

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 67

Short Title: GSC Technical Corrections 2021.

(Public)

Sponsors: Representative Davis.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary 1, if favorable, Rules, Calendar, and Operations of the House

February 11, 2021

A BILL TO BE ENTITLED
AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE GENERAL STATUTES AND
SESSION LAWS, AS RECOMMENDED BY THE GENERAL STATUTES
COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-34.1 reads as rewritten:

"§ 42-34.1. Rent pending execution of judgment; post bond pending appeal.

(a) If the judgment in district court is against the defendant appellant, it ~~shall be~~ is sufficient to stay execution of the judgment during the 30-day time period for taking an appeal provided for in Rule 3 of the North Carolina Rules of Appellate Procedure if the defendant appellant posts a bond as provided in ~~G.S. 42-34(b), and no G.S. 42-34(b).~~ No additional security under G.S. 1-292 is required. If the defendant appellant fails to make rental payments as provided in the undertaking within five days of the day rent is due under the terms of the residential rental agreement, the clerk of superior court shall, upon application of the plaintiff appellee, immediately issue a writ of possession, and the sheriff shall dispossess the defendant appellant as provided in G.S. 42-36.2.

(a1) If the judgment in district court is against the defendant appellant and the defendant appellant does not appeal the judgment, the defendant appellant shall pay rent to the plaintiff for the time the defendant appellant remains in possession of the premises after the judgment is given. Rent shall be prorated if the judgment is executed before the day rent would become due under the terms of the lease. The clerk of court shall ~~disperse~~ disburse any rent in arrears paid by the defendant appellant in accordance with a stipulation executed by all parties or, if there is no stipulation, in accordance with the judge's order.

(b) If the judgment in district court is against the defendant appellant and the defendant appellant appeals the judgment, it ~~shall be~~ is sufficient to stay execution of the judgment if the defendant appellant posts a bond as provided in ~~G.S. 42-34(b), and no G.S. 42-34(b).~~ No additional security under G.S. 1-292 is required. If the defendant appellant fails to perfect the appeal or the appellate court upholds the judgment of the district court, the execution of the judgment shall proceed. The clerk of court shall not ~~disperse~~ disburse any rent in arrears paid by the defendant appellant until all appeals have been resolved."

SECTION 2.(a) Subdivisions (1b) and (7) of G.S. 150B-2 are recodified as subdivisions (1a) and (5a) of G.S. 150B-2, respectively.

SECTION 2.(b) G.S. 150B-2, as amended by subsection (a) of this section, reads as rewritten:

"§ 150B-2. Definitions.



As used in this Chapter, the following definitions apply:

- (1) ~~"Administrative law judge" means a~~ Administrative law judge. – A person appointed under G.S. 7A-752, 7A-753, or 7A-757.
- (1a) ~~"Adopt" means to~~ Adopt. – To take final action to create, amend, or repeal a rule.
- ~~(1a)(1b)~~ "Agency" means an ~~Agency.~~ – An agency or an officer in the executive branch of the government of this ~~State and~~ State. The term includes the Council of State, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. A local unit of government is not an agency.
- (1c) ~~"Codifier of Rules" means the~~ Codifier of Rules. – The person appointed by the Chief Administrative Law Judge of the Office of Administrative Hearings pursuant to G.S. 7A-760(b).
- (1d) ~~"Commission" means the~~ Commission. – The Rules Review Commission.
- (2) ~~"Contested case" means an~~ Contested case. – An administrative proceeding pursuant to this Chapter to resolve a dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty. ~~"Contested case"~~ The term does not include rulemaking, declaratory rulings, or the award or denial of a scholarship, a grant, or a loan.
- (2a) Repealed by Session Laws 1991, c. 418, s. 3.
- (2b) ~~"Hearing officer" means a~~ Hearing officer. – A person or group of persons designated by an agency that is subject to Article 3A of this Chapter to preside in a contested case hearing conducted under that Article.
- (3) ~~"License" means any~~ License. – Any certificate, ~~permit~~ permit, or other evidence, by whatever name called, of a right or privilege to engage in any activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes, occupational licenses, and certifications of electronic poll books, ballot duplication systems, or voting systems under G.S. 163-165.7.
- (4) ~~"Licensing" means any~~ Licensing. – Any administrative action issuing, failing to issue, suspending, or revoking a license or occupational license. ~~"Licensing"~~ The term does not include controversies over whether an examination was fair or whether the applicant passed the examination.
- (4a) ~~"Occupational license" means any~~ Occupational license. – Any certificate, permit, or other evidence, by whatever name called, of a right or privilege to engage in a profession, occupation, or field of endeavor that is issued by an occupational licensing agency.
- (4b) ~~"Occupational licensing agency" means any~~ Occupational licensing agency. – Any board, commission, ~~committee~~ committee, or other agency of the State of North Carolina ~~which that~~ is established for the primary purpose of regulating the entry of persons into, ~~and/or or~~ the conduct of persons within a particular profession, ~~occupation~~ occupation, or field of endeavor, and ~~which that~~ is authorized to issue and revoke licenses. ~~"Occupational licensing agency"~~ The term does not include State agencies or departments ~~which that~~ may as only a part of their regular function issue permits or licenses.
- (5) ~~"Party" means any~~ Party. – Any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate.

