

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1556*

Short Title: 2002 Technical Corrections. (Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary II.

June 6, 2002

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING
3 CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE
4 GENERAL STATUTES COMMISSION.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 7A-273(2) reads as rewritten:

7 "**§ 7A-273. Powers of magistrates in infractions or criminal actions.**

8 In criminal actions or infractions, any magistrate has power:

9 ...

10 (2) In misdemeanor or infraction cases involving alcohol offenses under
11 Chapter 18B of the General Statutes, traffic offenses, hunting, fishing,
12 State park and recreation area rule offenses under Chapter 113 of the
13 General Statutes, boating offenses under Chapter 75A of the General
14 Statutes, and littering offenses under ~~G.S. 14-399(e)~~, G.S. 14-399(c)
15 and G.S. 14-399(c1), to accept written appearances, waivers of trial or
16 hearing and pleas of guilty or admissions of responsibility, in
17 accordance with the schedule of offenses and fines or penalties
18 promulgated by the Conference of Chief District Judges pursuant to
19 G.S. 7A-148, and in such cases, to enter judgment and collect the fines
20 or penalties and costs;

21"

22 **SECTION 2.(a)** G.S. 14-27.1(1) reads as rewritten:

23 "**§ 14-27.1. Definitions.**

24 As used in this Article, unless the context requires otherwise:

25 (1) "Mentally ~~defective~~"-disabled" means (i) a victim who suffers from
26 mental retardation, or (ii) a victim who suffers from a mental disorder,
27 either of which temporarily or permanently renders the victim
28 substantially incapable of appraising the nature of his or her conduct,
29 or of resisting the act of vaginal intercourse or a sexual act, or of

1 communicating unwillingness to submit to the act of vaginal
2 intercourse or a sexual act.

3"

4 **SECTION 2.(b)** G.S. 14-27.3(a)(2) reads as rewritten:

5 **"§ 14-27.3. Second-degree rape.**

6 (a) A person is guilty of rape in the second degree if the person engages in
7 vaginal intercourse with another person:

8 ...

9 (2) Who is mentally ~~defective,~~disabled, mentally incapacitated, or
10 physically helpless, and the person performing the act knows or should
11 reasonably know the other person is mentally ~~defective,disabled,~~
12 mentally incapacitated, or physically helpless."

13 **SECTION 2.(c)** G.S. 14-27.5(a)(2) reads as rewritten:

14 **"§ 14-27.5. Second-degree sexual offense.**

15 (a) A person is guilty of a sexual offense in the second degree if the person
16 engages in a sexual act with another person:

17 ...

18 (2) Who is mentally ~~defective,disabled,~~ mentally incapacitated, or
19 physically helpless, and the person performing the act knows or should
20 reasonably know that the other person is mentally ~~defective,disabled,~~
21 mentally incapacitated, or physically helpless."

22 **SECTION 2.(d)** G.S. 15-144.1(c) reads as rewritten:

23 "(c) If the victim is a person who is mentally ~~defective,disabled,~~ mentally
24 incapacitated, or physically helpless it is sufficient to allege that the defendant
25 unlawfully, willfully, and feloniously did carnally know and abuse a person who was
26 mentally ~~defective,disabled,~~ mentally incapacitated or physically helpless, naming such
27 victim, and concluding as aforesaid. Any bill of indictment containing the averments
28 and allegations herein named shall be good and sufficient in law for the rape of a
29 mentally ~~defective,disabled,~~ mentally incapacitated or physically helpless person and all
30 lesser included offenses."

31 **SECTION 2.(e)** G.S. 15-144.2(c) reads as rewritten:

32 "(c) If the victim is a person who is mentally ~~defective,disabled,~~ mentally
33 incapacitated, or physically helpless it is sufficient to allege that the defendant
34 unlawfully, willfully, and feloniously did engage in a sex offense with a person who
35 was mentally ~~defective,disabled,~~ mentally incapacitated or physically helpless, naming
36 such victim, and concluding as aforesaid. Any bill of indictment containing the
37 averments and allegations herein named shall be good and sufficient in law for a sex
38 offense against a mentally ~~defective,disabled,~~ mentally incapacitated or physically
39 helpless person and all lesser included offenses."

40 **SECTION 2.(f)** This section becomes effective December 1, 2002, and
41 applies to offenses committed on or after that date.

42 **SECTION 3.(a)** G.S. 14-309.7(a) reads as rewritten:

43 "(a) An exempt organization may not operate a bingo game at a location without a
44 license. Application for a bingo license shall be made to the Department of ~~Health and~~

1 ~~Human Services~~Crime Control and Public Safety on a form prescribed by the
2 Department. The Department shall charge an annual application fee of one hundred
3 dollars (\$100.00) to defray the cost of issuing bingo licenses and handling bingo audit
4 reports. The fees collected shall be deposited in the General Fund of the State. This
5 license shall expire one year after the granting of the license. This license may be
6 renewed yearly, if the applicant pays the application fee and files an audit with the
7 Department pursuant to G.S. 14-309.11. A copy of the application and license shall be
8 furnished to the local law-enforcement agency in the county or municipality in which
9 the licensee intends to operate before bingo is conducted by the licensee."

