

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 248*

Short Title: Update Archaic Disability Terms. (Public)

Sponsors: Senators Hartsell; and Atwater.

Referred to: Health Care.

March 8, 2011

A BILL TO BE ENTITLED

AN ACT TO UPDATE CERTAIN TERMINOLOGY IN REFERENCE TO PERSONS WITH
DISABILITIES, AS RECOMMENDED BY THE GENERAL STATUTES
COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-255 reads as rewritten:

"§ 1-255. Who may apply for a declaration.

Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, ~~an infant, lunatic, or insolvent,~~ a minor, an incompetent person, or an insolvent person, may have a declaration of rights or legal relations in respect thereto:

- (1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; or
- (2) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or
- (3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.
- (4) To determine the apportionment of the federal estate tax, interest and penalties under the provisions of Article 27 of Chapter 28A."

SECTION 2. Rule 601 of the North Carolina Rules of Evidence, as contained in G.S. 8C-1, reads as rewritten:

"Rule 601. General rule of competency; disqualification of witness.

(a) General rule. – Every person is competent to be a witness except as otherwise provided in these rules.

(b) Disqualification of witness in general. – A person is disqualified to testify as a witness when the court determines that ~~he~~ the person is (1) incapable of expressing himself or herself concerning the matter as to be understood, either directly or through interpretation by one who can understand ~~him,~~ him or her, or (2) incapable of understanding the duty of a witness to tell the truth.

(c) Disqualification of interested persons. – Upon the trial of an action, or the hearing upon the merits of a special proceeding, a party or a person interested in the event, or a person from, through or under whom such a party or interested person derives his or her interest or title by assignment or otherwise, shall not be examined as a witness in his or her own behalf or interest, or in behalf of the party succeeding to his or her title or interest, against the executor, administrator or survivor of a deceased person, ~~or the committee of a lunatic,~~ guardian of an incompetent person, or a person deriving his or her title or interest from, through or under a



1 ~~deceased or incompetent person or lunatic~~, by assignment or otherwise, concerning any oral
2 communication between the witness and the ~~person or lunatic or incompetent person~~.
3 However, this subdivision shall not apply when:

- 4 (1) The executor, administrator, survivor, ~~committee guardian~~, or person so
5 deriving title or interest is examined in his or her own behalf regarding the
6 subject matter of the oral communication.
- 7 (2) The testimony of the ~~lunatic or deceased~~ or incompetent person is given in
8 evidence concerning the same transaction or communication.
- 9 (3) Evidence of the subject matter of the oral communication is offered by the
10 executor, administrator, survivor, ~~committee guardian~~ or person so deriving
11 title or interest.

12 Nothing in this subdivision shall preclude testimony as to the identity of the operator of a motor
13 vehicle in any case."

14 **SECTION 3.** G.S. 14-113 reads as rewritten:

15 "**§ 14-113. Obtaining money by false representation of physical defect.**disability.

16 It shall be unlawful for any person to falsely represent himself or herself in any manner
17 whatsoever as blind, deaf, ~~dumb, or crippled~~ mute, or otherwise physically ~~defective~~ disabled
18 for the purpose of obtaining money or other thing of value or of making sales of any character
19 of personal property. Any person so falsely representing himself or herself as ~~blind, deaf,~~
20 ~~dumb, crippled or otherwise physically defective~~, and securing aid or assistance on account of
21 such representation, shall be deemed guilty of a Class 2 misdemeanor."

22 **SECTION 4.** G.S. 43-12 reads as rewritten:

23 "**§ 43-12. Effect of decree; approval of judge.**

24 Every decree rendered as hereinbefore provided shall bind the land and bar all persons and
25 corporations claiming title thereto or interest therein; quiet the title thereto, and shall be forever
26 binding and conclusive upon and against all persons and corporations, whether mentioned by
27 name in the order of publication, or included under the general description, "to whom it may
28 concern"; and every such decree so rendered, or a duly certified copy thereof, as also the
29 certificate of title issued thereon to the person or corporation therein named as owner, or to any
30 subsequent transferee or purchaser, shall be conclusive evidence that such person or
31 corporation is the owner of the land therein described, and no other evidence shall be required
32 in any court of this State of ~~his~~ his, her, or its right or title thereto. It shall not be an exception
33 to such conclusiveness that ~~the a person is an infant, lunatic~~ a minor, is incompetent, or is under
34 any disability, but such person may have recourse upon the indemnity fund hereinafter
35 provided for, for any loss ~~he~~ the person may suffer by reason of being so concluded.
36 Notwithstanding the provisions of G.S. 43-10, such decrees shall not be binding on and include
37 the State of North Carolina or any of its agencies unless the State of North Carolina is made a
38 party to the proceeding and notice of said proceeding and copy of petition, etc., are served upon
39 the State of North Carolina as provided in this Chapter. Such decrees shall, in addition to being
40 signed by the clerk of the court, be approved by the judge of the superior court, who shall
41 review the whole proceeding and have power to require any reformation of the process,
42 pleading, decrees or entries."

43 **SECTION 5.** On the next occasion that the State Banking Commission amends 04
44 NCAC 03D .0301, the Commission shall revise the definition of "fiduciary" so that it no longer
45 contains the word "lunatics."

46 **SECTION 6.** This act is effective when it becomes law.