

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 56

Short Title: Antiquated Laws Repealed.

(Public)

Sponsors: Senators Plyler, Conder, Hoyle; Plexico, Jordan, Hobbs, Soles, Speed, Edwards, Parnell, Dannelly, Odom, Kerr, Rand, Cooper, and Lucas.

Referred to: Judiciary II/Election Laws.

January 26, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO REPEAL ANTIQUATED, OBSOLETE, OR UNCONSTITUTIONAL
3 LAWS.

4 The General Assembly of North Carolina enacts:

6 **COUNTERFEITING SPANISH MILLED DOLLAR**

7 Section 1. (a) G.S. 14-13 reads as rewritten:

8 **"§ 14-13. Counterfeiting coin and uttering coin that is counterfeit.**

9 If any person shall falsely make, forge or counterfeit, or cause or procure to be falsely
10 made, forged or counterfeited, or willingly aid or assist in falsely making, forging or
11 counterfeiting the resemblance or similitude or likeness of a ~~Spanish milled dollar, or any~~
12 coin of gold or silver which is in common use and received in the discharge of contracts
13 by the citizens of the State; or shall pass, utter, publish or sell, or attempt to pass, utter,
14 publish or sell, or bring into the State from any other place with intent to pass, utter,
15 publish or sell as true, any such false, forged or counterfeited coin, knowing the same to
16 be false, forged or counterfeited, with intent to defraud any person whatsoever, every
17 person so offending shall be punished as a Class I felon."

18 (b) G.S. 14-14 reads as rewritten:

19 **"§ 14-14. Possessing tools for counterfeiting.**

1 If any person shall have in his possession any instrument for the purpose of making
2 any counterfeit similitude or likeness of a ~~Spanish milled dollar, or other~~ any coin made of
3 gold or silver which is in common use and received in discharge of contracts by the
4 citizens of the State, and shall be duly convicted thereof, the person so offending shall be
5 punished as a Class I felon."
6

7 COUNTY LICENSE TAX FOR ROADHOUSES

8 Sec. 2. G.S. 72-31 is repealed.
9

10 EVIDENCE LAW

11 REFERENCE TO REPEALED FEDERAL LAW MENTIONING 12 THE WAR DEPARTMENT

13 Sec. 3. G.S. 8-37.1 reads as rewritten:

14 **"§ 8-37.1. Finding of presumed death.**

15 (a) A written finding of presumed death, made by the Secretary of War, the
16 Secretary of the Navy, or other officer or employee of the United States authorized to
17 made such finding, pursuant to the Federal Missing Persons Act (56 Stat. 143, 1092, and
18 P.L. 408, ch. 371, 2d Sess. 78th Cong.; 50 U.S.C. App. Supp. 1001-17), as now or
19 hereafter amended, or a duly certified copy of such finding, shall be received in any
20 court, office or other place in this State as prima facie evidence of the death of the person
21 therein found to be dead, and the date, circumstances and place of his disappearance.
22 This subsection applies only to findings of presumed death made prior to the effective
23 date of Section 5(b) of Public Law 89-554.

24 (b) A written finding of presumed death, made by the Secretary pursuant to
25 Chapter 10 of Title 37 of the U.S. Code, P.L. 89-554 as now or hereafter amended, or a
26 duly certified copy of such finding, shall be received in any court, office, or other place in
27 this State as prima facie evidence of the death of the person therein found to be dead, and
28 the date, circumstances, and place of his disappearance. This subsection applies only to
29 findings of presumed death made on or after the effective date of Section 5(b) of Public
30 Law 89-554."
31

32 NATIONAL DEFENSE HOUSING

33 REFERENCES TO WAR AND NAVY DEPARTMENTS

34 Sec. 4. G.S. 157-53(f) reads as rewritten:

35 "(f) 'Persons engaged in national defense activities,' as used in this Article shall
36 include: ~~enlisted men in the military and naval personnel in the armed services of the~~
37 ~~United States and employees of the War and Navy Departments~~ Defense Department
38 assigned to duty at military or naval armed forces reservations, posts or bases; and workers
39 engaged or to be engaged in industries connected with and essential to the National
40 Defense Program; and shall include the families of the aforesaid persons who are living
41 with them."
42

43 POWERS OF ATTORNEY OF MEMBERS OF ARMED SERVICES

REFERENCE TO 48 STATES

Sec. 5. G.S. 165-39 reads as rewritten:

"§ 165-39. Validity of acts of agent performed after death of principal.