10 **SECTION 3.(b)** G.S. 14-309.7(e) reads as rewritten:

11 "(e) An exempt organization that wants to conduct only an annual or semiannual
12 bingo game may apply to the Department of ~~Health and Human Services~~Crime Control
13 and Public Safety for a limited occasion permit. The Department of ~~Health and Human~~
14 ~~Services~~Crime Control and Public Safety may require such information as is reasonable
15 and necessary to determine that the bingo game is conducted in accordance with the
16 provisions of this Part but may not require more information than previously specified
17 in this section for application of a regular license. The application shall be made to the
18 Department on prescribed forms at least 30 days prior to the scheduled date of the bingo
19 game. In lieu of the reporting requirements of G.S. 14-309.11(b) the exempt
20 organization shall file with the licensing agency and local law-enforcement a report on
21 prescribed forms no later than 30 days following the conduct of the bingo game for
22 which the permit was obtained. Such report may require such information as is
23 reasonable and necessary to determine that the bingo game was conducted in
24 accordance with the provisions of this Part but may not require more information than
25 specified in G.S. 14-309.11(b). Any licensed exempt organization may donate or loan
26 its equipment or use of its premises to an exempt organization which has secured a
27 limited occasion permit provided such arrangement is disclosed in the limited occasion
28 permit application and is approved by the Department of ~~Health and Human~~
29 ~~Services~~Crime Control and Public Safety. Except as stated above, all provisions of this
30 Part shall apply to any exempt organization operating a bingo game under this
31 provision."

32 **SECTION 4.(a)** G.S. 14-309.11(b) reads as rewritten:

33 "(b) An audit of the account required by subsection (a) of this section shall be
34 prepared annually for the period of January 1 through December 31 or otherwise as
35 directed by the Department of ~~Health and Human Services~~Crime Control and Public
36 Safety and shall be filed with the Department of ~~Health and Human Services~~Crime
37 Control and Public Safety and the local law-enforcement agency at a time directed by
38 the Department of ~~Health and Human Services~~Crime Control and Public Safety. The
39 audit shall be prepared on a form approved by the Department of ~~Health and Human~~
40 ~~Services~~Crime Control and Public Safety and shall include the following information:

- 41 (1) The number of bingo games conducted or sponsored by the exempt
42 organization;
- 43 (2) The location and date at which each bingo game was conducted and
44 the prize awarded;

- 1 (3) The gross receipts of each bingo game;
2 (4) The cost or amount of any prize given at each bingo game;
3 (5) The amount paid in prizes at each session;
4 (6) The net return to the exempt organization; and
5 (7) The disbursements from the separate account and the purpose of those
6 disbursements, including the date of each transaction and the name and
7 address of each payee."

8 **SECTION 4.(b)** G.S. 14-309.11(d) reads as rewritten:

9 "(d) All books, papers, records and documents relevant to determining whether an
10 organization has acted or is acting in compliance with this section shall be open to
11 inspection by the law-enforcement agency or its designee, or the district attorney or his
12 designee, or the Department of ~~Health and Human Services~~Crime Control and Public
13 Safety at reasonable times and during reasonable hours."

14 **SECTION 5.** G.S. 14-313(b) reads as rewritten:

15 "(b) Sale or distribution to persons under the age of 18 years. – If any person shall
16 distribute, or aid, assist, or abet any other person in distributing tobacco products or
17 cigarette wrapping papers to any person under the age of 18 years, or if any person shall
18 purchase tobacco products or cigarette wrapping papers on behalf of ~~to~~a person, less
19 than 18 years, the person shall be guilty of a Class 2 misdemeanor; provided, however,
20 that it shall not be unlawful to distribute tobacco products or cigarette wrapping papers
21 to an employee when required in the performance of the employee's duties. Retail
22 distributors of tobacco products shall prominently display near the point of sale a sign in
23 letters at least five-eighths of an inch high which states the following:

24
25 **N.C. LAW STRICTLY PROHIBITS**

26
27 **THE PURCHASE OF TOBACCO PRODUCTS**

28
29 **BY PERSONS UNDER THE AGE OF 18.**

30
31 **PROOF OF AGE REQUIRED.**

32
33 Failure to post the required sign shall be an infraction punishable by a fine of
34 twenty-five dollars (\$25.00) for the first offense and seventy-five dollars (\$75.00) for
35 each succeeding offense.

36 A person engaged in the sale of tobacco products shall demand proof of age from a
37 prospective purchaser if the person has reasonable grounds to believe that the
38 prospective purchaser is under 18 years of age. Failure to demand proof of age as
39 required by this subsection is a Class 2 misdemeanor if in fact the prospective purchaser
40 is under 18 years of age. Proof that the defendant demanded, was shown, and
41 reasonably relied upon proof of age in the case of a retailer, or any other documentary
42 or written evidence of age in the case of a nonretailer, or that the defendant relied on the
43 electronic system established and operated by the Division of Motor Vehicles pursuant
44 to G.S. 20-37.02, shall be a defense to any action brought under this subsection. Retail

1 distributors of tobacco products shall train their sales employees in the requirements of
2 this law."

