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SESSION 2011

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Short Title: Prison Maint/Justice Reinv/Tech Corr.

(Public)

Sponsors:

Referred to:

March 14, 2011

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DEPARTMENT OF CORRECTION AND THE DEPARTMENT OF PUBLIC SAFETY TO STUDY CONTRACTING FOR MAINTENANCE SERVICES AT PRISON FACILITIES AND TO TEMPORARILY LIMIT EXPANSION OF PRIVATE MAINTENANCE CONTRACTS AT PRISON FACILITIES; TO MAKE CLARIFYING CHANGES TO CERTAIN PROBATION STATUTES AND TO THE JUSTICE REINVESTMENT ACT; TO MAKE CLARIFYING CHANGES TO THE LAW RELATING TO PROVISIONAL DRIVERS LICENSES, MAKING A CHANGE TO THE BUDGET TECHNICAL CORRECTIONS BILL AND A TECHNICAL CHANGE TO S.L. 2011-313; TO PROVIDE BONDSMAN ACCESS TO CRIMINAL COURT RECORDS; TO AUTHORIZE ADDITIONAL CONNECTIONS TO WATER SUPPLY LINES FUNDED BY THE CLEAN WATER AND NATURAL GAS CRITICAL NEEDS BOND ACT OF 1998; AND TO CLARIFY THE QUALIFICATIONS OF PUBLIC MEMBERS OF THE NORTH CAROLINA HOME INSPECTOR LICENSURE BOARD.

The General Assembly of North Carolina enacts:

PART I. MAINTENANCE OF PRISONS

SECTION 1.1. The Department of Correction shall study the potential benefits and costs of contracting for maintenance services at prison facilities and report its findings to the 2013 Session of the General Assembly. The Department shall not expand private maintenance contracts to additional prison facilities unless authorized by the 2013 Session of the General Assembly.

SECTION 1.2. Effective January 1, 2012, Section 1.1 of this act reads as rewritten:

"**SECTION 1.1.** The Department of ~~Correction~~ Public Safety shall study the potential benefits and costs of contracting for maintenance services at prison facilities and report its findings to the 2013 Session of the General Assembly. The Department shall not expand private maintenance contracts to additional prison facilities unless authorized by the 2013 Session of the General Assembly."

PART II. JUSTICE REINVESTMENT/CLARIFICATIONS

SECTION 2.1. Effective December 1, 2011, G.S. 15A-1343(b)(2), as amended by Section 1 of S.L. 2011-62, reads as rewritten:



* H 3 3 5 - P C C S 1 1 2 6 2 - C C S L B F - 8 *

1 "(b) Regular Conditions. – As regular conditions of probation, a defendant must:

- 2 ...
- 3 (2) ~~Remain accessible to the probation officer by making the defendant's~~
4 ~~whereabouts known to the officer and not leave the county of residence or~~
5 ~~the State of North Carolina within the jurisdiction of the court unless granted~~
6 written permission to leave by the court or his probation officer.

7"

8 **SECTION 2.2.** Effective December 1, 2011, Section 4 of S.L. 2011-62 reads as
9 rewritten:

10 "**SECTION 4.** This act becomes effective December 1, ~~2011, and applies to persons placed~~
11 ~~on probation on or after that date.~~ 2011. Sections 1 and 2 of this act apply to offenses committed
12 on or after December 1, 2011. Section 3 of this act applies to persons placed on probation on or
13 after December 1, 2011."

14 **SECTION 2.3.(a)** G.S. 15A-1343(a1)(3), as enacted by Section 1(c) of S.L.
15 2011-192, reads as rewritten:

16 "(a1) Community and Intermediate Probation Conditions. – In addition to any conditions
17 a court may be authorized to impose pursuant to G.S. 15A-1343(b1), the court may include any
18 one or more of the following conditions as part of a community or intermediate punishment:

19 ...

- 20 (3) Submission to a period or periods of confinement in a local confinement
21 facility for a total of no more than six days per month during any three
22 separate months during the period of probation. The six days per month
23 confinement provided for in this subdivision may only be imposed as
24 two-day or three-day consecutive periods. When a defendant is on probation
25 for multiple judgments, confinement periods imposed under this subdivision
26 shall run concurrently and may total no more than six days per month.

