1997

HOUSE
JUDICIARY I

MINUTES

North Carolina House of Representatives
1997

JUDICIARY I COMMITTEE

N. Leo Daughtry
Edwin M. "Sandy" Hardy

Gene G. Arnold
J. Russell Capps
Debbie Clary
J. Sam Ellis
Theresa Harlow Esposito
Lyons Gray
Bobby Ray Hall
George M. Holmes
Larry T. Justus
Richard T. Morgan
Wilma M. Sherrill
Gregg Thompson

Jerry Braswell
Martha Alexander
Daniel T. Blue, Jr.
James W. Crawford
Milton F. Fitch, Jr.
Thomas C. Hardaway
Robert C. Hunter
John W. Hurley
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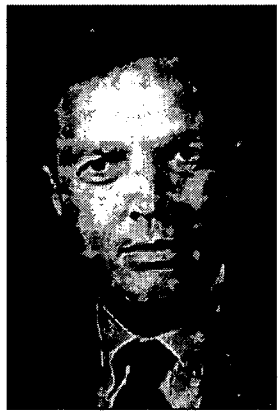
George W. Miller, Jr.

STAFF COUNSEL
Steven J. Rose
Karen Cochrane-Brown

COMMITTEE CLERK
Joel C. Raupe

North Carolina House of Representatives

JUDICIARY I COMMITTEE
1997



N. Leo Daughtry

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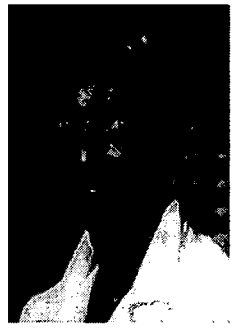
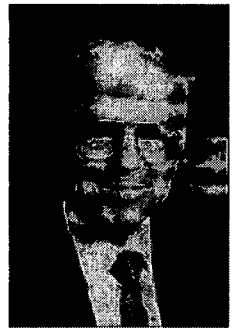
Jerry Braswell



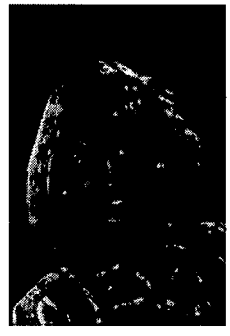
Martha B. Alexander

Gene Arnold

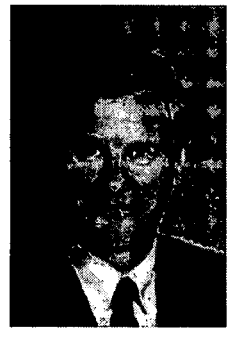
Daniel T. Blue, Jr.



J. Russell Capps



Debbie Clary



James W. Crawford

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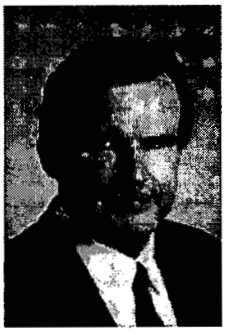

John W. Hurley

Margaret M. Jeffus

Larry T. Justus

H.M. Michaux, Jr.

George W. Miller

Richard T. Morgan

Wilma M. Sherrill

Gregory J. Thompson

North Carolina House of Representatives JUDICIARY I COMMITTEE 1997

N. Leo Daughtry Bernice Bullard	**5-0850**	**2301**	**30**
Edwin M. "Sandy" Hardy **Joel Raupe**	**5-3019**	**417A**	**100**
Jerry Braswell Dianna Gilmore	**3-5809**	**539**	**96**
Martha B. Alexander Margy Blackmon	**3-5605**	**1209**	**34**
Gene G. Arnold Carolyn Popson	**3-5747**	**535**	**54**
Daniel T. Blue, Jr. Lin Threatt	**5-2528**	**1227**	**80**
J. Russell Capps Pamela Ahlin	**5-3005**	**419B**	**77**
Debbie Clary Mary Jamison	**5-3011**	**418B**	**75**
James W. Crawford Linda Winstead	**3-5824**	**1301**	**24**
J. Sam Ellis Susan Everett	**3-5821**	**1303**	**78**
Theresa Harlow Esposito Melissa Jackson	**5-2530**	**634**	**5**
Milton F. Fitch, Jr. Carolyn Branch	**5-2241**	**1202**	**91**
Lyons Gray Catherine Parsons	**3-5995**	**532**	**49**
Bobby Ray Hall Billie Stevens	**3-5906**	**637**	**87**
Thomas C. Hardaway Jan Brooks	**3-5775**	**1323**	**56**
George M. Holmes Glenda Jacobs	**3-5900**	**631**	**6**
Robert C. Hunter Ferebee Stainback	**3-5987**	**1201**	**107**
John W. Hurley Dot Anderson	**3-5859**	**1004**	**71**
Margaret M. Jeffus Mary Lee Robinson	**3-5191**	**1013**	**108**
Larry T. Justus Carolyn Justus	**3-5956**	**2204**	**2**
H. M. Michaux, Jr. Karlene Scott	**3-5609**	**1409**	**57**
George W. Miller, Jr. Laura Curtis	**3-5878**	**611**	**43**
Richard T. Morgan Dixie Epps	**5-3028**	**404**	**17**
Wilma M. Sherrill Rosa Kelley	**3-5601**	**2215**	**51**
Gregg Thompson Edna Sykes	**3-5828**	**1002**	**15**

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February 11, 1997

Representative Edwin Mitchell Hardy
Room 637
Legislative Office Building
Raleigh, North Carolina 27603

Dear Representative Hardy:

As we discussed, I have asked Mr. Steve Rose and Ms. Karen Cochrane-Brown to serve as counsel to the House Judiciary I Committee, which you co-chair. They will attend the meetings of the Committee when it meets on Tuesdays and Thursdays at 10 a.m. In accordance with the Committee's directions as expressed through the Co-chairs, Mr. Steve Rose and Ms. Karen Cochrane-Brown will aid in analyzing proposed legislation and drafting amendments and committee substitutes. Like other staff, Mr. Rose and Ms. Cochrane-Brown will also staff several other committees.

My best wishes to you and the House Judiciary I Committee in its work. If I can be of any service to you or the Committee, please contact me.

Yours truly,

Terrence D. Sullivan
Director of Research

cc: The Honorable Harold J. Brubaker
The Honorable Leo Daughtry
Mr. Steve Rose
Ms. Karen Cochrane-Brown
Mr. George R. Hall, Jr.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

2-13-97

ATTENDANCE

JUDICIARY I

(Name of Committee)

DATES	2/13														
DAUGHTRY, Chair	✓														
HARDY, Chair	✓														
BRASWELL, RMM	✓														
ARNOLD	✓														
BLUE															
CAPPS	✓														
CLARY	✓														
CRAWFORD	✓														
ELLIS															
ESPOSITO															
FITCH	✓														
HALL	✓														
HARDAWAY	✓														
HOLMES	✓														
HUNTER, R.	✓														
HURLEY	Etc.														
JEFFUS															
JUSTUS	✓														
MICHAUX	✓														
MILLER															
MORGAN															
SHERRILL	✓														
THOMPSON	✓														

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ATTENDANCE

House Judiciary I

(Name of Committee)

DATES	2/13	2/18	2/20	2/25											
Daughtry	/	/													
Hardy	/	/													
Braswell	/	/													
Arnold	/	/													
Capps	/	/													
Clary	/	/													
Ellis	x	/													
Esposito	x	/													
Hall	/	/													
Holmes	/	/													
Justus	/	/													
Morgan	x	/													
Sherrill	/	/													
Thompson	/	/													
Alexander		/													
Blue	x														
Crawford	/	/													
Fitch	/														
Hardaway	/	/													
Hunter	/	/													
Hurley		/													
Michaux	/	/													
Miller	x	/													
Jeffus	x	/													

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1997-98 Regular Session — HOUSE: JUDICIARY I — Valid Through 2-SEP-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
✓H 30	BAKER	USE OF MOTORCYCLE HELMETS	HF-REPTD UNFAV	02-04-97	03-20-97
H 88=	PRESTON	STATE BD OF EDUC SUBPOENA	R -CH. SL 97-0325	02-27-97	03-26-97
H 102	BUCHANAN	MITCHELL PRECINCTS	R -CH. SL 97-0183	02-11-97	03-12-97
H 103=	BUCHANAN	AVERY PRECINCTS	*R -CH. SL 97-0217	02-11-97	02-18-97
H 138	JUSTUS	DMV ENFORCEMENT AUTHORITY	*H -RE-REF COM ON JUDICI	03-05-97	
H 139=	JUSTUS	CLARIFY SEX OFFENDER REGISTRATION	*R -CH. SL 97-0015	02-13-97	03-03-97
H 141=	JUSTUS	EMBEZZLEMENT/INCREASE PENALTY	*S -RE-REF COM ON APPROPR	02-13-97	02-26-97
H 142=	JUSTUS	ACCESORY AFTER THE FACT/PENALTY	S -RE-REF COM ON APPROPR	02-13-97	02-25-97
H 144=	JUSTUS	VOL MANSLAUGHTER/CLASS D FELONY	S -RE-REF COM ON APPROPR	02-13-97	02-25-97
H 150	EASTERLING	PROHIBIT SALE OF SOME PYROTECHNICS	HF-REPTD UNFAV	02-13-97	03-27-97
H 162=	CRAWFORD	INCREASE DRUG PENALTIES	H -RE-REF COM ON APPROP	02-13-97	03-03-97
H 191	HUNTER R	CERT. COPIES/CUSTODY & WILLS	R -CH. SL 97-0081	02-17-97	03-06-97
H 192	HUNTER R	COURTS COMMISSION MEMBERSHIP	R -CH. SL 97-0082	02-17-97	03-06-97
H 193=	HUNTER R	NO INS. POINTS/15MPH OVER LIMIT	*H -CAL PURSUANT RULE 36(A)	04-28-97	04-30-97
H 198	SEXTON	SUPERVISION OF PRISONERS	*S -REF TO COM ON ST GVT	02-17-97	03-10-97
H 202=	CULPEPPER	INCREASE MINIMUM UPSET AMOUNT	*R -CH. SL 97-0119	03-25-97	
H 231=	HIATT	DMV MEDICAL INFORMATION IMMUNITY	*H -PRES. TO GOV. 08-22	02-17-97	04-02-97
H 248=	CLARY	GRADUATED DRIVERS LICENSES	*R -CH. SL 97-0016	02-17-97	02-19-97
H 258=	TOLSON	SERVICE OF ADM. SEARCH WARRANTS	H -REF TO COM ON JUDICI	02-17-97	
H 261=	CREECH	APA TECHNICAL CHANGES	H -REF TO COM ON JUDICI	02-17-97	
H 267	SHERRILL	BOMB THREAT/FELONY-2	*S -REF TO COM ON JUDIC	02-18-97	03-03-97
H 268	**BRAWLEY**	**DIVIDE DISTRICT 22**	**H -REF TO COM ON JUDICI**	**02-18-97**	
H 309=	ALEXANDER	CHARLOTTE ON-STREET PARKING	*R -CH. SL 97-0045	02-26-97	03-06-97
H 315=	RUSSELL	STATE HIRES MOST QUALIFIED	*S -RE-REF COM ON ST GVT	04-15-97	04-23-97
H 316=	RUSSELL	CHANGE SPA EXEMPTION PROCESS	*S -REF TO COM ON ST GVT	04-23-97	04-30-97
H 321	**PRESTON**	**STUDY HUNTING ON SUNDAY**	***H -RE-REF COM ON RULES**	**02-25-97**	**04-29-97**
H 328	ARNOLD	BAN TOBACCO SALES TO MINORS-2	*S -REC FROM HOUSE	02-26-97	03-26-97
H 336	EDDINS	VICTIM'S FAMILY WITNESS EXECUTION	*R -CH. SL 97-0070	02-26-97	03-12-97
H 344=	CLARY	MOTOR VEHICLE OCCUPANT RESTRAINTS	*S -RE-REF COM ON JUDIC	04-29-97	04-30-97
H 348	EDDINS	CIDER/VINEGAR MANUFACTURER PERMIT	*R -CH. SL 97-0134	02-27-97	03-19-97

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1997-98 Regular Session — HOUSE: JUDICIARY I — Valid Through 2-SEP-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 388	NICHOLS	AMEND TRESPASS OFFENSES	*H -CAL PURSUANT RULE 36(A)	03-04-97	04-29-97
H 389	RAYFIELD	FELONY CHILD ABUSE/INCR. PENALTY	S -REF TO COM ON JUDIC	03-04-97	03-19-97
H 394	JARRELL	DOGFIGHTS/GAMBLING/FELONY	H -REF TO COM ON JUDICI	03-04-97	
H 407=	BADDOUR	UNIFORM FRAUDULENT TRANSFER ACT	*R -CH. SL 97-0291	06-18-97	
H 430	CULP	PERMISSIBLE SALES AT ZOO	*R -CH. SL 97-0258	06-25-97	
H 431=	HOWARD	PUBLIC ASSISTANCE FRAUD	*H -PRES. TO GOV. 08-29	04-15-97	04-28-97
H 433=	GULLEY J	CONCEALED HANDGUN EXEMPTION	*R -CH. SL 97-0274	03-10-97	04-24-97
H 468	DECKER	NC DA'S M.V. RECOMMENDATIONS	*S -REF TO COM ON JUDIC	03-10-97	04-29-97
H 470=	TALLENT	MEDICAL INVESTIGATORS	*S -RE-REF COM ON COMMERCE	03-10-97	04-24-97
H 476=	HURLEY	VITAL RECORDS ACCESS	*R -CH. SL 97-0242	06-18-97	
H 482	CULP	HANDICAPPED PERSONS SIGNATURE	R -CH. SL 97-0208	03-10-97	03-26-97
H 483=	IVES	SCHOOL BOARD "QUICK TAKE"	*H -RE-REF COM ON FINANCE	04-24-97	05-01-97
H 484	WEATHERLY	RECORD NOTICES OF OPEN DUMPS	*R -CH. SL 97-0330	04-09-97	04-29-97
H 485	DOCKHAM	FUNERAL ESTABLISHMENTS	*R -CH. SL 97-0399	03-10-97	04-14-97
H 499	THOMPSON	GIS RECORD EXCEPTION	*R -CH. SL 97-0193	04-23-97	04-28-97
H 501	BROWN	CARTWAYS	H -RE-REF COM ON JUDICI	04-29-97	
H 502	ELLIS	AMEND MOTOR VEHICLE DEFINITION	*HF-FAILED 2ND READING	03-12-97	04-28-97
H 507	HUNTER R	MANDATORY JAIL FOR SOME D.W.I.	*S -REF TO COM ON JUDIC	03-12-97	04-24-97
H 513	PRESTON	LRC STUDY WATERCRAFT SAFETY	*H -RE-REF COM ON RULES	03-13-97	04-28-97
H 527=	JUSTUS	OPTOMETRY CHANGES	*R -CH. SL 97-0075	03-18-97	04-09-97
H 538	NEELY	TRUTHFUL EMPLOYMENT REFERENCES	*S -REF TO COM ON RULES &	03-20-97	04-22-97
H 539	NEELY	COLLATERAL SOURCE EVIDENCE	H -RE-REF COM ON JUDICI	03-20-97	
H 560	ALEXANDER	DIVORCE EDUCATION	*H -ASSIGNED TO APP-JPS	04-01-97	04-14-97
H 580	THOMPSON	NONRESIDENT HANDGUN PERMIT	*H -RE-REF COM ON FINANCE	03-24-97	04-28-97
H 584	JARRELL	ATTEMPTING TO ELUDE ARREST	*S -RE-REF COM ON APPROPR	03-24-97	03-25-97
H 615	BONNER	PUBLIC DEFENDER/DISTRICT 16B	R -CH. SL 97-0175	03-26-97	04-17-97
H 616=	SHERRILL	STANDARDIZE LAW ENF.DISCIPLINE	H -REF TO COM ON JUDICI	03-26-97	
H 618	MITCHELL	WORKERS' COMPENSATION FRAUD	*R -CH. SL 97-0353	03-26-97	04-07-97
H 646	DAUGHTRY	REVISE UCC/CROP LIENS	*R -CH. SL 97-0336	03-27-97	04-17-97
H 652	SHERRILL	AUDITS	*H -PRES. TO GOV. 08-29	03-27-97	04-28-97

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1997-98 Regular Session — HOUSE: JUDICIARY I — Valid Through 2-SEP-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 665=	EDDINS	CRIME VICTIMS' RIGHTS ACT	*H -ASSIGNED TO APP-JPS	03-27-97	06-25-97
H 674	ARNOLD	PERMANENT CURATIVE STATUTE-SEALS	H -REF TO COM ON JUDICI	03-31-97	
H 704	THOMPSON	SHERIFF'S REGISTRATION PLATES	*R -CH. SL 97-0158	04-02-97	04-17-97
H 734	FITCH	CLARIFYING G.S.153A-15	*S -REF TO COM ON AGRICUL&	04-01-97	04-29-97
H 739=	DICKSON	MV DEALERS/MANUFACTURERS LIC. LAW	*R -CH. SL 97-0319	04-01-97	04-28-97
H 741=	NEELY	COURT IMPROVEMENT ACT/CONSTITUTION	H -REF TO COM ON JUDICI	04-01-97	
H 742=	BADDOUR	COURT IMPROVEMENT ACT	H -REF TO COM ON JUDICI	04-01-97	
H 790	MICHAUX	NO RACE OR GENDER ON CHECKS	*R -CH. SL 97-0149	04-03-97	04-22-97
H 795=	BAKER	ROLLER SKATING RINK LIABILITY	H -RE-REF COM ON JUDICI	04-28-97	
H 855	HALL	LEE COMMISSIONERS ELECTIONS	S -REF TO COM ON ST GVT	04-07-97	04-24-97
H 856	CULPEPPER	TYRRELL CUMULATIVE VOTING	H -REF TO COM ON JUDICI	04-07-97	
H 869	DAVIS D	SPEED TO ELUDE ARREST	*H -CAL PURSUANT RULE 36(A)	04-07-97	04-28-97
H 870	ALLRED	LOCAL WORKING OF PRISONERS	*S -REF TO COM ON ST GVT	04-22-97	04-28-97
H 873	HUNTER R	AGE OF UNDISCIPLINED JUVENILES	*S -REF TO COM ON JUDIC	04-07-97	04-28-97
H 891=	MITCHELL	WORKERS COMPENSATION MEDICAL CARE	*S -REF TO COM ON JUDIC	04-28-97	04-29-97
H 902=	MORRIS	AMEND STALKING LAW	H -RE-REF COM ON JUDICII	04-09-97	04-10-97
H 904	MOSLEY	LIFE PRISON/REPEAT CHILD MOLESTER	*S -REF TO COM ON JUDIC	04-09-97	04-17-97
H 904	MOSLEY	LIFE PRISON/REPEAT CHILD MOLESTER	*S -REF TO COM ON JUDIC	04-23-97	04-30-97
H 927	HARDY	RABIES VACCINE/DOG OWNER ADMIN.	H -REF TO COM ON JUDICI	04-14-97	
H 936	BEALL	LIABILITY FOR LLAMA ACTIVITIES	*S -REF TO COM ON JUDIC	04-14-97	04-29-97
H 939	HURLEY	DRUG TAX FOR CRIMESTOPPERS	*H -ASSIGNED TO APP-JPS	04-14-97	04-28-97
H 958	HIGHTOWER	CONCEALED HANDGUN LAWS AMEND.	*R -CH. SL 97-0238	04-16-97	04-30-97
H 964	HOWARD	REVISE CODE OF LEGISLATIVE ETHICS	*H -AMEND PENDING #1	05-01-97	
H 981	HARDY	CIVIL RIGHTS RESTORATION ACT	H -REF TO COM ON JUDICI	04-17-97	
H1008	WATSON	CHIROPRACTIC LICENSURE AMENDMENTS	*R -CH. SL 97-0230	04-21-97	04-28-97
H1010=	WARNER	GOVT. USE/SEIZED GUN PARTS	H -REF TO COM ON JUDICI	04-21-97	
H1012	SEXTON	SHOOTING RANGE PROTECTION	*H -PRES. TO GOV. 08-22	04-21-97	04-28-97
H1036	HARDY	STUDY INDIGENT COUNSEL RESTRICTION	*H -RE-REF COM ON RULES	04-21-97	04-30-97
H1042=	BLACK	PUBLICATION OF APPELATE DECISIONS	H -REF TO COM ON JUDICI	04-21-97	
H1071	CAPPS	PAY RENT TO STAY EJECTMENT	S -REF TO COM ON JUDIC	04-21-97	04-28-97

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1997-98 Regular Session — HOUSE: JUDICIARY I — Valid Through 2-SEP-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H1074	HALL	REPRESENTATIONS TO CONSOLIDATE DEBTS	S -REF TO COM ON COMMERCE	04-28-97	04-30-97
H1075	HALL	APPRECIATION OF REVERSE MORTGAGES	*S -RE-REF COM ON COMMERCE	04-28-97	04-30-97
H1076	CLARY	INFRACTIONS TO MAGISTRATES	H -REF TO COM ON JUDICI	04-21-97	
H1079	WATSON	DRUG LAW AMENDMENTS	H -REF TO COM ON JUDICI	04-21-97	
H1085	LUEBKE	AMEND ETHNIC INTIMIDATION LAW	H -REF TO COM ON JUDICI	04-21-97	
H1086	MILLER G	AMEND OFFER OF JUDGEMENT RULE-2	*S -REF TO COM ON JUDIC	04-21-97	04-30-97
H1091	BRASWELL	CRIM. RECORD CHECK BY PRIVATE BUS.	*S -REF TO COM ON JUDIC	04-28-97	04-30-97
H1097	**PRESTON**	**FISHERIES REFORM ACT-2**	***R -CH. SL 97-0400**	**04-23-97**	**05-15-97**
H1114	EDDINS	BAD CHECK COLLECTIONS PILOT	*S -RE-REF COM ON APPROPR	04-21-97	05-29-97
H1120=	MCCOMAS	PRESCRIBED BURNING IN FORESTS	*S -REF TO COM ON AGRICUL&	04-22-97	04-28-97
H1122	GULLEY J	ADMIT DRUG/OPTOM. EVID./COURT SITE	*R -CH. SL 97-0304	04-21-97	04-29-97
H1123	SHERRILL	STATE PERSONNEL GRIEVANCE PROCEDURE	H -RE-REF COM ON JUDICI	04-28-97	
H1124	CAPPS	FIRE/RESCUE PERSONNEL RECORDS CHECKS	S -REF TO COM ON JUDIC	04-21-97	04-29-97
H1132	HUNTER R	DATE RAPE DRUGS	*H -PRES. TO GOV. 08-29	04-21-97	04-29-97
H1140	HUNTER R	LITTERING/REQUIRE COMM. SERVICES	*H -PRES. TO GOV. 08-29	04-21-97	04-28-97
H1144	WOOD	SPEEDING IN SCHOOL ZONES	H -RE-REF COM ON JUDICI	04-30-97	
S 3	JENKINS	LOBBYIST WAITING PERIOD	*H -RE-REF COM ON RULES	02-26-97	03-12-97
S 16	BALLANCE	CLARIFY COMMUNITY-BASED CORRECTIONS	*R -CH. SL 97-0057	03-27-97	05-06-97
S 30	JORDAN	SPEEDING IN A WORK ZONE	*S -PRES. TO GOV. 08-29	05-05-97	07-14-97
S 79	HARTSELL	REPEAL MORE ANTIQUATED LAWS	R -CH. SL 97-0014	03-03-97	03-12-97
S 95	RAND	VALIDATE NOTARIAL ACTS	*R -CH. SL 97-0019	03-03-97	03-19-97
S 106	COOPER	SALE OF PROPERTY FOR UNPAID TAXES	*R -CH. SL 97-0121	03-04-97	05-08-97
S 152=	COOPER	SERVICE OF ADMIN. SEARCH WARRANTS	H -RE-REF COM ON JUDICI	03-26-97	05-13-97
S 152=	COOPER	SERVICE OF ADMIN. SEARCH WARRANTS	H -RE-REF COM ON JUDICI	05-15-97	
S 172	ALBERTSON	NO SAFETY COURSE/DISABLED HUNTERS	*R -CH. SL 97-0365	04-16-97	05-06-97
S 187=	KERR	APA TECHNICAL CHANGES	R -CH. SL 97-0034	03-17-97	04-07-97
S 246=	RAND	GOVT. USE/SEIZED GUN PARTS	H -REF TO COM ON JUDICI	03-24-97	
S 250	WELLONS	CLARIFY PERFECTION-SECUR. INTEREST	*R -CH. SL 97-0386	04-17-97	05-06-97
S 251	WELLONS	CREATION OF EASEMENTS BY LANDOWNER	*R -CH. SL 97-0333	04-17-97	05-08-97
S 320	RAND	NURSES' TRAINING	*R -CH. SL 97-0375	04-17-97	06-03-97

NOTES- = AFTER BILL NUMBER SHOWS THAT BILL IS IDENTICAL, AS INTRODUCED, TO ANOTHER BILL.
* AFTER NUMBERS INDICATES THAT TEXT OF BILL WAS ALTERED BY ACTION ON THE BILL.
BOLDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1997-98 Regular Session — HOUSE: JUDICIARY I — Valid Through 2-SEP-1997

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 320	RAND	NURSES' TRAINING	*R -CH. SL 97-0375	06-11-97	06-18-97
S 371	ODOM	INTERNATIONAL COMM. CONCILIATION	*R -CH. SL 97-0368	05-01-97	05-14-97
S 376	WARREN	CAMPUS LAW ENFORCEMENT	R -CH. SL 97-0194	04-28-97	06-03-97
S 393	RAND	FAIL COMM. SERVICE/REVOKE LICENSE	*R -CH. SL 97-0234	04-07-97	06-03-97
S 402	WEBSTER	DEBTOR PROTECTION/SIMPLE IRAS	H -REF TO COM ON JUDICI	04-28-97	
S 409	SHAW R	AIRPORT LAW ENFORCEMENT	*R -CH. SL 97-0143	05-01-97	05-14-97
S 417	SHAW L	HIGHWAY CONTRACT BONDING REQ'MENTS	*H -RE-REF COM ON JUDICI	06-18-97	
S 430=	ODOM	INDUSTRIAL HYGIENISTS	*R -CH. SL 97-0195	05-06-97	05-27-97
S 521	CARPENTER R	DOC PILOT/SEXUAL ASSAULT	*R -CH. SL 97-0288	06-11-97	06-23-97
S 561	ODOM	COMPANY POLICE/ CONCEALED HANDGUNS	*R -CH. SL 97-0441	05-01-97	06-04-97
S 561	ODOM	COMPANY POLICE/ CONCEALED HANDGUNS	*R -CH. SL 97-0441	06-19-97	07-08-97
S 571	DALTON	CONTROLLED SUBSTANCE/SCHEDULE II	R -CH. SL 97-0385	04-28-97	07-14-97
S 625	PAGE	SPEEDING ON SCHOOL GROUNDS	*R -CH. SL 97-0341	04-30-97	05-12-97
S 625	PAGE	SPEEDING ON SCHOOL GROUNDS	*R -CH. SL 97-0341	05-14-97	06-18-97
S 699	HORTON	MODIFY VEHICLE DEALER REQUIREMENTS	*R -CH. SL 97-0429	07-09-97	07-23-97
S 861	LEE	DISPENSING OPTICIANS	*R -CH. SL 97-0424	05-19-97	06-10-97
S 875	KERR	REVISE RECORDS LAWS-2	*R -CH. SL 97-0309	06-02-97	06-16-97
S 885	GULLEY W	NOTICE OF EXECUTION	*R -CH. SL 97-0289	05-05-97	06-16-97
S 897	RAND	AMEND ELEC. SURVEILLANCE LAW	*R -CH. SL 97-0435	05-01-97	06-18-97
S 910	DALTON	LIMITATIONS FOR OFFICIAL BONDS	*R -CH. SL 97-0297	04-30-97	06-16-97
S 919	ODOM	UNLAWFUL TELECOMMUNICATIONS	*R -CH. SL 97-0372	05-01-97	07-14-97
S 943	RAND	MEDICAID FALSE CLAIMS ACT	*R -CH. SL 97-0338	05-12-97	07-02-97
S 953	WEBSTER	CORPORATE REINSTATEMENT	R -CH. SL 97-0200	05-01-97	05-27-97

NOTES- = AFTER BILL NUMBER SHOWS THAT BILL IS IDENTICAL, AS INTRODUCED, TO ANOTHER BILL.
* AFTER NUMBERS INDICATES THAT TEXT OF BILL WAS ALTERED BY ACTION ON THE BILL.
BOLDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY
PENDING HOUSE COMMITTEE ON
JUDICIARY I

Date: 9/ 2/97
Time: 11:21 a.m.
Page: 1
Leg. day:H-123/S-123

1997-98 Biennium

BILL	SHORT TITLE		DATE	LATEST ACTION
H 138	DMV ENFORCEMENT AUTHORITY	*H	3- 5-97	RE-REF COM ON JUDICI
H 258=	SERVICE OF ADM. SEARCH WARRANTS	H	2-17-97	REF TO COM ON JUDICI
H 261=	APA TECHNICAL CHANGES	H	2-17-97	REF TO COM ON JUDICI
H 268	**DIVIDE DISTRICT 22**	**H**	**2-18-97**	**REF TO COM ON JUDICI**
H 394	DOGFIGHTS/GAMBLING/FELONY	H	3- 4-97	REF TO COM ON JUDICI
H 501	CARTWAYS	H	4-29-97	RE-REF COM ON JUDICI
H 539	COLLATERAL SOURCE EVIDENCE	H	3-20-97	RE-REF COM ON JUDICI
H 616=	STANDARDIZE LAW ENF.DISCIPLINE	H	3-26-97	REF TO COM ON JUDICI
H 674	PERMANENT CURATIVE STATUTE-SEALS	H	3-31-97	REF TO COM ON JUDICI
H 741=	COURT IMPROVEMENT ACT/CONSTITUTIO	H	4- 1-97	REF TO COM ON JUDICI
H 742=	COURT IMPROVEMENT ACT	H	4- 1-97	REF TO COM ON JUDICI
H 795=	ROLLER SKATING RINK LIABILITY	H	4-28-97	RE-REF COM ON JUDICI
H 856	TYRRELL CUMULATIVE VOTING	H	4- 7-97	REF TO COM ON JUDICI
H 927	RABIES VACCINE/DOG OWNER ADMIN.	H	4-14-97	REF TO COM ON JUDICI
H 964	REVISE CODE OF LEGISLATIVE ETHICS	*H	5- 1-97	AMEND PENDING #1
H 981	CIVIL RIGHTS RESTORATION ACT	H	4-17-97	REF TO COM ON JUDICI
H1010=	GOVT. USE/SEIZED GUN PARTS	H	4-21-97	REF TO COM ON JUDICI
H1042=	PUBLICATION OF APPELATE DECISIONS	H	4-21-97	REF TO COM ON JUDICI
H1076	INFRACTIONS TO MAGISTRATES	H	4-21-97	REF TO COM ON JUDICI
H1079	DRUG LAW AMENDMENTS	H	4-21-97	REF TO COM ON JUDICI
H1085	AMEND ETHNIC INTIMIDATION LAW	H	4-21-97	REF TO COM ON JUDICI
H1123	STATE PERSONNEL GRIEVANCE PROCEDU	H	4-28-97	RE-REF COM ON JUDICI
H1144	SPEEDING IN SCHOOL ZONES	H	4-30-97	RE-REF COM ON JUDICI
S 152=	SERVICE OF ADMIN. SEARCH WARRANTS	H	5-15-97	RE-REF COM ON JUDICI
S 246=	GOVT. USE/SEIZED GUN PARTS	H	3-24-97	REF TO COM ON JUDICI
S 402	DEBTOR PROTECTION/SIMPLE IRAS	H	4-28-97	REF TO COM ON JUDICI
S 417	HIGHWAY CONTRACT BONDING REQ'MENT	*H	6-18-97	RE-REF COM ON JUDICI

Bolded line indicates bill is an appropriation bill.
* indicates that text of original bill was changed by some action.
= sign indicates that the original bill is identical to another bill.

North Carolina House of Representatives
JUDICIARY I COMMITTEE
MINUTES

Representative N. Leo Daughtry, Co-Chairman
Representative Edwin M. Hardy, Co-Chairman

February 13, 1997

Members Present

Gene G. Arnold
Jerry Braswell
J. Russell Capps
Debbie Clary
Milton F. Fitch, Jr.
Lyons Gray
Bobby Ray Hall
Thomas C. Hardaway
Edwin M. Hardy
George M. Holmes
Robert C. Hunter
Larry T. Justus
H. M. Michaux, Jr.
Wilma M. Sherrill
Greg Thompson

The House Committee on JUDICIARY I met at 10:00 a.m. on Thursday, February 13, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry presiding.