- 1 (5a) ~~"Person" means any Person.~~ – Any natural person, partnership, corporation,
 2 body ~~politic~~ politic, and any unincorporated association, organization, or
 3 society ~~which that~~ may sue or be sued under a common name.
- 4 (6) ~~"Person aggrieved" means any Person aggrieved.~~ – Any person or group of
 5 persons of common interest directly or indirectly affected substantially in ~~his~~
 6 his, her, or its person, property, or employment by an administrative decision.
- 7 (7a) ~~"Policy" means any Policy.~~ – Any nonbinding interpretive statement within
 8 the delegated authority of an agency that merely defines, interprets, or
 9 explains the meaning of a statute or rule. The term includes any document
 10 issued by an agency ~~which that~~ is intended and used purely to assist a person
 11 to comply with the law, such as a guidance document.
- 12 (8) ~~"Residence" means domicile~~ Residence. – Domicile or principal place of
 13 business.
- 14 (8a) ~~"Rule" means any Rule.~~ – Any agency regulation, standard, or statement of
 15 general applicability that implements or interprets an enactment of the General
 16 Assembly or Congress or a regulation adopted by a federal agency or that
 17 describes the procedure or practice requirements of an agency. The term
 18 includes the establishment of a fee and the amendment or repeal of a prior
 19 rule. The term does not include the following:
 20 ...
 21 b. Budgets and budget policies and procedures issued by the Director of
 22 the Budget, by the head of a department, as defined by G.S. 143A-2 or
 23 G.S. 143B-3, or by an occupational licensing board, as defined by
 24 G.S. 93B-1.
 25 ...
 26 l. Standards adopted by the ~~Department of Information Technology~~
 27 State Chief Information Officer and applied to information technology
 28 as defined by G.S. 147-33.81 in G.S. 143B-1320.
- 29 (8b) Repealed by Session Laws 2011-398, s. 61.2, effective July 25, 2011.
- 30 (8c) ~~"Substantial evidence" means relevant~~ Substantial evidence. – Relevant
 31 evidence a reasonable mind might accept as adequate to support a conclusion.
- 32 (9) Repealed by Session Laws 1991, c. 418, s. 3."
- 33 **SECTION 2.(c)** G.S. 150B-38 reads as rewritten:
- 34 **"§ 150B-38. Scope; hearing required; notice; venue.**
- 35 (a) The provisions of this Article shall apply to:
- 36 (1) Occupational licensing agencies.
- 37 (2) The State Banking Commission, the Commissioner of Banks, and the Credit
 38 Union Division of the Department of Commerce.
- 39 (3) The Department of Insurance and the Commissioner of Insurance.
- 40 (4) The State Chief Information Officer in the administration of the provisions of
 41 Article 15 of Chapter 143B of the General Statutes.
- 42 (5) The North Carolina State Building Code Council.
- 43 (6) Repealed by Session Laws 2018-146, s. 4.4(b), effective December 27, 2018.
- 44 (b) Prior to any agency action in a contested case, the agency shall give the parties in the
 45 case an opportunity for a hearing without undue delay and notice not less than 15 days before the
 46 hearing. Notice to the parties shall ~~include~~ include all of the following:
- 47 (1) A statement of the date, hour, place, and nature of the ~~hearing~~ hearing.
- 48 (2) A reference to the particular sections of the statutes and rules ~~involved;~~
 49 and involved.
- 50 (3) A short and plain statement of the facts alleged.

