



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

June 13, 2016

To: Senate Committee on Judiciary I
From: General Statutes Commission
Re: SB 821 (GSC Technical Corrections 1)

General Comments

Part I of the proposed committee substitute for this bill contains corrections of a technical nature to the General Statutes and session laws as recommended by the General Statutes Commission.

These amendments correct typographical, redlining, and other obvious drafting and stylistic errors, make conforming changes, make references to public officials gender neutral, update archaic phrasing, repeal duplicative and obsolete provisions, rephrase unclear provisions, recodify two statutes, and add a cross-reference.

Specific Comments

Section 1 amends G.S. 14-118 (b1) to clarify the phrasing of the third sentence. S.L. 2015-87 added subsection (b1) to provide clerks of court with authority similar to the authority of registers of deeds to refuse to file what appear to be false liens or encumbrances against public officers or public employees or one of their immediate family members. If the clerk declines to file, the document may not be filed unless a judge approves filing. As drafted, however, the 2015 provision can be read to require the clerk to review the clerk's own actions, followed by a mandatory appeal to a judge, if the reader assumes that an "and" is missing between "by the clerk of superior court by any judge" The amendment in this section reverses the order of two phrases in this sentence and makes it clearer.

Section 1.1 amends G.S. 14-159.3(a1) to correct an inadvertent error in the 2015 amendment to this section. The 2015 amendment included making references to "landowner" gender neutral by replacing references to "his" and "he" with references to "his or hers" and "he or she." "Landowner" can, however, include corporations and other entities. Rather than use "his, her, or its" and similar phrases, the amendment in this section repeats the word "landowner."

Section 2 amends G.S. 14-208.6 to make a conforming amendment in subdivision (5), the definition of "sexually violent offense."

S.L. 2015-181 recodified the sex offenses in former Article 7A of Chapter 14 of the General Statutes into a new Article 7B of that chapter and reorganized them to separate the rape offenses from the sexual assault offenses and also to separate out the offenses against children from the offenses against adults. In the process, former G.S. 14-27.2 (First degree rape) was separated into two new statutes, G.S. 14-27.21 (First degree forcible rape) and G.S. 14-27.24 (First degree statutory rape).

G.S. 14-208.6(5) included former G.S. 14-27.2 in its list of sexually violent offenses. As a result, S.L. 2015-181 should have amended G.S. 14-208.6(5) to include both new G.S. 14-27.21 and new G.S. 14-27.24 in this list as part of its conforming amendments. The 2015 session law did insert a reference to new G.S. 14-27.21, but it inadvertently failed to include new G.S. 14-27.24. The amendment in this section corrects that oversight.

Section 2.1 amends G.S. 20-45 in subsection (a) to eliminate an unnecessary word as legalese; in subsection (b) to make a reference to the Commissioner of Motor Vehicles gender neutral; and in subsection (c) to make a conforming amendment. The conforming amendment replaces a reference to former G.S. 20-309(e) with a reference to G.S. 20-311; S.L. 2011-213 repealed G.S. 20-309(e) and enacted new, more detailed provisions on revocation of licenses due to the cancellation of insurance. Those provisions are now contained in G.S. 20-311.

Section 3 amends the catchline of G.S. 20-171.24 to make a conforming amendment. Subsection (f) of G.S. 20-171.24, which formerly limited the application of that statute to certain listed municipalities and counties, was repealed by S.L. 2015-26. The statute therefore now applies statewide. The 2015 session law, however, failed to amend the catchline to reflect the change.

Section 3.1 amends G.S. 24-10.1 to delete a reference to repealed G.S. 24-1.2. That statute dealt with a special interest rate cap for installment sales. There was apparently no successor provision.

Section 4 amends G.S. 28A-2-4 to correct an obvious error in subdivision (a)(4) and one in subsection (c) and to add a cross-reference in subsection (c). G.S. 36C-2-203, the equivalent statute for trusts, was used as the model for this statute when it was enacted in 2011. Some of the changes to the text of G.S. 36C-2-203 that were needed to adapt the wording to estates rather than trusts and to allow for changes from the original text were not made. Specifically, in subdivision (a)(4), the reference in the last sentence to "a trust" proceeding should have been changed to "an estate" proceeding, and the citation in the introductory language of subsection (c) to "subsection ... (c) of this section" is an obvious error. Comparing the text of subsection (c) to the original model makes it apparent that the comparable reference in G.S. 28A-2-49(c) should be to subsection (b). In addition, this section adds a cross-reference to G.S. 28A-2-5.

Section 5 amends G.S. 28A-2B-2 to correct an apparent error and conform this statute to other venue provisions, in which "residence" is the test rather than "domicile."

Section 6 amends G.S. 28A-19-5(b) to correct an obvious error by inserting a missing "not."

Section 7 amends G.S. 31B-1(a) to make a conforming amendment. G.S. 31B-1(a) lists possible persons that may renounce an interest in property. Subdivision (8) lists specifically only an "[a]ppointee" under a power of appointment with references to powers of appointment. However, G.S. 31D-4-401 expressly also allows permissible appointees and takers in default

under a power of appointment to renounce, and G.S. 31B-2.1 describes how an instrument of renunciation by a permissible appointee or taker in default must be delivered.

Section 7.1 amends G.S. 36C-8-816.1 in subdivision (c)(9) to clarify the wording of a requirement and to correct an obvious drafting error.