No action was deliberated.

The Committee adjourned at 10:03 a.m.

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS:

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE

You are hereby notified that the Committee on **JUDICIARY I** will meet as follows:

DAY & DATE: **Thursday, February 13th**

TIME: **10:00 a.m.**

LOCATION: **Room 1327**

The following bills will be considered (Bill # & Short Title):

H.B. 102 - Mitchell Precincts
H.B. 103 - Avery Precincts

Will not take up H.B. 30 - Use of Motor Cycle Helmets

Respectfully,

Representative N. Leo Daughtry
Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at **3:00 p.m.** on **Wednesday, February 12, 1997**.

___Principal Clerk
___Reading Clerk - House Chamber

Bernice Bullard, (Committee Clerk)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 102

Short Title: Mitchell Precincts. (Local)

Sponsors: Representative Buchanan.

Referred to: Judiciary I.

February 11, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT THERE BE AT LEAST ONE VOTING PLACE IN MITCHELL COUNTY WITHIN EVERY TOWNSHIP THAT EXISTED IN 1995.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S.163-128, 163-132.5C, or 163-132.3, the Mitchell County Board of Elections shall provide for at least one voting place within every township in Mitchell County that was in existence on January 1, 1995.

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 103*

Short Title: Avery Precincts. (Local)

Sponsors: Representative Buchanan.

Referred to: Judiciary I.

February 11, 1997

A BILL TO BE ENTITLED

AN ACT TO DESIGNATE NINETEEN PRECINCTS IN AVERY COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S.163-128, 163-132.5C, or 163-132.3 or any action by the county or State boards of elections, the voting precincts of Avery County Board of Elections shall be the 19 precincts that were in existence on January 1, 1995.

Section 2. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

JUDICIARY I COMMITTEE **February 13, 1997**

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amanda Digby	NC Academy of Trial Lawyers

North Carolina House of Representatives

JUDICIARY I COMMITTEE

1 tape minutes NOT in computer

February 18, 1997
10:00 a.m.
1327 Legislative Bldg.

N. Leo Daughtry, Chairman

Members Present

Martha B. Alexander	Gene Arnold
Jerry Braswell	J. Russell Capps
Debbie Clary	James W. Crawford
J. Sam Ellis	Teresa Harlow Esposito
Milton F. Fitch, Jr.	Lyons Gray
Bobby Ray Hall	Thomas C. Hardaway
Edwin M. "Sandy" Hardy	George M. Holmes
Robert C. Hunter	Margaret M. Jeffus
Larry T. Justus	H. M. Michaux, Jr.
George W. Miller, Jr.	Richard T. Morgan
Wilma M. Sherrill	Gregg Thompson

The House Committee on JUDICIARY I met at 10:00 a.m. on Tuesday, February 18, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry presiding.

Committee counsels Steven Rose and Karen Cochrane-Brown were present to assist the committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

On a motion by Rep. Ellis, and without objection, the Committee approved House Bill 103 on Avery County Precincts, introduced by Rep. Buchanan, requiring that Avery County have the same 19 precincts it had on January 1, 1995. The measure was referred to the House with a favorable report.

The Chairman brought before the Committee House Bill 248, on a Graduated Drivers License, introduced by Rep. Clary. Committee Counsel Steven Rose issued a memorandum to committee members regarding House Bill 248, a copy of which is attached and made a part of the minutes.

The chairman recognized Rep. Clary who explained the measure, and read into the record

A list of *Myths and Facts about Graduated Drivers Licensing,* also attached and made a part of the Minutes.

Mr. Oliver Wheeler of New Bern, member of the Governor's Council of Young Adult Drivers, and Officer Stanley K. McHenry, traffic accident investigator for the City of Durham Police Department were recognized and spoke on behalf of the measure.

On a motion by Representative Ellis, the Committee adopted four technical amendments to the measure proposed by Mr. Rose. Representative Ellis made the motion that these amendments, copies of which were made available to the Committee and are attached and made a part of the Minutes, be incorporated into a *proposed committee substitute* and that the Committee approved the measure with a favorable report to the proposed committee substitute, unfavorable to the original bill, and recommended that the proposed committee substitute be re-referred to the Committee on Finance. The motion was adopted without objection.

The Committee adjourned at 10:37 a.m.

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 103 A BILL TO BE ENTITLED AN ACT TO DESIGNATE NINETEEN PRECINCTS IN AVERY COUNTY.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill ( ), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill). (and recommendation that the committee substitute bill be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill , ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
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(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
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(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
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(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

February 13, 1997

TO: House Judiciary I Committee.

FROM: William R. Gilkeson, Staff Attorney.

RE: House Bill 103. – Avery County Precincts.

House Bill 103, introduced by Rep. Buchanan, would require that Avery County have the same 19 precincts it had on January 1, 1995.

The effect of the bill would be to overturn an action of the Avery County Board of Elections, made final in January 1997, reducing the number of precincts from 19 to 12. That reduction has been part of a long-running dispute between the county elections board and the county commissioners about the number of precincts.

General election law gives a county board of elections the discretion to determine how many precincts that county will have and where the precinct lines will be. G.S. 163-128. That discretion is limited by a statute that says lines must follow 1990 Census blocks, certain visible features, municipal lines, or township lines. G.S. 163-132.3. That statute is designed to give redistricters using Census maps the ability to avoid splitting precincts. It is enforced by the Executive Secretary-Director of the State Board of Elections, with the advice of the Legislative Services Office. Both the 19 old precincts and the 12 new precincts of Avery County have been approved under this program.

Later this decade, when the Census Bureau determines its block boundaries for the 2000 Census, State law will require that the county elections boards re-examine their precincts to make sure they follow those block lines. G.S. 163-132.1. County boards have just completed a program using preliminary Census 2000 maps to suggest the lines they will need as 2000 block boundaries to underly their precincts. Avery County has completed that program. It appears likely that Avery will be able to comply with the 2000 requirement using the 12 precincts, but the 19 precincts could probably be drawn on block lines only if the eight Avery townships now shown on the 1990 Census maps are expanded to 19.

General law gives the county commissioners the authority to decide how many townships their county will have. G.S. 153A-19. That law also requires that the county manager report the location of the townships to the Census Bureau so the township lines can appear on the official Census maps as block boundaries. In 1986, during a dispute with the county elections board over precinct mergers, the Avery commissioners passed a resolution creating 19 townships, to be coterminous with the 19 precincts. Since that time, however, county officials have repeatedly reported to the Census the eight townships the county traditionally had, sometimes with minor corrections. In 1986, state law required that there be at least one polling place in every township, so the commissioners' resolution would have blocked the precinct mergers. The commissioners alluded to that fact in their resolution, saying that if the elections board reconsidered merger the precincts, the commissioners would consider rescinding their township change. Since 1986, however, the precinct-in-every-township rule has been repealed, and now county elections boards can draw precincts without regard to townships. Precinct lines often still follow township lines anyway, because a township line is a acceptable to the Census as a block boundary even if it isn't a visible feature.

The State Constitution prohibits the General Assembly from changing townships by local act. But there is not such prohibition for changing precinct lines by local act.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 103*

Short Title: Avery Precincts. (Local)

Sponsors: Representative Buchanan.

Referred to: Judiciary I.

February 11, 1997

A BILL TO BE ENTITLED

AN ACT TO DESIGNATE NINETEEN PRECINCTS IN AVERY COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S.163-128, 163-132.5C, or 163-132.3 or any action by the county or State boards of elections, the voting precincts of Avery County Board of Elections shall be the 19 precincts that were in existence on January 1, 1995.

Section 2. This act is effective when it becomes law.

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Legislative Services Office

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February 13, 1997

TO: House Judiciary I Committee.

FROM: William R. Gilkeson, Staff Attorney.

RE: House Bill 103. – Avery County Precincts.

House Bill 103, introduced by Rep. Buchanan, would require that Avery County have the same 19 precincts it had on January 1, 1995.

The effect of the bill would be to overturn an action of the Avery County Board of Elections, made final in January 1997, reducing the number of precincts from 19 to 12. That reduction has been part of a long-running dispute between the county elections board and the county commissioners about the number of precincts.

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1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 248 A BILL TO BE ENTITLED AN ACT TO IMPLEMENT GRADUATED DRIVERS LICENSES

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to committee substitute bill ~~(_____), ☐ which changes the title,~~ unfavorable as to original bill ~~(Committee Substitute Bill _____)~~. (and recommendation that the committee substitute bill be re-referred to the Committee on FINANCE.)

☐ With a favorable report as to House committee substitute bill , ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 248

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H248-ARL-001 Page 1 of 1

Date_____,1997

Comm. Sub. []
Amends Title []

Representative Clary

moves to amend the bill on page 2, line 23, by inserting the words "Level 1" immediately before the word "limited"; and

on page 3, line 30, by inserting the following language immediately after the word "body": ", or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a),";

on page 3, line 43, by inserting the following language immediately after the word "time.": "The supervisor shall be a parent, guardian, or other person approved by the Division, who is a licensed driver, and who has been licensed to drive for at least five years."; and

on page 4, line 7, by inserting the following language immediately after the word "body": ", or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a),".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 248*
Proposed Committee Substitute H248-PCS2071

Short Title: Graduated Drivers Licenses. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT GRADUATED DRIVERS LICENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-11 reads as rewritten:

"**§ 20-11. Application of minors.**

(a) The Division shall not grant the application of any minor between the ages of 16 and 18 years for a ~~driver's~~ drivers license or a learner's permit unless such application is signed both by the applicant and by the parent, guardian, husband, wife or employer of the applicant, or, if the applicant has no parent, guardian, husband, wife or employer residing in this State, by some other responsible adult person. It shall be unlawful for any person to sign the application of a minor under the provisions of this section when such application misstates the age of the minor and any person knowingly violating this provision shall be guilty of a Class 2 misdemeanor.

The Division shall not grant the application of any minor between the ages of 16 and 18 years for a ~~driver's~~ drivers license unless such minor presents evidence of having satisfactorily completed the driver training and safety education courses offered at the public high schools as provided in G.S. 20-88.1 or upon having satisfactorily completed a course of driving instruction offered at a licensed commercial driver training school or an approved nonpublic secondary school, provided instruction offered in such schools shall be approved by the State Commissioner of Motor Vehicles and the State Superintendent of Public Instruction and all expenses for such instruction shall be paid by the persons enrolling in such

courses and/or by the schools offering them. All approved driver training and safety education courses and courses of driving instruction shall include at least six hours of actual driving experience.

(b) The Division may issue a Level 1 limited learner's permit to a minor who is at least 15 years old ~~but is less than 16 years old~~ and who otherwise meets the requirements of this section. An application for a Level 1 limited learner's permit ~~must~~ shall be signed by both the applicant and the applicant's parent or guardian or some other responsible adult with whom the applicant resides and who is approved by the Division. A Level 1 limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle under the conditions specified in subdivision (d)(1) of this section while in possession of the permit and accompanied by a parent, guardian, or other person approved by the Division who is licensed to operate the motor vehicle being driven and is seated beside the permit holder. A Level 1 limited learner's permit is valid for a period of 18 months. The fee for a Level 1 limited learner's permit is ten dollars ($10.00). In the event a minor who holds a Level 1 limited learner's permit drives a motor vehicle in violation of law, the permit shall be canceled.

A driver who holds a Level 1 limited learner's permit only shall not be deemed a licensed driver for the purpose of determining the inexperienced operator premium surcharge under automobile insurance policies.

(c) The Division may, upon satisfactory proof that a minor between the ages of 16 and 18 years has become a resident of North Carolina and holds a valid unrestricted motor vehicle ~~driver's~~ drivers license from his prior state of ~~residence but has not completed a course in driver education which meets the requirements of this State, grant to such~~ residence:

(1) Issue to the minor a temporary driver's permit ~~under such~~ with any necessary terms and conditions ~~as shall be deemed necessary by the Division~~ to allow the minor to operate a motor vehicle of a specified type or class in this State in order to obtain the driver education courses or a course of driving instruction necessary for a drivers license in North ~~Carolina.~~ Carolina;

(2) Issue to the minor the graduated license appropriate to his age and experience as provided by this section; or

(3) Issue to the minor an unrestricted drivers license if the minor has possessed a valid unrestricted drivers license in his previous state of residence for the 12-month period immediately preceding the date of the application and has not been convicted of a traffic violation for which points may be assessed under this Article.

Every application for a temporary driver's permit shall be made upon the approved form furnished by the Division. A temporary driver's permit issued pursuant to this section shall be subject to all provisions of law relating to a ~~driver's~~ drivers license.

(d) Graduated Drivers Licenses. -- Provisional licensees shall be issued the graduated provisional drivers licenses appropriate to their driving experience with the following experience-based restrictions:

(1) Level 1. -- Limited learner's permit.
a. An applicant for this level provisional license shall have:
1. Passed a course of driver education prescribed in G.S. 20-88.1 or a course of driver instruction at a licensed commercial driver training school or an approved nonpublic secondary school;
2. Passed a written test administered by the Division; and
3. Obtained a limited learner's permit pursuant to subsection (b) of this section.
b. For the first six months, a Level 1 limited learner's permit allows only supervised driving between the hours of 5:00 a.m. and 9:00 p.m.
c. The supervisor shall be a parent, guardian, or other person approved by the Division, who is a licensed driver, and who has been licensed to drive for at least five years. The supervisor shall be the only other occupant allowed in the front seat with the driver.
d. After the first six months of issuance, a holder of this level provisional license may drive under supervision at any time.
e. Every person occupying the vehicle being driven by the Level 1 provisional licensee shall have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.
(2) Level 2. -- Limited provisional license.
a. An applicant for this level provisional license shall have:
1. Possessed a Level 1 provisional license for a period of not less than 12 months with no moving violations or seat belt infractions;
2. Passed a road test administered by the Division; and
3. Paid a fee of ten dollars ($10.00).
b. A Level 2 provisional license allows unsupervised driving from 5:00 a.m. to 9:00 p.m. and when going to and coming from work.
c. A Level 2 provisional licensee may drive under supervision at any time. The supervisor shall be a parent, guardian, or other person approved by the Division, who is a licensed driver, and who has been licensed to drive for at least five years.
d. When a Level 2 provisional licensee is driving under supervision, the supervisor shall be the occupant of the next occupied seat to the right of the driver, but need not be the only other occupant of the front seat.

e. Every person occupying the vehicle being driven by the Level 2 provisional licensee shall have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(3) Level 3. -- Full provisional license.

a. An applicant for this level provisional license shall have:

1. Possessed a Level 2 provisional license for a period of not less than six months with no moving violations or seat belt infractions; and

2. Paid a fee of ten dollars ($10.00).

b. A Level 3 provisional licensee may drive unsupervised at any time.

(e) The provisional licenses shall bear a distinctive color photographic background or border indicating the level of driving experience of the licensee.

(f) After deducting the costs of administering the provisional license program pursuant to this section, the Division shall transfer, quarterly, any balance of the funds received as fees to the Highway Fund."

Section 2. This act becomes effective December 1, 1997, but shall not apply to any person who holds a valid North Carolina limited learner's permit issued before the effective date of this act, a valid North Carolina learner's permit issued before the effective date of this act, or who is a provisional licensee holding a valid North Carolina drivers license issued before the effective date of this act.

Joel Raupe (Rep. Hardy)

From: Carol Fowler (Research)
Sent: Tuesday, February 18, 1997 1:45 PM
To: Rep. Leo Daughtry; Rep. Edwin Hardy; Rep. Debbie Clary
Subject: House Bill 248; Graduated Drivers License

MEMORANDUM FROM STEVEN ROSE:

In preparing the Proposed Committee Substitute for House Bill 248, I noticed that there were four places in the existing language in G.S.20-11 where the term "driver's license" is used. The language that we added to G.S. 20-11 follows the current drafting convention of not having an apostrophe in "drivers license." I have corrected the four places in G.S. 20-11 to remove the apostrophe so that the term "drivers license" is used consistently in G.S. 20-11. If this is a problem, please let me know and I will remove those changes before the Proposed Committee Substitute is printed. I am presently waiting for the bill typing section to prepare the Proposed Committee Substitute so that I can review it before having it printed.

****

Carol Fowler
Research Division-545 LOB
3-2578

****

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 248

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H248-ARL-003

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

Representative Clary

moves to amend the bill on page 3, line 13, by inserting the following language immediately before the semicolon:
"or a course of driver instruction at a licensed commercial driver training school or an approved nonpublic secondary school".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 248

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H248-ARL-002

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

Representative Clary

moves to amend the bill on page 4, line 22, by rewriting that line to read:

"Section 2. This act becomes effective December 1, 1997, but shall not apply to any person who holds a valid North Carolina limited learner's permit issued before the effective date of this act, a valid North Carolina learner's permit issued before the effective date of this act, or who is a provisional licensee holding a valid North Carolina drivers license issued before the effective date of this act."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 248

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H248-ARL-001

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

Representative Clary

moves to amend the bill on page 2, line 23, by inserting the words "Level 1" immediately before the word "limited"; and

on page 3, line 30, by inserting the following language immediately after the word "body": ", or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a),";

on page 3, line 43, by inserting the following language immediately after the word "time.": "The supervisor shall be a parent, guardian, or other person approved by the Division, who is a licensed driver, and who has been licensed to drive for at least five years."; and

on page 4, line 7, by inserting the following language immediately after the word "body": ", or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a),".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

North Carolina General Assembly
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February 18, 1997

MEMORANDUM

TO: House Judiciary I Committee

FROM: Steven Rose, Committee Counsel

RE: House Bill 248; Graduated Drivers License

House Bill 248 would change the way in which drivers licenses are issued to persons under 18 years of age.

Under present law, a limited learner's permit can be issued to a person 15 years old but less than 16 years old, if they have completed a driver education course. The person may drive when accompanied by a parent, guardian, or other person approved by the Division of Motor Vehicles who is licensed to operate the motor vehicle. That person must be seated beside the permit holder. A person holding a learner's permit must be 16 years of age or older, need not have completed the driver education course, and must be accompanied by a person licensed to operate the motor vehicle being driven, which person is seated beside the permit holder. A person between the ages of 16 and 18 years old who holds a driver's license (known as a provisional licensee), is not subject to any supervision restrictions, but must have passed a driver education course.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

House Bill 248 creates a system of graduated drivers licenses with three levels based upon driver experience:

1. Level 1 is a limited learner's permit. The requirements are passing a course of driver education administered through the public schools, passing a written test administered by the Division of Motor Vehicles, and obtaining a limited learner's permit as provided in subsection (b) of G.S. 20-11. For the first six months, driving is restricted to the hours between 5:00 a.m. and 9:00 p.m., and must be supervised by a parent, guardian, or other person approved by the Division, who must have been a licensed driver for at least five years, and who is the only occupant allowed in the front seat with the driver. After six months, the holder of the Level 1 permit may drive at any time, but the supervisory requirements remain. Every occupant of the vehicle must have a safety belt fastened when the vehicle is in motion.
2. A Level 2 provisional license requires the applicant to have possessed a Level 1 license for not less than 12 months with no moving violations or seat belt infractions, have passed a road test, and have paid a $10 fee. A Level 2 license holder may drive unsupervised from 5:00 a.m. to 9:00 p.m. and when going to and coming from work. The person may drive under supervision at any time. The supervisor must occupy the seat to the right of the driver, but need not be the only other occupant of the front seat. Every person in the vehicle must wear a seat belt when the vehicle is in motion.
3. A Level 3 license is a full provisional license. To obtain this license the applicant must have possessed a Level 2 license for a period of not less than six months with no moving

violations or seat belt infractions and have paid a $10 fee. A Level 3 licensee may drive unsupervised at any time.

The provisional licenses must bear a distinctive color photographic background indicating the level of the license. After deducting the costs of administering the provisional license program, any balance of the fees must be transferred on a quarterly basis to the Highway Fund.

The bill makes other changes to G.S. 20-11. It amends subsection (a) to require that all approved driver education courses include at least six hours of actual driving experience. It amends subsection (b) to denominate the present limited learner's permit as a Level 1 limited learner's permit and eliminates the language that makes a limited learner's permit applicable to a person less than 16 years old. Under the amendment, the Level 1 limited learner's permit applies to drivers at least 15 years old, and up to 18 years of age.

Subsection (c), which applies to persons between the ages of 16 and 18 years of age who become residents of North Carolina and hold a valid unrestricted drivers license from the prior state of residence, is amended. Previously, if that driver had not completed a course in driver education which meets the requirements of this State, the Division would grant a temporary drivers permit under terms and conditions deemed necessary to allow the minor to operate a motor vehicle in order to obtain the driver education courses necessary for a North Carolina provisional license. The amendments now give three choices to the Division of Motor Vehicles in this situation. It may issue a temporary drivers permit to allow the driver to obtain the driver education courses; it may issue a graduated license appropriate to the driver's age and experience as provided by G.S. 20-11, or it may issue an unrestricted drivers license if the person has

possessed a valid unrestricted drivers license in his previous state for the 12 month period immediately preceding the date of application and has not been convicted of a traffic violation for which points might be assessed under the Uniform Driver's License Act.

The act becomes effective December 1, 1997.

248

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

0248 FEB 13 97

HOUSE PRINCIPAL CLERK

H D

HOUSE DRH1060*-LKZ025B(1.23)

Short Title: Graduated Drivers Licenses. (Public)

Sponsors: Representatives Clary, Alexander, and Easterling.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT GRADUATED DRIVERS LICENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-11 reads as rewritten:

"**§ 20-11. Application of minors.**

(a) The Division shall not grant the application of any minor between the ages of 16 and 18 years for a driver's license or a learner's permit unless such application is signed both by the applicant and by the parent, guardian, husband, wife or employer of the applicant, or, if the applicant has no parent, guardian, husband, wife or employer residing in this State, by some other responsible adult person. It shall be unlawful for any person to sign the application of a minor under the provisions of this section when such application misstates the age of the minor and any person knowingly violating this provision shall be guilty of a Class 2 misdemeanor.

The Division shall not grant the application of any minor between the ages of 16 and 18 years for a driver's license unless such minor presents evidence of having satisfactorily completed the driver training and safety education courses offered at the public high schools as provided in G.S. 20-88.1 or upon having satisfactorily completed a course of driving instruction offered at a licensed commercial driver training school or an approved nonpublic secondary school, provided instruction offered in such schools shall be approved by the State Commissioner of Motor Vehicles and the State Superintendent of Public Instruction and all expenses for such instruction shall be paid by the persons enrolling in such courses and/or by the schools offering them. <u>All approved driver training and safety education courses and courses of driving instruction shall include at least six hours of actual driving experience.</u>

(b) The Division may issue a Level 1 limited learner's permit to a minor who is at least 15 years old ~~but is less than 16 years old~~ and who otherwise meets the requirements of this section. An application for a Level 1 limited learner's permit ~~must~~ shall be signed by both the applicant and the applicant's parent or guardian or some other responsible adult with whom the applicant resides and who is approved by the Division. A Level 1 limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle under the conditions specified in subdivision (d)(1) of this section while in possession of the permit and accompanied by a parent, guardian, or other person approved by the Division who is licensed to operate the motor vehicle being driven and is seated beside the permit holder. A limited learner's permit is valid for a period of 18 months. The fee for a Level 1 limited learner's permit is ten dollars ($10.00). In the event a minor who holds a Level 1 limited learner's permit drives a motor vehicle in violation of law, the permit shall be canceled.

A driver who holds a Level 1 limited learner's permit only shall not be deemed a licensed driver for the purpose of determining the inexperienced operator premium surcharge under automobile insurance policies.

(c) The Division may, upon satisfactory proof that a minor between the ages of 16 and 18 years has become a resident of North Carolina and holds a valid unrestricted motor vehicle driver's license from his prior state of ~~residence but has not completed a course in driver education which meets the requirements of this State, grant to such~~ residence:

(1) Issue to the minor a temporary driver's permit ~~under such~~ with any necessary terms and conditions ~~as shall be deemed necessary by the Division~~ to allow the minor to operate a motor vehicle of a specified type or class in this State in order to obtain the driver education courses or a course of driving instruction necessary for a drivers license in North ~~Carolina.~~ Carolina;

(2) Issue to the minor the graduated license appropriate to his age and experience as provided by this section; or

(3) Issue to the minor an unrestricted drivers license if the minor has possessed a valid unrestricted drivers license in his previous state of residence for the 12-month period immediately preceding the date of the application and has not been convicted of a traffic violation for which points may be assessed under this Article.

Every application for a temporary driver's permit shall be made upon the approved form furnished by the Division. A temporary driver's permit issued pursuant to this section shall be subject to all provisions of law relating to a driver's license.

(d) Graduated Drivers Licenses. -- Provisional licensees shall be issued the graduated provisional drivers licenses appropriate to their driving experience with the following experience-based restrictions:

(1) Level 1. -- Limited learner's permit.

a. An applicant for this level provisional license shall have:

1. Passed a course of driver education prescribed in G.S. 20-88.1; or a course of instruction at an approved driver's license school
2. Passed a written test administered by the Division; and
3. Obtained a limited learner's permit pursuant to subsection (b) of this section.

b. For the first six months, a Level 1 limited learner's permit allows only supervised driving between the hours of 5:00 a.m. and 9:00 p.m.

c. The supervisor shall be a parent, guardian, or other person approved by the Division, who is a licensed driver, and who has been licensed to drive for at least five years. The supervisor shall be the only other occupant allowed in the front seat with the driver.

d. After the first six months of issuance, a holder of this level provisional license may drive under supervision at any time.

e. Every person occupying the vehicle being driven by the Level 1 provisional licensee shall have a safety belt properly fastened about his or her body when the vehicle is in motion.

(2) Level 2. -- Limited provisional license.

a. An applicant for this level provisional license shall have:
   1. Possessed a Level 1 provisional license for a period of not less than 12 months with no moving violations or seat belt infractions;
   2. Passed a road test administered by the Division; and
   3. Paid a fee of ten dollars ($10.00).

b. A Level 2 provisional license allows unsupervised driving from 5:00 a.m. to 9:00 p.m. and when going to and coming from work.

c. A Level 2 provisional licensee may drive under supervision at any time.

d. When a Level 2 provisional licensee is driving under supervision, the supervisor shall be the occupant of the next occupied seat to the right of the driver, but need not be the only other occupant of the front seat.

e. Every person occupying the vehicle being driven by the Level 2 provisional licensee shall have a safety belt properly fastened about his or her body when the vehicle is in motion or child restraint system

(3) Level 3. -- Full provisional license.

a. An applicant for this level provisional license shall have:

1. Possessed a Level 2 provisional license for a period of not less than six months with no moving violations or seat belt infractions; and
2. Paid a fee of ten dollars ($10.00).

b. A Level 3 provisional licensee may drive unsupervised at any time.

(e) The provisional licenses shall bear a distinctive color photographic background indicating the level of driving experience of the licensee.

(f) After deducting the costs of administering the provisional license program pursuant to this section, the Division shall transfer, quarterly, any balance of the funds received as fees to the Highway Fund."

Section 2. This act becomes effective ~~December 1, 1997.~~ but shall not apply to holders of limited D.L. or D.L before eff. date.

Myths and Facts About Graduated Driver Licensing

Graduated Driver Licensing (GDL) is a different way of introducing young drivers to the complex and potentially deadly task of driving. It is designed to reduce crash risks for young new drivers by systematically providing them with more practical experience, gained under the safest possible conditions, before allowing them to drive completely on their own. Several misunderstandings or Myths about GDL have developed. These are addressed below.

Myth: GDL requires teens to graduate from High School before they can obtain a Driver License.

- ❑ ***Fact.*** GDL refers to the fact that new drivers progress or 'graduate' from one licensing stage to the next after they have successfully achieved the goals at each level.

Myth: GDL would mean teenagers can't get their license until they are 18 years old.

- ❑ ***Fact.*** Under GDL, new drivers could obtain their license at the same age as with the present system. There would be only one noteworthy difference: for the *first six months* in order to legally drive between 9 pm and 5 am they would have to be accompanied by an adult driver.

Myth: GDL would prevent teenagers from working at night.

- ❑ ***Fact.*** GDL would only prevent beginning drivers, mainly those who have just turned 16, from *recreational driving* between 9 pm and 5 am, and this would last *only six months*. And, teens could drive at any time of night when accompanied by an adult driver. Driving to or from work without an adult in the car would also be permitted.

Myth: GDL would punish everybody for mistakes that only some young drivers make.

- ❑ ***Fact.*** GDL is designed to support and protect new drivers, not to punish them. It extends the driving privilege in steps, as new drivers demonstrate their competence and responsibility, rather than simply throwing inexperienced, emotionally immature beginners into the complex risky driving environment as is presently done – with all too frequent tragic consequences.

Myth: Alcohol is the main problem for young drivers. How would GDL affect that?

- ❑ ***Fact.*** Although alcohol does contribute to teen driver crashes, it is only a minor factor among 16- and 17-year-old drivers. A much greater problem is impulsive, risky driving actions: the failure to make good judgments and decisions.

Myth: GDL is just another government attempt to protect people from themselves.

- ❑ ***Fact.*** In fact, young beginning drivers commonly cause crashes in which both their passengers and occupants of other vehicles are hurt or killed. GDL is designed to protect everybody who uses the roadways, not just young drivers.

Myth: Simply improving Driver Education programs would solve the problem of young driver crashes. It isn't necessary to change the licensing system.

- ❑ ***Fact.*** Although it can help teach persons how to drive, there is no research evidence to suggest that Driver Education reduces crashes. A drastically revised approach might have some benefit, but such a program would be far more costly than the public seems willing to pay for at present.

Find out more: Visit the UNC-HSRC Web site at http://www.hscr.unc.edu

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February 18, 1997

MEMORANDUM

TO: House Judiciary I Committee

FROM: Steven Rose, Committee Counsel

RE: House Bill 248; Graduated Drivers License

House Bill 248 would change the way in which drivers licenses are issued to persons under 18 years of age.

Under present law, a limited learner's permit can be issued to a person 15 years old but less than 16 years old, if they have completed a driver education course. The person may drive when accompanied by a parent, guardian, or other person approved by the Division of Motor Vehicles who is licensed to operate the motor vehicle. That person must be seated beside the permit holder. A person holding a learner's permit must be 16 years of age or older, need not have completed the driver education course, and must be accompanied by a person licensed to operate the motor vehicle being driven, which person is seated beside the permit holder. A person between the ages of 16 and 18 years old who holds a driver's license (known as a provisional licensee), is not subject to any supervision restrictions, but must have passed a driver education course.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

House Bill 248 creates a system of graduated drivers licenses with three levels based upon driver experience:

1. Level 1 is a limited learner's permit. The requirements are passing a course of driver education administered through the public schools, passing a written test administered by the Division of Motor Vehicles, and obtaining a limited learner's permit as provided in subsection (b) of G.S. 20-11. For the first six months, driving is restricted to the hours between 5:00 a.m. and 9:00 p.m., and must be supervised by a parent, guardian, or other person approved by the Division, who must have been a licensed driver for at least five years, and who is the only occupant allowed in the front seat with the driver. After six months, the holder of the Level 1 permit may drive at any time, but the supervisory requirements remain. Every occupant of the vehicle must have a safety belt fastened when the vehicle is in motion.
2. A Level 2 provisional license requires the applicant to have possessed a Level 1 license for not less than 12 months with no moving violations or seat belt infractions, have passed a road test, and have paid a $10 fee. A Level 2 license holder may drive unsupervised from 5:00 a.m. to 9:00 p.m. and when going to and coming from work. The person may drive under supervision at any time. The supervisor must occupy the seat to the right of the driver, but need not be the only other occupant of the front seat. Every person in the vehicle must wear a seat belt when the vehicle is in motion.
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Myth: GDL would mean teenagers can't get their license until they are 18 years old.

- ❑ ***Fact.*** Under GDL, new drivers could obtain their license at the same age as with the present system. There would be only one noteworthy difference: for the *first six months* in order to legally drive between 9 pm and 5 am they would have to be accompanied by an adult driver.

Myth: GDL would prevent teenagers from working at night.

- ❑ ***Fact.*** GDL would only prevent beginning drivers, mainly those who have just turned 16, from *recreational driving* between 9 pm and 5 am, and this would last *only six months*. And, teens could drive at any time of night when accompanied by an adult driver. Driving to or from work without an adult in the car would also be permitted.

Myth: GDL would punish everybody for mistakes that only some young drivers make.

- ❑ ***Fact.*** GDL is designed to support and protect new drivers, not to punish them. It extends the driving privilege in steps, as new drivers demonstrate their competence and responsibility, rather than simply throwing inexperienced, emotionally immature beginners into the complex risky driving environment as is presently done – with all too frequent tragic consequences.