27"

28 **SECTION 2.3.(b)** G.S. 15A-1343.2(e)(5), as enacted by Section 1(d) of S.L.
29 2011-192, reads as rewritten:

30 "(e) Delegation to Probation Officer in Community Punishment. – Unless the presiding
31 judge specifically finds in the judgment of the court that delegation is not appropriate, the
32 Division of Community Corrections in the Department of Correction may require an offender
33 sentenced to community punishment to do any of the following:

34 ...

- 35 (5) Submit to a period or periods of confinement in a local confinement facility
36 for a total of no more than six days per month during any three separate
37 months during the period of probation. The six days per month confinement
38 provided for in this subdivision may only be imposed as two-day or
39 three-day consecutive periods. When a defendant is on probation for
40 multiple judgments, confinement periods imposed under this subdivision
41 shall run concurrently and may total no more than six days per month.

42"

43 **SECTION 2.3.(c)** G.S. 15A-1343.2(f), enacted by Section 1(e) of S.L. 2011-192,
44 reads as rewritten:

45 "(f) Delegation to Probation Officer in Intermediate Punishments. – Unless the presiding
46 judge specifically finds in the judgment of the court that delegation is not appropriate, the
47 Division of Community Corrections in the Department of Correction may require an offender
48 sentenced to intermediate punishment to do any of the following:

49 ...

- 50 (6) Submit to a period or periods of confinement in a local confinement facility
51 for a total of no more than six days per month during any three separate

1 months during the period of probation. The six days per month confinement
 2 provided for in this subdivision may only be imposed as two-day or
 3 three-day consecutive periods. When a defendant is on probation for
 4 multiple judgments, confinement periods imposed under this subdivision
 5 shall run concurrently and may total no more than six days per month.

6"

7 **SECTION 2.3.(d)** G.S. 15A-1344(d2), as enacted by Section 4(c) of S.L.
 8 2011-192, reads as rewritten:

9 "(d2) Confinement in Response to Violation. – When a defendant has violated a condition
 10 of probation other than G.S. 15A-1343(b)(1) or G.S. 15A-1343(b)(3a), the court may impose a
 11 90-day period of confinement for a defendant under supervision for a felony conviction or a
 12 period of confinement of up to 90 days for a defendant under supervision for a misdemeanor
 13 conviction. The court may not revoke probation unless the defendant has previously received a
 14 total of two periods of confinement under this subsection. A defendant may receive only two
 15 periods of confinement under this subsection. If the time remaining on the defendant's
 16 maximum imposed sentence is ~~less than 90 days, 90 days or less,~~ then the term of confinement
 17 is for the remaining period of the sentence. Confinement under this section shall be credited
 18 pursuant to G.S. 15-196.1.

19 If a defendant is arrested for violation of a condition of probation and is lawfully confined
 20 to await a hearing for the violation, then the judge shall first credit any confinement time spent
 21 awaiting the hearing to any confinement imposed under this subsection; any excess time shall
 22 be credited to the activated sentence. The period of confinement imposed under this subsection
 23 on a defendant who is on probation for multiple offenses shall run concurrently on all cases
 24 related to the violation. Confinement shall be immediate unless otherwise specified by the
 25 court.

26 A defendant shall serve any confinement imposed under this subsection in the correctional
 27 facility where the defendant would have served an active sentence."

28 **SECTION 2.3.(e)** Subsection (d) of this section becomes effective December 1,
 29 2011, and applies to probation violations occurring on or after that date. The remainder of this
 30 section becomes effective December 1, 2011, and applies to offenses committed on or after that
 31 date.

32 **SECTION 2.4.(a)** G.S. 15A-1340.17(e), as amended by Section 2(f) of S.L.
 33 2011-192, reads as rewritten:

34 "(e) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum
 35 Terms up to 339 Months. – Unless provided otherwise in a statute establishing a punishment
 36 for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of
 37 this section, expressed in months, the corresponding maximum term of imprisonment, also
 38 expressed in months, is as specified in the table below for Class B1 through Class E felonies.
 39 The first figure in each cell of the table is the minimum term and the second is the maximum
 40 term.