No agency created by a power of attorney in writing given by a principal who is at the time of execution, or who, after executing such power of attorney, becomes, either (i) a member of the armed forces of the United States, or (ii) a person serving as a merchant seaman outside the limits of the United States, included within the 48 several states and the District of Columbia; or (iii) a person outside said limits by permission, assignment or direction of any department or official of the United States government, in connection with any activity pertaining to or connected with the prosecution of any war in which the United States is then engaged, shall be revoked or terminated by the death of the principal, as to the agent or other person who, without actual knowledge or actual notice of the death of the principal, shall have acted or shall act, in good faith, under or in reliance upon such power of attorney or agency, and any action so taken, unless otherwise invalid or unenforceable, shall be binding on the heirs, devisees, legatees, or personal representatives of the principal."

COASTING

Sec. 6. G.S. 20-165 is repealed.

CUSSING ON PUBLIC ROADS

Sec. 7. G.S. 14-197 is repealed.

CLARK'S CALENDAR

Sec. 8. G.S. 8-48 is repealed.

**REPEAL OF SPECIAL PROCEDURE FOR WRITS OF QUO WARRANTO
THE WRIT ITSELF HAVING BEEN ABOLISHED**

Sec. 9. G.S. 8-77 is repealed.

ABOLISH OATH OF OFFICE FOR OFFICES THAT DO NOT EXIST

Sec. 10. G.S. 11-11 reads as rewritten:

"§ 11-11. Oaths of sundry persons; forms.

The oaths of office to be taken by the several persons hereafter named shall be in the words following the names of said persons respectively, after taking the separate oath required by Article VI, Section 7 of the Constitution of North Carolina:

ADMINISTRATOR

You swear (or affirm) that you believe A. B. died without leaving any last will and testament; that you will well and truly administer all and singular the goods and chattels, rights and credits of the said A. B., and a true and perfect inventory thereof return according to law; and that all other duties appertaining to the charge reposed in you, you

1 will well and truly perform, according to law, and with your best skill and ability; so help
2 you, God.

3
4 **ATTORNEY AT LAW**

5
6 I, A. B., do swear (or affirm) that I will truly and honestly demean myself in the
7 practice of an attorney, according to the best of my knowledge and ability; so help me,
8 God.

9
10 **ATTORNEY GENERAL, STATE DISTRICT ATTORNEYS AND COUNTY**
11 **ATTORNEYS**

12
13 I, A. B., do solemnly swear (or affirm) that I will well and truly serve the State of
14 North Carolina in the office of Attorney General (district attorney for the State or
15 attorney for the State in the county of); I will, in the execution of my office,
16 endeavor to have the criminal laws fairly and impartially administered, so far as in me
17 lies, according to the best of my knowledge and ability; so help me, God.

18
19 **AUDITOR**

20
21 I, A. B., do solemnly swear (or affirm) that I will well and truly execute the trust
22 reposed in me as auditor, without favor or partiality, according to law, to the best of my
23 knowledge and ability; so help me, God.

24
25 **BOOK DEBT OATH**

26
27 You swear (or affirm) that the matter in dispute is a book account; that you have no
28 means to prove the delivery of such articles, as you propose to prove by your own oath,
29 or any of them, but by yourself; and you further swear that the account rendered by you is
30 just and true; and that you have given all just credits; so help you, God.