(c) Notice shall be given by one of the methods for service of process under G.S. 1A-1, Rule 4(j) or Rule 4(j3). If given by registered or certified mail, by signature confirmation as provided by the United States Postal Service, or by designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, notice shall be deemed to have been given on the delivery date appearing on the return receipt, copy of proof of delivery provided by the United States Postal Service, or delivery receipt. If notice cannot be given by one of the methods for service of process under G.S. 1A-1, Rule 4(j) or Rule 4(j3), then notice shall be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) A party ~~who~~ that has been served with a notice of hearing may file a written response with the agency. If a written response is filed, a copy of the response ~~must~~ shall be mailed to all other parties not less than 10 days before the date set for the hearing.

(e) All hearings conducted under this Article shall be open to the public. A hearing conducted by the agency shall be held in the county where the agency maintains its principal office. A hearing conducted for the agency by an administrative law judge requested under G.S. 150B-40 shall be held in a county in this State where any person whose property or rights are the subject matter of the hearing resides. If a different venue would promote the ends of justice or better serve the convenience of witnesses, the agency or the administrative law judge may designate another county. A person whose property or rights are the subject matter of the hearing waives ~~his~~ an objection to venue ~~if he proceeds by~~ proceeding in the hearing.

(f) Any person may petition to become a party by filing with the agency or hearing officer a motion to intervene in the manner provided by G.S. 1A-1, Rule 24. In addition, any person interested in a contested case under this Article may intervene and participate to the extent deemed appropriate by the agency hearing officer.

(g) When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending before an agency, the agency may order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make other orders to reduce costs or delay in the proceedings.

(h) Every agency shall adopt rules governing the conduct of hearings that are consistent with the provisions of this Article.

~~(i) Standards adopted by the State Chief Information Officer and applied to information technology as defined in G.S. 143B-1320."~~

SECTION 2.(d) G.S. 122C-151.4 reads as rewritten:

"§ 122C-151.4. Appeal to State MH/DD/SA Appeals Panel.

(a) Definitions. – The following definitions apply in this section:

(1) ~~"Appeals Panel" means the State MH/DD/SA Appeals Panel established under this section.~~

(1a) ~~"Client" means an Client.~~ – An individual who is admitted to or receiving public services from an area facility. ~~"Client"~~ The term includes the client's personal representative or designee.

(1b) ~~"Contract" means a Contract.~~ – A contract with an area authority or county program to provide services, other than personal services, to clients and other recipients of services.

(2) ~~"Contractor" means a Contractor.~~ – A person ~~who~~ that has a contract or ~~who~~ that had a contract during the current fiscal year.

(3) ~~"Former contractor" means a Former contractor.~~ – A person ~~who~~ that had a contract during the previous fiscal year.

(4) Panel. – The State MH/DD/SA Appeals Panel established under this section.

(b) Appeals Panel. – The State MH/DD/SA Appeals Panel is established. The Panel shall consist of three members appointed by the Secretary. The Secretary shall determine the qualifications of the Panel members. Panel members serve at the pleasure of the Secretary.