41 15-30	16-32	17-33	18-34	19-35	20-36	21-38	22-39
42 23-40	24-41	25-42	26-44	27-45	28-46	29-47	30-48
43 31-50	32-51	33-52	34-53	35-54	36-56	37-57	38-58
44 39-59	40-60	41-62	42-63	43-64	44-65	45-66	46-68
45 47-69	48-70	49-71	50-72	51-74	52-75	53-76	54-77
46 55-78	56-80	57-81	58-82	59-83	60-84	61-86	62-87
47 63-88	64-89	65-90	66-91	67-93	68-94	69-95	70-96
48 71-98	72-99	73-100	74-101	75-102	76-104	77-105	78-106
49 79-107	80-108	81-110	82-111	83-112	84-113	85-114	86-115
50 87-117	88-118	89-119	90-120	91-122	92-123	93-124	94-125
51 95-126	96-128	97-129	98-130	99-131	100-132	101-134	102-135

1	103-136	104-137	105-138	106-140	107-141	108-142	109-143	110-144
2	111-146	112-147	113-148	114-149	115-150	116-152	117-153	118-154
3	119-155	120-156	121-158	122-159	123-160	124-161	125-162	126-164
4	127-165	128-166	129-167	130-168	131-170	132-171	133-172	134-173
5	135-174	136-176	137-177	138-178	139-179	140-180	141-182	142-183
6	143-184	144-185	145-186	146-188	147-189	148-190	149-191	150-192
7	151-194	152-195	153-196	154-197	155-198	156-200	157-201	158-202
8	159-203	160-204	161-206	162-207	163-208	164-209	165-210	166-212
9	167-213	168-214	169-215	170-216	171-218	172-219	173-220	174-221
10	175-222	176-224	177-225	178-226	179-227	180-228	181-230	182-231
11	183-232	184-233	185-234	186-236	187-237	188-238	189-239	190-240
12	191-242	192-243	193-244	194-245	195-246	196-248	197-249	198-250
13	199-251	200-252	201-254	202-255	203-256	204-257	205-258	206-260
14	207-261	208-262	209-263	210-264	211-266	212-267	213-268	214-269
15	215-270	216-271	217-273	218-274	219-275	220-276	221-278	222-279
16	223-280	224-281	225-282	226-284	227-285	228-286	229-287	230-288
17	231-290	232-291	233-292	234-293	235-294	236-296	237-297	238-298
18	239-299	240-300	241-302	242-303	243-304	244-305	245-306	246-308
19	247-309	248-310	249-311	250-312	251-314	252-315	253-316	254-317
20	255-318	256-320	257-321	258-322	259-323	260-324	261-326	262-327
21	263-328	264-329	265-330	266-332	267-333	268-334	269-335	270-336
22	271-338	272-339	273-340	274-341	275-342	276-344	277-345	278-346
23	279-347	280-348	281-350	282-351	283-352	284-353	285-354	286-356
24	287-357	288-358	289-359	290-360	291-362	292-363	293-364	294-365
25	295-366	296-368	297-369	298-370	299-371	300-372	301-374	302-375
26	303-376	304-377	305-378	306-380	307-381	308-382	309-383	310-384
27	311-386	312-387	313-388	314-389	315-390	316-392	317-393	318-394
28	319-395	320-396	321-398	322-399	323-400	324-401	325-402	326-404
29	327-405	328-406	328-406	329-407	330-408	331-410	332-411	333-412
30	335-414	336-416	337-417	338-418	339-419".			

31 **SECTION 2.4.(b)** This section becomes effective December 1, 2011, and applies
32 to offenses committed on or after that date.

33 **SECTION 2.5.** Section 4(d) of S.L. 2011-192 reads as rewritten:

34 "**SECTION 4.(d)** ~~This Subsection (a) of this section is~~becomes effective December 1,
35 2011, and applies to offenses committed on or after that date. Subsections (b) and (c) of this
36 section become effective December 1, 2011, and apply to probation violations occurring on or
37 after that date."