Myth: Alcohol is the main problem for young drivers. How would GDL affect that?

- ❑ ***Fact.*** Although alcohol does contribute to teen driver crashes, it is only a minor factor among 16- and 17-year-old drivers. A much greater problem is impulsive, risky driving actions: the failure to make good judgments and decisions.

Myth: GDL is just another government attempt to protect people from themselves.

- ❑ ***Fact.*** In fact, young beginning drivers commonly cause crashes in which both their passengers and occupants of other vehicles are hurt or killed. GDL is designed to protect everybody who uses the roadways, not just young drivers.

Myth: Simply improving Driver Education programs would solve the problem of young driver crashes. It isn't necessary to change the licensing system.

- ❑ ***Fact.*** Although it can help teach persons how to drive, there is no research evidence to suggest that Driver Education reduces crashes. A drastically revised approach might have some benefit, but such a program would be far more costly than the public seems willing to pay for at present.

Find out more: Visit the UNC-HSRC Web site at http://www.hscr.unc.edu

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Pam Seamans	United Way of NC / Covenant w/ NC's Children
Ginny McKay	Parent of 16th driver
Lucy Allen	PTA - Wake Co. Schools, Cary, NC
Barbara Putney	PTA - McDougle Elem., Chapel Hill/Carrboro school
Lisa Strickey	PTA Council, Chapel Hill - Carrboro Schools
Kaetta Wells	PTA - McDougle Elem, Chapel Hill - Carrboro Schools
Stephen W. Allen	—
Dave Horne	—
Anne Lacy	PTA Millbrook High School
Cheryl Citron	PTA Millbrook High School
Barbara Meyer	PTA - West Millbrook Middle School (Wake Cty.)
Donna Hearn	PTA - Alexander Middle School - CMS
Gwendolyn Brown-Johnson	Charlotte-Mecklenburg County PTA Council President
Glorestine Brown	PTA President - Bethel Elem. School / Pitt County
Ruth Sappie	DOT

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Milton Coats	Pleasant Grove Senior Center
Ruth Byrd	"
Norma Parrish	"
Ruby Barbour	"
Hunter Aiken	Volunteer Driver PLEASANT GROVE SENIOR CENTER
Frances R. Roberts	"
Kathleen Hobson	Pleasant Grove Tour Guide
Sarah J. Weaver	" " " "
Katie A Mabry	" " " "
Lera Flowers	Pleasant Grove Tour
Mable Coats	" " "
Stella H. McKenney	Dept. of Insurance
Jill Miller	NCATL
Ethel King	Nationwide Insurance
Susan Vellucci	Nationwide

Name of Committee | Date

JUDICIARY I | 2-18-97

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Shannon Bullock	GHSP
Oliver Wheeler	GCYAD
STANLEY K. McHENRY	DURHAM CITY POLICE.
Lawrence Harris	Gov's Hwy Safety Program
Joe Parker	GHSP
Ruth Sappie	DOT
Glen Peterson	DOA
Julie Rehder	NC Child Advocacy Institute
Paula A. Wolf	Covenant with NC's Children
Tony Spence	DMV
Harriett Southerland	YAIO
Martha Livengood	YAIO - DOA
GEORGE REED	NC COUNCIL OF CHURCHES
Bunnie Coats	Pleasant Grove
Lois pleasant	Magnet Pleasant Grove

North Carolina House of Representatives

JUDICIARY I COMMITTEE

1 tape minutes not in computer

February 20, 1997
10:00 a.m.
1327 Legislative Bldg.

N. Leo Daughtry, Chairman

Members Present

Martha B. Alexander	Gene Arnold
Daniel T. Blue, Jr.	Jerry Braswell
J. Russell Capps	Debbie Clary
James W. Crawford	J. Sam Ellis
Teresa Harlow Esposito	Milton F. Fitch, Jr.
Lyons Gray	Bobby Ray Hall
Thomas C. Hardaway	Edwin M. "Sandy" Hardy
George M. Holmes	Robert C. Hunter
Margaret M. Jeffus	Larry T. Justus
H. M. Michaux, Jr.	Richard T. Morgan
Wilma M. Sherrill	Gregg Thompson

The House Committee on JUDICIARY I met at 10:00 a.m. on Thursday, February 20, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry presiding.

Committee counsels Steven Rose and Karen Cochrane-Brown were present to assist the committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

The Committee took up consideration of House Bill 30, introduced by Rep. Baker, on the use of Motor Cycle Helmets, and heard statements in support and opposition to the measure.

Committee Counsel Karen Cochrane-Brown issued a memorandum to committee members regarding House Bill 30, a copy of which is attached and made a part of the minutes.

The chairman recognized Rep. Baker for the purpose of explaining House Bill 30, who presented statistics in the form of *North Carolina Motorcycle Statistics 1981 - 1995,* a copy of which is attached and made a part of the minutes.

On behalf of Representative Baker, the Chairman introduced Mr. Lem Sprinkle, State President of the North Carolina Chapter of the Concerned Bikers' Association, who read a statement in support of the measure. The Chairman recognized Mr. Wayne T. Curtin, Vice President of Government Relations for the Motorcycle Riders Foundation, Inc. of Washington, DC, who read a statement in support of the measure; a copy of which is attached and made a part of the Minutes.

The Chairman recognized Dr. Herb Garrison, Associate Professor of Emergency Medicine at the East Carolina University School of Medicine and Director of the Eastern Carolina Injury Prevention Program. Dr. Garrison read a statement in opposition to the measure; a copy of which is attached and made a part of the Minutes.

Chairman Daughtry also recognized Dr. Ron Levine, State Health Director, who spoke briefly in opposition to the measure. Mr. Donald W. Reinfurt, Ph.D., Deputy Director of the *University of North Carolina Highway Safety Research Center,* was recognized and presented statistics as a *Summary of North Carolina Motorcycle Crashes - 1995,* a copy of which is attached and made a part of the Minutes.

The Chairman deferred consideration of House Bill 30.

The Committee adjourned at 10:57 a.m.

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS

HOUSE COMMITTEE ON JUDICIARY I

February 20, 1997
Room 1327 LB
10:00 a.m.

OPENING REMARKS:
Representative N. Leo Daughtry, Chairman
Judiciary I Committee

BILLS TO BE CONSIDERED:

HB 30 - Use of Motor Cycle Helmets
Sponsor: Representative Baker
Remarks: Ronald H Levine, MD, State Health Director
Herbert G. Garrison, III, MD

H.B. 141 - Embezzlement / Increase Penalty
Sponsor: Representative Justus

H.B. 142 Accessory After the Fact / Penalty
Sponsor: Representative Justus

ADJOURNMENT

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February 20, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: House Bill 30 - Use of Motorcycle Helmets.

House Bill 30 amends G.S. 20-140.4 to allow a motorcycle operator who is 21 years of age or older and who has had a driver's license with motorcycle endorsement or, in the case of out-of-state drivers, a motorcycle license for at least 12 months to operate a motorcycle without a helmet. The bill also provides that when the motorcycle is being operated by a person who meets the above requirements, and the passenger is at least 21 years old, the passenger may ride without a helmet.

Currently, the law requires that no person shall operate a motorcycle or moped unless the operator and all passengers wear safety helmets of a type approved by the Commissioner of Motor Vehicles. Any person convicted of violating this provision is guilty of an infraction and shall pay a fine of $25.00.

According to the American Automobile Association's 1996 Digest of Motor Laws, 18 states require the use of helmets only by drivers under the age of 18. Two states require them for those under age 19, and South Carolina is the only state that presently requires the use of a helmet only by persons under age 21. Colorado, Illinois, and Iowa do not require use of helmets by anyone. Twenty-five states continue to require that all drivers and passengers wear a helmet while operating a motorcycle .

The act would become effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 30

Short Title: Use of Motorcycle Helmets. (Public)

Sponsors: Representatives Baker; Davis, Hill, Church, Cansler, Culp, and Gulley.

Referred to: Judiciary I.

February 4, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE REQUIREMENT FOR THE USE OF HELMETS BY OPERATORS AND PASSENGERS ON MOTORCYCLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-140.4(a) reads as rewritten:

"(a) No person shall operate a motorcycle or moped upon a highway or public vehicular area:

(1) When the number of persons upon such motorcycle or moped, including the operator, shall exceed the number of persons which it was designed to carry.

(2) Unless the operator and all passengers thereon wear safety helmets of a type approved by the Commissioner of Motor ~~Vehicles.~~ Vehicles, except that:

a. If the operator is 21 years of age or older and has had a motorcycle license or a motorcycle endorsement for more than 12 months, then the operator may operate the motorcycle without a helmet; and

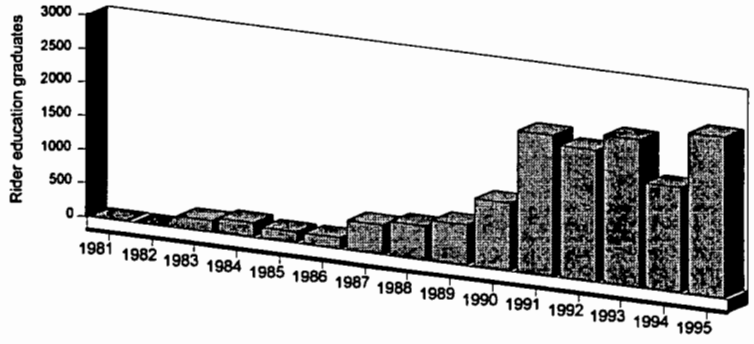
b. If the operator is allowed to operate a motorcycle without a helmet pursuant to sub-subdivision a. of this subdivision and the passenger is 21 years of age or older, then the passenger may ride without a helmet."

Section 2. This act is effective when it becomes law.

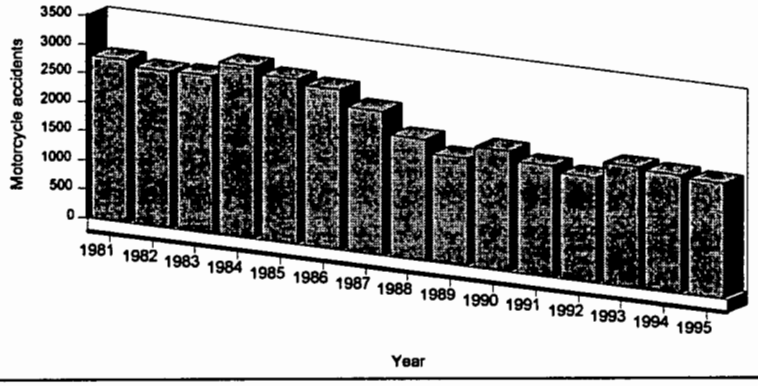
North Carolina Motorcycle Statistics 1981-1995

Year	Motorcycle Registrations	Motorcycles Operators	Accidents	Fatalities	Rider Education Graduates	Fatalities per 100 Accidents	Accidents per 10,000 Registrations
1995	65546	245220	2004	72	2404	3.59	305.74
1994	65247	245220	2049	60	1566	2.93	314.04
1993	61374	239100	2106	74	2214	3.51	343.14
1992	59219	239100	1822	62	1958	3.4	307.67
1991	58121	238441	1927	67	2095	3.48	331.55
1990	56799	237427	2087	72	997	3.45	367.44
1989	55844	233657	1857	52	602	2.8	332.53
1988	59991	227167	2114	75	516	3.55	352.39
1987	64129	227167	2489	91	439	3.66	388.12
1986	64129	210146	2750	94	171	3.42	428.82
1985	67632	210146	2846	98	172	3.44	420.81
1984	67615	195504	2957	99	226	3.35	437.33
1983	69616	173957	2715	60	182	2.21	390
1982	110000		2691	85		3.16	244.64
1981	110156	165000	2805	91		3.24	254.64

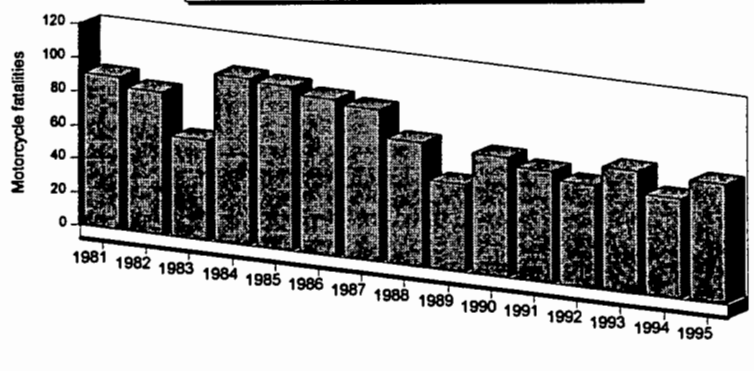
Annual Rider Education Graduates



Motorcycle Accidents, 1981-1995



Motorcyclist Fatalities, 1981-1995



(7)

Selected Statistics

Motorcycle Helmet Data

	Helmet States		Choice States		National	
	Accidents	Fatalities	Accidents	Fatalities	Accidents	Fatalities
1992	215.47	2.97	190.93	2.79	206.00	2.91
1993	222.21	2.98	194.02	2.90	211.24	2.95
1994	201.19	2.93	189.78	3.28	196.93	3.06
1995	195.77	2.95	169.89	3.17	185.89	3.03

Notes: Accidents are per 10,000 registrations
Fatalities are per 100 Accidents

(3)

SELECTED STATISTICS
Motorcycle Helmet Data

1. National

	Helmet States			Choice States			Total-National		
	Reg.*	Acc.	Fat.	Reg. *	Acc.	Fat.	Reg.*	Acc.	Fat.
1992	2,458	52,955	1,575	1,544	29,473	823	4,001	82,428	2,398
1993	2,352	52,270	1,557	1,498	29,062	844	3,850	81,332	2,401
1994	2,413	48,539	1,425	1,494	28,349	929	3,907	76,906	2,354
1995	2,441	47,795	1,410	1,509	25,637	812	3,950	73,432	2,221
4-year average									
	2,416	50,395	1,492	1,511	28,130	852	3,927	78,525	2,344
Acc./ 10 M reg.		208.57			186.16			199.95	
Fatalities/100 Acc.			2.96			3.03			2.99
% of National									
	61.5	64.2	63.7						

* Registrations in Thousands

(4)

SELECTED STATISTICS - MOTORCYCLES
NORTH CAROLINA

2. North Carolina

	Reg.	Acc.	Fat.	Fat/100 Acc.	Acc/10M Reg.
1992	59,219	1,822	62	3.40	307.67
1993	61,374	2,106	74	3.51	343.14
1994	65,247	2,049	60	2.93	314.04
1995	65,546	2,004	72	3.59	305.74
Average	62,847	1,995	67	3.35	317.44
% of Nation	2.6	3.95	4.49		

(5)

Estimated Impact of Mandatory Helmet Laws

A. Nationally

* Mandatory Helmet States Registrations - 4-Year Average	2,416,000
x 4-Year Average Accident Rate - Choice States	186.16 /10,000 Registrations
Projected Average Accidents	44,976
x 4-Year Average Fatality Rate - Choice States	3.03 /100 Accidents
Projected Average Fatalities	1,362
Actual Average Fatalities	1,492
** Additional Average Fatalities Attributable to Mandatory Helmets	130

B. North Carolina

* North Carolina Registrations - 4-Year Average	62,847
x 4-Year Average Accident Rate - Choice States	186.16/10,000 Registrations
Projected Average Accidents	1170
x 4-Year Average Fatality Rate - Choice States	3.03/100 Accidents
Projected Average Fatalities	35
Actual Average Fatalities	67
** Additional Average Fatalities Attributable to Mandatory Helmets	32

Table 6.
1995 State Motorcycle Accident Statistics, Voluntary Helmet Use States.

State	Registrations	Reported Accidents	Fatalities	Accidents Per 10,000 Registrations	Fatalities Per 100 Accidents
Alaska	12,917	145	3	112.26	2.07
Arizona	57,454	2,131	65	370.91	3.05
Colorado	90,179	1,279	36	141.83	2.81
Connecticut	51,433	972	33	188.98	3.4
Delaware	9,169	223	9	243.21	4.04
Hawaii	17,388	690	19	396.83	2.75
Idaho	33,949	330	18	97.20	5.45
Illinois	191,127	3,158	101	165.23	3.2
Indiana	95,710	2,386	67	249.29	2.81
Iowa	111,503	950	42	85.20	4.42
Kansas	43,120	680	14	157.7	2.06
Maine	28,523	595	14	208.6	2.35
Minnesota	113,981	1,126	35	98.79	3.11
Montana	18,225	317	16	173.94	5.05
New Hampshire	34,172	558	16	163.29	2.87
New Mexico	31,350	967	33	308.45	3.41
North Dakota	16,368	168	6	102.64	3.57
Ohio	218,114	3,286	112	150.66	3.41
Oklahoma	55,146	829	38	150.33	4.58
Rhode Island	16,129	265	6	164.3	2.26
South Carolina	36,218	1,249	50	344.86	4
South Dakota	25,155	375	14	149.08	3.73
Utah	20,210	680	11	336.47	1.62
Wisconsin	168,287	2,057	47	122.23	2.28
Wyoming	13,184	221	7	167.63	3.17
Voluntary Helmet States	1,509,011	25,637	812	169.89	3.17

Table 7.
1995 State Motorcycle Accident Statistics, Mandatory Helmet Law States.

State	Registrations	Reported Accidents	Fatalities	Accidents Per 10,000 Registrations	Fatalities Per 100 Accidents
Alabama	40,124	1,024	34	255.21	3.32
Arkansas	15,521	660	20	425.23	3.03
California	531,192	9,827	261	185	2.66
Florida	184,429	4,703	181	255	3.85
Georgia	72,000	2,805	44	389.58	1.57
Kentucky	30,932	853	22	275.77	2.58
Louisiana	65,312	975	30	149.28	3.08
Maryland	47,950	1,006	27	209.8	2.68
Mass.	60,000	1,480	28	246.67	1.89
Michigan	131,038	2,744	80	209.4	2.92
Mississippi	15,500	488	13	314.84	2.66
Missouri	74,160	1,194	41	161	3.43
Nebraska	18,696	315	6	168.49	1.9
Nevada	21,242	694	24	326.71	3.46
New Jersey	87,912	1,289	34	146.62	2.64
New York	165,456	3,753	92	226.83	2.45
North Carolina	65,546	2,004	72	305.74	3.59
Oregon	59,468	358	24	60.2	6.7
Pennsylvania	171,850	2,501	85	145.53	3.4
Tennessee	69,840	1,484	52	212.49	3.5
Texas	321,507	3,650	129	113.53	3.53
Vermont	16,000	101	8	63.13	7.92
Virginia	61,507	1,372	34	223.06	2.48
Washington	95,047	1,788	36	188.12	2.01
West Virginia	17,831	393	27	220.4	6.87
Distr. of Columbia	1,321	334	6	2,528.39	1.8
Mandatory Helmet States	2,441,381	47,795	1,410	195.77	2.95

CONCERNED BIKERS ASSOCIATION of North Carolina

* POSITION: MANDATORY HELMET USE LAW

The Concerned Bikers Association of North Carolina encourages and contributes to motorcycle safety education programs. We believe motorcyclists should be educated about the hazards and benefits of motorcycling and that with the education that comes from experience, the motorcyclists should be able to make educated choices about proper riding gear to suit the conditions into which they are riding. For this reason, we do not support laws mandating use of helmets at all times for experienced adult riders.

We have not nor will we ever oppose mandatory helmet use laws for minors as young riders may lack the maturity to make informed decisions regarding the use of motorcycle helmets. We believe that education and experience helps prevent accidents and hones better riding skills. In fact, information gathered from across this nation shows this to be true.

Mandatory helmet use laws were initiated by the Federal government in the Highway Safety Act of 1966 and subsequently repealed by the Federal Aid Highway Act of 1975. Most states repealed the imposed mandatory helmet use laws for adults after the Federal pressure was removed. Yet, motorcycle safety statistics improved dramatically throughout the 1980's with National Highway Traffic Safety Administration (NHTSA) figures showing a 30% decline in motorcyclist fatalities in the decade. (1)

More recently, Federal "incentives" to require state compliance with passage of mandatory helmet use laws were attempted again in the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. Only one state (Maryland) complied with these "incentives", which were also repealed by the National Highway Systems Act of 1995. There is currently no Federal Penalty against states which do not have or modify existing mandatory helmet use laws.

Motorcyclists generally exhibit a high rate of voluntary compliance with use of helmets. Where helmet use is not required by law, rates of use typically range from 60 to 75%. Rates as high as 82% have been achieved with active promotion of voluntary use, and in no case does voluntary use fall below 50 to 55%, far exceeding the voluntary use rates for automobile seatbelts, and comparing favorably with rates of compliance achieved with mandatory seatbelt use laws. (2). This may account for the fact that there is no significant difference in overall motorcyclist fatalities between states that require helmet use and those that do not (2.98 versus 2.90 fatalities per 100 accidents) (3,4).

Some advocates of mandatory helmet use laws believe that uninsured costs of injured motorcyclists which must be borne by the public would increase if voluntary use is permitted. This is not supported by the experience of states which have repealed mandatory use laws. So for any burden that uninsured motorcyclists may be thought to place on health care resources, it has been consistently found that motorcyclists are as likely to be privately insured as any other motor vehicle accident victim and in some cases, more likely to be privately insured than the general population of trauma patients. (5).

Motorcyclists do not represent any greater potential cost to taxpayers than a person driving a car or engaging in any other activity with a potential risk, be it skiing, horseback riding, or climbing the stairs in the house. Motorcycle accidents represent less than 1% of all vehicular accidents. Compared with automobile drivers, motorcyclists represent a minuscule part of all motor vehicle accident costs.

Considering the facts that helmets do not prevent accidents, mandatory helmet use does not result in lower fatality rates, 50% of fatal motorcycle accidents involve alcohol use (6), and 40% of all fatally injured motorcyclists are unlicensed (7). The Concerned Bikers Association of North Carolina maintains that the decision on when to wear a helmet while operating a motorcycle should remain with each responsible, experienced, adult rider.

Once this stumbling block facing the motorcyclists of North Carolina is removed, we will be in a much better position to direct our energies toward programs geared toward reducing riding under the influence, helping to expand the current Motorcycle Safety Education program, and fine tuning the current licensing programs in this state. Education, not legislation, is the key to safer riding!

---

1. "Motorcyclists Lead Nation in Casualty Reduction", American Motorcyclist, Westerville, Ohio (October 1989)
2. A review and Analysis of Government Claims About the Effect of Motorcycle Helmet Laws, American Motorcyclist Assn., Westerville, Ohio (April 1981).
3. In Support of Voluntary Helmet Use: Facts and Fallacies Surrounding the Current Helmet Law Debate" American Motorcyclist Assn. Westerville, Ohio (1992)
4. Motorcycle Statistical Annual, Motorcycle Industry Council (1994)
5. An Analysis of Injury Outcome and Insurance Status of Hospitalized Motorcyclists, Stutts, Rutledge, and Martell, University of North Carolina (1991)
6. Fatal Accident Reporting System 1990, National Highway Safety Admin., U.S. Dept. Of Transportation
7. Highway Safety Priority Plan 1991-1993, National Highway Safety Admin. U.S. Dept. Of Transportation

*special thanks to A.B.A.T.E. of Pennsylvania.

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Statement of

Wayne T. Curtin

Vice President of Government Relations

Before The

North Carolina House of Representatives'

Judiciary One Committee

In Support Of

House Bill 30

February 20, 1997

Chairman Daughtry, co-chairman Hardy and members of the Judiciary One Committee, thank you for allowing me to testify before your committee today. I am here today to provide testimony in favor of House Bill 30, which would provide for adults 21 years of age and older the ability to decide for themselves whether to wear a helmet while riding a motorcycle. My name is Wayne Curtin and I am vice president of government relations for the Motorcycle Riders Foundation (MRF), which is headquartered in Washington, D.C. The MRF is an association of state motorcyclists' rights organizations, like the Concerned Bikers Association of North Carolina, with a combined membership of between 250,000 and 275,000 motorcyclists.

Representative Baker and the Concerned Bikers Association have asked me to talk to you today about what is happening nationally with the helmet law issue. First, you should know that in 1995, Congress repealed the federal law that financially penalized states without helmet laws. So, passage of House Bill 30 would not affect North Carolina's federal-aid highway funding.

There are 25 states that mandate helmet use for all motorcyclists and 25 states that allow varying degrees of choice. Three states have no helmet law of any kind and 22 have age based helmet laws, ranging between 18 and 21 years of age. The 25 states without helmet laws have just endured three years of sanctions on their highway funds for not having helmet laws. However, those 25 states stood up to the federal government and by refusing to pass helmet laws helped motorcyclists repeal the federal penalties in 1995. Only one state, Maryland, passed a helmet law as a result of the federal penalties.

Currently, there is a lot of debate going on and action taking place in the state legislatures with the helmet law issue. When the federal repeal passed many people thought states would rush to repeal helmet laws, much like they did with the speed limits. But that has not been the case, state legislatures have taken a couple of years to consider this issue and now seem ready to act. Legislation to modify helmet laws to give adults choice is a very live issue in about 15 states. Last year, either the House or Senate passed such legislation in several states. In action just last week the Arkansas Senate passed a bill virtually identical to House Bill 30 on a vote of 23 to 10. And, the Texas Senate Transportation Committee passed an 18 years or older bill nine to two. There will considerably more action on this issue in state legislatures in 1997, and I hope, and respectfully ask, this committee to join them and pass out House Bill 30.

For me, the core issue is: Should any government mandate any "safety" equipment, especially on adults, if that government can not guarantee the equipment will work 100% of the time and never cause or in anyway contribute to an accident or injury? My answer to that question is NO! As an example, take the recent controversy over federal mandated air bags. Yes, air bags have saved some lives and reduced some injuries. But, over fifty children and adults of smaller stature have been killed by them. These people, who in most cases would have survived the accident, have died because of a piece of "safety" equipment mandated by the federal government. Where does any government, either under the Constitution or morally, get that right? Motorcyclists believe

the helmet law is one of those cases where the government has stepped too far into our lives, especially when it can not assure us the helmet will not contribute to an accident or injury and protect us 100%.

There may be people today who claim this is a financial issue. I argue it is not, for several reasons. First, if it saves money but is not 100% effect and may put me at risk of injury or death, even just 1% of the time, then it is an effort to put a dollar value trade-off on my life or well being. I do not believe governments should make those decisions or laws about my life based solely on saving money.

In addition, motorcyclists are more responsible about being insured and paying their medical bills than other road users and the general. In 1992, the University of North Carolina Highway Safety Research Center published a study titled: An Examination of Motorcyclist Injuries and Costs Using North Carolina Motor Vehicle Crash and Trauma Registry Data. The study reveled the following:

1. Motorcyclists admitted to trauma centers for treatment of crash-related injuries were just as likely as other road trauma cases to be medically insured, and considerably better insured than non-road trauma cases.
2. Motorcyclists had the highest insurance payment rate of all groups.
3. Motorcyclists relied on Medicare and Medicaid considerably less than any other group.
4. Motorcyclists had a higher rate of self-pay than any other group.
5. Motorcyclists average medical costs were less than other road trauma cases.

In summary, North Carolina motorcyclists have lower medical bills from accidents, were better at paying with insurance, when they did not have insurance were better at paying with their own money, and relied on Medicare and Medicaid less than all other North Carolina trauma victims.

So, if a group of North Carolina citizens are better at taking care of themselves than the rest of North Carolina citizens why should the government mandate them to wear a piece of "safety" equipment?

You may hear that helmet laws reduce fatalities. But, helmet laws do not cause the fatalities per accidents to drop. What they cause is less riding, therefore less accidents and fatalities, but no better protection for those riding. And, less riding means an economic loss to the state. Motorcyclists, through buying motorcycles, equipment, riding gear, gasoline and through tourism spend millions of dollars each year in North Carolina. Without a helmet law, North Carolina would see increased riding by North Carolina motorcyclists and by out-of-state tourists. Thereby, increasing the positive economic impact of motorcycling in North Carolina.

In closing, I would be happy to respond to any questions you may have. And, I encourage you to vote in favor of House Bill 30. Thank You.

Remarks to the House Judiciary I Committee
February 20, 1997

Thank you very much for the opportunity to speak. Your time is precious so I will be brief.

My name is Herb Garrison. I am here from Greenville where I am an Associate Professor of Emergency Medicine at the East Carolina University School of Medicine and Director of the Eastern Carolina Injury Prevention Program. I am also member of the medical staff of Pitt County Memorial Hospital.

I am here to urge you to reject House Bill 30. My recommendation is based on my 10 years experience as an emergency physician, on my knowledge as an injury prevention specialist, and as a native of our state who cares deeply about his fellow North Carolinians.

First, I give you my perspective as a doctor who works in one of the busiest emergency rooms in the state. Almost every time I work I care for someone who has sustained a severe head injury. What does it mean to suffer a head injury? Well often times it means that you come into the ER and we pronounce you dead. As you might guess, the worse part of my job is to tell a family that their loved one has just died.

In some ways it can be even worse on families when their loved one hasn't died. For a bad head injury can leave you severely disabled. This often means that as part of the job of caring for their disabled relative, the family will have to build a ramp to their front door, will have to get their plumbing changed, and will frequently be changing the diaper of their incapacitated son, daughter, husband or wife. Just as often it means they will have to quit work to take care of them.

Now what does this have to do with House Bill 30. Well the fact is that unhelmeted

motorcylists involved in crashes are three times as likely to sustain a head injury as helmeted cyclists. Motorcycle helmets offer the best protection from head injuries.

Another hat that I wear is that of an injury prevention specialist. Our hospital started its injury prevention program as a way to keep people healthy and injury free and, frankly, as a way to save money. This is because society has asked physicians and hospitals to contain the costs of health care and one of the best ways we can do that is by establishing prevention programs. The passage of House Bill 30 and the resulting head injuries it will permit will cost the hosptals of North Carolina a lot of money.

The problem comes about because at least one third of injured motorcyclists have no medical insurance and unhelmeted motorcyclists involved in crashes ~~as~~ are even less likely to be insured. As you know, the care of head injuries is very expensive. In Illinois, among unhelmeted motorcyclists admitting to the hospital, charges for those suffering brain injuries are 3 times higher than those who are helmeted. In Conneticutt, hospitals there had to absorb forty two percent of medical care costs for uninjured motorcyclists. This amounted to $12 million dollars in costs over five years that were not reimbursed to hospitals.

In the past, the additional cost from unhelmeted motorcycle crash head injury victims wouldn't have been much of a burden for hospitals. Then hospitals could shift the cost of care for the uninsured to the insured. But, insurance companies no longer compensate hospitals such that they can shift the cost of uninsured motorcyclists. Passage of this bill is guaranteed to add a significant burden to hospitals. And as you know, many of the hospitals, particularly in rural areas of our state, are already struggling to stay open. Hospitals ~~and insurance companies~~ appreciate the fact that acute medical care costs are 40% less with helmet use.

Last but certainly not least I'd like to give you my viewpoint on this issue as a taxpaying citizen. Not only will the enactment of House Bill 30 cost the state's

hospitals, it will cost the citizens of North Carolina. Remember that unhelmeted motorcylists are more likely to sustain a severe head injury and less likely to be insured. The state of Conneticutt, which is smaller and has a shorter riding season, estimates that the lack of a helmet law cost their state about $5 million dollars a year.

In the end, we the people are the ones who will have to absorb the additional cost of hospital and rehabilitation care, we will have to pay unemployemnt compensation, and, in some cases, have to support the family of the incapacitated head injured motorcyclist who must go on welfare.

North Carolina already has many important needs. We don't need to create further uses of our limited state revenues by enacting House Bill 30. To keep people healthy and productive, to save our hospitals money, and, ~~in the end~~, to safeguard the resources of our state and our people, I urge you to reject House Bill 30.

Thank you for your time and attention. I would be happy to answer any questions.

