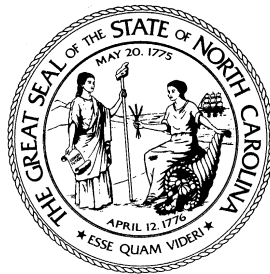


Biennial Report
to the
General Assembly
of North Carolina
2013-2015



THE GENERAL STATUTES COMMISSION

**REPORT OF THE
GENERAL STATUTES COMMISSION
2013-2015**

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 and Codification of Statutes 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 General Statutes 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 GENERAL STATUTES COMMISSION
DURING THE BIENNIUM**

Five new members were appointed during the 2013-2015 biennium. The Honorable H. William Constangy of Charlotte was appointed by the Governor to replace Mr. Edward C. Winslow III of Greensboro. Mr. Michael W. Mitchell of Raleigh was appointed by the Governor to replace Professor A. Fleming Bell, II, of Durham. Professor Judith Welch Wegner of Hillsborough was appointed by the Dean of The University of North Carolina School of Law to replace Professor A. Mark Weisburd of Chapel Hill. Professor Susan E. Hauser of Raleigh was appointed by the Dean of North Carolina Central University School of Law to replace Professor

Todd J. Clark of Durham. Mr. Starkey Sharp of Kitty Hawk was appointed by the President of the North Carolina State Bar to replace Ms. Meredith Jo Alcock of New Bern.

Nine members were reappointed during the biennium. Senator Fletcher L. Hartsell, Jr., of Concord was reappointed by the President Pro Tempore of the Senate. Representative John M. Blust of Greensboro was reappointed by the Speaker of the House. Ms. Jean T. Adams of Durham was reappointed by the President of the North Carolina Bar Association. Professor Andrew J. Haile of Greensboro was reappointed by the Dean of Elon University School of Law. Professor H. Beau Baez III of Monroe was reappointed by the Dean of Charlotte School of Law. Professor Richard T. Bowser of Raleigh was reappointed by the Dean of Campbell University School of Law. Professor Marguerite I. Most of Hillsborough was reappointed by the Dean of Duke University School of Law. 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.

The General Statutes Commission meets regularly on the first Friday of each month except July and August. Special meetings may be called by the chairman 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; fax (919) 715-5459.

PUBLICATION OF THE GENERAL STATUTES

A 2013 replacement set of the General Statutes of North Carolina, consisting of 21 volumes plus two index volumes, was published in December 2013. The 21 volumes include two additional volumes that resulted from the splitting of volumes 14 and 17 because of their large size. The 2011 replacement set consisted of 19 volumes plus two index volumes.

A 2013 edition of the Annotated Rules of North Carolina was published in December 2012, and a supplement was published in May 2013.

A 2014 edition of the Annotated Rules of North Carolina was published in November 2013, and a supplement was published in May 2014.

A 2014 Interim Supplement to the 2013 replacement set of the General Statutes of North Carolina, consisting of two volumes with a two-volume 2014 Replacement Index, was published in December 2014. The 2014 Interim Supplement is a cumulative supplement that contains the acts of a general and permanent nature enacted at the 2014 Regular Session of the General Assembly.

A 2015 edition of the Annotated Rules of North Carolina was published in December 2014, and a supplement will be published in May 2015.

DRAFTING COMMITTEES OF THE GENERAL STATUTES COMMISSION

The General Statutes Commission has appointed the following drafting committee of experts, to assist it in work on major projects:

Trusts Drafting Committee

The General Statutes Commission originally created this Committee in 1973 to draft a revision of the trusts laws of the State. The Committee's initial project was a revision of Chapter 36 of the General Statutes, containing the trusts 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. The Committee continues to work on other projects. Members of the Committee are Professor James B. McLaughlin, Jr., Mr. J. Stanley Atwell, Professor Alfred L. Brophy, and Mr. Thomas F. Wiggins. 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 Board of Law Examiners, the North Carolina Administrative Office of the Courts, the Association of Clerks of Superior Court of North Carolina, the North Carolina Association of Registers of Deeds, the North Carolina Department of the Secretary of State, the North Carolina Office of the Commissioner of Banks, the North Carolina Bankers Association, the North Carolina Bar Association, the North Carolina Department of Commerce, the Carolinas Credit Union League, and others. The General Statutes Commission continues its interest in the work of the National Conference of Commissioners on Uniform State Laws (also known as the Uniform Law Commission) and The American Law Institute.

The General Statutes Commission and its drafting committee have continued their efforts to circulate their 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; fax

(919) 715-5459. The Revisor of Statutes may also be contacted for legislative history of the Commission's legislative proposals.