38 **SECTION 2.6.(a)** G.S. 15A-145.2(c), as amended by Section 5(b) of S.L.
39 2011-192, reads as rewritten:

40 "(c) Whenever any person who has not previously been convicted of (i) any felony
41 offense under any state or federal laws; (ii) any offense under Chapter 90 of the General
42 Statutes; or (iii) an offense under any statute of the United States or any state relating to
43 controlled substances included in any schedule of Chapter 90 of the General Statutes or to that
44 paraphernalia included in Article 5B of Chapter 90 of the General Statutes, pleads guilty to or
45 has been found guilty of ~~(i)~~ a misdemeanor under ~~this Article 5 of Chapter 90 of the General~~
46 Statutes by possessing a controlled substance included within Schedules I through VI of
47 Chapter 90, or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or ~~(ii)~~pleads
48 guilty to or has been found guilty of a felony under G.S. 90-95(a)(3), the court may, upon
49 application of the person not sooner than 12 months after conviction, order cancellation of the
50 judgment of conviction and expunction of the records of the person's arrest, indictment or
51 information, trial, and conviction. A conviction in which the judgment of conviction has been

1 canceled and the records expunged pursuant to this subsection shall not be thereafter deemed a
2 conviction for purposes of this subsection or for purposes of disqualifications or liabilities
3 imposed by law upon conviction of a crime, including the additional penalties imposed for
4 second or subsequent convictions of Article 5 of Chapter 90 of the General Statutes.
5 Cancellation and expunction under this subsection may occur only once with respect to any
6 person. Disposition of a case under this subsection at the district court division of the General
7 Court of Justice shall be final for the purpose of appeal.

8 The granting of an application filed under this subsection shall cause the issue of an order to
9 expunge from all official records, other than the confidential files retained under G.S. 15A-151,
10 all recordation relating to the petitioner's arrest, indictment or information, trial, finding of
11 guilty, judgment of conviction, cancellation of the judgment, and expunction of records
12 pursuant to this subsection.

13 The judge to whom the petition is presented is authorized to call upon a probation officer
14 for additional investigation or verification of the petitioner's conduct since conviction. If the
15 court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of
16 Chapter 90 of the General Statutes for possessing a controlled substance included within
17 Schedules I through VI of Article 5 of Chapter 90 of the General Statutes or for possessing
18 drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3), that
19 the petitioner has no disqualifying previous convictions as set forth in this subsection, that the
20 petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of
21 good behavior since his or her conviction, that the petitioner has successfully completed a drug
22 education program approved for this purpose by the Department of Health and Human
23 Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a
24 traffic violation under the laws of this State at any time prior to or since the conviction for the
25 offense in question, it shall enter an order of expunction of the petitioner's court record. The
26 effect of such order shall be to restore the petitioner in the contemplation of the law to the
27 status the petitioner occupied before arrest or indictment or information or conviction. No
28 person as to whom such order was entered shall be held thereafter under any provision of any
29 law to be guilty of perjury or otherwise giving a false statement by reason of the person's
30 failures to recite or acknowledge such arrest, or indictment or information, or conviction, or
31 trial in response to any inquiry made of him or her for any purpose. The judge may waive the
32 condition that the petitioner attend the drug education school if the judge makes a specific
33 finding that there was no drug education school within a reasonable distance of the defendant's
34 residence or that there were specific extenuating circumstances which made it likely that the
35 petitioner would not benefit from the program of instruction.

36 The court shall also order all law enforcement agencies, the Department of Correction, the
37 Division of Motor Vehicles, and any other State or local agencies identified by the petitioner as
38 bearing records of the conviction and records relating thereto to expunge their records of the
39 conviction. The clerk shall notify State and local agencies of the court's order as provided in
40 G.S. 15A-150."

41 **SECTION 2.6.(b)** This section becomes effective January 1, 2012, and applies to
42 persons entering a plea or who are found guilty of an offense on or after that date.

43 **SECTION 2.7.** Effective January 1, 2012, G.S. 15A-1340.18(c), as enacted by
44 Section 5(c) of S.L. 2011-192, reads as rewritten:

45 "(c) ~~The~~ When imposing an active sentence for an eligible defendant, the court, in its
46 discretion and without objection from the prosecutor, may ~~include a risk reduction incentive or~~
47 ~~incentives in sentencing an eligible defendant to an active sentence.~~ order that the Department
48 of Correction admit the defendant to the ASR program. The Department of Correction shall
49 admit to the ASR program only those defendants for which ASR is ordered in the sentencing
50 judgment."