31
32 **BOOK DEBT OATH FOR ADMINISTRATOR**

33
34 You, as executor or administrator of A. B., swear (or affirm) that you verily believe
35 this account to be just and true, and that there are no witnesses, to your knowledge,
36 capable of proving the delivery of the articles therein charged; and that you found the
37 book or account so stated, and do not know of any other or further credit to be given than
38 what is therein given; so help you, God.

39
40 **CLERK OF THE SUPREME COURT**

1 I,, do solemnly swear that I will discharge the duties of the office of clerk
2 of the Supreme Court without prejudice, affection, favor, or partiality, according to law
3 and to the best of my skill and ability, so help me, God.
4

5 **CLERK OF THE SUPERIOR COURT**

6
7 I, A. B., do swear (or affirm) that, by myself or any other person, I neither have given,
8 nor will I give, to any person whatsoever, any gratuity, fee, gift or reward, in
9 consideration of my election or appointment to the office of clerk of the superior court for
10 the county of; nor have I sold, or offered to sell, nor will I sell or offer to sell,
11 my interest in the said office; I also solemnly swear that I do not, directly or indirectly,
12 hold any other lucrative office in the State; and I do further swear that I will execute the
13 office of clerk of the superior court for the county of without prejudice, favor,
14 affection or partiality, to the best of my skill and ability; so help me, God.
15

16 **COMMISSIONERS ALLOTING A YEAR'S PROVISIONS**

17
18 You and each of you swear (or affirm) that you will lay off and allot to the petitioner a
19 year's provisions for herself and family, according to law, and with your best skill and
20 ability; so help you, God.
21

22 **COMMISSIONERS DIVIDING AND ALLOTING REAL ESTATE**

23
24 You and each of you swear (or affirm) that, in the partition of the real estate now
25 about to be made by you, you will do equal and impartial justice among the several
26 claimants, according to their several rights, and agreeably to law; so help you, God.
27

28 **COMMISSIONER OF WRECKS**

29
30 ~~I, A. B., do solemnly swear (or affirm) that I will truly and faithfully discharge the~~
31 ~~duties of a commissioner of wrecks, for the district of... .., in the county of~~
32 ~~;, according to law; so help me, God.~~
33

34 **COTTON WEIGHER FOR PUBLIC**

35
36 ~~I,, public weigher for the city of (or as the case may be), do~~
37 ~~solemnly swear that I will justly, impartially and without any deduction, except as may be~~
38 ~~allowed by law, weigh all cotton that may be brought to me for that purpose, and tender a~~
39 ~~true account thereof to the parties concerned, if required so to do; so help me, God.~~
40

41 **ENTRY-TAKER**

1 I, A. B., do solemnly swear (or affirm) that I will well and impartially discharge the
2 several duties of the office of entry-taker for the county of according to law; so
3 help me, God.

4
5 **EXECUTOR**

6
7 You swear (or affirm) that you believe this writing to be and contain the last will and
8 testament of A. B., deceased; and that you will well and truly execute the same by first
9 paying his debts and then his legacies, as far as the said estate shall extend or the law
10 shall charge you; and that you will well and faithfully execute the office of an executor,
11 agreeably to the trust and confidence reposed in you, and according to law; so help you,
12 God.

13
14 **GRAND JURY–FOREMAN OF**

15
16 You, as foreman of this grand inquest for the body of this county, shall diligently
17 inquire and true presentment make of all such matters and things as shall be given you in
18 charge; the State's counsel, your fellows' and your own you shall keep secret; you shall
19 present no one for envy, hatred or malice; neither shall you leave anyone unrepresented for
20 fear, favor or affection, reward or the hope of reward; but you shall present all things
21 truly, as they come to your knowledge, according to the best of your understanding; so
22 help you, God.

23
24 **GRAND JURORS**

25
26 The same oath which your foreman hath taken on his part, you and each of you shall
27 well and truly observe and keep on your part; so help you, God.

28
29 **GRAND JURY–OFFICER OF**

30
31 You swear (or affirm) that you will faithfully carry all papers sent from the court to
32 the grand jury, or from the grand jury to the court, without alteration or erasement, and
33 without disclosing the contents thereof; so help you, God.

