state recognizing community property and then moves to North Carolina or acquires real property in North Carolina using proceeds from community property. This act provides a set of default rules to govern the disposition of community property upon the death of one of the spouses.

(GSC DN 21-9)

5. **An act to enact Article Three of the Uniform Unregulated Child Custody Transfer Act.** This proposal enacts Article 3 of the Uniform Unregulated Child Custody Transfer Act, an act recently promulgated by the Uniform Law Commission. The purpose of this Act is to prevent the unlawful transfer of custody of minors by better preparing adoptive parents for issues that may arise when caring for an adopted minor. The Act applies to the adoption of certain minors. It requires adoption agencies to provide general information about adoption, nonidentifying information about the minor, and guidance and instruction to prospective adoptive parents.

(GSC DN 22-2)

6. **An act to provide for the effect that conveyances of real property between spouses have on certain marital property rights.** This proposal, requested by the Real Property Section and Family Law Section of the North Carolina Bar Association, provides for the effect that conveyances of real property between spouse have on certain marital property rights. It provides that a spouse who conveys real property to another spouse may waive the right to take an elective life estate in the real property in the instrument of conveyance. However, a spouse who conveys real property to another spouse cannot waive a right to equitable distribution in the real property in the instrument of conveyance. A right to equitable distribution in real property may only be waived in a separate instrument pursuant to G.S. 50-20.

(GSC DN 22-3)

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

PENDING DOCKETS (dockets not covered in pending legislation)

- (1) Notarial Acts/Real Property Changes
(GSC DN 21-4)
- (2) Uniform Pretrial Release and Detention Act
(GSC DN 21-7)
- (3) Uniform Faithful Presidential Electors Act
(GSC DN 21-8)

- (4) Denial of License for Crime of Moral Turpitude
(GSC DN 22-4)
- (5) UCC Amendments (Emerging Technologies)
(GSC DN 22-5)
- (6) Attorneys' Fees in Notes
(GSC DN 22-7)

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

CONCLUSION

The General Statutes Commission is continuing its work as this report is prepared. Work not completed in time for submission to the 2023 General Assembly will be carried over into the next biennium.

In submitting this report, the Commission wishes to make grateful acknowledgment of the cooperation and support received from Mr. Paul Y. Coble, Legislative Services Officer of the North Carolina General Assembly, and Mr. Dan Ettefagh, Director of the Legislative Drafting Division of the North Carolina General Assembly. The Commission is especially indebted to Mr. David C. Unwin, Revisor of Statutes, Ms. Caroline Pantoja, Assistant Revisor of Statutes, and Ms. Veronica Scott Johnson, Senior Legislative Secretary with the Legislative Drafting Division of the North Carolina General Assembly, for their dedicated service during the biennium. In addition, the Commission wishes to express its appreciation for the valuable services rendered by Senator Chuck Edwards, Mr. Starkey Sharp, Professor Vanessa R. Zborek, Professor Susan E. Hauser, Professor Richard T. Bowser, and Professor Jane R. Wettach, who served as members of the Commission.

The Commission especially wishes to express its deepest appreciation to Professor James B. McLaughlin, Jr., former Chair of its Trusts Drafting Committee who served on the Committee for thirty-six years, Mr. J. Stanley Atwell, who served on its Trusts Drafting Committee for twenty-one years, and Mr. Thomas F. Wiggins, who served on its Trusts Drafting Committee for twelve years.

The Commission further wishes to express its appreciation for the valuable assistance provided on behalf of the North Carolina Bar Association by the following persons: Ms. Michelle L. Frazier, Mr. David P. Ferrell, Ms. Devon Karst Barnhardt, Mr. George T. Smith III, Justice Tamara Patterson Barringer, Mr. Kip D. Nelson, Mr. Nathan W. Wilson, Representative Tim Longest, Mr. S. Kyle Agee, Ms. Judith U. Linville, Ms. Catherine L. Wilson, Ms. Linda Funke Johnson, Mr. Mark J. Hale, Jr., Ms. Holly B. Norvell, Ms. Paula A. Kohut, Mr. John T. McLean, Ms. Nancy Short Ferguson, Ms. Lindsay Parris Thompson, Mr. Jeremy S. Shrader, Mr. Chris Salyer, Mr. Jeffrey A. Bunda, former Representative Jack Nichols, Mr. Jim Saintsing, Mr. Charles

W. Clanton, Mr. Ketan P. Soni, Mr. John Babcock, Mr. Graham Taylor Dean, Mr. Matthew James Meinel, and Mr. Jared Simmons.

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

This the 3rd day of March 2023.

Respectfully submitted,

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THE GENERAL STATUTES COMMISSION 2021-2023 Biennial Report

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