3 **SECTION 6.** G.S. 28A-13-3(c) reads as rewritten:

4 "(c) Prior to the personal representative exercising possession, custody or control
5 over real property of the estate he shall petition the clerk of court to obtain an order
6 authorizing such possession, custody or control. The petition shall include:

7 (1) A description of the real property which is the subject of the petition;

8 (2) The names, ages, and addresses, if known, of the devisees and heirs of
9 the decedent;

10 (3) A statement by the personal representative that he has determined that
11 such possession, custody or control is in the best interest of the
12 administration of the estate.

13 The devisees and heirs will be made parties to the proceeding by service of summons in
14 the manner prescribed by law. If the clerk of court determines that it is in the best
15 interest of the administration of the estate to authorize the personal representative to
16 take possession, custody or control he shall grant an order authorizing that power. If a
17 special proceeding has been instituted by the personal representative pursuant to G.S.
18 28A-15-1(c), the personal representative may petition for ~~sale, lease or~~
19 ~~mortgage~~ possession, custody, or control of any real property as a part of that proceeding
20 and is not required to institute a separate special proceeding."

21 **SECTION 7.** G.S. 28A-15-1(c) reads as rewritten:

22 "(c) If it shall be determined by the personal representative that it is in the best
23 interest of the administration of the estate to sell, lease, or mortgage any real estate or
24 interest therein to obtain money for the payment of debts and other claims against the
25 decedent's estate, the personal representative shall institute a special proceeding before
26 the clerk of superior court for such purpose pursuant to Article 17 of this Chapter,
27 except that no such proceeding shall be required for a sale made pursuant to authority
28 given by will. A general provision granting authority to the personal representative to
29 sell the testator's real property, or incorporation by reference of the provisions of G.S.
30 32-27(2) shall be sufficient to eliminate the necessity for a proceeding under Article 17.
31 If a special proceeding has been instituted by the personal representative pursuant to
32 G.S. 28A-13-3(c), the personal representative may petition for ~~possession, custody or~~
33 ~~control~~ sale, lease, or mortgage of any real property as a part of that proceeding and is
34 not required to institute a separate special proceeding."

35 **SECTION 8.** G.S. 47A-17 reads as rewritten:

36 "**§ 47A-17. Termination of unit ownership; no bar to reestablishment.**

37 The removal provided for in ~~the preceding section~~ G.S. 47A-16 shall in no way bar
38 the subsequent resubmission of the property to the provisions of this Article."

39 **SECTION 9.(a)** G.S. 51-1(1)b. reads as rewritten:

40 "b. With the consequent declaration by the minister or magistrate
41 that the persons are husband and wife; or".

42 **SECTION 9.(b)** Any marriage solemnized on or after October 1, 2001, and
43 before the effective date of this act and otherwise valid is not invalid because the
44 minister or magistrate failed to declare the persons husband and wife.

1 **SECTION 10.** G.S. 51-8 reads as rewritten:

2 "**§ 51-8. License issued by register of deeds.**

3 Every register of deeds shall, upon proper application, issue a license for the
4 marriage of any two persons who are able to answer the questions regarding age, marital
5 status, and intention to marry, and, based on the answers, the register of deeds
6 determines the persons are authorized to be married in accordance with the laws of this
7 State. In making a determination as to whether or not the parties are authorized to be
8 married under the laws of this State, the register of deeds may require the applicants for
9 the license to marry to present certified copies of birth certificates ~~or birth registration~~
10 ~~cards provided for in G.S. 130-73,~~ or such other evidence as the register of deeds deems
11 necessary to ~~such~~ the determination. The register of deeds may administer an oath to
12 any person presenting evidence relating to whether or not parties applying for a
13 marriage license are eligible to be married pursuant to the laws of this State. Each
14 applicant for a marriage license shall provide on the application the applicant's social
15 security number. If an applicant does not have a social security number and is ineligible
16 to obtain one, the applicant shall present a statement to that effect, sworn to or affirmed
17 before an officer authorized to administer oaths. Upon presentation of a sworn or
18 affirmed statement, the register of deeds shall issue the license, provided all other
19 requirements are met, and retain the statement with the register's copy of the license.
20 The register of deeds shall not issue a marriage license unless all of the requirements of
21 this section have been met."

22 **SECTION 11.** G.S. 116-209.25(c1)(2) reads as rewritten:

23 "(2) The investment manager is subject to the jurisdiction and regulation of
24 the United States ~~Security~~ Securities and Exchange Commission."

25 **SECTION 12.** The introductory language of G.S. 143-640(c) reads as
26 rewritten:

27 "(c) Membership. – The Commission shall consist of ~~28~~ 29 members, as
28 follows:"

29 **SECTION 13.** Unless otherwise provided, this act is effective when it
30 becomes law.