34
35 **JURY–OFFICER OF**

36
37 You swear (or affirm) that you will keep every person sworn on this jury in some
38 private and convenient place when in your charge. You shall not suffer any person to
39 speak to them, neither shall you speak to them yourself, unless it be to ask them whether
40 they are agreed in their verdict, but with leave of the court; so help you, God.

41
42 **OATH FOR PETIT JUROR**

1 You do solemnly swear (affirm) that you will truthfully and without prejudice or
2 partiality try all issues in civil or criminal actions that come before you and give true
3 verdicts according to the evidence, so help you, God.
4

5 **JUSTICE, JUDGE, OR MAGISTRATE OF THE**
6 **GENERAL COURT OF JUSTICE**
7

8 I,, do solemnly swear (affirm) that I will administer justice without
9 favoritism to anyone or to the State; that I will not knowingly take, directly or indirectly,
10 any fee, gift, gratuity or reward whatsoever, for any matter or thing done by me or to be
11 done by me by virtue of my office, except the salary and allowances by law provided;
12 and that I will faithfully and impartially discharge all the duties of of the
13 Division of the General Court of Justice to the best of my ability and understanding, and
14 consistent with the Constitution and laws of the State; so help me, God.
15

16 **REGISTER OF DEEDS**
17

18 I, A. B., do solemnly swear (or affirm) that I will faithfully and truly, according to the
19 best of my skill and ability, execute the duties of the office of register of deeds for the
20 county of, in all things according to law; so help me, God.
21

22 **SECRETARY OF STATE**
23

24 I, A. B., do swear (or affirm) that I will, in all respects, faithfully and honestly execute
25 the office of Secretary of State of the State of North Carolina, during my continuance in
26 office, according to law; so help me, God.
27

28 **SHERIFF**
29

30 I, A. B., do solemnly swear (or affirm) that I will execute the office of sheriff of
31 . county to the best of my knowledge and ability, agreeably to law; and that I will not
32 take, accept or receive, directly or indirectly, any fee, gift, bribe, gratuity or reward
33 whatsoever, for returning any man to serve as a juror or for making any false return on
34 any process to me directed; so help me, God.
35

36 **LAW ENFORCEMENT OFFICER**
37

38 I, A. B., do solemnly swear (or affirm) that I will be alert and vigilant to enforce the
39 criminal laws of this State; that I will not be influenced in any matter on account of
40 personal bias or prejudice; that I will faithfully and impartially execute the duties of my
41 office as a law enforcement officer according to the best of my skill, abilities, and
42 judgment; so help me, God.
43

1 You swear (or affirm) that the evidence you shall give to the court and jury in this
2 trial, between the State and the prisoner at the bar, shall be the truth, the whole truth, and
3 nothing but the truth; so help you, God.

4
5 **WITNESS IN A CRIMINAL ACTION**

6
7 You swear (or affirm) that the evidence you shall give to the court and jury in this
8 action between the State and A. B. shall be the truth, the whole truth, and nothing but the
9 truth; so help you, God.

10
11 **WITNESS IN CIVIL CASES**

12
13 You swear (or affirm) that the evidence you shall give to the court and jury in this
14 cause now on trial, wherein A. B. is plaintiff and C. D. defendant, shall be the truth, the
15 whole truth, and nothing but the truth; so help you, God.

16
17 **WITNESS TO PROVE A WILL**

18
19 You swear (or affirm) that you saw C. D. execute (or heard him acknowledge the
20 execution of) this writing as his last will and testament; that you attested it in his presence
21 and at his request; and that at the time of its execution (or at the time the execution was
22 acknowledged) he was, in your opinion, of sound mind and disposing memory; so help
23 you, God.

24
25 **WITNESS BEFORE A LEGISLATIVE COMMITTEE OR COMMISSION**

26
27 You swear (or affirm) that the testimony you shall give to the committee (or
28 commission) shall be the truth, the whole truth, and nothing but the truth; so help you,
29 God.