VISITOR REGISTRATION SHEET

Committee: JUDICIARY I Date: 2/20/97

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
WAYNE T CURTIN	MOTORCYCLE RIDERS FOUNDATION P.O. BOX 1808 WASHINGTON DC 20013-1808
LEM SPINELLS	CONCERNED BIKERS ASSOCIATION OF N.C. Rt #1 Box 544 PINNACLES, N.C. 27043
Em Tomlin M.D.	Legislative Doctor for the Day
Chuck Beauchesne	DENR - Transportation
Herbert G Gamson	East Carolina University, Greenville
Donald W Reinfurt	UNC Highway Safety Res. Ctr., Chapel Hill
Sean [illegible]	E & H & S
[illegible]	DeHNR
David Ferrell	Hafer, McNamara, Caldwell, McElroy & Cutler, P.A., Raleigh
Roger Pack	Concered Bikers Association of N.C. 308 Tall Pine St Asheboro NC 27203
[illegible] Burson	CBA of NC 5359 NESTLEWAY DR.; CLEMMONS, NC 27012
Charles Boone	CBA of N.C. Zebulon, N.C.
Alan Wiley	Bailey & Dixon LLP
Joe Pate	GH&P
Shannon Bullock	GH&P
Carl Johnson	CBA Fuquay-Varina, N.C.
David Day	CBA Raleigh N.C.
Steve Boyles	President, Raleigh Chapter, Concerned Bikers Assn
Mike McMahan	President, Chatham Co. Chapter, Concerned Bikers Assn
Whitney Obrig	DMHDDSAS
Evelyn Hawthorne	NCHA
Steve Keene	North Carolina Medical Society
Amy Jo Bain	NCMS / NCTA
Russell Parker	135 Greengate Ct Cary NC 27511
Amy Christian	NCAWA
Lucia Peel	NC Medical Society

North Carolina House of Representatives

JUDICIARY I COMMITTEE

February 25, 1997
10:00 a.m.
1327 Legislative Building

N. Leo Daughtry, Chairman

Members Present

Edwin M. Hardy	Martha Alexander
Jerry Braswell	J. Russell Capps
Debbie Clary	J. Sam Ellis
Theresa H. Esposito	Milton F. Fitch, Jr.
Lyons Gray	Bobby Ray Hall
John W. Hurley	Margaret M. Jeffus
Larry T. Justus	Richard T. Morgan
Wilma M. Sherrill	Gregg Thompson

The House Committee on JUDICIARY I met at 10:00 a.m. on Tuesday, February 25, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry presiding.

Committee counsels Steven Rose and Karen Cochrane-Brown were present to assist the committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

Chairman Daughtry introduced House Pages David Nida of Warren County and Scott Reavis of Cabarrus County, present to assist the committee.

The Chair announced House Bill 30, previously scheduled for resumed deliberation, had been removed from the schedule at the request of the sponsor, Rep. Baker.

The Chair brought before the committee House Bill 141, to Increase the Penalty for Embezzlement, as recommended by the North Carolina Sentencing Advisory Commission, sponsored by Rep. Justus. Committee counsel Steven Rose issued a memorandum to committee members regarding House Bill 141, a copy of which is attached and made a part of these minutes.

Rep. Justus was recognized for the purpose of explaining the recommendations of the North Carolina Policy Advisory Commission and House Bill 141.

There was no objection to a motion made by Rep. Thompson to deliberate a Proposed Committee Substitute to the original House Bill 141.

Without objection, and on a motion made by Rep. Thompson, the committee reported House Bill 141 with a favorable report as to the committee substitute bill, unfavorable as to the original bill.

The Chair brought before the committee House Bill 142, to Change Accessory After the Fact Punishment, as recommended by the North Carolina Sentencing Advisory Commission, sponsored by Rep. Justus. Committee counsel Steven Rose issued a memorandum to committee members regarding House Bill 142, a copy of which is attached and made a part of these minutes.

Rep. Justus was recognized for the purpose of explaining the recommendations of the North Carolina Policy Advisory Commission and House Bill 142.

The Chairman announced that, if House Bill 142 were recommended with a favorable report, it would be re-referred to the APPROPRIATIONS Committee. Though there was some question of the necessity of re-referring the bill to the APPROPRIATIONS Committee, the Chair would later rule that the bill be re-referred to APPROPRIATIONS.

Without objection, and on a motion by Rep. Thompson, the committee recommended House Bill 142 with a favorable report, and re-referred House Bill 142 to the APPROPRIATIONS Committee.

The Chair brought before the committee House Bill 144, on Voluntary Manslaughter as a Class D Felony, and as a recommendation by the North Carolina Sentencing Advisory Commission, sponsored by Rep. Justus. Committee counsel Karen Cochrane-Brown issued a memorandum to committee members regarding House Bill 144, a copy of which is attached and made a part of these minutes.

Rep. Justus was recognized for the purpose of explaining the recommendations of the North Carolina Policy Advisory Commission and House Bill 144.

Rep. Ellis asked for an example of "Voluntary Manslaughter," and Counsel Cochrane-Brown explained voluntary manslaughter is distinguished from second-degree murder by the absence of malice.

Rep. Hardy explained that the distinction in such cases was usually determined by a jury.

Rep. Capps moved that the bill be recommended to the House with a favorable report. There was no objection.

The Committee adjourned at 10:25 a.m.

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE

You are hereby notified that the Committee on **JUDICIARY I** will meet as follows:

DAY & DATE: **Tuesday, February 25, 1997**

TIME: **10:00 a.m.**

LOCATION: **1327 LB**

The following bills will be considered (Bill # & Short Title):

H.B. 30 Use of Motor Cycle Helmets
H.B. 141 Embezzlement/Increase Penalty
H.B. 142 Accessory After the Fact/Penalty
H.B. 144 Voluntary Manslaughter / Class D Felony

Respectfully,

Representative N. Leo Daughtry
Chairman

I hereby certify this notice was filed by the committee clerk at the following offices at **3:00 p.m.** on **February 20, 1997**.

___Principal Clerk
___Reading Clerk - House Chamber

Joel Raupe (Committee Clerk)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 30

Short Title: Use of Motorcycle Helmets. (Public)

Sponsors: Representatives Baker; Davis, Hill, Church, Cansler, Culp, and Gulley.

Referred to: Judiciary I.

February 4, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE REQUIREMENT FOR THE USE OF HELMETS BY OPERATORS AND PASSENGERS ON MOTORCYCLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-140.4(a) reads as rewritten:

"(a) No person shall operate a motorcycle or moped upon a highway or public vehicular area:

(1) When the number of persons upon such motorcycle or moped, including the operator, shall exceed the number of persons which it was designed to carry.

(2) Unless the operator and all passengers thereon wear safety helmets of a type approved by the Commissioner of Motor ~~Vehicles.~~ Vehicles, except that:

a. If the operator is 21 years of age or older and has had a motorcycle license or a motorcycle endorsement for more than 12 months, then the operator may operate the motorcycle without a helmet; and

b. If the operator is allowed to operate a motorcycle without a helmet pursuant to sub-subdivision a. of this subdivision and the passenger is 21 years of age or older, then the passenger may ride without a helmet."

Section 2. This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on JUDICIARY I .

☐ Committee Substitute for
H.B. 141 A BILL TO BE ENTITLED AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO INCREASE THE CRIMINAL PENALTY FOR CERTAIN EMBEZZLEMENT OFFENSES

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

X With a favorable report as to committee substitute bill, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
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Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
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Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

February 20, 1997

MEMORANDUM

TO: House Judiciary I Committee

FROM: Steven Rose, Committee Counsel

RE: **House Bill 141; Increase Penalty for Embezzlement**

House Bill 141 is a recommendation of the N.C. Sentencing and Policy Advisory Commission which would increase the criminal penalty for certain embezzlement related offenses. Under current law, offenses of larceny by employees and obtaining property by false pretenses are classified as Class H felonies, and various other embezzlement offenses are classified as either Class F or Class H felonies. House Bill 141 makes embezzlement of property valued at $100,000 or more a Class C felony. Assuming prior record level I, the minimum presumptive sentence is 58-73 months active punishment for a Class C felony, as opposed to 10-13 months intermediate or active punishment for a Class F felony, or 5-6 months community, intermediate, or active punishment for a Class H felony. (A chart showing relevant portions of the sentencing grid is attached.)

House Bill 141 affects the following offenses:

Section 1. Larceny by servants or other employees (person steals from employer): less than $100,000 remains a Class H felony;

Section 2. Embezzlement of property received by virtue of office or employment (person holds property in fiduciary capacity): less than $100,000 remains a Class H felony;

Section 3. Embezzlement of State property by public officers and employees: less than $100,000 remains a Class F felony;

Section 4. Embezzlement of money, funds, securities, or other property by public officers and trustees (includes officials of local governments, charitable, religious or educational institutions who embezzle or otherwise "willfully and corruptly" use or misapply funds): less than $100,000 remains a Class F felony;

Section 5. Embezzlement by treasurers of charitable and religious organizations (lend moneys without consent, failure to account for moneys): less than $100,000 remains a Class H felony;

Section 6. Embezzlement by officers of railroad companies: money, bonds, or other valuable funds or securities with a value of less than $100,000 remains a Class H felony;

Section 7. Appropriation of partnership funds by partner to personal use: less than $100,000 remains a Class H felony;

Section 8. Embezzlement by a surviving partner: property, money, or other effects with value of less than $100,000 remains a Class H felony;

Section 9. Embezzlement of taxes by officers: value of less than $100,000 remains a Class F felony;

Section 10. Obtaining property by false pretenses (representation of a fact or event that is false and is calculated and intended to deceive another person in order to obtain something of value from that person): value of less than $100,000 remains a Class H felony;

Section 11. Misapplication, embezzlement of funds by bank officer and employees: value of less than $100,000 remains a Class H felony;

Section 12. Embezzlement by insurance agents, brokers, or administrators: money, negotiable instruments or other consideration with value of less than $100,000 remains a Class H felony;

Section 13. Embezzlement of preneed funeral funds: value of less than $100,000 remains a Class H felony.

Information provided by the Sentencing Commission indicates impact beginning in 1999 with an additional 13 inmates, increasing to 231 additional inmates by 2007 as shown on the attached chart. An incarceration fiscal note is required for this bill. The bill would become effective December 1, 1997 and would apply to offenses committed on or after that date.

RECOMMENDATION #3

RECLASSIFY CERTAIN EMBEZZLEMENT RELATED OFFENSES

ISSUE: Regardless of the value of the property involved, *larceny by employees* is a Class H felony, *obtaining property by false pretenses* is a Class H felony, and other embezzlement offenses are either Class F or Class H felonies.

APPROACH: This bill creates a Class C felony for all embezzlement offenses, *larceny by employees (G.S. 14-74), and obtaining property by false pretenses (G.S. 14-100),* when the value of the property involved is $100,000 or more.

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts
C	A *73 - 92* **58 - 73** *44 - 58*	A *100 - 125* **80 - 100** *60 - 80*	A *116 - 145* **93 - 116** *70 - 93*	A *133 - 167* **107-133** *80 - 107*	A *151 - 188* **121 - 151** *90 - 121*	A *168 - 210* **135 - 168** *101-135*
F	I/A *16 - 20* **13 - 16** *10 - 13*	I/A *19 - 24* **15 - 19** *11 - 15*	I/A *21 - 26* **17 - 21** *13 - 17*	A *25 - 31* **20 - 25** *15 - 20*	A *34 - 42* **27 - 34** *20 - 27*	A *39 - 49* **31 - 39** *23 - 31*
H	C/I/A *6 - 8* **5 - 6** *4 - 5*	I/A *8 - 10* **6 - 8** *4 - 6*	I/A *10 - 12* **8 - 10** *6 - 8*	I/A *11 - 14* **9 - 11** *7 - 9*	I/A *15 - 19* **12 - 15** *9 - 12*	A *20 - 25* **16 - 20** *12 - 16*

Note: A - Active Punishment I - Intermediate Punishment C - Community Punishment

***Numbers shown are in months and represent the range of minimum sentences.**

IMPACT:

PROJECTED ADDITIONAL INMATES: END OF FISCAL YEAR									
98**	99	0	1	2	3	4	5	6	7
0	13	42	77	113	149	186	223	227	231

Assumes effective for crimes committed on or after 1/1/98

** Too soon after implementation to have any measurable impact

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 141*
Proposed Committee Substitute H141-PCS8036

Short Title: Embezzlement/Increase Penalty. (Public)

Sponsors:

Referred to:

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO INCREASE THE CRIMINAL PENALTY FOR CERTAIN EMBEZZLEMENT OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-74 reads as rewritten:

"**§ 14-74. Larceny by servants and other employee~~s~~.**

If any servant or other employee, to whom any money, goods or other chattels, or any of the articles, securities or choses in action mentioned in the following section [G.S. 14-75], by his master shall be delivered safely to be kept to the use of his master, shall withdraw himself from his master and go away with such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, with intent to steal the same and defraud his master thereof, contrary to the trust and confidence in him reposed by his said master; or if any servant, being in the service of his master, without the assent of his master, shall embezzle such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, or otherwise convert the same to his own use, with like purpose to steal them, or to defraud his master thereof, the servant so offending shall be ~~punished as a Class H felon.~~ guilty of a felony: Provided, that nothing contained in this section shall extend to apprentices or servants within the age of 16 years. If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75, is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C

felony. If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75, is less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony."

Section 2. G.S. 14-90 reads as rewritten:

"**§ 14-90. Embezzlement of property received by virtue of office or employment.**

If any person exercising a public trust or holding a public office, or any guardian, administrator, executor, trustee, or any receiver, or any other fiduciary, or any officer or agent of a corporation, or any agent, consignee, clerk, bailee or servant, except persons under the age of 16 years, of any person, shall embezzle or fraudulently or knowingly and willfully misapply or convert to his own use, or shall take, make away with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to his own use any money, goods or other chattels, bank note, check or order for the payment of money issued by or drawn on any bank or other corporation, or any treasury warrant, treasury note, bond or obligation for the payment of money issued by the United States or by any state, or any other valuable security whatsoever belonging to any other person or corporation, unincorporated association or organization which shall have come into his possession or under his care, he shall be ~~punished as a Class H felon.~~ guilty of a felony. If the value of the property is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the property is less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony."

Section 3. G.S. 14-91 reads as rewritten:

"**§ 14-91. Embezzlement of State property by public officers and employees.**

If any officer, agent, or employee of the State, or other person having or holding in trust for the same any bonds issued by the State, or any security, or other property and effects of the same, shall embezzle or knowingly and willfully misapply or convert the same to his own use, or otherwise willfully or corruptly abuse such trust, such offender and all persons knowingly and willfully aiding and abetting or otherwise assisting therein shall be ~~punished as a Class F felon.~~ guilty of a felony. If the value of the property is one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the value of the property is less than one hundred thousand dollars ($100,000), a violation of this section is a Class F felony."

Section 4. G.S. 14-92 reads as rewritten:

"**§ 14-92. Embezzlement of funds by public officers and trustees.**

If an officer, agent, or employee of an entity listed below, or a person having or holding money or property in trust for one of the listed entities, shall embezzle or otherwise willfully and corruptly use or misapply the same for any purpose other than that for which such moneys or property is held, such person shall be ~~punished as a Class F felon.~~ guilty of a felony. If the value of the money or property is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the money or property is less than one hundred thousand dollars ($100,000), the person is guilty of a Class F felony. If any clerk of the superior court or any sheriff, treasurer, register of deeds or other public officer of any county, unit

or agency of local government, or local board of education shall embezzle or wrongfully convert to his own use, or corruptly use, or shall misapply for any purpose other than that for which the same are held, or shall fail to pay over and deliver to the proper persons entitled to receive the same when lawfully required so to do, any moneys, funds, securities or other property which such officer shall have received by virtue or color of his office in trust for any person or corporation, such officer shall be ~~punished as a Class F felon.~~ guilty of a felony. If the value of the money, funds, securities, or other property is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the money, funds, securities, or other property is less than one hundred thousand dollars ($100,000), the person is guilty of a Class F felony. The provisions of this section shall apply to all persons who shall go out of office and fail or neglect to account to or deliver over to their successors in office or other persons lawfully entitled to receive the same all such moneys, funds and securities or property aforesaid. The following entities are protected by this section: a county, a city or other unit or agency of local government, a local board of education, and a penal, charitable, religious, or educational institution."

Section 5. G.S. 14-93 reads as rewritten:

"**§ 14-93. Embezzlement by treasurers of charitable and religious organizations.**

If any treasurer or other financial officer of any benevolent or religious institution, society or congregation shall lend any of the moneys coming into his hands to any other person or association without the consent of the institution, association or congregation to whom such moneys belong; or, if he shall fail to account for such moneys when called on, he shall be guilty of a ~~Class H~~ felony. If the violation of this section involves money with a value of one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the violation of this section involves money with a value of less than one hundred thousand dollars ($100,000), a violation of this section is a Class H felony."

Section 6. G.S. 14-94 reads as rewritten:

"**§ 14-94. Embezzlement by officers of railroad companies.**

If any president, secretary, treasurer, director, engineer, agent or other officer of any railroad company shall embezzle any moneys, bonds or other valuable funds or securities, with which such president, secretary, treasurer, director, engineer, agent or other officer shall be charged by virtue of his office or agency, or shall in any way, directly or indirectly, apply or appropriate the same for the use or benefit of himself or any other person, state or corporation, other than the company of which he is president, secretary, treasurer, director, engineer, agent or other officer, for every such offense the person so offending shall be guilty of a felony, and on conviction in the superior or criminal court of any county through which the railroad of such company shall pass, shall be punished as a ~~Class H~~ felon. If the value of the money, bonds, or other valuable funds or securities is one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the value of the money, bonds, or other valuable funds or securities has value of less than one hundred thousand dollars ($100,000), a violation of this section is a Class H felony."

Section 7. G.S. 14-97 reads as rewritten:

"**§ 14-97. Appropriation of partnership funds by partner to personal use.**

Any person engaged in a partnership business in the State of North Carolina who shall, without the knowledge and consent of his copartner or copartners, take funds belonging to the partnership business and appropriate the same to his own personal use with the fraudulent intent of depriving his copartners of the use thereof, shall be guilty of a ~~Class H~~ felony. Appropriation of partnership funds with a value of one hundred thousand dollars ($100,000) or more by a partner is a Class C felony. Appropriation of partnership funds with a value of less than one hundred thousand dollars ($100,000) by a partner is a Class H felony."

Section 8. G.S. 14-98 reads as rewritten:

"**§ 14-98. Embezzlement by surviving partner.**

If any surviving partner shall willfully and intentionally convert any of the property, money or effects belonging to the partnership to his own use, and refuse to account for the same on settlement, he shall be ~~punished as a Class H felon.~~ guilty of a felony. If the property, money, or effects has a value of one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the property, money, or effects has a value of less than one hundred thousand dollars ($100,000), a violation of this section is a Class H felony."

Section 9. G.S. 14-99 reads as rewritten:

"**§ 14-99. Embezzlement of taxes by officers.**

If any officer appropriates to his own use the State, county, school, city or town taxes, he shall be guilty of embezzlement, and shall be punished as a ~~Class F~~ felon. If the value of the taxes is one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the value of the taxes is less than one hundred thousand dollars ($100,000), a violation of this section is a Class F felony."

Section 10. G.S. 14-100(a) reads as rewritten:

"(a) If any person shall knowingly and designedly by means of any kind of false pretense whatsoever, whether the false pretense is of a past or subsisting fact or of a future fulfillment or event, obtain or attempt to obtain from any person within this State any money, goods, property, services, chose in action, or other thing of value with intent to cheat or defraud any person of such money, goods, property, services, chose in action or other thing of value, such person shall be guilty of a ~~felony, and shall be punished as a Class H felon:~~ felony: Provided, that if, on the trial of anyone indicted for such crime, it shall be proved that he obtained the property in such manner as to amount to larceny or embezzlement, the jury shall have submitted to them such other felony proved; and no person tried for such felony shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts: Provided, further, that it shall be sufficient in any indictment for obtaining or attempting to obtain any such money, goods, property, services, chose in action, or other thing of value by false pretenses to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person, and without alleging any ownership of the money, goods, property, services, chose in action or other thing of value; and upon the trial of any such indictment, it shall not be

Section 7. G.S. 14-97 reads as rewritten:

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Any person engaged in a partnership business in the State of North Carolina who shall, without the knowledge and consent of his copartner or copartners, take funds belonging to the partnership business and appropriate the same to his own personal use with the fraudulent intent of depriving his copartners of the use thereof, shall be guilty of a ~~Class H~~ felony. Appropriation of partnership funds with a value of one hundred thousand dollars ($100,000) or more by a partner is a Class C felony. Appropriation of partnership funds with a value of less than one hundred thousand dollars ($100,000) by a partner is a Class H felony."

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If any surviving partner shall willfully and intentionally convert any of the property, money or effects belonging to the partnership to his own use, and refuse to account for the same on settlement, he shall be ~~punished as a Class H felon.~~ guilty of a felony. If the property, money, or effects has a value of one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the property, money, or effects has a value of less than one hundred thousand dollars ($100,000), a violation of this section is a Class H felony."

Section 9. G.S. 14-99 reads as rewritten:

"**§ 14-99. Embezzlement of taxes by officers.**

If any officer appropriates to his own use the State, county, school, city or town taxes, he shall be guilty of embezzlement, and shall be punished as a ~~Class F~~ felon. If the value of the taxes is one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the value of the taxes is less than one hundred thousand dollars ($100,000), a violation of this section is a Class F felony."

Section 10. G.S. 14-100(a) reads as rewritten:

"(a) If any person shall knowingly and designedly by means of any kind of false pretense whatsoever, whether the false pretense is of a past or subsisting fact or of a future fulfillment or event, obtain or attempt to obtain from any person within this State any money, goods, property, services, chose in action, or other thing of value with intent to cheat or defraud any person of such money, goods, property, services, chose in action or other thing of value, such person shall be guilty of a ~~felony, and shall be punished as a Class H felon:~~ felony: Provided, that if, on the trial of anyone indicted for such crime, it shall be proved that he obtained the property in such manner as to amount to larceny or embezzlement, the jury shall have submitted to them such other felony proved; and no person tried for such felony shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts: Provided, further, that it shall be sufficient in any indictment for obtaining or attempting to obtain any such money, goods, property, services, chose in action, or other thing of value by false pretenses to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person, and without alleging any ownership of the money, goods, property, services, chose in action or other thing of value; and upon the trial of any such indictment, it shall not be

necessary to prove either an intent to defraud any particular person or that the person to whom the false pretense was made was the person defrauded, but it shall be sufficient to allege and prove that the party accused made the false pretense charged with an intent to defraud. If the value of the money, goods, property, services, chose in action, or other thing of value is one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the value of the money, goods, property, services, chose in action, or other thing of value is less than one hundred thousand dollars ($100,000), a violation of this section is a Class H felony."

Section 11. G.S. 53-129 reads as rewritten:

"**§ 53-129. Misapplication, embezzlement of funds, etc.**

Whoever being an officer, employee, agent or director of a bank, with intent to defraud or injure the bank, or any person or corporation, or to deceive an officer of the bank or an agent appointed to examine the affairs of such bank, embezzles, abstracts, or misapplies any of the money, funds, credit or property of such bank, whether owned by it or held in trust, or who, with such intent, willfully and fraudulently issues or puts forth a certificate of deposit, draws an order or bill of exchange, makes an acceptance, assigns a note, bond, draft, bill of exchange, mortgage, judgment, decree or fictitiously borrows or solicits, obtains or receives money for a bank not in good faith, intended to become the property of such bank; or whoever being an officer, employee, agent, or director of a bank, makes or permits the making of a false statement or certificate, as to a deposit, trust fund or contract, or makes or permits to be made a false entry in a book, report, statement or record of such bank, or conceals or permits to be concealed by any means or manner, the true and correct entries of said bank, or its true and correct transactions, who knowingly loans, or permits to be loaned, the funds or credit of any bank to any insolvent company or corporation, or corporation which has ceased to exist, or which never had any existence, or upon collateral consisting of stocks or bonds of such company or corporation, or who makes or publishes or knowingly permits to be made or published a false report, statement or certificate as to the true financial condition of such bank, shall be ~~punished as a Class H felon.~~ guilty of a felony. If an offense committed under this section involves money, funds, credit, or property with a value of one hundred thousand dollars ($100,000) or more, it is a Class C felony. If an offense committed under this section involves money, funds, credit, or property with a value of less than one hundred thousand dollars ($100,000), it is a Class H felony. Any other offense committed under this section is a Class H felony."

Section 12. G.S. 58-2-162 reads as rewritten:

"**§ 58-2-162. Embezzlement by insurance agents, brokers, or administrators.**

If any insurance agent, broker, or administrator embezzles or fraudulently converts to his own use, or, with intent to use or embezzle, takes, secretes, or otherwise disposes of, or fraudulently withholds, appropriates, lends, invests, or otherwise uses or applies any money, negotiable instrument, or other consideration received by him in his performance as an agent, broker, or administrator, he shall be ~~punished as a Class H felon.~~ guilty of a felony. If the value of the money, negotiable instrument, or

other consideration is one hundred thousand dollars ($100,000) or more, violation of this section is a Class C felony. If the value of the money, negotiable instrument, or other consideration is less than one hundred thousand dollars ($100,000), violation of this section is a Class H felony."

Section 13. G.S. 90-210.70(a) reads as rewritten:

"(a) Anyone who embezzles or who fraudulently, or knowingly and willfully misapplies, or in any manner converts preneed funeral funds to his own use, or for the use of any partnership, corporation, association, or entity for any purpose other than as authorized by this Article; or anyone who takes, makes away with or secretes, with intent to embezzle or fraudulently or knowingly and willfully misapply or in any manner convert preneed funeral funds for his own use or the use of any other person for any purpose other than as authorized by this Article shall be ~~punished as a Class H felon.~~ guilty of a felony. If the value of the preneed funeral funds is one hundred thousand dollars ($100,000) or more, violation of this section is a Class C felony. If the value of the preneed funeral funds is less than one hundred thousand dollars ($100,000), violation of this section is a Class H felony. Each such embezzlement, conversion, or misapplication shall constitute a separate offense and may be prosecuted individually. Upon conviction, all licenses issued under this Article shall be revoked."

Section 14. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

THIS IS A DRAFT
H141-PCSRL-001
PROPOSED COMMITTEE SUBSTITUTE FOR
HOUSE BILL 141*

Short Title: Embezzlement/Increase Penalty. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO INCREASE THE CRIMINAL PENALTY FOR CERTAIN EMBEZZLEMENT OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-74 reads as rewritten:

"**§ 14-74. Larceny by servants and other employees.**

If any servant or other employee, to whom any money, goods or other chattels, or any of the articles, securities or choses in action mentioned in the following section [G.S. 14-75], by his master shall be delivered safely to be kept to the use of his master, shall withdraw himself from his master and go away with such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, with intent to steal the same and defraud his master thereof, contrary to the trust and confidence in him reposed by his said master; or if any servant, being in the service of his master, without the assent of his master, shall embezzle such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, or otherwise convert the same to his own use, with like purpose to steal them, or to defraud his master thereof, the servant so offending shall be ~~punished as a Class H~~

~~felon:~~ guilty of a felony: Provided, that nothing contained in this section shall extend to apprentices or servants within the age of 16 years. If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75, is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75, is less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony."

Section 2. G.S. 14-90 reads as rewritten:

"**§ 14-90. Embezzlement of property received by virtue of office or employment.**

If any person exercising a public trust or holding a public office, or any guardian, administrator, executor, trustee, or any receiver, or any other fiduciary, or any officer or agent of a corporation, or any agent, consignee, clerk, bailee or servant, except persons under the age of 16 years, of any person, shall embezzle or fraudulently or knowingly and willfully misapply or convert to his own use, or shall take, make away with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to his own use any money, goods or other chattels, bank note, check or order for the payment of money issued by or drawn on any bank or other corporation, or any treasury warrant, treasury note, bond or obligation for the payment of money issued by the United States or by any state, or any other valuable security whatsoever belonging to any other person or corporation, unincorporated association or organization which shall have come into his possession or under his care, he shall be ~~punished as a Class H felon.~~ guilty of a felony. If the value of the property is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the property is less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony."

Section 3. G.S. 14-91 reads as rewritten:

"**§ 14-91. Embezzlement of State property by public officers and employees.**

If any officer, agent, or employee of the State, or other person having or holding in trust for the same any bonds issued by the State, or any security, or other property and effects of the same, shall embezzle or knowingly and willfully misapply or convert the same to his own use, or otherwise willfully or corruptly abuse such trust, such offender and all persons knowingly and willfully aiding and abetting or otherwise

assisting therein shall be ~~punished as a Class F felon.~~ guilty of a felony. If the value of the property is one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the value of the property is less than one hundred thousand dollars ($100,000), a violation of this section is a Class F felony."

Section 4. G.S. 14-92 reads as rewritten:

"**§ 14-92. Embezzlement of funds by public officers and trustees.** If an officer, agent, or employee of an entity listed below, or a person having or holding money or property in trust for one of the listed entities, shall embezzle or otherwise willfully and corruptly use or misapply the same for any purpose other than that for which such moneys or property is held, such person shall be ~~punished as a Class F felon.~~ guilty of a felony. If the value of the money or property is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the money or property is less than one hundred thousand dollars ($100,000), the person is guilty of a Class F felony. If any clerk of the superior court or any sheriff, treasurer, register of deeds or other public officer of any county, unit or agency of local government, or local board of education shall embezzle or wrongfully convert to his own use, or corruptly use, or shall misapply for any purpose other than that for which the same are held, or shall fail to pay over and deliver to the proper persons entitled to receive the same when lawfully required so to do, any moneys, funds, securities or other property which such officer shall have received by virtue or color of his office in trust for any person or corporation, such officer shall be ~~punished as a Class F felon.~~ guilty of a felony. If the value of the money, funds, securities, or other property is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the money, funds, securities, or other property is less than one hundred thousand dollars ($100,000), the person is guilty of a Class F felony. The provisions of this section shall apply to all persons who shall go out of office and fail or neglect to account to or deliver over to their successors in office or other persons lawfully entitled to receive the same all such moneys, funds and securities or property aforesaid. The following entities are protected by this section: a county, a city or other unit or agency of local government, a local board of education, and a penal, charitable, religious, or educational institution."

Section 5. G.S. 14-93 reads as rewritten:

"**§ 14-93. Embezzlement by treasurers of charitable and religious organizations.**

If any treasurer or other financial officer of any benevolent or religious institution, society or congregation shall lend any of the moneys coming into his hands to any other person or association without the consent of the institution, association or congregation to whom such moneys belong; or, if he shall fail to account for such moneys when called on, he shall be guilty of a ~~Class H~~ felony. If the violation of this section involves money with a value of one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the violation of this section involves money with a value of less than one hundred thousand dollars or less, a violation of this section is a Class H felony."

Section 6. G.S. 14-94 reads as rewritten:

"**§ 14-94. Embezzlement by officers of railroad companies.**

If any president, secretary, treasurer, director, engineer, agent or other officer of any railroad company shall embezzle any moneys, bonds or other valuable funds or securities, with which such president, secretary, treasurer, director, engineer, agent or other officer shall be charged by virtue of his office or agency, or shall in any way, directly or indirectly, apply or appropriate the same for the use or benefit of himself or any other person, state or corporation, other than the company of which he is president, secretary, treasurer, director, engineer, agent or other officer, for every such offense the person so offending shall be guilty of a felony, and on conviction in the superior or criminal court of any county through which the railroad of such company shall pass, shall be punished as a ~~Class H~~ felon. If the value of the money, bonds, or other valuable funds or securities is one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the value of the money, bonds, or other valuable funds or securities has value of less than one hundred thousand dollars ($100,000), a violation of this section is a Class H felony."

Section 7. G.S. 14-97 reads as rewritten:

"**§ 14-97. Appropriation of partnership funds by partner to personal use.**

Any person engaged in a partnership business in the State of North Carolina who shall, without the knowledge and consent of his copartner or copartners, take funds belonging to the partnership business and appropriate the same to his own personal use with the fraudulent intent of depriving his copartners of the use thereof, shall be guilty of a ~~Class H~~ felony. Appropriation

of partnership funds with a value of one hundred thousand dollars ($100,000) or more by a partner is a Class C felony. Appropriation of partnership funds with the value of less than one hundred thousand dollars ($100,000) by a partner is a Class H felony."

Section 8. G.S. 14-98 reads as rewritten:

"**§ 14-98. Embezzlement by surviving partner.**

If any surviving partner shall willfully and intentionally convert any of the property, money or effects belonging to the partnership to his own use, and refuse to account for the same on settlement, he shall be ~~punished as a Class H felon.~~ guilty of a felony. If the property, money, or effects has a value of one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the property, money, or effects has a value of less than one hundred thousand dollars ($100,000), a violation of this section is a Class H felony."

Section 9. G.S. 14-99 reads as rewritten:

"**§ 14-99. Embezzlement of taxes by officers.**

If any officer appropriates to his own use the State, county, school, city or town taxes, he shall be guilty of embezzlement, and shall be punished as a ~~Class F~~ felon. If the value of the taxes is one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the value of the taxes is less than one hundred thousand dollars ($100,000), a violation of this section is a Class F felony."