LEGISLATION RECOMMENDED TO THE 2013 GENERAL ASSEMBLY

The following chart shows bills recommended by the General Statutes Commission to the 2013 General Assembly and their disposition:

General Statutes Commission – Recommended Bill Chart 2013-2014 Bills were introduced in each chamber; the bill number of the one enacted is shown in bold				
Bill Number	Short Title	GSC Docket	Long Title As Introduced	Session Law
<u>HB 77</u> <u>SB 74</u>	Board of Law Examiners/Update Expense Law	DN 12-6	An Act to Delete a Provision for a Fifty Dollar Payment to Members of the Board of Law Examiners That Has Not Been Paid Since the 1970s and to Clarify a Provision Relating to Expenses of That Board.	2013-9
<u>HB 78</u> <u>SB 72</u>	Amend UCC Article 4A/Funds Transfers	DN 12-7	An Act to Amend Uniform Commercial Code Article 4A, Funds Transfers, to Continue the Applicability of that Article to Remittance Transfers that are not Electronic Fund Transfers.	2013-14
<u>HB 92</u> <u>SB 101</u>	GSC Technical Corrections 2013	DN 13-1	An Act to Make Technical Corrections to the General Statutes and Session Laws, and to Make Other Clarifying, Conforming, and Technical Amendments.	2013-410
<u>HB 1117</u> <u>SB 746</u>	Conform Pledge of Joint Account Laws.	DN 14-3	An Act to Conform the Law Governing the Pledge of Joint Accounts in Credit Unions, Savings and Loan Associations, and Savings Banks to the Law Governing the Pledge of Joint Accounts in Banks.	2014-61
<u>HB 1116</u> <u>SB 773</u>	Implement GSC Recommendations.	DN 12-10 DN 14-2 DN 11-6 DN 14-4	An Act to Implement the Recommendations of the General Statutes Commission to Modify the Slayer Statute Due to the Need to Account for Property Held in a Joint Tenancy in Unequal Shares, to Clarify the Provisions for Filing Certified Copies of Probated Wills in Other Counties Where a Decedent Has Real Property, to Delete the Statutory Forms for Judgment Debtors Claiming Exemptions	2014-07

General Statutes Commission – Recommended Bill Chart 2013-2014 Bills were introduced in each chamber; the bill number of the one enacted is shown in bold				
Bill Number	Short Title	GSC Docket	Long Title As Introduced	Session Law
			Under G.S. 1C-1601 Because the Administrative Office of the Courts Already Has Widely Used Forms for that Purpose, and to Resolve an Apparent Conflict Between Rule 8 of the North Carolina Rules of Civil Procedure, Dealing With the Content of Pleadings, and G.S. 7A-243, Dealing With the Proper Trial Court Division.	
HB 1118 SB 745	Technical and Other Corrections	DN 14-1	An Act to Make Technical Corrections to the General Statutes and the Session Laws.	2014-115 ¹

RECOMMENDED LEGISLATION, 2015

During the biennium, the General Statutes Commission has received suggestions for statutory changes from various sources including practicing attorneys, State officials and agencies, and from its Trusts Drafting Committee and its own membership. In addition, the Commission 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 General Statutes 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 General Statutes Commission, acting pursuant to G.S. 164-13, therefore has recommended enactment of proposals in the following areas:

1. **An Act to Modernize the Law Governing the Use of Assumed Business Names, to Appropriate Funds for the Purpose, and to Make Related Conforming and Technical Amendments.** This proposal modernizes the law governing the use of assumed

¹ HB 1118 and SB 745 were not enacted. The technical corrections recommended by the General Statutes Commission in those bills were added to [HB 1133](#) by the Committee on Rules, Calendar, and the Operation of the House. That bill was enacted as S.L. 2014-115.

business names as set out in Article 14 of Chapter 66 of the General Statutes, entitled "Business Under Assumed Name Regulated." It was developed in conjunction with representatives of the North Carolina Department of the Secretary of State and the North Carolina Association of Registers of Deeds.

Article 14 provides important protection to the public by requiring persons that engage in business in this State under an assumed name to make the identity of the business' true owners available to the public through filings with the registers of deeds. Generally, Article 14 requires any person, before engaging in business in this State under an assumed name, to file a certificate with the register of deeds of each county in which business is to be engaged. The certificate must include the assumed name and the real name and address of each owner of the business. Failure to file is a Class 3 misdemeanor; it can also result in a \$50.00 civil penalty collectable in a civil action by any person demanding that the certificate be filed if it is not filed within seven days after the demand is made.