1 **SECTION 2.8.** Effective January 1, 2012, G.S. 15A-1340.18(e), as enacted by
2 Section 5(c) of S.L. 2011-192, reads as rewritten:

3 "(e) The defendant shall be notified at sentencing that if the defendant completes the risk
4 reduction incentives as identified by the Department, then he or she will be released on the
5 ASR ~~date~~-date, as determined by the Department pursuant to the provisions of subsection (d)
6 of this section. If the Department determines that the defendant is unable to complete the
7 incentives by the ASR date, through no fault of the defendant, then the defendant shall be
8 released at the ASR date."

9 **SECTION 2.9.** Except as otherwise provided, this Part becomes effective
10 December 1, 2011.

11 **PART III. TECHNICAL CORRECTIONS AND CLARIFICATION**

12 **SECTION 3.1.** G.S. 68-25(b1), as enacted by S.L. 2011-313, is repealed.

13 **SECTION 3.2.** Section 6 of S.L. 2011-385 reads as rewritten:

14 "**SECTION 6.** Sections 1, 2, and 3 of this act become effective October 1, 2011, and apply
15 to limited learner's permits and limited provisional licenses issued on or after that date. Section
16 1 of this act becomes effective October 1, 2011, and applies to persons issued a limited
17 provisional license on or after that date. Section 2 of this act becomes effective January 1,
18 2012, and applies to persons issued a limited learner's permit on or after that date. Section 3 of
19 this act becomes effective January 1, 2012, and applies to persons issued a limited provisional
20 license on or after that date. Section 4 of this act becomes effective ~~October 1, 2011~~, January 1,
21 2012, and applies to offenses committed on or after that date. The remainder of this act
22 becomes effective October 1, 2011."

23 **SECTION 3.3.** Section 20 of S.L. 2011-391 is repealed.

24 **PART IV. BAIL BONDSMEN**

25 **SECTION 4.1.** Article 71 of Chapter 58 of the General Statutes is amended by
26 adding a new section to read:

27 "**§ 58-71-200. Bondsman access to criminal court records.**

28 (a) In order to assist licensed sureties and their agents in evaluating potential and
29 current clients for the purposes of bail, the Administrative Office of the Courts shall provide
30 any individual with a current license to act as professional bondsman, surety bondsman, or
31 runner with access to search criminal records in the Administrative Office of the Courts'
32 real-time criminal information systems.

33 (b) Access granted under subsection (a) of this section shall be limited to information
34 systems containing general criminal case information, as maintained by the clerks of superior
35 court. Access shall not include systems for the production of criminal process by law
36 enforcement officials and judicial officials under G.S. 15A-301.1 or other information not
37 subject to public disclosure.

38 (c) Access provided pursuant to subsection (a) of this section shall be without charge
39 for individual searches of the Administrative Office of the Courts' criminal information
40 systems. In order to defray the costs of establishing access, the Administrative Office of the
41 Courts shall charge initial setup fees equivalent to its fees for governmental agencies granted
42 access to its systems to each individual granted access pursuant to subsection (a) of this section.

43 (d) All hardware, software, telecommunications charges, or other expenditures required
44 for such access shall be the sole responsibility of the individual bondsman or runner. No State
45 funds may be expended for any such expenses.

46 (e) The Commissioner shall coordinate the access granted under subsection (a) of this
47 section by providing all information requested by the Administrative Office of the Courts for
48 the establishment of access. The Administrative Office of the Courts shall not provide access to
49 any bondsman or runner who fails to provide all information requested by the Commissioner.
50
51

1 (f) The Commissioner shall notify the Administrative Office of the Courts within 24
2 hours of any action to suspend or revoke a bondsman's or runner's license or authority to act as
3 a bondsman or runner. The Administrative Office of the Courts shall immediately revoke
4 access of the suspended or revoked bondsman or runner to its criminal information systems.