Section 10. G.S. 14-100(a) reads as rewritten:

"(a) If any person shall knowingly and designedly by means of any kind of false pretense whatsoever, whether the false pretense is of a past or subsisting fact or of a future fulfillment or event, obtain or attempt to obtain from any person within this State any money, goods, property, services, chose in action, or other thing of value with intent to cheat or defraud any person of such money, goods, property, services, chose in action or other thing of value, such person shall be guilty of a ~~felony, and shall be punished as a Class H felon:~~ felony: Provided, that if, on the trial of anyone indicted for such crime, it shall be proved that he obtained the property in such manner as to amount to larceny or embezzlement, the jury shall have submitted to them such other felony proved; and no person tried for such felony shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts: Provided, further, that it shall be sufficient in any indictment for obtaining or attempting to obtain any such money, goods, property, services, chose in action, or other thing of value by false pretenses to allege that

the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person, and without alleging any ownership of the money, goods, property, services, chose in action or other thing of value; and upon the trial of any such indictment, it shall not be necessary to prove either an intent to defraud any particular person or that the person to whom the false pretense was made was the person defrauded, but it shall be sufficient to allege and prove that the party accused made the false pretense charged with an intent to defraud. If the value of the money, goods, property, services, chose in action, or other thing of value is one hundred thousand dollars ($100,000) or more, a violation of this section is a Class C felony. If the value of the money, goods, property, services, chose in action, or other thing of value is less than one hundred thousand dollars ($100,000), a violation of this section is a Class H felony."

Section 11. G.S. 53-129 reads as rewritten:

"**§ 53-129. Misapplication, embezzlement of funds, etc.**

Whoever being an officer, employee, agent or director of a bank, with intent to defraud or injure the bank, or any person or corporation, or to deceive an officer of the bank or an agent appointed to examine the affairs of such bank, embezzles, abstracts, or misapplies any of the money, funds, credit or property of such bank, whether owned by it or held in trust, or who, with such intent, willfully and fraudulently issues or puts forth a certificate of deposit, draws an order or bill of exchange, makes an acceptance, assigns a note, bond, draft, bill of exchange, mortgage, judgment, decree or fictitiously borrows or solicits, obtains or receives money for a bank not in good faith, intended to become the property of such bank; or whoever being an officer, employee, agent, or director of a bank, makes or permits the making of a false statement or certificate, as to a deposit, trust fund or contract, or makes or permits to be made a false entry in a book, report, statement or record of such bank, or conceals or permits to be concealed by any means or manner, the true and correct entries of said bank, or its true and correct transactions, who knowingly loans, or permits to be loaned, the funds or credit of any bank to any insolvent company or corporation, or corporation which has ceased to exist, or which never had any existence, or upon collateral consisting of stocks or bonds of such company or corporation, or who makes or publishes or knowingly permits to be made or published a false report, statement or certificate as to the true financial condition of such bank, shall be ~~punished as a Class H felon.~~

guilty of a felony. If an offense committed under this section involves money, funds, credit or property with a value of one hundred thousand dollars ($100,000) or more, it is a Class C felony. If an offense committed under this section involves money, funds, credit or property with a value of less than one hundred thousand dollars ($100,000), it is a Class H felony. Any other offense committed under this section is a Class H felony."

Section 12. G.S. 58-2-162 reads as rewritten:

"**§ 58-2-162. Embezzlement by insurance agents, brokers, or administrators.**

If any insurance agent, broker, or administrator embezzles or fraudulently converts to his own use, or, with intent to use or embezzle, takes, secretes, or otherwise disposes of, or fraudulently withholds, appropriates, lends, invests, or otherwise uses or applies any money, negotiable instrument, or other consideration received by him in his performance as an agent, broker, or administrator, he shall be ~~punished as a Class H felon.~~ guilty of a felony. If the value of the money, negotiable instrument, or other consideration is one hundred thousand dollars ($100,000) or more, violation of this section is a Class C felony. If the value of the money, negotiable instrument, or other consideration is less than one hundred thousand dollars ($100,000), violation of this section is a Class H felony."

Section 13. G.S. 90-210.70(a) reads as rewritten:

"(a) Anyone who embezzles or who fraudulently, or knowingly and willfully misapplies, or in any manner converts preneed funeral funds to his own use, or for the use of any partnership, corporation, association, or entity for any purpose other than as authorized by this Article; or anyone who takes, makes away with or secretes, with intent to embezzle or fraudulently or knowingly and willfully misapply or in any manner convert preneed funeral funds for his own use or the use of any other person for any purpose other than as authorized by this Article shall be ~~punished as a Class H felon.~~ guilty of a felony. If the value of the preneed funeral funds is one hundred thousand dollars ($100,000) or more, violation of this section is a Class C felony. If the value of the preneed funeral funds is less than one hundred thousand dollars ($100,000), violation of this section is a Class H felony. Each such embezzlement, conversion, or misapplication shall constitute a separate offense and may be prosecuted individually. Upon conviction, all licenses issued under this Article shall be revoked."

Section 14. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 141*

Short Title: Embezzlement/Increase Penalty. (Public)

Sponsors: Representatives Justus; Allred, Baddour, Bowie, Capps, Davis, Starnes, and Thompson.

Referred to: Judiciary I.

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO INCREASE THE CRIMINAL PENALTY FOR CERTAIN EMBEZZLEMENT OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-74 reads as rewritten:

"**§ 14-74. Larceny by servants and other employees.**

If any servant or other employee, to whom any money, goods or other chattels, or any of the articles, securities or choses in action mentioned in the following section [G.S. 14-75], by his master shall be delivered safely to be kept to the use of his master, shall withdraw himself from his master and go away with such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, with intent to steal the same and defraud his master thereof, contrary to the trust and confidence in him reposed by his said master; or if any servant, being in the service of his master, without the assent of his master, shall embezzle such money, goods or other chattels, or any of the articles, securities or choses in action mentioned as aforesaid, or any part thereof, or otherwise convert the same to his own use, with like purpose to steal them, or to defraud his master thereof, the servant so offending shall be ~~punished as a Class H felon:~~ guilty of a felony: Provided, that nothing contained in this section shall extend to apprentices or servants within the age of 16 years. Larceny or embezzlement by servants and other employees of money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75, with the value of one hundred thousand

dollars ($100,000) or more is a Class C felony. Larceny or embezzlement by servants and other employees of money, goods, or other chattels, or any of the articles, securities, or choses in action mentioned in G.S. 14-75, with the value of less than one hundred thousand dollars ($100,000) is a Class H felony."

Section 2. G.S. 14-90 reads as rewritten:

"**§ 14-90. Embezzlement of property received by virtue of office or employment.**

If any person exercising a public trust or holding a public office, or any guardian, administrator, executor, trustee, or any receiver, or any other fiduciary, or any officer or agent of a corporation, or any agent, consignee, clerk, bailee or servant, except persons under the age of 16 years, of any person, shall embezzle or fraudulently or knowingly and willfully misapply or convert to his own use, or shall take, make away with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to his own use any money, goods or other chattels, bank note, check or order for the payment of money issued by or drawn on any bank or other corporation, or any treasury warrant, treasury note, bond or obligation for the payment of money issued by the United States or by any state, or any other valuable security whatsoever belonging to any other person or corporation, unincorporated association or organization which shall have come into his possession or under his care, he shall be ~~punished as a Class H felon.~~ guilty of a felony. Embezzlement of property with the value of one hundred thousand dollars ($100,000) or more, received by virtue of office or employment, is a Class C felony. Embezzlement of property with the value of less than one hundred thousand dollars ($100,000), received by virtue of office or employment, is a Class H felony."

Section 3. G.S. 14-91 reads as rewritten:

"**§ 14-91. Embezzlement of State property by public officers and employees.**

If any officer, agent, or employee of the State, or other person having or holding in trust for the same any bonds issued by the State, or any security, or other property and effects of the same, shall embezzle or knowingly and willfully misapply or convert the same to his own use, or otherwise willfully or corruptly abuse such trust, such offender and all persons knowingly and willfully aiding and abetting or otherwise assisting therein shall be ~~punished as a Class F felon.~~ guilty of a felony. Embezzlement of State property with the value of one hundred thousand dollars ($100,000) or more by public officers and employees is a Class C felony. Embezzlement of State property with the value of less than one hundred thousand dollars ($100,000) by public officers and employees is a Class F felony."

Section 4. G.S. 14-92 reads as rewritten:

"**§ 14-92. Embezzlement of funds by public officers and trustees.**

If an officer, agent, or employee of an entity listed below, or a person having or holding money or property in trust for one of the listed entities, shall embezzle or otherwise willfully and corruptly use or misapply the same for any purpose other than that for which such moneys or property is held, such person shall be ~~punished as a Class F felon.~~ guilty of a felony. Embezzlement of money or property with the value of one hundred thousand dollars ($100,000) or more by public officers and trustees is a Class C felony. Embezzlement of money or property with the value of less than

one hundred thousand dollars ($100,000) by public officers and trustees is a Class F felony. If any clerk of the superior court or any sheriff, treasurer, register of deeds or other public officer of any county, unit or agency of local government, or local board of education shall embezzle or wrongfully convert to his own use, or corruptly use, or shall misapply for any purpose other than that for which the same are held, or shall fail to pay over and deliver to the proper persons entitled to receive the same when lawfully required so to do, any moneys, funds, securities or other property which such officer shall have received by virtue or color of his office in trust for any person or corporation, such officer shall be ~~punished as a Class F felon.~~ guilty of a felony. Embezzlement of money, funds, securities, or other property with the value of one hundred thousand dollars ($100,000) or more by public officers and trustees is a Class C felony. Embezzlement of money, funds, securities, or other property with the value of less than one hundred thousand dollars ($100,000) by public officers and trustees is a Class F felony. The provisions of this section shall apply to all persons who shall go out of office and fail or neglect to account to or deliver over to their successors in office or other persons lawfully entitled to receive the same all such moneys, funds and securities or property aforesaid. The following entities are protected by this section: a county, a city or other unit or agency of local government, a local board of education, and a penal, charitable, religious, or educational institution."

Section 5. G.S. 14-93 reads as rewritten:

"**§ 14-93. Embezzlement by treasurers of charitable and religious organizations.**

If any treasurer or other financial officer of any benevolent or religious institution, society or congregation shall lend any of the moneys coming into his hands to any other person or association without the consent of the institution, association or congregation to whom such moneys belong; or, if he shall fail to account for such moneys when called on, he shall be guilty of a ~~Class H~~ felony. Embezzlement by treasurers of charitable and religious organizations of money with the value of one hundred thousand dollars ($100,000) or more is a Class C felony. Embezzlement by treasurers of charitable and religious organizations of money with the value of less than one hundred thousand dollars ($100,000) is a Class H felony."

Section 6. G.S. 14-94 reads as rewritten:

"**§ 14-94. Embezzlement by officers of railroad companies.**

If any president, secretary, treasurer, director, engineer, agent or other officer of any railroad company shall embezzle any moneys, bonds or other valuable funds or securities, with which such president, secretary, treasurer, director, engineer, agent or other officer shall be charged by virtue of his office or agency, or shall in any way, directly or indirectly, apply or appropriate the same for the use or benefit of himself or any other person, state or corporation, other than the company of which he is president, secretary, treasurer, director, engineer, agent or other officer, for every such offense the person so offending shall be guilty of a felony, and on conviction in the superior or criminal court of any county through which the railroad of such company shall pass, shall be punished as a ~~Class H~~ felon. Embezzlement by officers of railroad companies of money, bonds, or other valuable funds or securities with the value of one hundred thousand dollars ($100,000) or more is a Class C felony.

Embezzlement by officers of railroad companies of money, bonds, or other valuable funds or securities with the value of less than one hundred thousand dollars ($100,000) is a Class H felony."

Section 7. G.S. 14-97 reads as rewritten:

"**§ 14-97. Appropriation of partnership funds by partner to personal use.**

Any person engaged in a partnership business in the State of North Carolina who shall, without the knowledge and consent of his copartner or copartners, take funds belonging to the partnership business and appropriate the same to his own personal use with the fraudulent intent of depriving his copartners of the use thereof, shall be guilty of a ~~Class H~~ felony. Appropriation of partnership funds with the value of one hundred thousand dollars ($100,000) or more by a partner is a Class C felony. Appropriation of partnership funds with the value of less than one hundred thousand dollars ($100,000) by a partner is a Class H felony."

Section 8. G.S. 14-98 reads as rewritten:

"**§ 14-98. Embezzlement by surviving partner.**

If any surviving partner shall willfully and intentionally convert any of the property, money or effects belonging to the partnership to his own use, and refuse to account for the same on settlement, he shall be ~~punished as a Class H felon.~~ guilty of a felony. Embezzlement by a surviving partner of property, money, or effects with the value of one hundred thousand dollars ($100,000) or more is a Class C felony. Embezzlement by a surviving partner of property, money, or effects with the value of less than one hundred thousand dollars ($100,000) is a Class H felony."

Section 9. G.S. 14-99 reads as rewritten:

"**§ 14-99. Embezzlement of taxes by officers.**

If any officer appropriates to his own use the State, county, school, city or town taxes, he shall be guilty of embezzlement, and shall be punished as a ~~Class F~~ felon. Embezzlement of taxes with the value of one hundred thousand dollars ($100,000) or more by officers is a Class C felony. Embezzlement of taxes with the value of less than one hundred thousand dollars ($100,000) by officers is a Class F felony."

Section 10. G.S. 14-100(a) reads as rewritten:

"(a) If any person shall knowingly and designedly by means of any kind of false pretense whatsoever, whether the false pretense is of a past or subsisting fact or of a future fulfillment or event, obtain or attempt to obtain from any person within this State any money, goods, property, services, chose in action, or other thing of value with intent to cheat or defraud any person of such money, goods, property, services, chose in action or other thing of value, such person shall be guilty of a ~~felony, and shall be punished as a Class H felon.~~ felony; Provided, that if, on the trial of anyone indicted for such crime, it shall be proved that he obtained the property in such manner as to amount to larceny or embezzlement, the jury shall have submitted to them such other felony proved; and no person tried for such felony shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts: Provided, further, that it shall be sufficient in any indictment for obtaining or attempting to obtain any such money, goods, property, services, chose in action, or other thing of value by false pretenses to allege that the party accused did the act with intent to

defraud, without alleging an intent to defraud any particular person, and without alleging any ownership of the money, goods, property, services, chose in action or other thing of value; and upon the trial of any such indictment, it shall not be necessary to prove either an intent to defraud any particular person or that the person to whom the false pretense was made was the person defrauded, but it shall be sufficient to allege and prove that the party accused made the false pretense charged with an intent to defraud. Obtaining property with the value of one hundred thousand dollars ($100,000) or more by false pretenses is a Class C felony. Obtaining property with the value of less than one hundred thousand dollars ($100,000) by false pretenses is a Class H felony."

Section 11. G.S. 53-129 reads as rewritten:

"**§ 53-129. Misapplication, embezzlement of funds, etc.**

Whoever being an officer, employee, agent or director of a bank, with intent to defraud or injure the bank, or any person or corporation, or to deceive an officer of the bank or an agent appointed to examine the affairs of such bank, embezzles, abstracts, or misapplies any of the money, funds, credit or property of such bank, whether owned by it or held in trust, or who, with such intent, willfully and fraudulently issues or puts forth a certificate of deposit, draws an order or bill of exchange, makes an acceptance, assigns a note, bond, draft, bill of exchange, mortgage, judgment, decree or fictitiously borrows or solicits, obtains or receives money for a bank not in good faith, intended to become the property of such bank; or whoever being an officer, employee, agent, or director of a bank, makes or permits the making of a false statement or certificate, as to a deposit, trust fund or contract, or makes or permits to be made a false entry in a book, report, statement or record of such bank, or conceals or permits to be concealed by any means or manner, the true and correct entries of said bank, or its true and correct transactions, who knowingly loans, or permits to be loaned, the funds or credit of any bank to any insolvent company or corporation, or corporation which has ceased to exist, or which never had any existence, or upon collateral consisting of stocks or bonds of such company or corporation, or who makes or publishes or knowingly permits to be made or published a false report, statement or certificate as to the true financial condition of such bank, shall be ~~punished as a Class H felon.~~ guilty of a felony. Embezzlement of money, funds, credit, or property with the value of one hundred thousand dollars ($100,000) or more is a Class C felony. Embezzlement of money, funds, credit, or property with the value of less than one hundred thousand dollars ($100,000) is a Class H felony."

Section 12. G.S. 58-2-162 reads as rewritten:

"**§ 58-2-162. Embezzlement by insurance agents, brokers, or administrators.**

If any insurance agent, broker, or administrator embezzles or fraudulently converts to his own use, or, with intent to use or embezzle, takes, secretes, or otherwise disposes of, or fraudulently withholds, appropriates, lends, invests, or otherwise uses or applies any money, negotiable instrument, or other consideration received by him in his performance as an agent, broker, or administrator, he shall be ~~punished as a Class H felon.~~ guilty of a felony. Embezzlement by insurance agents, brokers, or

administrators of money, negotiable instrument, or other consideration with the value of one hundred thousand dollars ($100,000) or more is a Class C felony. Embezzlement by insurance agents, brokers, or administrators of money, negotiable instrument, or other consideration with the value of less than one hundred thousand dollars ($100,000) is a Class H felony."

Section 13. G.S. 90-210.70(a) reads as rewritten:

"(a) Anyone who embezzles or who fraudulently, or knowingly and willfully misapplies, or in any manner converts preneed funeral funds to his own use, or for the use of any partnership, corporation, association, or entity for any purpose other than as authorized by this Article; or anyone who takes, makes away with or secretes, with intent to embezzle or fraudulently or knowingly and willfully misapply or in any manner convert preneed funeral funds for his own use or the use of any other person for any purpose other than as authorized by this Article shall be ~~punished as a Class H felon.~~ guilty of a felony. Embezzlement of preneed funeral funds with the value of one hundred thousand dollars ($100,000) or more is a Class C felony. Embezzlement of preneed funeral funds with the value of less than one hundred thousand dollars ($100,000) is a Class H felony. Each such embezzlement, conversion, or misapplication shall constitute a separate offense and may be prosecuted individually. Upon conviction, all licenses issued under this Article shall be revoked."

Section 14. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 142 A BILL TO BE ENTITLED AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO RECLASSIFY THE OFFENSE OF ACCESSORY AFTER THE FACT.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 142*

Short Title: Amend Accessory After the Fact. (Public)

Sponsors: Representatives Justus; Baddour, Bowie, Capps, Davis, and Thompson.

Referred to: Judiciary I.

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO RECLASSIFY THE OFFENSE OF ACCESSORY AFTER THE FACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-7 reads as rewritten:

"**§ 14-7. Accessories after the fact; trial and punishment.**

If any person shall become an accessory after the fact to any felony, whether the same be a felony at common law or by virtue of any statute made, or to be made, such person shall be guilty of a ~~felony,~~ crime, and may be indicted and convicted together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted for such ~~felony~~ crime whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to ~~justice, and shall be punished as a Class H felon.~~ justice. Unless a different classification is expressly stated, that person shall be punished for an offense that is two classes lower than the felony the principal felon committed, except that an accessory after the fact to a Class A or Class B1 felony is a Class C felony, an accessory after the fact to a Class B2 felony is a Class D felony, an accessory after the fact to a Class H felony is a Class 1 misdemeanor, and an accessory after the fact to a Class I felony is a Class 2 misdemeanor. The offense of such person may be inquired of, tried, determined and punished by any court which shall have jurisdiction of the principal felon, in the same manner as if the act, by reason whereof such person shall have become an accessory, had been committed at the same place as the principal felony, although such act may have been committed without the limits of the State;

and in case the principal felony shall have been committed within the body of any county, and the act by reason whereof any person shall have become accessory shall have been committed within the body of any other county, the offense of such person guilty of a felony as aforesaid may be inquired of, tried, determined, and punished in either of said counties: Provided, that no person who shall be once duly tried for such felony shall be again indicted or tried for the same offense."

Section 2. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

North Carolina General Assembly
Legislative Services Office

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February 20, 1997

MEMORANDUM

TO: House Judiciary I Committee

FROM: Steven Rose, Committee Counsel

RE: House Bill 142; Change Accessory After the Fact Punishment

House Bill 142 is a recommendation of the N.C. Sentencing and Policy Advisory Commission which would reclassify the offense of accessory after the fact to a felony. A person commits the offense when he or she, knowing that another person has committed a crime, assists that person in escaping or attempting to escape detection, arrest or punishment after the felony was committed. Under current law, accessory after the fact to any felony is punishable as a Class H felony. Assuming prior record level I, the minimum presumptive sentence for a Class H felony is 5-6 months community, intermediate or active punishment.

House Bill 142 would relate accessory after the fact offenses to the seriousness of the principal offense by classifying the offense of accessory after the fact two classes lower than the underlying felony itself. The bill would make accessory after the fact to a Class A or B1 felony (1st degree murder, 1st degree rape, or 1st degree sexual offense) a Class C felony. Assuming prior record level I, the minimum presumptive sentence for a Class C felony is 58-73 months active punishment.

The bill would make accessory after the fact to a Class B2 felony (for example, 2nd degree murder) a Class D felony. Assuming prior record level I, the minimum presumptive sentence for a Class D felony is 51-64 months active punishment.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

(OVER)

Accessory after the fact to a Class C felony would be a Class E, and so on - D/F, E/G, F/H, G/I. The bill provides that an accessory after the fact to a Class H felony is a Class 1 misdemeanor, and an accessory after the fact to a Class I felony is a Class 2 misdemeanor.

Information provided by the Sentencing Commission indicates impact beginning in 1999 with an additional 29 inmates, increasing to 233 additional inmates by 2007 as shown below. An incarceration fiscal note is required for this bill. The bill would become effective December 1, 1997 and would apply to offenses committed on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 144 A BILL TO BE ENTITLED AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION THAT THE OFFENSE OF VOLUNTARY MANSLAUGHTER BE INCREASED FROM A CLASS E TO A CLASS D FELONY

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 144*

Short Title: Voluntary Manslaughter/Class D Felony. (Public)

Sponsors: Representatives Justus; Baddour, Bowie, Capps, Davis, and Sexton.

Referred to: Judiciary I.

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION THAT THE OFFENSE OF VOLUNTARY MANSLAUGHTER BE INCREASED FROM A CLASS E FELONY TO A CLASS D FELONY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-18 reads as rewritten:

"**§ 14-18. Punishment for manslaughter.**

Voluntary manslaughter shall be punishable as a Class ~~E~~ D felony, and involuntary manslaughter shall be punishable as a Class F felony."

Section 2. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

North Carolina General Assembly
Legislative Services Office

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February 24, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: House Bill 144 - Voluntary Manslaughter/Class D Felony.

House Bill 144 is a recommendation of the N.C. Sentencing and Policy Advisory Commission which would increase the criminal penalty for voluntary manslaughter. Voluntary manslaughter is distinguished from second-degree murder by the absence of malice.

Under current law, voluntary manslaughter is punishable as a Class E felony. The Sentencing Commission found that this was the same class as assault with a deadly weapon with intent to kill or assault with a deadly weapon inflicting serious injury and the same class as discharging certain barreled weapons or firearms into occupied property. The Commission recommended that voluntary manslaughter be classified as more serious than these other crimes because the act results in death.

House Bill 144 would raise the felony offense class for voluntary manslaughter from E to Class D. Assuming prior record level I, the minimum presumptive sentence for a Class E felony is 20-25 months intermediate or active punishment; and 51-64 months active punishment for a Class D felony.

Information provided by the Sentencing Commission indicates impact beginning in 1999 with an additional 27 inmates increasing to 383 additional inmates by 2007. An incarceration fiscal note is required for this bill.

The bill would become effective December 1, 1997 and would apply to offenses committed on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

Committee: Judiciary I Date: 2-25-97

VISITORS: Please sign below and return to Committee Clerk.

NAME	FIRM OR STATE AGENCY AND ADDRESS
Rob Lubitz	Sentencing Commission
Susan Valaani	Nationwide Ins.
Roslyn Savitt	NC Coalition Against Domestic Violence
Chuck Cramer	NCATL

North Carolina House of Representatives

JUDICIARY I COMMITTEE

1 tape

February 27, 1997
10:00 a.m.
1327 Legislative Building

N. Leo Daughtry, Chairman

Members Present

Edwin M. Hardy	Martha Alexander
Gene G. Arnold	Jerry Braswell
J. Russell Capps	James W. Crawford
J. Sam Ellis	Milton F. Fitch, Jr.
Lyons Gray	Bobby Ray Hall
Thomas C. Hardaway	John W. Hurley
Margaret M. Jeffus	Larry T. Justus
H. M. Michaux, Jr.	Richard T. Morgan
Wilma M. Sherrill	Gregg Thompson

The House Committee on JUDICIARY I met at 10:00 a.m. on Thursday, February 27, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry presiding.

Committee counsels Steven Rose and Karen Cochrane-Brown were present to assist the committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

Chairman Daughtry introduced House Pages Laura Harvey and Becky Jordanson of Wake County who were present to assist the committee.

The Chair announced House Bill 198, scheduled for deliberation, had been removed from the calendar at the request of the sponsor.

The Chair brought before the committee House Bill 267, to Increase the Penalty for Bomb Threats, and recognized for the purpose of explaining her bill Rep. Sherrill. Committee counsel Steven Rose issued a memorandum to committee members regarding House Bill 267, a copy of which is attached and made a part of these minutes.

Rep. Thompson moved to amend the bill on page 1, line 5, by deleting the word "perpetuating" and substituting the word "PERPETRATING."

This technical amendment was approved without objection.

Rep. Sherrill proceeded to explain the amended bill, saying House Bill 67 changes to a felony the penalty for making a false report of a bomb or perpetrating a hoax using a false bomb.

Rep. Sherrill distributed copies of letters from officials of Buncombe County, copies of which are attached and made a part of the minutes.

Rep. Sherrill introduced Captain Lee Farnsworth, of the Buncombe County Sheriffs Department, to explain the impact of false bomb threats in Buncombe County. Rep. Sherrill recognized, with the permission of the chairman, the presence of Senator Ledbetter, who had introduced in the Senate a duplicate measure related to false bomb threats.

The Fiscal Research Division prepared a Legislative Fiscal Note related to H.B. 267, a copy of which is attached and made part of the minutes.

Without objection, the committee agreed to a motion made by Rep. Hall that the committee approve House Bill 267 as amended with a favorable report.

The Chair introduced Rep. Justis who brought before House Bill 139, to Clarify Sex Offender Registration, as recommended by the Justice and Public Safety and Crime Control Study Commission and sponsored by Rep. Justus. Committee counsel Steven Rose issued a memorandum to committee members regarding House Bill 139, a copy of which is attached and made a part of these minutes.

An Opinion issued by the Office of the Attorney General, written by Andrew A. Vanore, Jr., Chief Deputy Attorney General, regarding the those "subject to North Carolina's Sex Offender Registration Program" was distributed, a copy of which is attached and made a part of the minutes.

Rep. Justus brought before the committee the draft of a Proposed Committee Substitute to the original bill. There was no objection to its consideration.

Rep. Hunter made a motion the committee approve the Proposed Committee Substitute to H.B. 139 with a favorable report, unfavorable as to the original bill. There was no objection.

Rep. Crawford was recognized for the purpose of explaining House Bill 162, to Increase the Penalty for Certain Drug Sales, as recommended by the North Carolina Sentencing Advisory Committee. Committee counsel Karen Cochrane-Brown issued a memorandum to committee members regarding House Bill 162, a copy of which is attached and made a part of these minutes.

Rep. Crawford explained information provided by the Sentencing Commission indicating a "measurable impact beginning in 1999," with an additional 392 inmates, that an Incarceration Fiscal Note would be required for this bill, and that the bill would be re-referred to the APPROPRIATIONS Committee.

Rep. Morgan made a motion recommending the committee approve H.B. 162 with a favorable report, re-referring the measure to the APPROPRIATIONS Committee. There was no objection.

The Committee adjourned at 10:35 a.m.

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS

HOUSE COMMITTEE ON JUDICIARY I

February 27, 1997 ✓
Room 1327 LB
10:00 a.m.

OPENING REMARKS:
Representative N. Leo Daughtry, Chairman
Judiciary I Committee

BILLS TO BE CONSIDERED:

H.B. 139 Clarify Sex Offender Registration
Sponsor: Representative Justus

H.B. 162 Increase Drug Penalties
Sponsor: Representative Crawford

H.B. 198 Supervision of Prisoners
Sponsor: Representative Sexton

H.B. 267 Bomb Threat / Felony -2
Sponsor: Representative Sherrill

ADJOURNMENT

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on JUDICIARY I .

☐ Committee Substitute for
H.B. 267 A BILL TO BE ENTITLED AN ACT TO INCREASE THE PENALTY FROM A MISDEMEANOR TO A CLASS G FELONY FOR THE OFFENSES OF FALSELY REPORTING THAT A BOMB OR OTHER DESTRUCTIVE DEVICE MAY EXPLODE AND PERPETUATING A HOAX BY USING A FALSE DESTRUCTIVE DEVICE.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

X With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 267

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H267-ARL-001 Page 1 of 1

Date_____,1997

Comm. Sub. []
Amends Title []

Representative

moves to amend the bill on page 1, line 5, by deleting the word "PERPETUATING" and substituting the word "PERPETRATING".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 267*

Short Title: Bomb Threat/Felony. (Public)

Sponsors: Representatives Sherrill; Arnold, Berry, Bonner, Brown, Buchanan, Cansler, Capps, Cole, Esposito, Gardner, Gulley, Hall, Hardy, Hiatt, Holmes, Ives, Justus, Kiser, McCrary, Moore, Mosley, Sexton, Thompson, Warwick, Weatherly, and Yongue.

Referred to: Judiciary I.

February 18, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FROM A MISDEMEANOR TO A CLASS G FELONY FOR THE OFFENSES OF FALSELY REPORTING THAT A BOMB OR OTHER DESTRUCTIVE DEVICE MAY EXPLODE AND PERPETUATING A HOAX BY USING A FALSE DESTRUCTIVE DEVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-69.1 reads as rewritten:

"**§ 14-69.1. Making a false report concerning destructive device.**

(a) If any person shall, by any means of communication to any person or group of persons, make a report, knowing or having reason to know the same to be false, that there is located in any building, house or other structure whatsoever or any vehicle, aircraft, vessel or boat any device designed to destroy or damage the building, house or structure or vehicle, aircraft, vessel or boat by explosion, blasting or burning, he shall be guilty of a Class ~~1 misdemeanor.~~ G felony.

~~(b) If any person shall, by any means of communication to any person or group of persons, make a report, knowing or having reason to know the same to be false, that there is located in any hospital facility as defined in G.S. 131E-6, which includes a health clinic facility, any device designed to destroy or damage the hospital or health clinic facility by explosion, blasting, or burning, he shall, upon a first conviction, be guilty of a Class 1 misdemeanor, punishable by a minimum of 100 hours of~~

~~mandatory community service. Upon a second or subsequent conviction under this subsection, he shall be guilty of a Class I felony.~~ "

Section 2. G.S. 14-69.2 reads as rewritten:

"**§ 14-69.2. Perpetrating hoax by use of false bomb or other device.**

(a) If any person, with intent to perpetrate a hoax, shall secrete, place or display any device, machine, instrument or artifact, so as to cause any person reasonably to believe the same to be a bomb or other device capable of causing injury to persons or property, he shall be guilty of a Class ~~1 misdemeanor.~~ G felony.

~~(b) A violation of subsection (a) of this section that occurs in a hospital facility as defined in G.S. 131E-6 is, upon a first conviction, a Class 1 misdemeanor punishable by a minimum of 100 hours of mandatory community service. A second or subsequent conviction under subsection (a) of this section is a Class I felony.~~"

Section 3. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
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(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
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Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-
(919) 733-2578

February 26, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **House Bill 267; Penalty for Bomb Threats**

House Bill 267 changes to a felony the penalty for making a false report of a bomb or perpetrating a hoax using a false bomb.

Section 1 of the bill amends G.S. 14-69.1 by changing the penalty for knowingly falsely reporting a bomb from a Class 1 misdemeanor to a Class G felony. It repeals subsection (b) of G.S. 14-69.1 which specifically pertains to a false report of a bomb located in a hospital and makes such a report a Class 1 misdemeanor with a minimum of 100 hours mandatory community service for a first offense, and a Class I felony for a subsequent offense. Subsection (b) is no longer necessary since all such false reports would be a Class G felony and carry a higher penalty. The presumptive sentence for a Class G felony at Level I is 10-13 months intermediate or active sentence. The presumptive sentence for a Class 1 misdemeanor at Level I is 1-45 days community punishment. The presumptive sentence for a Class I felony at Level I is 4-6 months community punishment.

Section 2 of the bill amends G.S.. 14-69.2. This section makes it a crime to perpetrate a hoax by placing an object so as to cause a person to reasonably believe it is a bomb or other destructive devise. A violation is now a Class 1 misdemeanor. The amendment makes it a Class G felony. The amendment also repeals subsection (b) of that statute which requires a mandatory 100 hours of community service for a first offense where the violation occurs in a hospital facility, and which makes a second or subsequent conviction involving a hospital facility a Class I felony. As with G.S. 14-69.1(b), this subsection is no longer necessary.