30
31 **GENERAL OATH**

32
33 Any officer of the State or of any county or township, the term of whose oath is not
34 given above, shall take an oath in the following form:

35 I, A. B., do swear (or affirm) that I will well and truly execute the duties of the office
36 of according to the best of my skill and ability, according to law; so help me,
37 God."

38
39 **ABOLISHED DUTIES OF GOVERNOR'S PRIVATE SECRETARY**

40 Sec. 11. G.S. 147-15.1 is repealed.

41
42 **ABOLITION OF POSSE COMITATUS, THE "POWER OF THE COUNTY"**

43 Sec. 12. (a) G.S. 1-415 reads as rewritten:

1 **"§ 1-415. Execution of order.**

2 The sheriff shall execute the order by arresting the defendant and keeping him in
3 custody until discharged by law. ~~The sheriff may call the power of the county to his aid in the~~
4 ~~execution of the arrest."~~

5 (b) G.S. 17-22 is repealed.

6 (c) G.S. 15-48 reads as rewritten:

7 **"§ 15-48. Outlawry for felony.**

8 In all cases where any justice or judge of the General Court of Justice shall, on written
9 affidavit, filed and retained by such justice or judge, receive information that a felony has
10 been committed by any person, and that such person flees from justice, conceals himself
11 and evades arrest and service of the usual process of law, the justice or judge is hereby
12 empowered and required to issue proclamation against him reciting his name, if known,
13 and thereby requiring him forthwith to surrender himself; ~~and also empowering and~~
14 ~~requiring the sheriff of any county in the State in which such fugitive shall be to take such power~~
15 ~~with him as he shall think fit and necessary for the going in search and pursuit of, and effectually~~
16 ~~apprehending, such fugitive from justice, which proclamation shall be published at the door~~
17 ~~of the courthouse of any county in which such fugitive is supposed to lurk or conceal~~
18 ~~himself, and at such other places as the justice or judge shall direct; and if any person~~
19 ~~against whom proclamation has been thus issued continues to stay out, lurks and conceals~~
20 ~~himself, and does not immediately surrender himself, any citizen of the State may~~
21 ~~capture, arrest, and bring him to justice, and in case of flight or resistance by him, after~~
22 ~~being called on and warned to surrender, may slay him without accusation of any crime."~~

23
24 **REFERENCE TO THE DOORKEEPER OF THE HOUSE AND SENATE**

25 Sec. 13. G.S. 147-2 reads as rewritten:

26 **"§ 147-2. Legislative officers.**

27 The legislative officers are:

- 28 (1) Fifty Senators;
- 29 (2) One hundred and twenty members of the House of Representatives;
- 30 (3) A Speaker of the House of Representatives;
- 31 (4) A clerk and assistants in each house;
- 32 (5) A ~~doorkeeper~~ Sergeant-at-arms and assistants in each house;
- 33 (6) As many subordinates in each house as may be deemed necessary."

34
35 **ABOLITION OF REFERENCES TO CONSTABLE**

36 Sec. 14. (a) G.S. 1-339.50 reads as rewritten:

37 **"§ 1-339.50. Officer's return of no sale for want of bidders; penalty.**

38 When a sheriff or other officer returns upon an execution that he has made no sale for
39 want of bidders, he must state in his return the several places he has advertised and
40 offered for sale the property levied on; and an officer failing to make such statement is on
41 motion subject to a fine of forty dollars; ~~and every constable, for a like omission of duty, is~~
42 ~~subject to a fine of ten dollars, for the use and benefit of the plaintiff in the execution; for~~
43 ~~which, on motion of the plaintiff, judgment shall be granted by the court to which, or by~~

1 justice to whom, the execution shall be returned. Nothing in, nor any recovery under, this
2 section is a bar to any action for a false return against the sheriff or other officer."