G.S. 36C-8-816.1 is termed a "decanting" statute, that is, it allows a trustee to transfer the assets of one trust into another trust ("decant" from one to another), subject to certain restrictions. Subdivision (c)(9) requires that the terms of the second trust must not jeopardize any existing tax benefits. However, the current wording does not reflect the possibility that the existence of the decanting statute itself may be regarded as sufficient to disqualify the first trust from tax benefits that it was designed to qualify. The amendment to this provision clarifies that and follows the wording of the equivalent provision in the Uniform Trust Decanting Act.

This section also changes references in subdivision (c)(9) to "Code" to "Internal Revenue Code." Chapter 36C defines "Internal Revenue Code" but does not define "Code"; for this reason, the full defined term should be included for precision.

Section 7.2 repeals two statutes in Chapter 39 of the General Statutes that were made duplicative or obsolete by the enactment last year of Chapter 31D of the General Statutes and recodifies two other statutes from that Chapter into Chapter 31D. Specifically, G.S. 39-33 provides a method of releasing a power of attorney that G.S. 39-34 makes non-exclusive. Essentially the same provision is now included in G.S. 31D-4-403, rendering the older statute duplicative and unnecessary. The repeal of G.S. 39-33 would in turn render G.S. 39-34 obsolete. Finally, subsections (b) and (c) of this section recodify G.S. 39-35 as G.S. 31D-5-505 and G.S. 39-36 as G.S. 31D-4-403.1. Subsection (d) authorizes the Revisor of Statutes to print drafters comments.

Section 7.3 amends G.S. 42A-17(a) to make a conforming amendment. S.L. 2015-93 amended the primary statute on institutions in which a landlord in a vacation rental can deposit a tenant's security agreement to change the reference to a "bank or savings and loan association" to a "federally insured depository institution lawfully doing business in this State." G.S. 42A-17 effectively refers back to that provision by requiring the rental agreement to identify "the" institution where the security deposit is held. This section accordingly amends the wording in G.S. 42A-17(a) to conform to the new description in the primary provision.

Section 7.4 amends G.S. 97-25(f) to make two changes. First, the reference in the introductory language to filing "via electronic mail" is changed to "via electronic means"; the existing reference appears not to have literally meant e-mail only, since elsewhere in this same subsection (subdivision (2)) transcripts may be "submitted electronically." Second, the dangling language at the end of the introductory paragraph is corrected.

Section 8 makes a conforming amendment to the catchline of G.S. 108A-70.21. Former subsections (g) and (h) of that statute provided for the purchase of extended coverage in the North Carolina Health Insurance for Children Program. With their repeal in 2015, the reference in the catchline to "purchase of extended coverage" is no longer relevant.

Section 9 amends G.S. 120-4.16(b) by codifying the second paragraph as subsection (b1). Please note that this second paragraph has what appears to be intended as a subsection catchline.

Section 9.1 repeals G.S. 120-57, which sets out duties for the now-repealed Legislative Intern Program Council and is therefore obsolete.

Section 9.2 amends G.S. 136-41.2(c) to update a reference. G.S. 160-410.3 has been long since repealed. The comparable provisions are G.S. 159-8 and G.S. 159-13.

Section 9.3 amends G.S. 143-215.31(a1)(6) to correct a typographical error in the reference to a section of the Code of Federal Regulations. There is no 18 C.F.R. § 333.112; the correct reference is to 18 C.F.R. § 388.112.

Section 9.4 amends 143B-168.5 to update the reference to G.S. 110-105.2, which was repealed last year. The comparable, more detailed, provisions are in G.S. 110-105.3, 110-105.4, 110-105.5, and 110-105.6. In addition, this section inserts a specific reference to the Division within the Department of Health and Human Services where the special unit established in this statute is located.

Section 9.5 amends G.S. 143B-931(b) to update references to G.S. 115C-238.56N to the current G.S. number, G.S. 115C-238.73.

Section 9.6 amends G.S. 143C-4(b)(2) to make a conforming change in the references to G.S. 166A-19.40, which was reorganized in last year's budget bill.

Section 10 amends G.S. 146-9(b)(4) to delete an extra word ("to").

Section 10.1 amends G.S. 147-12(a)(12) to update a citation. In 1989, the then-existing text of G.S. 143B-373 was designated as subsection (a) of that section and new subsections (b) through (d) were added. No conforming amendment was made to G.S. 147-12(a)(12).

Section 11 amends G.S. 153A-340(h) to remove "garbage language" caused by a redlining error in S.L. 2011-286 that caused the phrase "county development approval required by law" to be inserted twice.

Section 12 amends the introductory language of G.S. 160A-332(a) to update a citation. The definition formerly at subdivision (1) of G.S. 160A-331 was renumbered as (1b) in 1997. This section also changes the parentheses to commas.

Section 13 amends G.S. 160A-372(e) to change two references to "paragraph" to "subsection," which is now the correct term after the previously undesignated paragraphs in subsection (c) were given their own subsection designation.

Section 14(a) amends Section 7.1 of S.L. 2014-107 to make it clear that the amendment by Section 5.1 of that act, which clarified that the common-law rule against accumulations no

longer applies to trusts, applied to all trusts, regardless of when created. **Section 14(b)** makes the provision retroactive to the effective date of S.L. 2014-107.

Section 14.1 amends the introductory language of Section 54.5(b) of S.L. 2015-264 to correct a typographical error in the citation. Section 54.5(b) stated that it was amending "Section 32.2(c)" of S.L. 2015-241, but there was no such section and the provision actually set out was Section 32.3(c).

The **final section** of the bill contains an effective date of when the bill becomes law. That date applies to the amendments in Part I, unless otherwise specified.