In general, the proposed modernization:

- Repeals Article 14 and enacts a new Article 14A of Chapter 66 of the General Statutes with the title "Assumed Business Name Act." § 66-71.1.
- Provides a statement of purpose, that is, "to afford the public a means of ascertaining the real names of persons engaging in business in this State under an assumed business name." § 66-71.2.
- Defines the terms "assumed business name" and "person." § 66-71.3.
- Requires any person, before engaging in business in this State under an assumed business name, to file an assumed business name certificate in the office of the register of deeds of at least one county in which the person is or will be engaged in business. § 66-71.4(a) and (b).
- Excludes from the filing requirement any limited liability partnership, limited partnership, limited liability company, or corporation that engages in business under a name that is its real name with the legal entity designation required by G.S. 55D-20 omitted. § 66-71.4(c).
- Requires that the assumed business name certificate include the assumed business name, the real name of the person engaging in business under the assumed business name, the type of business, the street address of the principal place of business, and each county where the person uses or will be using the assumed business name. § 66-71.5.
- Specifies the proper execution for an assumed business name certificate. § 66-71.6.
- Requires the filing of a properly executed certificate of amendment, setting forth specified information, within 60 days after a change in any of the information required in the assumed business name certificate. § 66-71.7.
- Provides for the withdrawal of an assumed business name when it is no longer being used and specifies the contents of a properly executed certificate of withdrawal. § 66-71.8.

- Requires the Secretary of State to develop and maintain a central database of assumed business name information to be entered and retrieved by the registers of deeds. The database must be available to the public for online searches. § 66-71.9.
- Requires registers of deeds to index assumed business names, transmit a scanned image of the certificate to the Secretary of State, and enter specified information from the certificate into the central database maintained by the Secretary of State. § 66-71.10.
- Authorizes the Land Records Management Advisory Committee established under G.S. 147-54.3 to develop forms that may be used in complying with the Act and authorizes any person, including the registers of deeds, to make these forms available. § 66-71.11.
- Provides that an assumed business name certificate is effective upon filing and remains in effect until withdrawn and that compliance with the Act does not confer any exclusive rights to the use of an assumed business name in this State. § 66-71.12.
- Provides that a copy of a certificate filed under the Act, duly certified by the register of deeds of the office in which it was filed, is prima facie evidence of the facts required to be stated in the certificate. § 66-71.13.
- Makes it a Class 1 misdemeanor for a person to sign a certificate that the person knows is false in any material respect with intent that the certificate be delivered to the register of deeds for filing. § 66-71.14(a).
- Encourages compliance with the Act by providing that a person failing to file an assumed business name certificate or certificate of amendment as required by the Act is liable to any person injured by the failure for the reasonable expenses, including attorneys' fees, incurred by the person in ascertaining, for a reasonable purpose, the information required to be stated in the assumed business name certificate or certificate of amendment. § 66-71.14(b).
- Provides generally that all certificates of assumed name filed under former Article 14 expire July 1, 2021, and that any person desiring to continue engaging in business under the assumed name on or after that date must file an assumed business name certificate under the new Act. Certificates filed under former Article 14 will not be uploaded to the database maintained by the Secretary of State. § 66-71.15.

The proposal also makes related conforming and technical amendments to other sections of the General Statutes and appropriates funds to the Secretary of State for the 2015-2016 fiscal year to develop and implement the central database.

(GSC DN 06-7)

2. **An Act to Amend the Uniform Fraudulent Transfer Act to Adopt the Amendments Approved by the Uniform Law Commission in 2014 and to Make Related Conforming and Technical Amendments.** This proposal is based on the 2014 amendments to the Uniform Fraudulent Transfer Act that were approved by the National Conference of Commissioners on Uniform State Laws (also known as the Uniform Law Commission). The

General Assembly enacted the Uniform Fraudulent Transfer Act in 1997 as Article 3A of Chapter 39 of the General Statutes, §§ 39-23.1 through 39-23.12.

In general, the 2014 amendments to the Uniform Fraudulent Transfer Act (the "Act"):

- Rename the Act as the "Uniform Voidable Transactions Act."
- Make a number of stylistic changes that are not intended to change the meaning of the Act, such as consistently using the word "voidable" instead of "fraudulent" to denote a transfer or obligation for which the Act provides a remedy.
- Define the new terms "electronic," "organization," "record," and "sign." § 39-23.1.
- Delete the special definition of "insolvency" applicable to partnerships, with the result that the general definition of "insolvency" in the Act will apply to partnerships. § 39-23.2.
- Add provisions allocating the burden of proof and defining the standard of proof with respect to claims and defenses under the Act. §§ 39-23.2(b), 39-23.4(c), 39-23.5(c), and 39-23.8(g) and (h).
- Replace references in the Act to a "writing" with "record" in order to accommodate modern technology. § 39-23.6(5).
- Refine in relatively minor respects several provisions relating to defenses available to a transferee or obligee. § 39-23.8(b).
- Provide a choice of law provision for claims of the nature governed by the Act. § 39-23.9A.
- Provide that each "protected series" of a "series organization" is to be treated as a person for purposes of the Act, even if it is not treated as a person for other purposes. This change responds to the emergence of the "series organization" as a significant form of business organization. § 39-23.9B.
- State that the Act modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act (E-sign) with respect to the procedures for obtaining and validating electronic signatures. § 39-23.11A.