(c) ~~Who Can~~ Persons That May Appeal. – The following persons may appeal to the State MH/DD/SA Appeals Panel after having exhausted the appeals process at the appropriate area authority or county program:

- (1) A contractor or a former contractor ~~who~~ that claims that an area authority or county program is not acting or has not acted within applicable State law or rules in denying the contractor's application for endorsement or in imposing a particular requirement on the contractor on fulfillment of the ~~contract;~~ contract.
- (2) A contractor or a former contractor ~~who~~ that claims that a requirement of the contract substantially compromises the ability of the contractor to fulfill the ~~contract;~~ contract.
- (3) A contractor or former contractor ~~who~~ that claims that an area authority or county program has acted arbitrarily and capriciously in reducing funding for the type of services provided or formerly provided by the contractor or former ~~contractor;~~ contractor.
- (4) A client or a person who was a client in the previous fiscal year, who claims that an area authority or county program has acted arbitrarily and capriciously in reducing funding for the type of services provided or formerly provided to the client directly by the area authority or county ~~program;~~ and program.
- (5) A person ~~who~~ that claims that an area authority or county program did not comply with a State law or a rule adopted by the Secretary or the Commission in developing the plans and budgets of the area authority or county program and that the failure to comply has adversely affected the ability of the person to participate in the development of the plans and budgets.

(d) Hearing. – All members of the State MH/DD/SA Appeals Panel shall hear an appeal to the Panel. An appeal shall be filed with the Panel within the time required by the Secretary and shall be heard by the Panel within the time required by the Secretary. A hearing shall be conducted at the place determined in accordance with the rules adopted by the Secretary. A hearing before the Panel shall be informal; no sworn testimony shall be taken and the rules of evidence do not apply. The person ~~who~~ that appeals to the Panel has the burden of proof. The Panel shall not stay a decision of an area authority during an appeal to the Panel.

(e) Decision. – The State MH/DD/SA Appeals Panel shall make a written decision on each appeal to the Panel within the time set by the Secretary. A decision may direct a contractor, an area authority, or a county program to take an action or to refrain from taking an action, but it shall not require a party to the appeal to pay any amount except payment due under the contract. In making a decision, the Panel shall determine the course of action that best protects or benefits the clients of the area authority or county program. If a party to an appeal fails to comply with a decision of the Panel and the Secretary determines that the failure deprives clients of the area authority or county program of a type of needed service, the Secretary may use funds previously allocated to the area authority or county program to provide the service.

(f) Chapter 150B Appeal. – A person ~~who~~ that is dissatisfied with a decision of the Panel may commence a contested case under Article 3 of Chapter 150B of the General Statutes. Notwithstanding ~~G.S. 150B-2(1a),~~ G.S. 150B-2(1b), an area authority or county program is considered an agency for purposes of the limited appeal authorized by this section. If the need to first appeal to the State MH/DD/SA Appeals Panel is waived by the Secretary, a contractor may appeal directly to the Office of Administrative Hearings after having exhausted the appeals process at the appropriate area authority or county program.

(g) Limitation of Applicability. – This section does not apply to LME/MCOs, enrollees, applicants, providers of emergency services, or network providers subject to Chapter 108D of the General Statutes."

SECTION 2.(e) G.S. 150B-23 reads as rewritten:

"§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.

(a) A contested case shall be commenced by paying a fee in an amount established in G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party ~~who~~that files the petition shall serve a copy of the petition on all other parties and, if the dispute concerns a license, the person ~~who~~that holds the license. A party ~~who~~that files a petition shall file a certificate of service together with the petition. A petition shall be signed by a party, an attorney representing a party, or other representative of the party as may specifically be authorized by law, and, if filed by a party other than an agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the ~~agency~~agency did any of the following:

- (1) Exceeded its authority or ~~jurisdiction~~jurisdiction.
- (2) Acted ~~erroneously~~erroneously.
- (3) Failed to use proper ~~procedure~~procedure.
- (4) Acted arbitrarily or ~~capriciously~~or capriciously.
- (5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case ~~hereunder~~under this section.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases under this Article.

A business entity may represent itself using a nonattorney representative who is one or more of the following of the business entity: (i) officer, (ii) manager or member-manager, if the business entity is a limited liability company, (iii) employee whose income is reported on IRS Form W-2, if the business entity authorizes the representation in writing, or (iv) owner of the business entity, if the business entity authorizes the representation in writing and if the owner's interest in the business entity is at least twenty-five percent (25%). Authority for and prior notice of nonattorney representation shall be made in writing, under penalty of perjury, to the Office on a form provided by the Office.