The act becomes effective December 1, 1997 and applies to offenses committed on or after that date. An incarceration fiscal note is required.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Buncombe County Board of Commissioners

BOARD OF COMMISSIONERS
60 COURT PLAZA
ASHEVILLE, NC 28801-3565
Phone and TDD (704) 255-5533
FAX (704) 255-5535

Tom Sobol, Chairman
COMMISSIONERS
David Gantt
Patsy Keever
William H. Stanley
David W. Young

FROM THE OFFICE OF THE CLERK TO THE BOARD

TO: The Honorable Wilma Sherrill
919-733-2599

FROM: Kathy Hughes
Clerk to the Board
PHONE: 255-5538
FAX: 255-5461

DATE: February 24, 1997 TIME: 9:45 a.m.
PAGES: 1

Attached is a copy of the letter from Chairman Sobol endorsing your legislation. A hard copy is in the mail. If you need anything else, don't hesitate to call us.

Buncombe County Board of Commissioners

BOARD OF COMMISSIONERS
60 COURT PLAZA
ASHEVILLE, NC 28801-3565
Phone and TDD (704) 255-5533
FAX (704) 255-5535

Tom Sobol, Chairman
COMMISSIONERS
David Gantt
Patsy Keever
William H. Stanley
David W. Young

February 24, 1997

The Honorable Wilma Sherrill
Representative 51st District
State Legislative Office Building
Raleigh, NC 27607

Dear Wilma:

The Buncombe County Board of Commissioners wholeheartedly support your submission of legislation to make the act of a bomb threat on any County agency or building a felony. The recent rash of bomb threats on our County Courthouse has cost Buncombe County over $150,000 and backlogged our already overloaded Court system.

Such an act is a violation of the safety of our employees and citizens and should be punished stringently. We hope that your legislation is successful and urge you to contact us if we can be of any further assistance.

Sincerely,

C. Thomas Sobol, Jr.
Chairman
Buncombe County Commissioners

cc: Commissioners
County Manager
file

FAX

DISTRICT ATTORNEY'S OFFICE
28TH PROSECUTORIAL DISTRICT
P.O. BOX 7158
ASHEVILLE, NC 28802

Date 02/24/97

Number of pages including cover sheet 3

To:

REP. WILMA SHERRILL
NC HOUSE OF REP.

Phone

Fax Phone 919/ 733-2669

CC:

From:

RONALD L. MOORE,
DISTRICT ATTORNEY

Phone (704) 255-4727

Fax Phone (704) 251-6257

REMARKS:

☐ Urgent ☒ For your review ☐ Reply ASAP ☐ Please comment

HAVE A NICE AND SUNNY DAY!!!!!!!!

I HAVE ALSO SPOKEN TO JUDGE PAYNE, JUDGE LEWIS, AND BILL STANLEY AND I EXPECT EACH WILL BE SENDING YOU SOMETHING

R

State of North Carolina
General Court of Justice
Twenty-eighth Prosecutorial District

RONALD L. MOORE
DISTRICT ATTORNEY

P. O. BOX 7158
ASHEVILLE, N. C. 28802

FIFTH FLOOR COURTHOUSE
TELEPHONE 704-255-4727

February 24, 1997

The Honorable Wilma Sherrill
North Carolina House of Representatives
Raleigh, North Carolina

Dear Representative Sherrill:

I am writing with regard to the bill you sponored concerning punishments for individuals convicted of calling in bomb threats to court houses and other buildings. As you are no doubt aware during the past 8 to 10 months there have probably been at least a dozen called into the Buncombe County Courthouse. On three different occasions last year threats were called in on days when we were appearing in court on a triple murder case including a threat that occurred in the middle of the trial and resulted in court having to be canceled for a day during the middle of that trial. I believe that this type of crime is one which can disrupt not only many governmental functions that occur daily in the courthouse, but also is damaging to the psyche of many of those who work every day in our courthouse or come to our courthouse to transact business. This will include people who not only have involvement in criminal or civil court, but also people who come to visit the Register of Deeds Office, the Tax Collector's Office, the Tax Assessor's Office, the Probation Department, the Estate Office as well as many other functions that are conducted within the building each day, as well as the twice monthly meeting of the Board of Commissioners.

We have literally spent hundreds of thousands of dollars in lost employee time in this courthouse in the past year, not to mention the unbelievable inconvenience to thousands of citizens who have come to the courthouse to conduct business, perhaps, on their day off. It is also a logistical nightmare rescheduling all the cases that have to be recalendared when the courthouse is closed and the cases rescheduled for 6 or 8 courts.

Individuals who call into the courthouse or other governmental buildings and disrupt the exercise of our government by making bomb threats are very difficult to catch and prosecute. Frequently, they call from pay phones or into numbers that do not have any type of capacity to trace the numbers. The calls we have received have been placed to different entities within city and county governments, all of which has made it very difficult to catch the person or persons responsible. I am personally aware that there has been many

hours of law enforcement investigation as well as assistance from members of my staff trying to catch the individual or individuals responsible for these calls to our courthouse. Needless to say, under current law, the arrest and prosecution of that individual or individuals would be something less than satisfactory because of the lack of punishment allowed under the statute. In fact, it would almost encourage individuals who are facing mandatory jail time such as in the case of a second offense DWI or face the loss of custody or visitation of their children or contempt for failure to pay child support to place such calls so as to try and put off the inevitable. I believe that your bill will give us a tool to appropriately punish individuals who commit, for a lack of a better word, terrorism that disrupts the functioning of a portion of our government. There should also be a deterrent effect upon those who are contemplating committing such a crime which we currently do not have, for which I believe your bill provides.

I feel very strongly that the punishment should fit the crime and I believe that your bill gives judges the flexibility to fashion a punishment appropriate to the harm that has been caused by providing a range of options to the sentencing judge.

Thank you very much for the opportunity to write and express my feelings about this bill. Please feel free to call upon me at any time if you need any additional information or if I can be of any further assistance.

Sincerely,

RONALD L. MOORE
DISTRICT ATTORNEY

RLM/kek

FAX

Date 02/24/97

Number of pages including cover sheet 4

TO: The Honorable Wilma M. SHERRILL
NC House of Representatives
Raleigh, NC.

Phone (919) 733-5601
Fax Phone (919) 733-3549

CC:

FROM: Anne B. EWALD
SUPERIOR COURT
JUDGES' OFFICE
BUNCOMBE COUNTY
COURTHOUSE
ASHEVILLE, NC 28801-
3584

Phone ((704)255 -4762
Fax Phone (704)255-4714

REMARKS: ☑ Urgent ☐ For your review ☐ Reply ASAP ☐ Please Comment

State of North Carolina
General Court of Justice
Superior Court District 28

DENNIS J. WINNER
SENIOR RESIDENT SUPERIOR COURT JUDGE

RONALD K. PAYNE
RESIDENT SUPERIOR COURT JUDGE

BUNCOMBE COUNTY COURTHOUSE
ASHEVILLE, NC 28801-3584

February 24, 1997

The Honorable Wilma M. Sherrill
North Carolina House of Representatives
State Legislative Building; Room 2215
Raleigh, NC 27602

In re: Bomb Threat Bill

Dear Wilma:

I was elated to read in the Asheville newspaper that the local delegation to the General Assembly is introducing legislation which will make the telephoning of a bomb threat to a public building become a "Class G. Felony." I encourage the other members of the General Assembly to pass this legislation.

Last fall during the capital murder trial of James Floyd Davis we were interrupted by bomb threats on two occasions causing us to lose one and one-half days of court time. These unnecessary interruptions increase the possibility of a mistrial in cases which are already very expensive. These bomb threats also are costly in that they prevent citizens from using their courthouses to pay taxes, record deeds, obtain birth certificates, and marriage licenses as well as attend to court matters. Many times as a result of bomb threats, people who cannot afford to lose time from their jobs are forced to take more time from their jobs to attend to matters at the courthouse. In addition, there is no telling how much money the taxpayers of Buncombe County and North Carolina have lost as a result of these threats.

Making these threats a Class G will enable the trial judge to give active time, however, it will also give the trial judge the option of using less drastic punishment if he or she deems it appropriate. Leaving this as it is currently classified does not enable the courts to deal appropriately with these offenders, if and when they are apprehended.

Very truly yours,

Ronald K. Payne

RKP:a

State of North Carolina
General Court of Justice
Superior Court District 28
BUNCOMBE COUNTY

DENNIS J. WINNER
SENIOR RESIDENT SUPERIOR COURT JUDGE

BUNCOMBE COUNTY COURTHOUSE
ASHEVILLE, N. C. 28801-3584

February 24, 1997

The Honorable Wilma M. Sherrill
North Carolina House of Representatives
State Legislative Building; Room 2215
Raleigh, NC 27602

In re: Bomb Threat Bill

Dear Representative Sherrill:

I am writing this letter to thank you for offering the Bill to increase punishment for bomb scares to a "Class G. Felony." Our experience last year, in Buncombe County, shows the necessity of this change. Because of the numerous time that our courthouse was closed due to bomb threats, the taxpayers of the county and the state lost several hundred thousand dollars of work. If the perpetrator had been caught under present law, there is no significant punishment available. The punishment should be raised to "Class G" as a minimum to make the punishment commensurate to the crime.

If there is anything I can do to aid you in your effort to make this necessary change, please let me know.

Very truly yours,

Dennis J. Winner

Dennis J. Winner

DJW:a

State of North Carolina
General Court of Justice
Superior Court District 28
BUNCOMBE COUNTY

ROBERT D. LEWIS
EMERGENCY SUPERIOR COURT JUDGE

909 COUNTRY CLUB ROAD
ASHEVILLE, N.C. 28804

24 February 1997

Representative Wilma M. Sherrill
North Carolina General Assembly
State Legislative Building - Room 2215
Raleigh, NC 27601

re: Bomb Threat Bill

Thank you for offering a bill to increase the punishment for making bomb threats. The present misdemeanor classification of this offense provides little punishment for the offender even if apprehended.

Obviously, evacuation of the court house as a precautionary measure is very costly, but I am equally concerned about the impact such calls have on jurors sitting for trials in progress. More often than not these threats occur during consideration of a high profile case. Obtaining qualified citizens who will keep their attention focused on the evidence without any outside interference is difficult enough. We certainly do not need any more distractions which could exert an adverse influence on deliberations by the twelve.

If I can help to obtain favorable consideration of this much needed change in the offense classification, please feel free to call.

Very truly yours,

Hon. Robert D. Lewis

RDL: b

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 267

SHORT TITLE: Bomb Threat/Felony

SPONSOR(S): Representative Sherrill; Arnold, Berry, Bonner, Brown, Buchanan, Cansler, Capps, Cole, Esposito, Gardner, Gulley, Hall, Hardy, Hiatt, Holmes, Ives, Justus, Kiser, McCrary, Moore, Mosley, Sexton, Thompson, Warwick, Weatherly, and Yongue.

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

(in millions)

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
GENERAL FUND					
Correction					
Recurring					
Nonrecurring					
			No Fiscal Impact		
Judicial					
Recurring					
Nonrecurring					
TOTAL EXPENDITURES					

POSITIONS: It is anticipated that approximately 0 positions would be needed to supervise the additional inmates housed under this bill. This is based on inmate to employee ratios, provided by the Division of Prisons, for close, medium, and minimum custody facilities (These position totals include security, program, and administrative personnel.).

Close – 2 to 1
Medium – 3 to 1
Minimum – 4 to 1

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Dept. of Correction; Judicial Branch

EFFECTIVE DATE: December 1, 1997, and applies to offenses committed on or after that date.

BILL SUMMARY: BOMB THREAT/FELONY. *TO INCREASE THE PENALTY FROM A MISDEMEANOR TO A CLASS G FELONY FOR THE OFFENSES OF FALSELY REPORTING THAT A BOMB OR OTHER DESTRUCTIVE DEVICE MAY EXPLODE AND PERPETUATING A HOAX BY USING A FALSE DESTRUCTIVE DEVICE.* Amends GS 14-69.1 and 14-69.2 to raise offenses indicated in title from class 1 misdemeanors to class 1 felonies. Applies to offenses committed on or after Dec. 1, 1997.

SUMPTIONS AND METHODOLOGY: Department of Correction and Judicial Branch

Department of Correction

During calendar year 1996, there were thirty five (35) convictions for making a false report concerning destructive devices, GS 14-69.1, and no convictions for perpetrating a hoax by use of false bomb other device, GS 14-69.2. Assuming that there continues to be about 35 convictions per year (the average over the past five years has been 28.2 per annum), then this proposal would add a **maximum** of about nineteen (19) offenders to the average daily prison population during the first full year after implementation and about twenty seven (27) offenders in subsequent years. This estimate assumes that sentences for this crime follow the same pattern as sentences for other class G felonies and further assumes that there are not incapacitative or deterrent effects.

There is no specific fiscal impact on the Department of Correction because the projected number of available prison beds exceeds the anticipated total number of inmates that may be incarcerated due to this bill: (See the Chart below).

	June 30 1998	June 30 1999	June 30 2000	June 30 2001	June 30 2002
Projected No. of Inmates Under Current ctured Sentencing Act[1]	31,762	30,371	30,060	30,610	31,259
Projected No. of Prison Beds (DOC Expanded Capacity)[2]	34,135	35,601	35,601	35,601	35,601
No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	+2,373	+5,230	+5,541	+4,991	+4,432
No. of Projected Additional Inmates Due to this Bill	+19	+27	+27	+27	+27
No. of Additional Beds Need Each Fiscal Year Due to this Bill	0	0	0	0	0

[1] The Sentencing Commission's revised prison population projections (dated December 1996) were estimated under three scenarios: High, Best, and Low. The differences in these scenarios reflect varying assumptions on incarceration rates under Structured tencing, probation and revocation rates, and the decline of the stock population. The projections outlined above are included in the st scenario" since the Sentencing Commission and the Department of Correction believe this scenario is most likely to occur.

[2] Projected number of prison beds based on Department of Correction estimates of expanded bed capacity as of 1/11/97. These numbers do not include the number of beds requested in the Governor's 1997-99 Capital Improvement budget.

cial Branch

There would not be a significant fiscal impact on the Judicial Branch, as there would not be any major changes in the time required to process or dispose of these cases. The Court Information System has no offense code for GS14-69.2. This indicates a small number of offenses since "offense codes" are established only when the number of offenses is significant. If, as a result of a possibly felony conviction, some of these defendants were to change their defense strategy and ask for a trial in Superior Court, the Judicial Branch believes that the impact of these few additional trials would not be substantial.

SOURCES OF DATA: Department of Correction, Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Andy Willis
APPROVED BY: Tom L. Covington **TomC**
DATE: February 20, 1997

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on JUDICIARY I .

☐ Committee Substitute for
H.B. 139 A BILL TO BE ENTITLED AN ACT TO AMEND THE SEX OFFENDER REGISTRATION LAW TO CLARIFY THAT PERSONS CONVICTED OF SEX OFFENSES IN FEDERAL COURT ARE REQUIRED TO REGISTER.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

X With a favorable report as to committee substitute bill, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 139*

Short Title: Clarify Sex Offender Registration. (Public)

Sponsors: Representatives Justus; Arnold, Baker, Bowie, Boyd-Mcintyre, Cansler, Carpenter, Clary, Crawford, Creech, Dockham, Esposito, Fox, Gardner, Hall, Holmes, Ives, Kiser, McCombs, McMahan, Mitchell, Morris, Mosley, Nichols, Russell, Sherrill, Thompson, Watson, and G. Wilson.

Referred to: Judiciary I.

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE SEX OFFENDER REGISTRATION LAW TO CLARIFY THAT PERSONS CONVICTED OF SEX OFFENSES IN FEDERAL COURT ARE REQUIRED TO REGISTER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-208.6(4) reads as rewritten:

"(4) 'Reportable conviction' means:

a. A final conviction for violation of G.S. 14-27.2 (first degree rape), 14-27.3 (second degree rape), 14-27.4 (first degree sexual offense), 14-27.5 (second degree sexual offense), 14-27.6 (attempted rape or sexual offense), 14-27.7 (intercourse and sexual offense with certain victims), 14-178 (incest between near relatives), 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), 14-190.16 (first degree sexual exploitation of a minor), 14-190.17 (second degree sexual exploitation of a minor), 14-190.17A (third degree sexual exploitation of a minor), 14-190.18 (promoting prostitution of a minor), 14-190.19 (participating in prostitution of a minor), or 14-202.1 (taking indecent liberties with children).

b. A final conviction in another state of an offense, which if committed in this State, would have been a sex offense as defined by the sections of the General Statutes set forth in paragraph a. of this subdivision.

c. A final conviction in a federal jurisdiction of an offense which is substantially similar to an offense set forth in paragraph a. of this subdivision."

Section 2. This act is effective when it becomes law and applies to all persons convicted on or after that date and to all persons released from a penal institution on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 139*
Proposed Committee Substitute H139-PCS8044

Short Title: Clarify Sex Offender Registration. (Public)

Sponsors:

Referred to:

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE SEX OFFENDER REGISTRATION LAW TO CLARIFY THAT PERSONS CONVICTED OF SEX OFFENSES IN FEDERAL COURT AND OTHER STATES ARE REQUIRED TO REGISTER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-208.6(2) reads as rewritten:

"(2) 'Penal institution' ~~means a~~ means:

a. A detention facility operated under the jurisdiction of the Division of Prisons of the Department of ~~Correction, or a county jail.~~ Correction;

b. A detention facility operated under the jurisdiction of another state or the federal government; or

c. A detention facility operated by a local government in this State or another state."

Section 2. G.S. 14-208.6(4) reads as rewritten:

"(4) 'Reportable conviction' means:

a. A final conviction for violation of G.S. 14-27.2 (first degree rape), 14-27.3 (second degree rape), 14-27.4 (first degree sexual offense), 14-27.5 (second degree sexual offense), 14-27.6 (attempted rape or sexual offense), 14-27.7 (intercourse and sexual offense with certain victims), 14-178 (incest between near relatives), 14-190.6 (employing or permitting minor to assist in offenses against public morality and

decency), 14-190.16 (first degree sexual exploitation of a minor), 14-190.17 (second degree sexual exploitation of a minor), 14-190.17A (third degree sexual exploitation of a minor), 14-190.18 (promoting prostitution of a minor), 14-190.19 (participating in prostitution of a minor), or 14-202.1 (taking indecent liberties with children).

b. A final conviction in another state of an offense, which if committed in this State, would have been a sex offense as defined by the sections of the General Statutes set forth in paragraph a. of this subdivision.

c. A final conviction in a federal jurisdiction of an offense which is substantially similar to an offense set forth in paragraph a. of this subdivision."

Section 3. This act is effective when it becomes law and applies to all persons convicted on or after that date and to all persons released from a penal institution on or after that date.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
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Gerry F. Cohen, Director
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Suite 401, LOB
300 N. Salisbury St.
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Thomas L. Covington, Director
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Suite 619, LOB
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Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
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Suite 400, LOB
300 N. Salisbury St.
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(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

February 26, 1997

MEMORANDUM

TO: House Judiciary I Committee

FROM: Steven Rose, Committee Counsel

RE: House Bill 139; Clarify Sex Offender Registration
Proposed Committee Substitute

House Bill 139 amends North Carolina's sex offender registration law to make it clear that persons released from incarceration in another state, or convicted in a federal jurisdiction, for an offense similar to the North Carolina reportable offenses, is required to register as a sex offender.

Section 1 of the bill amends subdivision (2) of G.S. 14-208.6. This is the definition of "penal institution." The current definition defines a penal institution as a detention facility operated by the State Division of Prisons, or a county jail. The amendment clarifies that the definition includes a detention facility operated by another state, the federal government, or one operated by a local government in this or another state.

Section 2 of the bill amends subdivision (4) of G.S. 14-208.6. This subdivision defines "reportable conviction." The amendment clarifies that the definition includes conviction in a federal jurisdiction of an offense substantially similar to the North Carolina reportable offenses.

The act is effective when it becomes law and applies to all persons convicted on or after that date and to all persons released from a penal institution on or after that date.

The act was recommended by the Crime Control and Public Safety Study Commission.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

MICHAEL F. EASLEY
ATTORNEY GENERAL

State of North Carolina
Department of Justice
P. O. BOX 629
RALEIGH
27602-0629

Reply To:
Andrew A. Vanore, Jr.
Administration
(919) 733-3377

January 30, 1996

Mr. Rick Marshburn
U.S. Probation Officer
P. O. Box 526
Jacksonville, NC 28541

Dear Mr. Marshburn:

I reply to your recent letter requesting our advice whether defendants convicted in federal courts are subject to North Carolina's Sex Offender Registration Program. For reasons which follow, I concur with the opinion given by your legal counsel that North Carolina law does not apply to defendants convicted in federal courts.

First, a "reportable conviction" is defined in N.C.G.S. §14-208.6 as any conviction of a specifically enumerated North Carolina criminal statute and "a final conviction in another state of an offense, which if committed in this State, would have been a sex offense as defined by the sections of the general statutes . . ." specifically enumerated. Had the General Assembly wished to include within the definition of a "reportable conviction" any convictions of federal statutes, the General Assembly would have specifically so stated. However, they did not do so.

Moreover, North Carolina's laws include a Chapter 12 that is designated "Statutory Construction." N.C.G.S. §12-3 sets out the definition of certain words that are commonly used throughout North Carolina's laws, including the word, "state". As set forth in N.C.G.S. §12-3(11), "the word 'state' when applied to different parts of the United States, shall be construed to extend to and include the District of Columbia and the several territories, so called . . . ." The word "state" clearly does not include convictions of federal crimes.

I believe that the Legislature could amend the law to include federal convictions, but this is something that would be left to the wisdom of the General Assembly. If your office wishes to propose such an amendment, I suggest you take it up with one of your local legislators to the North Carolina House or Senate.

If you have any questions, please feel free to call me.

Very truly yours,

Andrew A. Vanore, Jr.
Chief Deputy Attorney General

AAVjr/jt

An Equal Opportunity / Affirmative Action Employer

END

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H139-PCSRL-001
THIS IS A DRAFT 26-FEB-97 14:56:16
PROPOSED COMMITTEE SUBSTITUTE FOR
HOUSE BILL 139*

Short Title: Clarify Sex Offender Registration. (Public)

Sponsors:

Referred to:

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE SEX OFFENDER REGISTRATION LAW TO CLARIFY THAT PERSONS CONVICTED OF SEX OFFENSES IN FEDERAL COURT AND OTHER STATES ARE REQUIRED TO REGISTER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-208.6(2) reads as rewritten:

"(2) 'Penal institution' ~~means a~~ means:

a. A detention facility operated under the jurisdiction of the Division of Prisons of the Department of ~~Correction, or a county jail.~~ Correction;

b. A detention facility operated under the jurisdiction of another state or the federal government; or

c. A detention facility operated by a local government in this State or another state."

Section 2. G.S. 14-208.6(4) reads as rewritten:

"(4) 'Reportable conviction' means:

a. A final conviction for violation of G.S. 14-27.2 (first degree rape), 14-27.3 (second degree rape), 14-27.4 (first degree sexual offense), 14-27.5 (second degree sexual offense), 14-27.6 (attempted rape or sexual

offense), 14-27.7 (intercourse and sexual offense with certain victims), 14-178 (incest between near relatives), 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), 14-190.16 (first degree sexual exploitation of a minor), 14-190.17 (second degree sexual exploitation of a minor), 14-190.17A (third degree sexual exploitation of a minor), 14-190.18 (promoting prostitution of a minor), 14-190.19 (participating in prostitution of a minor), or 14-202.1 (taking indecent liberties with children).

b. A final conviction in another state of an offense, which if committed in this State, would have been a sex offense as defined by the sections of the General Statutes set forth in paragraph a. of this subdivision.

c. A final conviction in a federal jurisdiction of an offense which is substantially similar to an offense set forth in paragraph a. of this subdivision."

Section 3. This act is effective when it becomes law and applies to all persons convicted on or after that date and to all persons released from a penal institution on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on JUDICIARY I .

☐ Committee Substitute for
H.B. 162 A BILL TO BE ENTITLED AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO INCREASE THE CRIMINAL PENALTY FOR THE SALE OF CERTAIN CONTROLLED SUBSTANCES

☐ With a favorable report.

X With a favorable report and recommendation that the bill be re-referred to the Committee on **X** Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 162*

Short Title: Increase Penalty for Certain Drug Sales. (Public)

Sponsors: Representatives Crawford; Aldridge, Capps, Davis, Sexton, and Watson.

Referred to: Judiciary I.

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO INCREASE THE CRIMINAL PENALTY FOR THE SALE OF CERTAIN CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-95(b) reads as rewritten:

"(b) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(1) with respect to:

(1) A controlled substance classified in Schedule I or II shall be punished as a Class H ~~felon;~~ felon, except that the sale of a controlled substance classified in Schedule I or II shall be punished as a Class G felon;

(2) A controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class I felon, except that the sale of a controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class H felon. ~~but the~~ The transfer of less than 5 grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1)."

Section 2. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
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February 26, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **House Bill 162 - Increase Penalty for Certain Drug Sales.**

House Bill 162 is a recommendation of the N.C. Sentencing and Policy Advisory Commission which would increase the criminal penalty for the ***sale*** of certain controlled substances. The bill amends G.S. 90-95(a)(1) which makes it unlawful for any person to manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance.

The bill would raise the felony offense class for the sale of a Schedule I or II controlled substance from Class H to Class G. Schedule I and II controlled substances include heroin, morphine, opium, LSD, and cocaine. Assuming prior record level I, the minimum presumptive sentence for a Class H felony is 5-6 months community, intermediate, or active punishment; a Class G felony is 10-13 months intermediate or active punishment.

The bill would also raise the felony offense class for the sale of a Schedule III through Schedule VI controlled substances from Class I to Class H. Schedule III, IV, V, and VI controlled substances include barbiturates, narcotics, anabolic steroids, and marijuana. Assuming prior record level I, the minimum presumptive sentence for a Class I felony is 4-6 months community punishment; a Class H felony is 5-6 months community, intermediate, or active punishment.

Information provided by the Sentencing Commission indicates measurable impact beginning in 1999, with an additional 392 inmates. An incarceration fiscal note is required for this bill.

The bill would become effective December 1, 1997 and would apply to offenses committed on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

RECOMMENDATION #6

RECLASSIFY THE SALE OF CLASS H AND CLASS I CONTROLLED SUBSTANCES

ISSUE: The Sentencing Commission originally proposed that non-trafficking offenses which involve the actual sale of drugs be treated more seriously than offenses only involving the possession, manufacturing, or delivering of drugs. This provision was included in the Commission's original recommendations to the General Assembly in 1993 but was inadvertently omitted during drafting.

APPROACH: This bill singles out the sale of a schedule I or II controlled substance and raises the felony offense class from Class H to Class G felony. This bill also singles out the sale of a schedule III, IV, V, or VI controlled substance and raises the felony offense class from Class I to Class H.

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts
G	I/A *13 - 16* 10 - 13 *8 - 10*	I/A *15 - 19* 12 - 15 *9 - 12*	I/A *16 - 20* 13 - 16 *10 - 13*	I/A *20 - 25* 16 - 20 *12 - 16*	A *21 - 26* 17 - 21 *13 - 17*	A *29 - 36* 23 -29 *17 - 23*
H	C/I/A *6 - 8* 5 - 6 *4 - 5*	I/A *8 - 10* 6 - 8 *4 - 6*	I/A *10 - 12* 8 - 10 *6 - 8*	I/A *11 - 14* 9 - 11 *7 - 9*	I/A *15 - 19* 12 - 15 *9 - 12*	A *20 - 25* 16 - 20 *12 - 16*
I	C *6 - 8* 4 - 6 *3 - 4*	C/I *6 - 8* 4 - 6 *3 - 4*	I *6 - 8* 5 - 6 *4 - 5*	I/A *8 - 10* 6 - 8 *4 - 6*	I/A *9 - 11* 7 - 9 *5 - 7*	I/A *10 - 12* 8 -10 *6 - 8*

IMPACT:

PROJECTED ADDITIONAL INMATES: END OF FISCAL YEAR									
98**	99	0	1	2	3	4	5	6	7
0	392	404	399	426	428	437	444	457	462

Assumes effective for crimes committed on or after 1/1/98
** Too soon after implementation to have any measurable impact

GENERAL ASSEMBLY OF NORTH CAROLINA PULLED

SESSION 1997

H 1

HOUSE BILL 198

Short Title: Supervision of Prisoners. (Public)

Sponsors: Representatives Sexton, Reynolds, Allred; Capps, Culp, Hall, Moore, and Watson.

Referred to: Judiciary I.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A COUNTY TO ARRANGE FOR THE SUPERVISION OF WORKING PRISONERS BY EMPLOYEES OF ANOTHER UNIT OF STATE OR LOCAL GOVERNMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 162-58 reads as rewritten:

"**§ 162-58. Counties may work prisoners.**

The board of commissioners of the several counties may enact by resolution all necessary rules and regulations for work on projects to benefit units of State or local government by persons convicted of crimes and imprisoned in the local confinement facilities or satellite jail/work release units of their respective counties. The sheriff shall approve rules and regulations enacted by the board. Prisoners working under this section shall be supervised by county ~~employees~~ employees, employees of another unit of State or local government, or by the sheriff. The rules enacted by the board of county commissioners and approved by the sheriff shall specify a procedure for ensuring that county employees or employees of another unit of State or local government supervising prisoners pursuant to this section be provided with notice that the persons placed under their supervision are inmates from a local confinement facility or a satellite jail/work release unit."

Section 2. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

JUDICIARY I

FEBRUARY 27, 1997

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
1. John Bowdish	Zeb Alley PA
2. Deborah Ross	ACLU
3. Pam Dearduff	YAID / DOA
4. Charles Comer	NCATL
5. Laura Hartsell	MCIC
6. Ginger L. Bish	MAM
7. Jake B. Gray	DOJ
8. Eddie Caldwell	NCSA/NCLEOA
9. PETE MARTIN	DMHDDSAS
10. John Madler	Sentencing Commission
11.	DCIA
22.	DOC
23. Whitney Berg	DMHDDSAS
24. Gertrude Anderson	Retired
25. Katherine A. Vaughan	private citizen
26.	Buncombe County Sheriff's Office
27. Kelly Sandling	Leg. Intern
28. Ann Christian	NCAWA
29.	ACTEL
30. Jessica Perkey	ALHel

North Carolina House of Representatives

JUDICIARY I COMMITTEE

1 tape
computer minutes do not match notebook

March 4, 1997
10:00 a.m.
1327 Legislative Bldg.

N. Leo Daughtry and Edwin M. "Sandy" Hardy, Chairmen

Members Present

Martha B. Alexander	Gene G. Arnold
J. Russell Capps	Debbie Clary
J. Sam Ellis	Theresa H. Esposito
George M. Holmes	Lyons Gray
Bobby Ray Hall	Thomas C. Hardaway
Robert C. Hunter	John W. Hurley
Margaret M. Jeffus	Larry T. Justus
H. M. Michaux, Jr.	George W, Miller, Jr.
Wilma M. Sherrill	Gregg Thompson

The House Committee on JUDICIARY I met at 10:00 a.m. on Tuesday, March 4, 1997 in Room 1327 of the Legislative Building with Chairmen N. Leo Daughtry and E.M. "Sandy" Hardy presiding.

Committee Counsel Steven Rose and Karen Cochrane-Brown were present to assist the Committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

Chairman Daughtry introduced House Pages Jennifer Rouse of Sampson County and Preston Purdue of Randolph County who were present to assist the Committee.

Chairman Daughtry announced H.B. 321 ALLOW HUNTING ON SUNDAY, previously scheduled for deliberation at this meeting, had been removed from the agenda at the request of the sponsor, Representative Preston.

Chairman Daughtry introduced Representative Arnold for the purpose of introducing for discussion H.B. 328 BAN TOBACCO SALES TO MINORS -2.

Representative Arnold began introduction of a Proposed Committee Substitute for H.B. 328 and passed out a prepared paper entiled "COMPARATIVE PENALTIES FOR TOBACCO SALES TO MINORS" and "PENALTY COMPARISONS" relating the

penalties proposed under H.B. 328 with present penalties for the purchase of beer and possession of one-half ounce of marijuana by 18 year-olds. A copy is attached and made a part of the minutes.

On a motion by Rep. Thompson, and without objection, the Committee agreed to consider a Proposed Committee Substitute to H.B. 328, a copy of which is attached and made a part of the minutes.

Committee Counsel Steven Rose had prepared a memorandum explaining the Proposed Committee Substitute for H.B. 328, a copy of which is attached and made a part of the minutes.