The proposal provides that the amendments become effective October 1, 2015, and apply to transfers made or obligations incurred on or after that date. The proposal also authorizes the printing of the revised official comments to the Uniform Voidable Transactions Act and all explanatory comments of the drafters of the proposal.

(GSC DN 14-7)

In addition to these proposals, the Commission plans to introduce 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) Uniform Partnership Act (1992)
(GSC DN 93-8)
- (2) Retaining Safeguards for Public Records
(GSC DN 97-6)
- (3) Certification of Questions of Law
(GSC DN 05-2)
- (4) Gender Neutralization of Constitution and Statutes
(GSC DN 09-5)
- (5) Revised Uniform Unincorporated Association Act
(GSC DN 10-2)
- (6) Uniform Partition of Heirs Property Act.
(GSC DN 11-3)
- (7) Exercise of Power of Appointment by Will
(GSC DN 11-4)
- (8) Uniform Electronic Legal Material Act
(GSC DN 11-7)
- (9) State Vital Records Law
(GSC DN 12-2)
- (10) Retention of AOC Staffing Numbers in Statutes
(GSC DN 12-5)
- (11) Official and Drafters Comments
(GSC DN 12-9)
- (12) Statutory References to Jurisdictional Amounts
(GSC DN 14-4)
- (13) Reformation or Modification of Wills
(GSC DN 14-5)

- (14) Nonademption of Specific Devises
(GSC DN 14-6)
- (15) G.S. 1A-1, Rule 53 (Referees)
(GSC DN 14-8)
- (16) G.S. 1A-1, Rule 70 (Judgment for Specific Acts; Vesting Title)
(GSC DN 14-9)

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 2015 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. George R. Hall, former Legislative Services Officer of the North Carolina General Assembly, Ms. Kory Goldsmith, Director of the Bill Drafting Division of the North Carolina General Assembly and former Interim Legislative Services Officer of the North Carolina General Assembly, and Mr. O. Walker Reagan, Director of the Research Division of the North Carolina General Assembly. The Commission is especially indebted to Mr. Floyd M. Lewis, Revisor of Statutes, Ms. P. Bly Hall, Assistant Revisor of Statutes, Ms. Veronica Scott, Legislative Secretary, Ms. Elizabeth H. Smith, Legislative Secretary, and Ms. Sylvia Watlington-Green, Office Manager, for their dedicated service during the biennium. In addition, the Commission wishes to express its appreciation for the valuable services rendered by Mr. Edward C. Winslow III, Mr. A. Fleming Bell, II, Professor A. Mark Weisburd, Ms. Meredith Jo Alcock, and Mr. Todd J. Clark, who served as members of the Commission during the biennium.

The Commission also wishes to express its appreciation for the efforts of the following persons who provided valuable assistance with the Commission's review of the State's assumed business name statutes: Ms. Pamela L. Taylor, Principal Program Evaluator, and Mr. Jeff L. Grimes, Program Evaluator, with the Program Evaluation Division of the North Carolina General Assembly; Honorable Judy D. Martin, Moore County Register of Deeds and President of the North Carolina Association of Registers of Deeds; Honorable Crystal D. Crump, Union County Register of Deeds and past President of the North Carolina Association of Registers of Deeds; Honorable Wayne L. Rash, Caldwell County Register of Deeds, and Honorable Davis H. Brinson, Duplin County Register of Deeds, and Co-Chairs of the Legislative Committee of the North Carolina Association of Registers of Deeds; and Mr. Peter E. Powell, former Legal Counsel with the North Carolina Administrative Office of the Courts. The Commission further

wishes to express its appreciation for the efforts of Ann Anderson, Assistant Professor of Public Law and Government with the School of Government of The University of North Carolina at Chapel Hill, who provided valuable assistance with the Commission's review of the statutory forms for judgment debtors claiming exempt property under G.S. 1C-1601.

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 6th day of February, 2015.

Respectfully submitted,

Jean T. Adams, Chairman
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