

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

HOUSE BILL 379
RATIFIED BILL

AN ACT TO ENACT THE NORTH CAROLINA INTERSTATE DEPOSITIONS AND DISCOVERY ACT AND TO MAKE CONFORMING AMENDMENTS TO THE NORTH CAROLINA RULES OF CIVIL PROCEDURE.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

Chapter 1F.

"North Carolina Interstate Depositions and Discovery Act.

§ 1F-1. Short title.

This Chapter may be cited as the 'North Carolina Uniform Interstate Depositions and Discovery Act.'

§ 1F-2. Definitions.

The following definitions apply in this Chapter:

- (1) Foreign jurisdiction. – A state other than North Carolina.
- (2) Foreign subpoena. – A subpoena issued under authority of a court of record of a foreign jurisdiction.
- (3) Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (4) State. – A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.
- (5) Subpoena. – A document, however denominated, issued under authority of a court of record requiring a person to:
 - a. Attend and give testimony at a deposition, either oral or upon written questions;
 - b. Produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or
 - c. Permit inspection of premises under the control of the person.

§ 1F-3. Issuance of subpoena.

(a) To request issuance of a subpoena under this section, a party must submit a foreign subpoena to a clerk of court in the county in which discovery is sought to be conducted in this State. A request for the issuance of a subpoena under this act does not constitute an appearance in the courts of this State.

(b) When a party submits a foreign subpoena to a clerk of court in this State, the clerk, in accordance with that court's procedure, shall promptly open an appropriate court file, assign a file number, collect the applicable filing fee pursuant to G.S. 7A-305(a)(2), and issue a subpoena for service upon the person to which the foreign subpoena is directed.

(c) A subpoena under subsection (b) of this section must:

- (1) Incorporate the terms used in the foreign subpoena; and
- (2) Contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

§ 1F-4. Service of subpoena.

A subpoena issued by a clerk of court in North Carolina under G.S. 1F-3 must be served in compliance with G.S. 1A-1, Rule 45(b) of the North Carolina Rules of Civil Procedure.



§ 1F-5. Deposition; production; inspection.

Rules 26, 28, 30, 31, 34, and 45 of G.S. 1A-1, the North Carolina Rules of Civil Procedure, apply to subpoenas issued under G.S. 1F-3.

§ 1F-6. Application to court.

An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under G.S. 1F-3 must comply with the rules or statutes of this State and be submitted to the court in the county in which discovery is to be conducted. Where a dispute exists between the parties to the action, the party opposing the discovery shall apply for appropriate relief to the court in which the action is pending and not to the court in the state in which the discovery is sought.

§ 1F-7. Uniformity of application and construction.

In applying and construing this Chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that have enacted the Uniform Interstate Depositions and Discovery Act."

SECTION 2. G.S. 1A-1, Rule 28(d), reads as rewritten:

"(d) Depositions to be used outside this State.—in foreign countries. —

(1) A person desiring to take depositions in this State to be used in proceedings pending in the courts of any other state or country may present to a judge of the superior or district court a commission, order, notice, consent, or other authority under which the deposition is to be taken, whereupon it shall be the duty of the judge to issue the necessary subpoenas pursuant to Rule 45. Orders of the character provided in Rules 30(b), 30(d), and 45(b) may be made upon proper application therefor by the person to whom such subpoena is directed. Failure by any person without adequate excuse to obey a subpoena served upon him pursuant to this rule may be deemed a contempt of the court from which the subpoena issued.

...."

SECTION 3. G.S. 1A-1, Rule 45, is amended by adding the following new subsection to read:

"(f) Discovery From Persons Residing Outside the State. —

(1) Any party may obtain discovery from a person residing in another state of the United States or a territory or an insular possession subject to its jurisdiction in any one or more of the following forms: (i) oral depositions, (ii) depositions upon written questions, or (iii) requests for production of documents and tangible things. In doing so, the party shall use and follow any applicable process and procedures required and available under the laws of the state, territory, or insular possession where the discovery is to be obtained. If required by the process or procedure of the state, territory, or insular possession where the discovery is to be obtained, a commission may issue from the court in which the action is pending in accordance with the procedures set forth in subdivision (2) of this subsection.

(2) Obtaining a commission. —

- a. The party desiring a commission to obtain discovery outside the State shall prepare and file a motion indicating the party's intent to obtain a commission and requesting that the commission be issued.
- b. The motion shall indicate that the moving party has conferred, or describe fully the moving party's good faith attempts to confer, with counsel for all other parties regarding the request and shall indicate whether the motion is unopposed. The motion shall also attach a copy of any proposed subpoena, notice of deposition, or other papers to be served on the person from whom the moving party is seeking to obtain discovery.
- c. The motion shall indicate that counsel for the moving party has read the applicable rules and procedures of the foreign state and that the moving party will comply with those rules and procedures in obtaining the requested discovery.
- d. If the motion reflects that it is unopposed or indicates that the moving party has made reasonable, good faith efforts to confer with all other parties and that no other party has indicated that it opposes the

- motion, the motion shall immediately be placed on the calendar for a hearing within 20 days before the court in which the action is pending where the commission shall be issued. However, if the court determines, in its discretion, that the moving party has failed to make reasonable, good faith efforts to confer with all other parties prior to filing the motion, the court shall refuse to issue the commission, and the motion shall be denied.
- e. If the motion does not reflect that it is unopposed or that the moving party has made reasonable, good faith efforts to confer with all other parties and that no other party has indicated that it opposes the motion, any party wishing to oppose the motion shall file written objections to issuance of the commission within 10 days of being served with the motion, and the motion shall immediately be placed on the calendar for a hearing to be held within 20 days before the court in which the action is pending. The hearing may be held by telephone in the court's discretion. The court may refuse to issue the commission only upon a showing of substantial good cause to deny the motion.
- f. If the court, in its discretion, determines that any party opposing the motion did so without good cause, the court shall require the party opposing the motion to pay the moving party the reasonable costs and expenses incurred in obtaining the order, including attorneys' fees, unless circumstances exist which make an award of expenses unjust.
- (3) In addition to any terms required by the foreign jurisdiction to initiate the process of obtaining the requested discovery, the commission shall:
- a. State the time and place at which the requested discovery is to occur;
 - b. State the name and address of the person from whom the discovery is sought, if known, and, if unknown, a general description sufficient to identify the person or the particular class or group to which he or she belongs; and
 - c. Attach a copy of any case management order, discovery order, local rule, or other rule or order establishing any discovery deadlines in the North Carolina action."

SECTION 4. 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 Uniform Interstate Depositions and Discovery Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 5. This act becomes effective December 1, 2011, and shall apply to all cases then pending or filed on or after that date.

In the General Assembly read three times and ratified this the 16th day of June, 2011.

Walter H. Dalton
President of the Senate

Thom Tillis
Speaker of the House of Representatives

Beverly E. Perdue
Governor

Approved _____ .m. this _____ day of _____, 2011