There was discussion concerning penalties for infractions under the bill for retailers, clerks and customers; evidences, the burden of proof, effective dates, etc.

There being many questions regarding the scope of the legislation, the Chairman asked the Committee whether a subcommittee ought to be appointed to study H.B. 328 and that said subcommittee report to the Committee at a future meeting.

There being no objection, the Chair appointed Representative Arnold as the Chairman of the Subcommittee on H.B. 328, and Representative Gray, Michaux, Hall and Fitch as members.

The Chairman introduced Senator Jenkins to explain Senate Bill 3, LOBBYIST WAITING PERIOD.

Committee Counsel Karen Cochrane-Brown had prepared a memorandum explaining Senate Bill 3, a copy of which is attached and made a part of the minutes.

On a motion by Mr. Thompson, the measure was referred to a Subcommittee on Senate Bill 3 and without objection the Chairman appointed Representative Thompson to as the Subcommittee Chairman and Representatives Hunter, Hardaway, Justus and Gray as members

The Committee adjourned at 10:35 a.m.

Joel Raupe, committee clerk

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

ATTACHMENTS:

HOUSE COMMITTEE ON JUDICIARY I

Tuesday, March 4, 1997
Room 1327 LB
10:00 a.m.

OPENING REMARKS:
Representative N. Leo Daughtry, Chairman
Judiciary I Committee

BILLS TO BE CONSIDERED:

H.B. 321 ALLOW HUNTING ON SUNDAY
Sponsor: Representative Preston

H.B. 328 BAN TOBACCO SALES TO MINORS -2
Sponsor: Representatives Arnold and Fitch

S. 3 LOBBYIST WAITING PERIOD
Sponsor: Senator Jenkins

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

April 29

HOUSE BILL 321

Short Title: Allow Hunting on Sunday. (Public)

Sponsors: Representatives Preston; Morris, Baddour, and Warwick.

Referred to: Judiciary I.

February 25, 1997

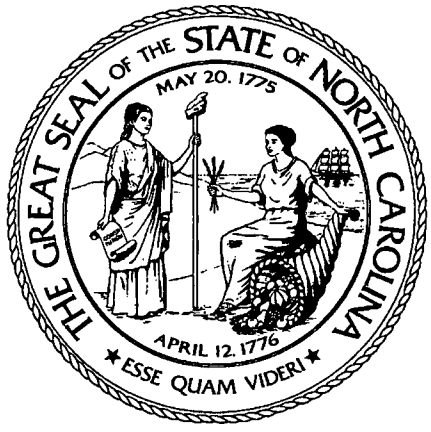
A BILL TO BE ENTITLED

AN ACT TO REPEAL THE LAW PROHIBITING HUNTING ON SUNDAY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 103-2 is repealed.

Section 2. This act is effective when it becomes law.



North Carolina Department of Commerce
Sports Development Office

Summary Statistics - Sunday Hunting

based on

"The Economic Impact
of Hunting
on the North Carolina Economy"

by
John E. Connaughton, Ph.D.
Professor of Economics
University of North Carolina at Charlotte

Presented to the Meeting of the Sports Commission
Pinehurst, North Carolina, March 13, 1997

Sports Development

MEMORANDUM

TO: Representative Jean Preston

FROM: Bill Dooley
Director of Sports Development

DATE: March 4, 1997

RE: **Economic Impact Study**

The North Carolina Sports Development Office with assistance from the N.C. Sports Commission hired Dr. John Connaughton to complete an Economic Impact Study on sports in our state.

Dr. Connaughton, professor of economics at The University of North Carolina at Charlotte, is an expert in the field of economics and has a strong background in the study of sports. He has completed economic impact studies for both the Charlotte Hornets and the Carolina Panthers.

The final report of our economic impact study will be presented at our upcoming Sports Commission meeting in Pinehurst on Thursday, March 13, 1997. This statewide economic impact study is a comprehensive study of all sports - professional, collegiate, amateur events and championships; including the motorsport industry and outdoor sports to name a few. This study will also be broken down by region and will include special events such as the BASSMASTERS, the 1997 US Women's Golf Championship and the upcoming 1999 Special Olympics World Summer Games.

This is our first statewide comprehensive study on the economic impact of sports and we look forward to its completion. Sports is a big business in our state. This economic impact study will be a tremendous tool for our office and for future planning.

cc: Angie Harris

North Carolina Department of Commerce, Sports Development Office,
301 N. Wilmington Street, Raleigh, North Carolina 27626
Phone: 919-715-3782 Fax: 919-733-8356

1/30/97

Conclusions on Sunday hunting

North Carolina hunting activity has a substantial economic impact on the North Carolina economy. The list of quantifiable benefits includes:

An estimated $389,820,125 of direct output was generated by North Carolina hunting activity during 1996.

This annual direct output has an estimated $748,021,846 total economic impact on the North Carolina economy.

North Carolina hunting activity generates 11,033 direct jobs in a variety of North Carolina industries.

North Carolina hunting activity accounts for an additional 625 jobs in supplier chain industries throughout the state.

North Carolina hunting activity accounts for an additional 5,223 induced jobs in various industries throughout the state.

Overall the economic activity associated with North Carolina hunting accounts for 16,881 jobs within the state.

With the repeal of G.S.103-2 Hunting on Sunday, North Carolina's economy can expect: a 15% increase from resident hunters and 25,000 more non-resident hunters x 4 trips each.

Resident hunters will contribute $105,962,214	$105,962,214
Non-resident hunters will contribute $73,934,681	+$73,934,681
	$179,896,895

Total worth to economy=$179,896,895
Total new jobs: 4,052
Total estimated tax revenue: $10,800,000

This information is based on the study done by John Connaughton: The Economic Impact of Hunting on the North Carolina Economy and information and data from other southeastern states that allow Sunday hunting. All this with no tax increase to anyone in North Carolina.

1/30/97

The effect on North Carolina's economy with the repeal of G.S. 103-2 Hunting on Sunday

Resident hunting licenses sold per million population

State	# sold	Pop.	License/mil. pop	% hunters/mil. pop.	
Alabama	221,829	4.0	55,500	.05	Mean Sunday states .09
Tennessee	798,190	4.8	166,000	.16	North Carolina .05
Georgia	713,737	6.5	109,805	.10	On the average Sunday
Mississippi	214,514	2.5	85,805	.08	states sell twice as many
Louisiana	423,000	4.2	100,714	.10	licenses as N.C.
South Carolina^	193,391	3.5	55,254	.05	
North Carolina*	361,408	6.6	54,758	.05	

Non-resident hunting licenses sold per million population

State	# sold	Pop.	License/mil. pop	% hunters/mil. pop.	
Alabama	32,368	4.0	8,092	.008	Mean Sunday .008
Tennessee	17,441	4.8	3,633	.003	North Carolina .001
Georgia	53,526	6.5	8,234	.008	On the average Sunday
Mississippi	35,912	2.5	14,364	.014	states sell 4 times more
Louisiana	10,714	4.2	2,550	.002	non-resident licenses
South Carolina^	52,640	3.5	15,040	.015	than N.C.
North Carolina*	10,277	6.6	1,557	.001	

With the repeal of G.S.103-2 Hunting on Sunday, North Carolina's economy can expect: a 15% increase from resident hunters and 25,000 more non-resident hunters x 4 trips each.

Resident hunters will contribute $105,962,214 — $105,962,214

Non-resident hunters will contribute $73,934,681 — +$73,934,681

$179,896,895

Total worth to economy:$179,896,895
Total tax revenue: $10,800,000
Additional jobs: 4,052

This information is based on the study done by John Connaughton: The Economic Impact of Hunting on the North Carolina Economy and information and data from other southeastern states that allow Sunday hunting. All this with no tax increase to anyone.

Populations from McNally Rand 1995
^ ½ hunts on Sunday
* No Sunday Hunting

Economic Impact on North Carolina of a Fifteen Percent Increase in North Carolina Residents Hunting

Dollar Impact				
SIC Code	Direct	Indirect	Induced	Total
5300	$12,985,326	$1,256,980	$13,370,990	$27,613,295
5500	$17,337,022	$1,246,532	$10,787,095	$29,370,649
5800	$14,674,780	$2,682,550	$15,003,495	$32,360,825
7000	$10,338,733	$2,722,188	$3,556,524	$16,617,445
Total	**$55,335,861**	**$7,908,250**	**$42,718,104**	**$105,962,214**
Employment Impact				
SIC Code	Direct	Indirect	Induced	Total
5300	494	16	229	738
5500	396	15	184	595
5800	545	26	257	822
7000	102	37	61	199
Total	**1,537**	**94**	**936**	**2,361**

Economic Impact on North Carolina of 25,000 Additional Non-Resident Hunters (Average 4 trips per year)

Dollar Impact

SIC Code	Direct	Indirect	Induced	Total(4 trips/hunter)
5300	$4,212,762	$407,795	$4,337,881	$35,833,752
5500	$1,090,165	$78,383	$678,301	$7,387,392
5800	$1,054,600	$192,781	$1,078,223	$9,302,420
7000	$2,432,186	$640,394	$836,672	$15,637,008
Gov.	$2,902,437	$0	$2,871,671	$5,774,109
Total	**$11,692,150**	**$1,319,354**	**$9,802,748**	**$73,934,681**

Employment Impact

SIC Code	Direct	Indirect	Induced	Total(4 trips/hunter)
5300	160	5	74	956
5500	25	1	12	148
5800	39	2	18	240
7000	24	9	14	188
Gov.	109	0	49	159
Total	**358**	**17**	**168**	**1691**

*Based on 1996 survey of NC residents out of state hunting expenditures.

2/17/97
W.T.S.

Direct First Year Advantages of: The Repeal of G.S. 103-2 as of projections.

1. North Carolina Wildlife Resources Commission gains an additional 3.5-4.0 million dollars in hunting license sales.

2. North Carolina General Fund gains an additional 10 million dollars in sales tax and gasoline tax.

3. Commerce:
    a. Travel and Tourism - all areas of the state.
    b. Economic Development - all areas of the state.
    c. Rural economic development with out changing our heritage.
    d. Jobs - 4,000 for local people.

4. North Carolina Agriculture and Forestry - economic gain by wildlife leases; this is done by:
    a. Leases to responsible groups - $
    b. Land improvements by sportsman groups: all expenses paid by sportsmen - $
    c. Non-game and educational groups - $
    d. This will change the public's image of forestry and agriculture if done correctly.
    e. In most other Southeastern states this is done in the private sector. These can be long term management programs with the use of private consultants. Agencies do not have the hands on personnel to do this type of work. Universities and agencies are only the research and education component.

5. This is a form of deregulation by state government.

6. Gives a landowner the right to open his land and a citizen the right of personal choice.

7. There are other laws that should follow:
    a. Hunting from a state maintained road. This is a public safety factor, <u>not</u> a wildlife law.

To: Representative Jean Preston 9/10/96

From: Bill Sullivan

The following groups contributed financially to the economic impact study through the Department of Commerce and the North Carolina Sports Development Commission (Bill Dooley director).

Warren J. Davis
Crow Hill Farms, Inc. And Fulcher Farm Quail Preserve
314 Joan Court
Beaufort, NC 28516
phone 919-728-2199
fax 919-728-3235

Ralph Garland - President
N.C. Taxidermist Assoc.
636 Gentry-Dunkley Road
Roxboro, NC 27573
phone 910-599-1181
fax 910-597-3817

Steve Evans - President
Appalachian Chapter of The Ruffed Grouse Society
117 Homestead Road
Candler, NC 28715
704-667-0958 (h)
704-251-6208

Ed Andrews, State Director
National Wild Turkey Federation
4226 Polar Point Road
Williamston, NC 27892
phone 919-792-5592

Don Manley, Regional Director
Ducks Unlimited
25 Scotts Place
Clinton, NC 28328
phone 910-592-3898
fax 910-590-3000

Tommy Millner, CEO
Art Wheaton, VP Corporate Affairs
Remington Arms Corp.
870 Remington Drive
P.O. Box 700
Madison, NC 27025
910-548-8576

TABLE I

History of Sunday Hunting Bans in the United States

	1996 Ban	First Ban	Repealed	Areas Included	Species Included
Alabama	NO	1803			
Alaska	NO				
Arizona	NO				
Arkansas	[redacted] NO	1855		Statewide	All
California	NO				
Colorado	NO				
✓Connecticut	YES	NA		Not private preserves	All
✓Delaware	YES	1750		Statewide	All
Florida	NO				
Georgia	NO				
Hawaii	NO				
Idaho	NO				
Illinois	[redacted] NO	1821		Statewide	All
Indiana	NO	1807			
Iowa	NO	1855			
Kansas	NO				
Kentucky	NO	1873	1972		
Louisiana	NO	NA			
✓Maine	YES	NA		Statewide	All
✓Maryland	YES	NA		Statewide	All
✓Massachusetts	YES	1635		Statewide	All
Michigan	YES/NO	NA		7 of 83 counties	All
Minnesota	NO	1849			
Mississippi	NO	1803			
Missouri	NO				
Montana	NO				
Nebraska	NO				
Nevada	NO				
New Hampshire	NO	1798			
✓New Jersey	YES	NA		Not private preserves	All
New Mexico	NO				
New York	NO	1874	1996		Deer
✓North Carolina.	YES	1868		Not military reservations	All
North Dakota	NO				
✓Ohio	YES	1805		Statewide	Not waterfowl, quail
Oklahoma	NO	1909	1989		Quail
Oregon	NO				
✓Pennsylvania	YES	NA		Statewide	All
Rhode Island	NO				
South Carolina	~~YES~~/NO	NA		[redacted] Public lands & 18 counties (west)	All
South Dakota	NO				
Tennessee	NO	1741			
Texas	NO				
Utah	NO				
Vermont	NO				
✓Virginia	YES	NA		Statewide	All
Washington	NO				
✓West Virginia	YES	NA		Statewide	All
Wisconsin	NO				
Wyoming	NO				

11 [redacted] Bans

SUNDAY HUNTING

DATA COMPILED BY

THE WILDLIFE LEGISLATIVE FUND OF AMERICA

INFORMATION PROVIDED BY STATE FISH AND WILDLIFE AGENCIES

☐ Permitted with no restrictions or with minimal restrictions.

☐ Sunday Hunting Prohibited *[Connecticut, Delaware, Maine, Maryland, North Carolina, West Virginia].*

*- Drastically limited species or methods permitted on Sunday. *[Massachusetts, New Jersey, Ohio, Pennsylvania and Virginia]*

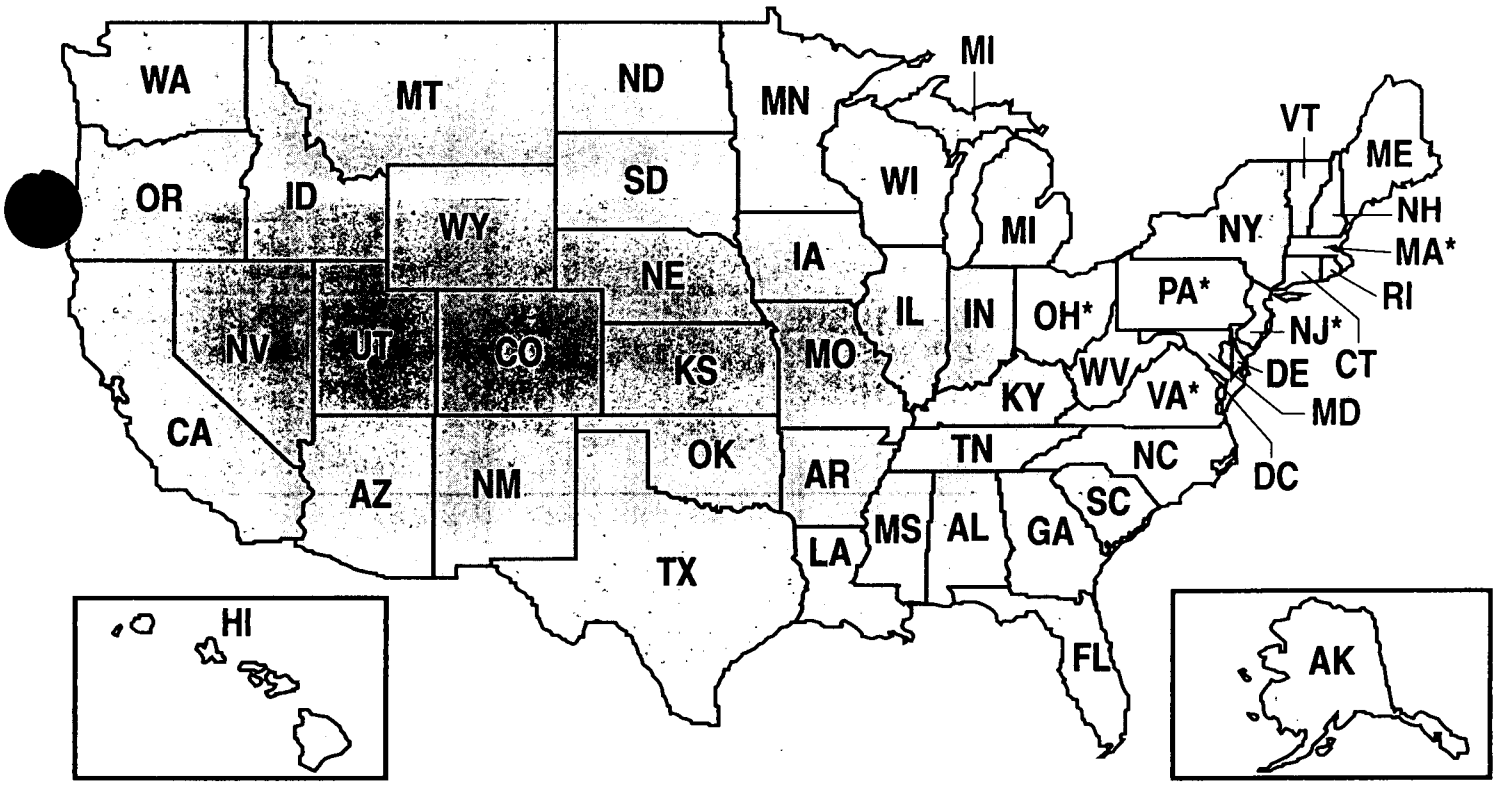
Three States Eyeing Law Changes in '97

Laws which prohibit hunting on Sunday still occur regionally in the United States, and date back to an era of "Blue Laws," which limited social, business and retail activities. Presently, Sunday hunting is prohibited or drastically restricted in 11 eastern states.

Legislation has been introduced in three states this year which would ease or eliminate the Sunday hunting ban in Ohio, Maine and Massachusetts.

The WLFA strongly supports Sunday hunting and has mounted a grassroots lobbying effort in Ohio and stands prepared to aid sportsmen's efforts in the remaining states.

"Most of the opposition to Sunday hunting today comes from landowners or agricultural interests," said WLFA President Richard Pierce. "However, we view the Sunday hunting prohibition as another government regulation we'd be better served without. A decision to hunt or not hunt on a particular day is a personal choice."



CT, DE, ME, MD, NC, WV: No Sunday hunting.
MA: Gamebirds on shooting preserve and falconry hunting only.
NJ: Gamebirds on shooting preserve only.
OH: Waterfowl, coyote, fox and groundhog hunting only and licensed shooting preserves.
PA: Crow, fox, coyote and regulated shooting preserve hunting only.
VA: Hunting only on licensed shooting preserve. Raccoon hunting until 2:00 a.m. Sunday morning.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 328
Proposed Committee Substitute H328-PCSRL-192-97d
THIS IS A DRAFT: LINE NUMBERS MAY CHANGE AFTER ADOPTION
4-MAR-97 10:00:56

Short Title: Stop Tobacco Sales to Minors. (Public)

Sponsors:

Referred to: Judiciary I.

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW PROHIBITING THE SALE OR PURCHASE OF TOBACCO PRODUCTS TO PERSONS LESS THAN EIGHTEEN YEARS OF AGE AND TO REQUIRE THAT CERTAIN PERSONS BE TRAINED REGARDING THESE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-313(a) reads as rewritten:

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

(1) Distribute. -- To sell, furnish, give, or provide tobacco products, including tobacco product samples, or cigarette wrapping papers to the ultimate consumer.

(2) Proof of age. -- A drivers license or other ~~documentary or written evidence~~ photographic identification that includes the bearer's date of birth that purports to establish that the person is 18 years of age or older.

(3) Sample. -- A tobacco product distributed to members of the general public at no cost for the purpose of promoting the product.

(4) Tobacco product. -- Any product that contains tobacco and is intended for human consumption."

Section 2. G.S. 14-313(b) reads as rewritten:

"(b) Sale or distribution to persons under the age of 18 years. -- If any person shall ~~knowingly~~ distribute, or ~~knowingly~~ aid, assist, or abet any other person in distributing tobacco products or cigarette wrapping papers to any person under the age of 18 years, or if any person shall ~~knowingly~~ purchase tobacco products or cigarette wrapping papers on behalf of a person, less than 18 years, the person shall be guilty ~~of a Class 2 misdemeanor;~~ on the occasion of the first offense, of an infraction punishable by a fine of one hundred dollars ($100.00). On the occasion of a second offense, such person shall be guilty of an infraction punishable by a fine of two hundred fifty dollars ($250.00). On the occasion of a third offense, such person shall be guilty of a Class 2 misdemeanor; provided, however, that it shall not be unlawful to distribute tobacco products or cigarette wrapping papers to an employee when required in the performance of the employee's duties. Retail distributors of tobacco products shall prominently display near the point of sale a sign in letters at least five-eighths of an inch high which states the following:

N.C. LAW STRICTLY PROHIBITS
THE PURCHASE OF TOBACCO PRODUCTS
BY PERSONS UNDER THE AGE OF 18.
PROOF OF AGE REQUIRED.

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

A person engaged in the sale of tobacco products shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age in the case of a retailer, or any other documentary or written evidence of age in the case of a nonretailer, shall be a defense to any action brought under this subsection. Retail distributors of tobacco products shall train their sales employees in the requirements of this law."

Section 3. G.S. 14-313(c) reads as rewritten:

"(c) Purchase by persons under the age of 18 years. -- If any person under the age of 18 years purchases or accepts receipt, or

attempts to purchase or accept receipt, of tobacco products or cigarette wrapping papers, ~~or presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product,~~ the person shall be guilty of ~~an infraction as provided in G.S. 14-3.1.~~ an infraction on the occasion of the first offense, punishable by a fine of one hundred dollars ($100.00). On the occasion of the second offense the person shall be guilty of an infraction punishable by a fine of two hundred fifty dollars ($250.00). On the occasion of a third offense the person shall be guilty of a Class 3 misdemeanor. If any person under the age of 18 years presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product or cigarette wrapping papers, the person shall be guilty of a Class 2 misdemeanor."

Section 4. G.S. 14-313(d) reads as rewritten:

"(d) Send or assist person less than 18 years to purchase or receive tobacco product. -- If any person shall ~~knowingly~~ send or assist a person less than 18 years of age to purchase, acquire, receive, or attempt to purchase, acquire, or receive tobacco products or cigarette wrapping papers, the person shall be guilty of a Class 2 misdemeanor; provided, however, persons under the age of 18 may be enlisted by police or local sheriffs' departments to test compliance if the testing is under the direct supervision of that law enforcement department and written parental consent is provided; provided further, that the Department of Human Resources shall have the authority, pursuant to a written plan prepared by the Secretary of Human Resources, to use persons under 18 years of age in annual, random, unannounced inspections, provided that prior written parental consent is given for the involvement of these persons and that the inspections are conducted for the sole purpose of preparing a scientifically and methodologically valid statistical study of the extent of success the State has achieved in reducing the availability of tobacco products to persons under the age of 18, and preparing any report to the extent required by section 1926 of the federal Public Health Service Act (42 USC § 300x-26)."

Section 5. G.S. 14-313 is amended by adding a new subsection to read:

"(b1) Vending machines. -- Tobacco products shall not be distributed in vending machines; provided, however, vending machines distributing tobacco products are permitted (i) in any establishment which is open only to persons 18 years of age and

older; or (ii) in any establishment if the vending machine is under the continuous control of the owner or licensee of the premises or an employee thereof and can be operated only upon activation by the owner, licensee or employee prior to each purchase and the vending machine is not accessible to the public when the establishment is closed. The owner, licensee or employee shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to any action brought under this subsection. Vending machines distributing tobacco products in establishments not meeting the above conditions shall be removed by July 31, 1997. Any person distributing tobacco products through vending machines in violation of this subsection shall be guilty of a Class 2 misdemeanor."

Section 6. G.S. 14-313 is amended by adding a new subsection to read:

"(b2) Out-of-package sales. -- If any person engaged in the sale of cigarettes shall sell cigarettes other than in unopened packages originating with the manufacturer, the person shall be guilty of a Class 2 misdemeanor."

Section 7. This act becomes effective August 1, 1997 and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 328

Short Title: Stop Tobacco Sales to Minors. (Public)

Sponsors: Representatives Arnold, Fitch; Brawley, Cansler, Dedmon, Goodwin, Moore, and Mosley.

Referred to: Judiciary I.

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE SALE OR PURCHASE OF TOBACCO PRODUCTS TO PERSONS LESS THAN EIGHTEEN YEARS OF AGE AND TO REQUIRE THAT CERTAIN PERSONS BE TRAINED REGARDING THESE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-313(a) reads as rewritten:

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

(1) Distribute. -- To sell, furnish, give, or provide tobacco products, including tobacco product samples, or cigarette wrapping papers to the ultimate consumer.

(2) Proof of age. -- A drivers license or other ~~documentary or written evidence~~ photographic identification that includes the bearer's date of birth that purports to establish that the person is 18 years of age or older.

(3) Sample. -- A tobacco product distributed to members of the general public at no cost for the purpose of promoting the product.

(4) Tobacco product. -- Any product that contains tobacco and is intended for human consumption."

Section 2. G.S. 14-313(b) reads as rewritten:

"(b) Sale or distribution to persons under the age of 18 years. -- If any person shall ~~knowingly~~ distribute, or ~~knowingly~~ aid, assist, or abet any other person in distributing tobacco products or cigarette wrapping papers to any person under the age of 18 years, or if any person shall ~~knowingly~~ purchase tobacco products or

cigarette wrapping papers on behalf of a person, less than 18 years, the person shall be guilty of a Class 2 misdemeanor; provided, however, that it shall not be unlawful to distribute tobacco products or cigarette wrapping papers to an employee when required in the performance of the employee's duties. Retail distributors of tobacco products shall prominently display near the point of sale a sign in letters at least five-eights of an inch high which states the following:

N.C. LAW STRICTLY PROHIBITS
THE PURCHASE OF TOBACCO PRODUCTS
BY PERSONS UNDER THE AGE OF 18.
PROOF OF AGE REQUIRED.

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

A person engaged in the sale of tobacco products shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age in the case of a retailer, or any other documentary or written evidence of age in the case of a nonretailer, shall be a defense to any action brought under this subsection. Retail distributors of tobacco products shall train their sales employees in the requirements of this law."

Section 3. G.S. 14-313(c) reads as rewritten:

"(c) Purchase by persons under the age of 18 years. -- If any person under the age of 18 years purchases or accepts receipt, or attempts to purchase or accept receipt, of tobacco products or cigarette wrapping papers, ~~or presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product,~~ the person shall be guilty of ~~an infraction as provided in G.S. 14-3.1.~~ a Class 3 misdemeanor. If any person presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product, the person shall be guilty of a Class 2 misdemeanor."

Section 4. G.S. 14-313(d) reads as rewritten:

"(d) Send or assist person less than 18 years to purchase or receive tobacco product. -- If any person shall ~~knowingly~~ send or assist a person less than 18 years of age to purchase, acquire, receive, or attempt to purchase, acquire, or receive tobacco products or cigarette wrapping papers, the person shall be guilty of a Class 2 misdemeanor; provided, however, persons under the age of 18 may be enlisted by police or local sheriffs' departments to test compliance if the testing is under the direct supervision of that law enforcement department and written parental consent is provided; provided further, that the Department of Human Resources shall have the authority, pursuant to a written plan prepared by the Secretary of Human Resources, to use persons under 18 years of age in annual, random, unannounced inspections, provided that prior written parental consent is given for the involvement of these

persons and that the inspections are conducted for the sole purpose of preparing a scientifically and methodologically valid statistical study of the extent of success the State has achieved in reducing the availability of tobacco products to persons under the age of 18, and preparing any report to the extent required by section 1926 of the federal Public Health Service Act (42 USC § 300x-26)."

Section 5. G.S. 14-313 is amended by adding a new subsection to read:

"(b1) Vending machines. -- Tobacco products shall not be distributed in vending machines; provided, however, vending machines distributing tobacco products are permitted (i) in any establishment which is open only to persons 18 years of age and older; or (ii) in any establishment if the vending machine is under the continuous control of the owner or licensee of the premises or an employee thereof and can be operated only upon activation by the owner, licensee or employee prior to each purchase and the vending machine is not accessible to the public when the establishment is closed. The owner, licensee or employee shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to any action brought under this subsection. Vending machines distributing tobacco products in establishments not meeting the above conditions shall be removed by August 28, 1997. Any person distributing tobacco products through vending machines after August 28, 1997, in violation of this subsection shall be guilty of a Class 2 misdemeanor."

Section 6. G.S. 14-313 is amended by adding a new subsection to read:

"(b2) Out-of-package sales. -- If any person engaged in the sale of cigarettes shall sell cigarettes other than in unopened packages originating with the manufacturer, the person shall be guilty of a Class 2 misdemeanor."

Section 7. Section 1 of this act becomes effective February 28, 1997, and applies to offenses committed on or after that date. Section 5 is effective when this act becomes law. The remaining sections become effective December 1, 1997.

COMPARATIVE PENALTIES FOR TOBACCO SALES TO MINORS

	Present N.C. Law	Senate Bill	House Bill	FDA Regs	Alcoholic Beverages
Purchaser	Infraction - Fine up to $100.00 for purchase or attempt to purchase.	Infraction - Fine up to $100.00 unless fraudulent ID is used. Class 2 misdemeanor if fraudulent ID is used, punishable by community service up to 30 days and/or fine up to $1,000.00 for the first offense - Repeated offenses, punishable by imprisonment up to 60 days.	Class 3 misdemeanor - Punishable by community service up to 10 days and/or fine up to $200.00 for the first offense - Repeated offenses, punishable by imprisonment up to 20 days.	None - FDA has said state and local governments should address the issue.	Under 18 - Class 1 misdemeanor, up to 45 days community service. 19-20, $25.00 infraction. Fraudulent ID - Class 1 misdemeanor and lose license for 1 year.
Aide/Abettor	Class 2 misdemeanor - Punishable by community service up to 30 days and/or fine up to $1,000.00 for the first offense - Repeated offenses, punishable by imprisonment up to 60 days.	Class 2 misdemeanor - Punishable by community service up to 30 days and/or fine up to $1,000.00 for the first offense - Repeated offenses, punishable by imprisonment up to 60 days.	Class 2 misdemeanor - Punishable by community service up to 30 days and/or fine up to $1,000.00 for the first offense - Repeated offenses, punishable by imprisonment up to 60 days.	None - FDA has said state and local governments should address the issue.	Class 1 and Class 2 misdemeanor.
Clerk	Class 2 misdemeanor - Punishable by community service up to 30 days and/or fine up to $1,000.00 for the first offense - Repeated offenses, punishable by imprisonment up to 60 days.	Class 2 misdemeanor - Punishable by community service up to 30 days and/or fine up to $1,000.00 for the first offense - Repeated offenses, punishable by imprisonment up to 60 days.	Class 2 misdemeanor - Punishable by community service up to 30 days and/or fine up to $1,000.00 for the first offense - Repeated offenses, punishable by imprisonment up to 60 days.	None - FDA has said state and local governments should address the issue.	Class 1 misdemeanor.
Retailer	None	Not known	None	1st: Warning 2nd: $250.00 3rd: Undecided by FDA	None

PENALTY COMPARISONS

CIGARETTES	BEER	MARIJUANA
HB 328 Minor Attempting to Buy Cigarettes	18 Year Old Buying Beer	18 Year Old Possessing One-Half Ounce or Less of Marijuana
CLASS III MISDEMEANOR	CLASS I MISDEMEANOR	CLASS III MISDEMEANOR (No active time possible)

North Carolina General Assembly
Legislative Services Office

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March 4, 1997

MEMORANDUM

TO: House Judiciary I Committee

FROM: Steven Rose, Committee Counsel

RE: House Bill 328; Prohibit Tobacco Sales to Minors – Proposed Committee Substitute

The proposed committee substitute for House Bill 328 amends G.S. 14-313 which prohibits sale or distribution of tobacco products to minors. The amendments will require photographic proof of age; remove the requirement that a person knowingly sell to the minor in order to be found guilty; raise penalties for violation; restrict vending machine sales; and prohibit out-of-package cigarette sales.