5 (g) The Administrative Office of the Courts shall provide to the Commissioner copies
6 of its current policies for access to court information systems for users outside the Judicial
7 Branch. Any bondsman or runner granted access pursuant to subsection (a) of this section shall
8 adhere to all such policies. The Administrative Office of the Courts shall revoke access of any
9 bondsman or runner who violates such policies.

10 (h) It is unlawful for any person to willfully do any of the following:

11 (1) For any person to access information systems of the Administrative Office
12 of the Courts by means of an online identifier, as defined in
13 G.S. 14-208.6(1n), that was assigned to another individual by the
14 Administrative Office of the Courts pursuant to subsection (a) of this
15 section.

16 (2) For any bondsman or runner granted access pursuant to subsection (a) of this
17 section to allow any other person, directly or indirectly, to make use of
18 access granted to the bondsman or runner pursuant to subsection (a) of this
19 section.

20 (3) For any bondsman or runner granted access pursuant to subsection (a) of this
21 section to make use of that access at any time when the bondsman or runner
22 knows or has reason to know that his or her license issued under this Article
23 is in a state of suspension or revocation.

24 (4) For any bondsman or runner granted access pursuant to subsection (a) of this
25 section to distribute, in any medium or manner, information obtained from
26 the information systems of the Administrative Office of the Courts to any
27 person for any reason not directly related to the evaluation of the individual
28 to whom the information pertains for the purposes of bail.

29 Unless the conduct is covered under some other provision of law providing for a greater
30 punishment, any violation of this subsection shall be a Class H felony."

31 **SECTION 4.2.(a)** Section 8 of S.L. 2011-377 is repealed.

32 **SECTION 4.2.(b)** G.S. 15A-544.5(d)(4) reads as rewritten:

33 "(4) If neither the district attorney nor the board of education has filed a written
34 objection to the motion by the twentieth day after the motion is ~~served,~~
35 served by the clerk of superior court pursuant to Rule 4 of the Rules of Civil
36 Procedure, the clerk shall enter an order setting aside the ~~forfeiture.~~
37 forfeiture, regardless of the basis for relief asserted in the motion, the
38 evidence attached, or the absence of either."

39 **SECTION 4.2.(c)** G.S. 15A-544.5(d)(4), as amended by Section 9(b) of this act,
40 reads as rewritten:

41 "(4) If neither the district attorney nor the attorney for the board of education has
42 filed a written objection to the motion by the twentieth day after a copy of
43 the motion is ~~served,~~served by the clerk of superior court pursuant to Rule 4
44 of the Rules of Civil Procedure, the clerk shall enter an order setting aside
45 the forfeiture, regardless of the basis for relief asserted in the motion, the
46 evidence attached, or the absence of either."
47

48 **PART V. WATER SUPPLY LINES**

49 **SECTION 5.** Notwithstanding Section 5.1(b) of S.L. 1998-132, the Secretary of
50 Environment and Natural Resources shall grant a waiver to allow additional connections to a
51 bond-funded waterline within an area designated as WS-I or the critical area of any area that

1 has been designated as WS-II, WS-III, or WS-IV by the Environmental Management
2 Commission pursuant to G.S. 143-214.5, provided the design capacity and size of the existing
3 bond-funded waterline can accommodate the additional connections and the purpose of the
4 additional connection is for either of the following reasons:

- 5 (1) To address an existing threat to public health or water quality.
- 6 (2) To provide water to a habitable structure located on a lot zoned for a
7 single-family residence. There is no requirement that the habitable structure
8 existed on the lot at the time of the construction of the bond-funded
9 waterline.

10
11 **PART VI. HOME INSPECTOR LICENSURE BOARD CLARIFICATION**

12 **SECTION 6.** G.S. 143-151.46(a)(1) reads as rewritten:

13 "(a) Membership. – The North Carolina Home Inspector Licensure Board is established
14 in the Department of Insurance. The Board shall be composed of the Commissioner of
15 Insurance or the Commissioner's designee and seven additional members appointed as follows:

- 16 (1) A public member who is not actively engaged in one of the professional
17 categories in subdivisions (2) through (4) of this subsection, appointed by
18 the General Assembly upon the recommendation of the Speaker of the
19 House of Representatives.

20"

21
22 **SECTION 7.** Except as otherwise provided herein, this act is effective when it
23 becomes law.