

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 599
HOUSE BILL 939

AN ACT TO MAKE ISOLATED AMENDMENTS TO THE GENERAL STATUTES AS
RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 17(b)(6) is repealed.

Sec. 2. G.S. 1A-1, Rule 32(c), as the same appears in the 1979 Cumulative Supplement to Volume 1A, is amended on line 6 by adding after "subsection (a)(2)" the following: "or (a)(3)".

Sec. 3. Article 19 of Chapter 7A of the General Statutes is hereby amended as follows:

a. G.S. 7A-228 is rewritten to read as follows:

"§ 7A-228. New trial before magistrate; appeal for trial de novo; how appeal perfected; oral notice; dismissal. — (a) With the consent of the chief district court judge, a magistrate may set aside an order or judgment for mistake or excusable neglect pursuant to G.S. 1A-1, Rule 60(b)(1) and order a new trial before a magistrate. After final disposition before the magistrate, the sole remedy for an aggrieved party is appeal for trial de novo before a district court judge. Notice of appeal may be given orally in open court upon announcement of or rendition of the judgment. If not announced in open court, notice of the appeal must be given in writing to the magistrate. The appeal must be perfected within 10 days after rendition of the judgment in the manner set out in subsection (b). Upon the announcement of the appeal in open court or upon receipt of the written notice of appeal, the magistrate shall note the appeal upon the judgment.

(b) The appeal shall be perfected by payment of the costs of the appeal and by serving a written notice of the appeal stating that the cost of the appeal has been paid on all other parties and the clerk of superior court. Failure to demand a jury is a waiver of the right thereto.

(c) Whenever such appeal is docketed and is regularly set for trial, and the appellant fails to appear and prosecute his appeal, the presiding judge may have the appellant called and the appeal dismissed; and in such case the judgment of the magistrate shall be affirmed."

b. G.S. 7A-230 is rewritten to read as follows:

"§ 7A-230. Jury trial on appeal. — (a) The appellant in his written notice of appeal may demand a jury on the trial de novo. Within 10 days after receipt of the notice of appeal stating that the costs of the appeal have been paid, any appellee by written notice served on all parties and on the clerk of superior court may demand a jury on the trial de novo."

Sec. 4. G.S. 20-154(b) is amended on lines 18 and 19 of the subsection by deleting the following: "; and provided further that the violation of this section shall not constitute negligence per se".

Sec. 5. G.S. 28A-8-1(b)(6) is amended in line 1 by adding after the word "representative" the following: "of an intestate".

Sec. 6. G.S. 28A-8-1(b) is hereby amended by adding a new subdivision to read as follows:

"(8) An administrator with the will annexed who resides in the State of North Carolina when all of the devisees of the decedent are over 18 years of age

and file with the clerk of superior court a written waiver instrument agreeing to relieve him of the necessity of giving bond."

Sec. 7. G.S. 30-17 is amended in the fourth line by deleting the word "college" and is further amended by inserting in that same line after the word "student" the following: "in any educational institution".

Sec. 8. G.S. 31-11.6(a) is hereby amended on lines 1 and 2 by deleting the following: "In addition to the procedures for the execution of a will set out in G.S. 31-3.3, any" and by substituting in lieu thereof "Any".

Sec. 9. The execution of an acknowledgment of a will by a testator, and of the affidavits of witnesses, made before an officer authorized to administer oaths under the laws of this State and evidenced by the officer's certificate substantially in the form set out in G.S. 31-11.6 if done during the period between October 1, 1979, and the effective date of this act, shall be considered to be a valid execution and attestation of a written will regardless of whether or not the will was signed and attested under the provisions of G.S. 31-3.3 separately from the execution of the acknowledgment by the testator and the affidavits of the witnesses. Such wills may be probated in accordance with G.S. 31-18.1(a)(4).

Sec. 10. G.S. 39-13.4 is amended in line 7 by deleting "husband or wife" and substituting in lieu thereof "conveying spouse" and by adding after the word "grantee" in that line the following: "and shall pass such title free and clear of all rights in such property and free and clear of such interest in property that the other spouse might acquire solely as a result of the marriage, including any rights arising under G.S. 29-30,".

Sec. 11. G.S. 39-13.4 is further amended beginning on line 14 by adding a new paragraph to read as follows:

"All conveyances of any interest in real property by a spouse who had previously executed a valid and lawful deed of separation, or separation agreement, or property settlement, which authorized the parties thereto to convey real property or any interest therein without the consent and joinder of the other, when said deed of separation, separation agreement, or property settlement, or a memorandum of the deed of separation, separation agreement, property settlement, setting forth such authorization, had been previously recorded in the county where the property is located, and when such conveyances were executed before the effective date of this act, shall be valid to pass such title as the conveying spouse may have to his or her grantee, and shall pass such to him free and clear of rights in such property and free and clear of such interest in such property that the other spouse might acquire solely as a result of the marriage, including any rights arising under G.S. 29-30, unless an instrument in writing canceling the deed of separation, separation agreement, or property settlement, or memorandum thereof, properly executed and acknowledged by said husband and wife, is recorded in the office of said register of deeds. The instrument which is registered under this section to authorize the conveyance of an interest in real property or the cancellation of the deed of separation, separation agreement, property settlement, or memorandum thereof shall comply with G.S. 52-10 or 52-10.1."

Sec. 12. G.S. 45-13 is hereby repealed.

Sec. 13. G.S. 49-5 is amended in line 5 by substituting both the word "Proceedings" for the word "Indictments" and the word "brought" for the word "returned" and is further amended in line 8 by substituting "proceedings against" in lieu of "indictment of".

Sec. 14. G.S. 49-14(c) is rewritten to read as follows:

"No such action shall be commenced nor judgment entered after the death of the putative father."

Sec. 15. G.S. 50-8 is hereby amended on line 16 by adding after the word "personally" the following: "or service of summons accepted by the defendant personally in the manner provided in G.S. 1A-1, Rule 4(j)(1)"; and is further amended on line 18 by adding after

the words "with summons" the following: "or in which the defendant personally accepted service of the summons".

Sec. 16. G.S. 52-8 is amended on line 4 by adding after the word "wife" the following: "or with the requirements that there be findings that such a contract between a husband and wife is not unreasonable or injurious to the wife".

Sec. 17. G.S. 53-43.5(a) is amended on line 1 by adding after "A bank" the following: ", including an industrial bank,"; G.S. 53-43.5(b) is amended on line 1 by adding after "A bank" the following: ", including an industrial bank,"; and G.S. 53-43.5(c) is amended in line 1 by adding after "an institution" the following: ", including an industrial bank,".

Sec. 18. G.S. 53-53 is hereby repealed.

Sec. 19. (a) G.S. 53-52 is repealed in its entirety; (b) G.S. 53-76 is amended in lines 3 through 6 by inserting a period after the word "bank" on line 3 and by deleting the remainder of the section, being all of lines 4, 5, and 6; and (c) G.S. 25-4-406(1) is amended by adding at the end of that subsection a new sentence to read as follows:

"A customer will be considered to have acted with reasonable care and promptness if he notifies the bank within 60 days of receipt of the statement of account accompanied by such items."

Sec. 20. G.S. 164-13(a) is amended by adding a new subdivision to read as follows:

"(5) To receive and consider proposed changes in the law recommended by the American Law Institute, by the National Conference of Commissioners on Uniform State Laws or by other learned bodies."

Sec. 21. This act shall become effective October 1, 1981, and shall not affect pending litigation.

In the General Assembly read three times and ratified, this the 17th day of June, 1981.