



# SENATE BILL 821: GSC Technical Corrections 1.

2016-2017 General Assembly

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<b>Committee:</b>	Senate Judiciary I	<b>Date:</b>	June 13, 2016
<b>Introduced by:</b>	Sen. Hartsell	<b>Prepared by:</b>	Brad Krehely, Susan L. Sitze, and Susan Barham, Legislative Analysis Division Staff
<b>Analysis of:</b>	PCS to First Edition S821-CSMN-11 [v.13]		

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**SUMMARY:** *Senate Bill 821 (proposed committee substitute) makes technical changes recommended by the General Statutes Commission and various other changes to State law.*

*Part I of the PCS for this bill (Sections 1-14.1) contains technical changes recommended by the General Statutes Commission. Part II of the PCS contains additional technical amendments and changes to State law.*

[As introduced, this bill was identical to H1064, as introduced by Rep. Bryan, which is currently in House Judiciary IV.]

## BILL ANALYSIS:

### PART I. General Statutes Commission Recommendations

Part I of the proposed committee substitute for this bill contains corrections of a technical nature that are recommended by the General Statutes Commission.

*Sections 1-14.1* are technical changes recommended by the General Statutes Commission.

### PART II. Other Amendments

*Section 15 (a-k)* would make essentially the same amendment to various statutes that list the institutions in which funds are authorized to be deposited. The list covers monies subject to an interpleader action; occupational licensing and proprietary school provisions that authorize the assigning of a savings account or CD in lieu of a bond; funds of the North Carolina Real Estate Commission; and time share deposits that were not addressed in S.L. 2015-93. With three exceptions, the amendments change a list of specific types of institutions to the phrase used in S.L. 2015-93, "federally insured depository institution lawfully doing business in this State." The three exceptions are statutes that currently include trust companies, which are only federally insured under some circumstances. To avoid inadvertently excluding trust companies, and to update the terminology, the phrase "federally insured depository institution or trust institution authorized to do business in this State" was used in these three statutes.

*Section 16(a-l)* would amend the statutes already amended by Section 15, plus four other sections on tenant deposits and first-time condominium purchaser deposits, to include trust companies in the statutes that do not currently include them.

*Section 16.1* would repeal two provisions that have been found to be unconstitutional by the NC Court of Appeals in *State v. Singletary* because they allow the sentence to be modified based on findings by a

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judge. The US Supreme Court has held that, other than prior record, factors affecting sentencing must be found by a jury.

**Section 16.3** would amend G.S. 28A-2B-2 to change the venue provision under the living probate statutes enacted last year from "domicile" to "residence," which is consistent with venue requirements for trusts and most other civil matters.

**Section 16.4** would amend G.S. 31D-5-505, as recodified by Section 7.2(b) of this bill, to remove references to "limitation" of a power of appointment, which are apparently no longer needed.

**Section 16.5** would amend G.S. 36C-5-505(c)(1)c. According to the NC Bar Association's Trusts and Estates Division, current law allows a spouse to establish a trust for the other spouse, and to set it up so that when the beneficiary spouse dies, the trust benefits the settlor spouse and his children. This kind of trust is not subject to claims by creditors of the settlor spouse. The change would allow the children of the beneficiary spouse (stepchildren of the grantor spouse) to also be beneficiaries if the grantor spouse chooses to include them when the trust is drafted.

**Section 16.6** would amend the statute governing tenancy by the entireties trusts in real property. It would specify how to give notice that the real property held in trust received immunity from the claims of separate creditors. It also provides that a person entering a transaction involving real property held in trust may request confirmation from the trustee on whether the requirements providing immunity from the claims of separate creditors are met at the time of the transaction. According to the NC Bar Association's Trusts and Estates Division, these provisions are designed to assist persons searching for title, so they will have notice that property held in trust has retained its character as tenancy by the entireties property.

**Section 16.8** would remove a date limitation for a project purchased or constructed by a public electric utility that otherwise qualifies as a carbon offset facility. G.S. 62-133.10 allows the electric public utility to file a petition with Utilities Commission seeking a fuel and fuel-related charge adjustment. A fuel and fuel-related charge adjustment is a prospective adjustment to the fuel cost component of electric rates designed to account for changes in the cost of fuel and certain fuel-related cost items as set in the electric utility's last general rate case.

To currently qualify as a carbon offset facility, the facility (1) must be purchased or constructed by a public electric utility between July 1, 2009, and July 1, 2014; (2) use solar electric, solar thermal, wind, hydropower, geothermal, or ocean current or wave energy; and (3) the electricity produced will displace electric generation from existing fossil fuel fired generation. This section would remove the date restriction required to qualify as a carbon offset facility.

**Section 17** would create an exemption for chorionic gonadotropin from the list of Schedule III controlled substances when administered by injection for veterinary use by or upon the order of a licensed veterinarian.

**Section 18** -- In 2014, the General Assembly enacted G.S. 90-113.22A, which separated the possession of marijuana paraphernalia from the possession of all other drug paraphernalia. Section 18 would add the new separate offense to the statute authorizing the conditional discharge of a first offense of possession of drug paraphernalia so that a first offense of possession of marijuana paraphernalia will continue to be eligible for conditional discharge.

**Section 18.5**—S.L. 2016-11 created privacy protections for student information held by third-party online educational applications for K-12 students in public schools, including prohibitions on (i) targeted advertising to students and (ii) payment or other consideration from a third party for recommendations for certain information on recommendation engines. Section 18.5 would (i) allow an exception for the

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use of a student's covered information for targeted advertising from nonprofit institutions of higher education or scholarship providers, and (ii) allow payment or other consideration from a nonprofit institution of higher education or scholarship provider seeking to enroll students meeting certain criteria to an operator providing recommendations on certain information to students through recommendation engines.

**Section 19** would correct the name of a State department.

**Section 19.2** would amend a statute in the Iran Divestment Act. Under current law, a State agency must require that a person that attempts to contract with the State or a political subdivision is not identified on the State Treasurer's list of persons engaging in investment activities in Iran. Section 19.2 would provide that if a State agency and the same person enter into multiple contracts or multiple contract renewals within 180 days after a certification is made, then a new certification is not required.

**Section 19.4** would provide that deputy sheriffs and employees of a sheriff are county employees for purposes of the statute governing county employees' political activity. Accordingly, a deputy sheriff and employees of a sheriff could not be required as a condition of employment to contribute funds for political purposes. Also, a deputy sheriff and employees of a sheriff would not be permitted to use county funds, supplies, or equipment for political purposes except where otherwise allowed by law. This section becomes effective October 1, 2016.

**Section 19.6** would amend a statute dealing with municipal service districts. Current law requires the city council to have a hearing on a request to be removed from a municipal service district. Section 19.6 would provide that the city council must establish a policy to hear all requests at regular intervals, but no less than once per year.

**Section 20** would repeal Section 1 of 2015-52, which requires the Department of Health and Human Services to provide information to the Program Evaluation Division. PED in turn is required to report to the Joint Legislative Program Evaluation Oversight Committee and the Joint Legislative Oversight Committee on Health and Human Services on certain criteria to be used in determining whether provision of overnight respite services in an adult day care setting is a worthwhile service. Permanent provision for such services has, however, been provided through the enactment of G.S. 131D-6.1.

**Section 21** would allow the Revisor of Statutes to print certain explanatory comments.

## **PART III. Effective Date.**

**Section 22** would provide for the bill to be effective when it becomes law.

Layla Cummings and Kara McCraw, Attorneys with the Legislative Analysis Division, contributed to this summary.