(a1) Repealed by Session Laws 1985 (Regular Session, 1986), c. 1022, s. 1(9).

(a2) An administrative law judge assigned to a contested case may require a party to the case to file a prehearing statement. A party's prehearing statement ~~must~~shall be served on all other parties to the contested case.

(a3) A Medicaid or NC Health Choice enrollee, or the enrollee's authorized representative, who appeals a notice of resolution issued by a managed care entity under Chapter 108D of the General Statutes may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the same manner as other contested cases initiated by Medicaid or NC Health Choice enrollees under this Article. Solely and only for the purposes of contested cases commenced pursuant to G.S. 108D-15 by enrollees of LME/MCOs to appeal a notice of resolution issued by the LME/MCO, an LME/MCO is considered an agency as defined in ~~G.S. 150B-2(1a)~~G.S. 150B-2. The LME/MCO ~~shall not be~~is not considered an agency for any other purpose. When a prepaid health plan, as defined in G.S. 108D-1, other than an LME/MCO, is under contract with the Department of Health and Human Services to issue notices of resolution under Article 2 of Chapter 108D of the General Statutes, then solely and only for the purposes of contested cases commenced pursuant to G.S. 108D-15 to appeal a notice of resolution issued by the prepaid health plan, the prepaid health plan ~~shall be~~is considered an agency as defined in ~~G.S. 150B-2(1a)~~G.S. 150B-2. The prepaid health plan ~~shall not be~~is not considered an agency for any other purpose.

1 ...

2 (c) Notice shall be given by one of the methods for service of process under G.S. 1A-1,
3 Rule 4(j) or Rule 4(j3). If given by registered or certified mail, by signature confirmation as
4 provided by the United States Postal Service, or by designated delivery service authorized
5 pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, notice ~~shall be~~ is deemed to have been
6 given on the delivery date appearing on the return receipt, copy of the proof of delivery provided
7 by the United States Postal Service, or delivery receipt. If giving of notice cannot be
8 accomplished by a method under G.S. 1A-1, Rule 4(j) or Rule 4(j3), notice shall then be given
9 in the manner provided in G.S. 1A-1, Rule 4(j1).

10 ...

11 (f) Unless another statute or a federal statute or regulation sets a time limitation for the
12 filing of a petition in contested cases against a specified agency, the general limitation for the
13 filing of a petition in a contested case is 60 days. The time limitation, whether established by
14 another statute, federal statute, or federal regulation, or this section, ~~shall commence~~ commences
15 when notice is given of the agency decision to all persons aggrieved ~~who that~~ are known to the
16 agency by personal delivery, electronic delivery, or by the placing of the notice in an official
17 depository of the United States Postal Service wrapped in a wrapper addressed to the person at
18 the latest address given by the person to the agency. The notice shall be in writing, ~~and~~ shall set
19 forth the agency action, and shall inform the persons of the right, the procedure, and the time
20 limit to file a contested case petition. When no informal settlement request has been received by
21 the agency prior to issuance of the notice, any subsequent informal settlement request shall not
22 suspend the time limitation for the filing of a petition for a contested case hearing. When the
23 Chief Justice of the North Carolina Supreme Court determines and declares that catastrophic
24 conditions exist or have existed in one or more counties of the State and issues an order pursuant
25 to G.S. 7A-39(b), the chief administrative law judge may by order entered pursuant to this
26 subsection extend, to a date certain no fewer than 10 days after the effective date of the order,
27 the time or period of limitation, whether established by another statute or this section, for the
28 filing of a petition for a contested case. The order shall be in writing and ~~shall become~~ becomes
29 effective for each affected county upon the date set forth in the order, and if no date is set forth
30 in the order, then upon the date the order is signed by the chief administrative law judge. The
31 order shall provide that it ~~shall expire~~ expires upon the expiration of the Chief Justice's order.

32 "

33 **SECTION 3.** Section 5 of S.L. 2020-90 is repealed.

34 **SECTION 4.** This act is effective when it becomes law.