3 (b) G.S. 46-10 reads as rewritten:

4 **"§ 46-10. Commissioners to meet and make partition; equalizing shares.**

5 The commissioners, who shall be summoned by the sheriff, ~~or any constable,~~ must
6 meet on the premises and partition the same among the tenants in common, or joint
7 tenants, according to their respective rights and interests therein, by dividing the land into
8 equal shares in point of value as nearly as possible, and for this purpose they are
9 empowered to subdivide the more valuable tracts as they may deem best, and to charge
10 the more valuable dividends with such sums of money as they may think necessary, to be
11 paid to the dividends of inferior value, in order to make an equitable partition."

12 (c) G.S. 62-62 reads as rewritten:

13 **"§ 62-62. Issuance and service of subpoenas.**

14 All subpoenas for witnesses to appear before the Commission, a division of the
15 Commission or a hearing commissioner or examiner and notice to persons or
16 corporations, shall be issued by the Commission or its chief clerk or a deputy clerk and
17 be directed to any ~~sheriff, constable~~ sheriff or other officer authorized by law to serve
18 process issued out of the superior courts, who shall execute the same and make due return
19 thereof as directed therein, under the penalties prescribed by law for a failure to execute
20 and return the process of any court. The Commission shall have the authority to require
21 the applicant for a subpoena for persons and documents to make a reasonable showing
22 that the evidence of such persons or documents will be material and relevant to the issue
23 in the proceeding."

24 (d) G.S. 162-13 reads as rewritten:

25 **"§ 162-13. To receipt for process.**

26 Every ~~sheriff, coroner or constable~~ sheriff or coroner shall, when requested, give his
27 receipt for all original and mesne process placed in his hands for execution, to the party
28 suing out the same, his agent or attorney; and such receipt shall be admissible as evidence
29 of the facts therein stated, against such officer and his sureties, in any suit between the
30 party taking the receipt and such officer and his sureties."

31 (e) G.S. 163-24 reads as rewritten:

32 **"§ 163-24. Power of State Board of Elections to maintain order.**

33 The State Board of Elections shall possess full power and authority to maintain order,
34 and to enforce obedience to its lawful commands during its sessions, and shall be
35 constituted an inferior court for that purpose. If any person shall refuse to obey the lawful
36 commands of the State Board of Elections or its chairman, or by disorderly conduct in its
37 hearing or presence shall interrupt or disturb its proceedings, it may, by an order in
38 writing, signed by its chairman, and attested by its secretary, commit the person so
39 offending to the common jail of the county for a period not exceeding 30 days. Such
40 order shall be executed by any ~~sheriff or constable~~ to whom the same shall be delivered, or
41 if a ~~sheriff or constable~~ shall not be present, or shall refuse to act, by any other person who
42 shall be deputed by the State Board of Elections in writing, and the keeper of the jail shall
43 receive the person so committed and safely keep him for such time as shall be mentioned

1 in the commitment: Provided, that any person committed under the provisions of this
2 section shall have the right to post a two hundred dollar (\$200.00) bond with the clerk of
3 the superior court and appeal to the superior court for a trial on the merits of his
4 commitment."
5

6 **CONTRACTS WITH CHEROKEE INDIANS**

7 Sec. 15. G.S. 22-3 is repealed.
8

9 **OBSOLETE TAX PROVISION**

10 Sec. 16. (a) G.S. 105-164.6(g) is repealed.

11 (b) This section does not affect the rights or liabilities of the State, a taxpayer, or
12 another person arising under a statute repealed by this section before its repeal; nor does
13 it affect the right to any refund or credit of a tax that would otherwise have been available
14 under the repealed statute before its repeal.

15 (c) This section becomes effective July 1, 1995.
16

17 **SPEAKER BAN**

18 Sec. 17. Article 22 of Chapter 116 of the General Statutes is repealed.
19

20 **RESIGN-TO-RUN**

21 Sec. 18. Article 11A of Chapter 163 of the General Statutes is repealed.
22

23 **OUTLAWRY**

24 Sec. 19. G.S. 15-48, as amended by Section 12(c) of this act, is repealed.
25

26 Sec. 20. Except as provided herein, this act is effective upon ratification but
27 does not affect pending litigation.