Section 1 amends G.S. 14-313(a). It changes the definition of "proof of age" so that proof of age may only be a drivers license or other photographic identification that includes the bearer's date of birth. The present definition allows a drivers license or other documentary or written evidence.

Section 2 amends G.S. 14-313(b). This is the subsection that specifically prohibits distribution of tobacco products to persons under 18 years of age. Under present law, a person can only be guilty of violating this subsection if they act "knowingly." The amendments remove the requirement that the person act "knowingly." Further, retail distributors will be required to display a sign stating that North Carolina law prohibits purchase of tobacco products by persons under 18. Failure to post a sign is an infraction punishable by a $25 fine for the first offense and a $75 fine for each succeeding offense. A nonretailer may still rely on documentary or other written evidence (without a photo) of age. Retail distributors of tobacco products must train their sales employees in the requirements of the law. The penalty for selling to a minor changes from a Class 2

misdemeanor to an infraction for the first two violations. A first offense is punishable by a one hundred dollar fine ($100.00), a second offense by a $250.00 fine. A third offense is a Class 2 misdemeanor.

Section 3 amends G.S. 14-313(c). This subsection prohibits minors from purchasing tobacco products. The amendments change the penalties. Under the present law, if a minor purchases or accepts receipt of tobacco products or uses false identification to purchase tobacco products, the person is guilty of an infraction with a maximum fine of $100. The amendments retain the $100.00 fine for the first offense. A second offense is an infraction punishable by a $250.00 fine. A third offense is a Class 3 misdemeanor. Using false identification becomes a Class 2 misdemeanor.

Section 4 amends G.S. 14-313(d) which prohibits knowingly sending or assisting a minor to purchase or receive tobacco products. The amendment removes the term "knowingly."

Section 5 of the bill adds a new subsection (b1) to G.S. 14-313. The new subsection regulates vending machines by prohibiting distribution of tobacco products in vending machines except under specific circumstances. Vending machines may be used in establishments open only to persons 18 years of age and older, or in establishments where the machine is under the continuous control of the owner or licensee of the premises, or an employee, the machine is activated by the owner, licensee, or employee prior to each purchase, and the machine is not accessible to the public when the establishment is closed. The person in control of the vending machine must demand proof of age if he has reasonable grounds to believe that the prospective purchaser is under 18 years of age, and failure to demand proof of age is a Class 2 misdemeanor. It is a defense to prosecution that the person in control of the vending machine demanded, was shown, and reasonably relied upon proof of age. Vending machines distributing tobacco products and not meeting the new requirements must be removed by July 31, 1997. Distribution of tobacco products in violation of this subsection, after the removal date, is a Class 2 misdemeanor.

Section 6 amends G.S. 14-313 by adding a new subsection (b2). The new subsection prohibits sale of cigarettes other than in unopened packages originating with the manufacturer. A violation is a Class 2 misdemeanor.

The act is effective August 1, 1997 and applies to offenses committed on or after that date

An incarceration fiscal note is required.

NORTH CAROLINA TRI-AGENCY COUNCIL

AMERICAN CANCER SOCIETY®
The "People" Organization
P.O. Box 27624
Raleigh, NC 27611

American Heart Association®
P.O. Box 2636
Chapel Hill, NC 27515

AMERICAN LUNG ASSOCIATION®
The Christmas Seal People®
P.O. Box 27985
Raleigh, NC 27611

HB 328
STOP TOBACCO SALES TO MINORS
Sponsors: Representatives Arnold and Fitch

The American Cancer Society, American Lung Association and American Heart Association applaud the efforts of the General Assembly to strengthen North Carolina's laws restricting youth access to tobacco products. No one wants children purchasing and using tobacco products.

STRENGTHS OF HB 328

- Removes the term "knowingly" from the current law
- Requires photo identification from the purchaser
- Requires merchants to display signage with age requirement
- Requires merchant education
- Restricts vending machine sales
- Prohibits out-of-package sales of single cigarettes

WEAKNESS OF HB 328

- A minor found guilty of *attempting* to purchase tobacco products will now have a criminal record

Penalties for children attempting to buy tobacco products are most effective when proportionate to the violation. Current law appropriately sets the penalty as an infraction. Creating a criminal record for minors attempting to buy tobacco products could have the reverse effect, and undermine enforcement.

THE TRI-AGENCY COUNCIL SUPPORTS THE EFFORT TO CREATE SIGNIFICANT CHANGE IN NORTH CAROLINA'S EXISTING YOUTH ACCESS LAW. WHILE WE ACKNOWLEDGE THAT CHILDREN SHOULD BE HELD RESPONSIBLE FOR USING FRAUDULENT IDENTIFICATION, MAKING AN *ATTEMPT TO PURCHASE* A MISDEMEANOR WITH A CRIMINAL RECORD IS INAPPROPRIATE. WE ENCOURAGE YOUR SUPPORT WITH THE MINOR CHANGE IN LANGUAGE AS IT RELATES TO CRIMINAL CHARGES VS. AN INFRACTION FOR THE CHILDREN OF OUR STATE.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

Rose →

March 12

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

XCommittee Substitute for
S.B. 3 A BILL TO BE ENTITLED AN ACT TO PROVIDE A ONE-YEAR WAITING PERIOD BEFORE FORMER LEGISLATORS AND FORMER MEMBERS OF THE COUNCIL OF STATE MAY BECOME LOBBYISTS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

x With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 3
Judiciary Committee Substitute Adopted 2/19/97
Third Edition Engrossed 2/24/97

Short Title: Lobbyist Waiting Period. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A ONE-YEAR WAITING PERIOD BEFORE FORMER LEGISLATORS AND FORMER MEMBERS OF THE COUNCIL OF STATE MAY BECOME LOBBYISTS.

The General Assembly of North Carolina enacts:

Section 1. Article 9A of Chapter 120 of the General Statutes is amended by adding a new section to read:

"**§ 120-47.5A. Waiting period before certain former State officials may lobby.**

Notwithstanding the provisions of G.S. 120-47.8, no individual who has served as a member of the General Assembly or the Council of State may act as a lobbyist as defined in this Article within one year after the expiration of the term for which the individual was elected or appointed to serve in that position."

Section 2. G.S. 120-47.2(b) reads as rewritten:

"(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, and complete address; the registrant's place of business; the full name and complete address of each person by whom the registrant is employed or retained; an indication of whether the registrant has served as a member of the General Assembly or the Council of State, and the period served; and a general description of the matters on which the registrant expects to act as a lobbyist."

Section 3. This act is effective when it becomes law and applies to individuals who serve terms beginning on or after January 1, 1997.

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Legislative Services Office

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March 3, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel

RE: **Senate Bill 3 - Lobbyist Waiting Period.**

Senate Bill 3 prohibits a former legislator or former member of the Council of State from being paid to be a lobbyist before the General Assembly for a period of one year after the end of the term to which the legislator or other state official was elected or appointed, regardless of whether that person ever serves that term.

The term "lobbyist" is defined in G.S. 120-47.1(6) (copy attached) as a person hired or compensated to influence or attempt to influence legislative action or soliciting others to influence legislative action. The term "lobbyist" does not include a person exempt from the lobbying statute in G.S. 120-47.8 (copy attached), which exempts a person who expresses personal opinions on legislation, an elected or appointed official or employee of the State, United States, or local government when acting in connection with their official duties, or a person who gives facts or recommendations to the person's own legislative delegation (whether hired or not). However, the Governor, Council of State members and all heads of agencies must file a list of designated legislative liaisons and expense reports with the Secretary of State.

At least eight other states restrict former legislators from lobbying for some period of time. South Carolina, California, Pennsylvania, Hawaii, and Rhode Island prohibit lobbying for one year. New York, Louisiana and Florida prohibit lobbying for two years.

Section 2 of the bill makes a conforming change to the lobbyist registration form prescribed by the Secretary of State to include information about whether the lobbyist was a former legislator or member of the Council of State, and if so, when the person served.

The bill becomes effective when it becomes law and applies to persons who serve terms beginning on or after January 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§ 120-47.1. Definitions.

For the purposes of this Article, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(1) The terms "contribution," "compensation" and "expenditure" mean any advance, conveyance, deposit, payment, gift, retainer, fee, salary, honorarium, reimbursement, loan, pledge or anything of value and any contract, agreement, promise or other obligation whether or not legally enforceable, but those terms do not include prizes, awards, or compensation not exceeding one hundred dollars ($100.00) in a calendar year.

(2), (3) Repealed by Session Laws 1991, c. 740, s. 1.1, effective January 1, 1992.

(4) The term "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the legislature or by a member or employee of the legislature acting or purporting to act in an official capacity.

(5) The term "lobbying" means:

a. Influencing or attempting to influence legislative action through direct oral or written communication with a member of the General Assembly; or

b. Solicitation of others by lobbyists to influence legislative action.

(6) The term "lobbyist" means an individual who:

a. Is employed and receives compensation, or who contracts for economic consideration, for the purpose of lobbying; or

b. Represents another person and receives compensation for the purpose of lobbying.

The term "lobbyist" shall not include those individuals who are specifically exempted from this Article by G.S. 120-47.8. For the purpose of determining whether an individual is a lobbyist under this subdivision, reimbursement of actual travel and subsistence expenses shall not be considered compensation; provided, however, that reimbursement in the ordinary course of business of these expenses shall be considered compensation if a significant part of the individual's duties involve lobbying before the General Assembly.

(7) The terms "lobbyist's principal" and "principal" mean the entity in whose behalf the lobbyist influences or attempts to influence legislative action.

(8) The term "person" means any individual, firm, partnership, committee, association, corporation, or any other organization or group of persons.

(9) The General Assembly is in "regular session" from the date set by law or resolution that the General Assembly convenes until the General Assembly either:

a. Adjourns sine die; or

b. Recesses or adjourns for more than 10 days.

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§ 120-47.8. Persons exempted from provisions of Article.

The provisions of this Article shall not be construed to apply to any of the following:

(1) An individual, not acting as a lobbyist, solely engaged in expressing a personal opinion on legislative matters to his own legislative delegation or other members of the General Assembly.

(2) A person appearing before a legislative committee at the invitation or request of the committee or a member thereof and who engages in no further activities as a lobbyist in connection with that or any other legislative matter.

(3) a. A duly elected or appointed official or employee of the State, the United States, a county, municipality, school district or other governmental agency, when appearing solely in connection with matters pertaining to his office and public duties.

b. Notwithstanding the persons exempted in this Article, the Governor, Council of State, and all appointed heads of State departments, agencies and institutions, shall designate all authorized official legislative liaison personnel and shall file and maintain current lists of designated legislative liaison personnel with the Secretary of State and shall likewise file with the Secretary of State a full and accurate accounting of all money expended on lobbying, other than the salaries of regular full-time employees, at the same times lobbyists are required to file expense reports under G.S. 120-47.6.

(4) A person performing professional services in drafting bills or in advising and rendering opinions to clients, or to legislators on behalf of clients, as to the construction and effect of proposed or pending legislation where the professional services are not otherwise, directly or indirectly, connected with legislative action.

(5) A person who owns, publishes or is employed by any news medium while engaged in the acquisition or dissemination of news on behalf of the news medium.

(6) Repealed by Session Laws 1991, c. 740, s. 1.1, effective January 1, 1992.

(7) Members of the General Assembly.

(8) A person responding to inquiries from a member of the General Assembly or a legislative employee, and who engages in no further activities as a lobbyist in connection with that or any other legislative matter.

(9) An individual giving facts or recommendations pertaining to legislative matters to his own legislative delegation only.

(1933, c. 11, s. 7; 1975, c. 820, s. 1; 1977, c. 697; 1991, c. 740, s. 1.1; 1993, c. 553, s. 3.)

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VISITOR REGISTRATION SHEET

Judiciary I
3/4/97

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
1. Cam Cover	NCACS
2. Jane O. Gray	DOJ
3. REGINALD R. HOLLEY	DOA - YOUTH ADVOCACY
4. Paula Edgerton	"
5. BILL BROOKS	NCFPC
6. Joe McClain	SmokeLess Tobacco Inst.
7. Hank Johnson	Philip Morris
8. Ron Akins	Good Neighbors Assoc
9. Michael Onieffrey	UNCCPTV
10. PAULA A. WOLF	Covenant with NC's Children
11. Lisa P. Greene	ACS
22. Amy Jo Bain	Smith Anderson
23. Dale McNeil	SCENIC NC
24. Ty Stein	DMH/DD/SAS
25. Susan Crocker	DMH/DD/SAS
26. Charlotte Barbee	CAPA
27. Roger Bone	Tobacco Institute
28. Albert Williams	Governor
29. Ann Christian	Duty
30. Nancy Nemeth	Poyner & Spruill
31. Binda Rao	Common Sense Foundation

32.	John Bowdish	Zeb Alley P.A.
33.	Richard	NCATA
34.	Jill Nixon	NCATA
35.	Brenda Coleman	DOR
36.	Nancy Bradley	NCCBI
37.	Gene Ammons	RJR
38.	Zeb Alley	RJR
39.		
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North Carolina House of Representatives

JUDICIARY I COMMITTEE

I these minutes are not in computer

March 6, 1997
10:00 a.m.
1327 Legislative Bldg.

N. Leo Daughtry and Edwin M. "Sandy" Hardy, Chairmen

Members Present

Martha B. Alexander
Jerry Braswell
Debbie Clary
Milton F. Fitch , Jr.
Bobby Ray Hall
George M. Holmes
John W. Hurley
Larry T. Justus
Wilma M. Sherrill
Gene G. Arnold
J. Russell Capps
Theresa H. Esposito
Lyons Gray
Thomas C. Hardaway
Robert C. Hunter
Margaret M. Jeffus
H. M. Michaux, Jr.

The House Committee on JUDICIARY I met at 10:00 a.m. on Thursday, March 6, 1997 in Room 1327 of the Legislative Building with Chairmen N. Leo Daughtry and E.M. "Sandy" Hardy presiding.

Committee Counsel Steven Rose and Karen Cochrane-Brown were present to assist the Committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

Without objection, on a motion by Representative Capps, the Committee agreed to accept, for the purpose of discussion, a Proposed Committee Substitute to House Bill 198 SUPERVISION OF PRISONERS. Chairman Daughtry recognized the measure's original sponsor Representative Sexton.

Committee Counsel Karen Cochrane-Brown had prepared a memorandum explaining the Proposed Committee Substitute for H.B. 198, a copy of which is attached and made a part of the minutes.

Without objection, on a motion by Representative Sherrill, the Committee reported House Bill 198 with a favorable report as to the committee substitute bill, unfavorable to as to the original bill.

The Chairman recognized Representative Alexander for the purpose of explaining

House Bill 309 CHARLOTTE ON-STREET PARKING.

Without objection, on a motion made by Representative Capps, the Committee accepted a technical amendment substituting the word "Article 1" with the word "Article 2," in line 5 of the bill.

Committee Counsel Steven Rose had prepared a memorandum explaining the Proposed Committee Substitute for H.B. 198, a copy of which is attached and made a part of the minutes.

The Chairman recognized Randy Jones, of the City of Charlotte, for the purpose of speaking favorably regarding the bill.

Without objection, on a motion by Representative Michaux, the Committee reported House Bill 309 with a favorable report, as amended.

The Chairman recognized Representative Hunter for the purpose of explaining House Bill 191, CERT. COPIES/CUSTODY & WILLS.

Committee Counsel Karen Cochrane-Brown had prepared a memorandum explaining the Proposed Committee Substitute for H.B. 191, a copy of which is attached and made a part of the minutes.

The Chairman recognized John Kennedy, Clerk of Superior Court of Wake County, for the purpose of speaking favorable regarding the bill.

Without objection, the committee agreed to report H.B. 191 with a favorable report.

The Chairman further recognized Representative Hunter for the purpose of explaining H.B. 192, COURTS COMMISSION MEMBERSHIP.

Committee Counsel Karen Cochrane-Brown had prepared a memorandum explaining the Proposed Committee Substitute for H.B. 192, a copy of which is attached and made a part of the minutes.

On a motion by Representative Justus, and without objection, the committee agreed to report H.B. 192 with a favorable report.

The Committee adjourned at 10:30 a.m.

_____ Joel Raupe, committee clerk

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

ATTACHMENTS:

HOUSE COMMITTEE ON JUDICIARY I

Tuesday, March 6, 1997
Room 1327 LB
10:00 a.m.

OPENING REMARKS:
Representative N. Leo Daughtry, Chairman
Judiciary I Committee

BILLS TO BE CONSIDERED:

H.B. 191 Cert. Copies / Custody & Wills
and
H.B. 192 Courts Commission Membership
Sponsor: Representative R. Hunter

H. B. 198 Supervision of Prisoners
Sponsor: Representative Sexton

H.B. 309 Charlotte On-Street Parking
Sponsor: Representative Alexander

H.B. 321 Allow Hunting on Sunday
Sponsor: Representative Preston

ADJOURNMENT

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I** .

☐ Committee Substitute for
H.B. 198 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE A COUNTY TO ARRANGE FOR THE SUPERVISION OF WORKING PRISONERS BY EMPLOYEES OF ANOTHER UNIT OF STATE OR LOCAL GOVERNMENT.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

X With a favorable report as to committee substitute bill, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 198
Proposed Committee Substitute
H198-CSRO-001
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Supervision of Prisoners. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A COUNTY TO ARRANGE FOR THE SUPERVISION OF WORKING PRISONERS BY EMPLOYEES OF ANOTHER UNIT OF STATE OR LOCAL GOVERNMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 162-58 reads as rewritten:

"§ 162-58. Counties may work prisoners.

The board of commissioners of the several counties may enact by resolution all necessary rules and regulations for work on projects to benefit units of State or local government by persons convicted of crimes and imprisoned in the local confinement facilities or satellite jail/work release units of their respective counties. The sheriff shall approve rules and regulations enacted by the board. Prisoners working under this section shall be supervised by county employees or by the sheriff. The board of county commissioners may also contract with units of State or local government to allow State or local government employees to supervise county prisoners. The contract shall set forth the terms and conditions under which employees of units of State and local government will supervise county

prisoners. The rules enacted by the board of county commissioners and approved by the sheriff shall specify a procedure for ensuring that county employees or employees of another unit of State or local government supervising prisoners pursuant to this section be provided with notice that the persons placed under their supervision are inmates from a local confinement facility or a satellite jail/work release unit."

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 198

Short Title: Supervision of Prisoners. (Public)

Sponsors: Representatives Sexton, Reynolds, Allred; Capps, Culp, Hall, Moore, and Watson.

Referred to: Judiciary I.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A COUNTY TO ARRANGE FOR THE SUPERVISION OF WORKING PRISONERS BY EMPLOYEES OF ANOTHER UNIT OF STATE OR LOCAL GOVERNMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 162-58 reads as rewritten:

"**§ 162-58. Counties may work prisoners.**

The board of commissioners of the several counties may enact by resolution all necessary rules and regulations for work on projects to benefit units of State or local government by persons convicted of crimes and imprisoned in the local confinement facilities or satellite jail/work release units of their respective counties. The sheriff shall approve rules and regulations enacted by the board. Prisoners working under this section shall be supervised by county ~~employees~~ employees, employees of another unit of State or local government, or by the sheriff. The rules enacted by the board of county commissioners and approved by the sheriff shall specify a procedure for ensuring that county employees or employees of another unit of State or local government supervising prisoners pursuant to this section be provided with notice that the persons placed under their supervision are inmates from a local confinement facility or a satellite jail/work release unit."

Section 2. This act is effective when it becomes law.

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March 5, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **House Bill 198 - Supervision of Prisoners.**
(Proposed Committee Substitute)

The Proposed Committee Substitute for House Bill 198 amends G.S. 162-58 to authorize a county to contract with a unit of State or local government to allow State or local government employees to supervise county prisoners. The contract will set forth the terms and conditions of such supervision.

Under current law, the counties may enact rules to employ county prisoners for work on projects to benefit units of State or local government. The rules must be approved by the sheriff and must specify a procedure to notify county employees that the persons placed under their supervision are inmates of a local confinement facility or satellite jail/work release unit. The law also provides that no prisoner may work pursuant to this section unless the prisoner has been approved by the person having custody of the prisoner, which is either the sheriff or the jail administrator. Furthermore, the county is liable for the negligent acts of these prisoners to the same extent it is for its employees.

Currently, only county employees or the sheriff may supervise prisoners under this section. This bill would authorize the county to enter a contractual arrangement to allow State or local government employees to supervise prisoners under whatever terms the parties deemed appropriate.

This act would become effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on JUDICIARY I .

☐ Committee Substitute for
H.B. 309 A BILL TO BE ENTITLED AN ACT TO ALLOW THE CITY OF CHARLOTTE TO ISSUE TICKETS FOR OVERTIME PARKING ON CITY STREETS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

X With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 309

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

H309-ARL-001

Date March 6 ,1997

Comm. Sub. []
Amends Title []

Representative Capps

moves to amend the bill on page 1, line 5,
by deleting the phrase "Article 1" and substituting the phrase
"Article II".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED V FAILED _____ TABLED _____

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March 6, 1997

MEMORANDUM

TO: House Judiciary I Committee

FROM: Steven Rose, Committee Counsel

RE: House Bill 309; Amend Charlotte City Charter regarding overtime parking

House Bill 309 amends the City Charter of Charlotte to give the City Council authority to adopt ordinances providing that each hour a vehicle remains illegally parked on the street is a separate offense, and allowing a ticket to be given for each offense. The act is effective when it becomes law.

G.S. 160A-301 gives cities the authority to regulate parking on the public streets. It does not specifically address multiple successive violations.

The bill received a favorable report in the House Local and Regional Government Committee.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§ 160A-301. Parking.

(a) On-Street Parking. — A city may by ordinance regulate, restrict, and prohibit the parking of vehicles on the public streets, alleys, and bridges within the city. When parking is permitted for a specified period of time at a particular location, a city may install a parking meter at that location and require any person parking a vehicle therein to place the meter in operation for the entire time that the vehicle remains in that location, up to the maximum time allowed for parking there. Parking meters may be activated by coins or tokens. Proceeds from the use of parking meters on public streets must be used to defray the cost of enforcing and administering traffic and parking ordinances and regulations.

(b) Off-Street Parking. — A city may by ordinance regulate the use of lots, garages, or other facilities owned or leased by the city and designated for use by the public as parking facilities. The city may impose fees and charges for the use of these facilities, and may provide for the collection of these fees and charges through parking meters, attendants, automatic gates, or any other feasible means. The city may make it unlawful to park any vehicle in an off-street parking facility without paying the established fee or charge and may ordain other regulations pertaining to the use of such facilities.

Revenues realized from off-street parking facilities may be pledged to amortize bonds issued to finance such facilities, or used for any other public purpose.

(c) Nothing contained in Public Laws 1921, Chapter 2, Section 29, or Public Laws 1937, Chapter 407, Section 61, shall be construed to affect the validity of a parking meter ordinance or the revenues realized therefrom.

(d) The governing body of any city may, by ordinance, regulate the stopping, standing, or parking of vehicles in specified areas of any parking areas or driveways of a hospital, shopping center, apartment house, condominium complex, or commercial office complex, or any other privately owned public vehicular area, or prohibit such stopping, standing, or parking during any specified hours, provided the owner or person in general charge of the operation and control of that area requests in writing that such an ordinance be adopted. The owner of a vehicle parked in violation of an ordinance adopted pursuant to this subsection shall be deemed to have appointed any appropriate law-enforcement officer as his agent for the purpose of arranging for the transportation and safe storage of such vehicle. (1917, c. 136, subch. 5, s. 1; 1919, cc. 136, 237; C.S., s. 2787; 1941, c. 153, ss. 1, 2; c. 272; 1947, c. 7; 1953, c. 171; 1965, c. 945; 1971, c. 698, s. 1; 1973, c. 426, s. 48; 1979, c. 745, s. 2.)

Local Modification. — City of Fayetteville: 1991 (Reg. Sess., 1992), c. 952.

CASE NOTES

Editor's Note. — Most of the cases cited below were decided under former § 160-200(31).

A municipality may require a motorist who parks his vehicle in a parking meter zone to set the meter in operation by depositing a coin, provided that the deposit of the coin is the method selected by its governing body in the exercise of its discretion for the purpose of regulating parking in the interest of the public convenience and not as a revenue raising measure. State v. Scoggin, 236 N.C. 1, 72 S.E.2d 97 (1952).

The deposit of a coin by a motorist at the time of parking, to activate the parking meter, is not a fee, charge or toll for using the parking space, but is simply the method adopted by the governing authorities of the city for putting the meter in operation, and the revenue derived therefrom is expressly set apart and dedicated to a particular use by the legislature. Britt v. City of Wilmington, 236 N.C. 446, 73 S.E.2d 289 (1952).

But Revenue Derived Therefrom Is in the Nature of a Tax. — The revenue derived from on-street parking facilities is exacted in the performance of a governmental function, and must be set apart and used for a specific purpose. By

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I** .

☐ Committee Substitute for
H.B. 191 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE FILING AND REGISTRY OF CERTIFIED COPIES OF OUT-OF-STATE CUSTODY DECREES AND FOR THE VALIDATION OF CERTIFIED COPIES OF WILLS RECORDED WITHOUT PROBATE.

X With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 191*

Short Title: Cert. Copies/Custody & Wills. (Public)

Sponsors: Representatives R. Hunter, Culpepper, Hensley, McCrary, and Neely.

Referred to: Judiciary I.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE FILING AND REGISTRY OF CERTIFIED COPIES OF OUT-OF-STATE CUSTODY DECREES AND FOR THE VALIDATION OF CERTIFIED COPIES OF WILLS RECORDED WITHOUT PROBATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50A-15 reads as rewritten:

"**§ 50A-15. Filing and enforcement of custody decree of another state.**

(a) An exemplified copy or a certified true copy of a custody decree of another state may be filed in the office of the clerk of any superior court of this State. The clerk shall treat the decree in the same manner as a custody decree of a court of this State. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this State.

(b) A person violating a custody decree of another state which makes it necessary to enforce the decree in this State may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or such party's witnesses."

Section 2. G.S. 50A-16 reads as rewritten:

"**§ 50A-16. Registry of out-of-state custody decrees and proceedings.**

The clerk of each superior court shall maintain a registry in which ~~he~~ the clerk shall enter the following:

(1) Exemplified and certified true copies of custody decrees of other states received for filing;

(2) Communications as to the pendency of custody proceedings in other states;
(3) Communications concerning a finding of inconvenient forum by a court of another state; and
(4) Other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this State or the disposition to be made by it in a custody proceeding."

Section 3. G.S. 31-30 reads as rewritten:

"**§ 31-30. Validation of wills recorded without probate by subscribing witnesses.**

In all cases where wills and testaments were executed prior to the first day of January, 1875, and which appear as recorded in the record of last wills and testaments to have had two or more witnesses thereto, and such last wills and testaments were admitted to probate and recorded in the record of wills in the proper county in this State prior to the first day of January, 1888, without having been duly proven as provided by law, and such wills were presented to the clerk of the superior court in any county in this State where the makers of said wills owned property, and where the makers of such wills lived and died, and were by such clerks recorded in the record of wills for his county, said wills and testaments or exemplified copies or certified true copies thereof, so recorded, if otherwise sufficient, shall have the effect to pass the title to real or personal property, or both, therein devised and bequeathed, to the same extent and as completely as if the execution thereof had been duly proven by the two subscribing witnesses thereto in the manner provided by law of this State. Nothing herein shall be construed to prevent such wills from being impeached for fraud."

Section 4. This act becomes effective October 1, 1997.

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March 5, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **House Bill 191 - Cert. Copies/Custody & Wills.**

House Bill 191 was recommended by the North Carolina Courts Commission. An identical bill was introduced during the 1996 Regular Session, also at the request of the Courts Commission. That bill passed the House but did not reach the Senate floor before the General Assembly adjourned, sine die.

Sections 1 and 2 of the bill amend G.S. 50A-15 and 50A-16 respectively, to allow for the filing and enforcement of certified copies of custody decrees, as well as the exemplified copies currently permitted by statute. Both methods are used to authenticate copies of official records. Exemplification is an older method of authentication which requires three signatures, including that of the clerk, that of a judge who verifies that the clerk is the clerk, and that of the clerk who verifies that the judge is a judge. The procedure does not exist in many other states. Thus, a custody order from a state which does not exemplify documents cannot be recorded in this State. This bill would allow such a document to be recorded if it were a certified true copy. Certification merely requires that the official custodian of the record certify by signature and stamp or seal that the copy is a true copy of the original.

Section 3 of the bill amends G.S. 31-30 which deals with copies of certain old wills, specifically wills executed prior to January 1, 1875 and recorded prior to January 1, 1888. The current statute allows only for proof of these records by exemplified copies. The amendment would add certified copies.

This act would become effective October 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I** .

☐ Committee Substitute for
H.B. 192 A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES IN THE MEMBERSHIP OF THE NORTH CAROLINA COURTS COMMISSION.

X With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 192

Short Title: Courts Commission Membership. (Public)

Sponsors: Representatives R. Hunter, Culpepper, Hensley, McCrary, and Neely.

Referred to: Judiciary I.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES IN THE MEMBERSHIP OF THE NORTH CAROLINA COURTS COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-506 reads as rewritten:

"**§ 7A-506. Creation; members; terms; qualifications; vacancies.**

(a) The North Carolina Courts Commission is created. Effective July 1, 1993, it shall consist of ~~24~~ 28 members, ~~six~~ seven to be appointed by the Governor, ~~six~~ seven to be appointed by the Speaker of the House of Representatives, ~~six~~ seven to be appointed by the President Pro Tempore of the Senate, and ~~six~~ seven to be appointed by the Chief Justice of the Supreme Court.

(b) Of the appointees of the Chief Justice of the Supreme Court, one shall be a Justice of the Supreme Court, one shall be a Judge of the Court of Appeals, two shall be judges of superior court, ~~and~~ two shall be district court ~~judges.~~ judges, and one shall be a public member who is not an attorney and who is not an officer or employee of the Judicial Department.

(c) Of the ~~six~~ seven appointees of the Governor, one shall be a district attorney, one shall be a practicing attorney, one shall be a clerk of superior court, at least three shall be members of the General Assembly, ~~and~~ at least ~~one~~ two shall not be ~~an attorney.~~ attorneys, and of the nonattorneys, one shall be a public member who is not an officer or employee of the Judicial Department.

(d) Of the ~~six~~ seven appointees of the Speaker of the House, at least three shall be practicing attorneys, at least three shall be members of the General Assembly, ~~and~~ at

least ~~one~~ two shall not be ~~an attorney.~~ attorneys, and of the non-attorneys, one shall be a public member who is not an officer or employee of the Judicial Department.

(e) Of the ~~six~~ seven appointees of the President Pro Tempore of the Senate, at least three shall be practicing attorneys, at least three shall be members of the General Assembly, ~~and~~ at least one shall be a ~~magistrate.~~ magistrate, and one shall be a public member who is not an attorney and who is not an officer or employee of the Judicial Department.

(f) Of the initial appointments of each appointing authority, three shall be appointed for four-year terms to begin July 1, 1993, and three shall be appointed for two-year terms to begin July 1, 1993. The two public members appointed by the Governor and the Speaker of the House of Representatives shall be appointed for four-year terms to begin July 1, 1997. The two public members appointed by the Chief Justice and the President Pro Tempore of the Senate shall be appointed for two-year terms to begin July 1, 1997. Successors shall be appointed for four-year terms.

(g) A vacancy in membership shall be filled for the remainder of the unexpired term by the appointing authority who made the original appointment. A member whose term expires may be reappointed."

Section 2. G.S. 7A-507 reads as rewritten:

"**§ 7A-507. Ex officio members.**

The following additional members shall serve ex officio: the Administrative Officer of the Courts; a representative of the N. C. State Bar appointed by the Council thereof; and a representative of the N. C. Bar Association appointed by the Board of Governors thereof. ~~Ex officio members have no vote.~~ The Administrative Officer of the Courts has no vote."

Section 3. This act is effective when it becomes law.

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March 5, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **House Bill 192 - Courts Commission Membership.**

House Bill was recommended by the North Carolina Courts Commission. An identical bill was introduced during the 1996 Regular Session, also at the request of the Courts Commission. That bill passed the House, but did not reach the Senate floor before the General Assembly adjourned, sine die.

Section 1 of the bill amends G.S. 7A-506 to increase the membership of the North Carolina Courts Commission from 24 to 28 members. The Chief Justice of the Supreme Court, the Governor, the Speaker of the House and the President Pro Tempore of the Senate would each be given an additional appointment to the Commission. In each case the new members will be public members who are not attorneys and not officers or employees of the Judicial Department. This section also provides for the staggering of the terms of the new members.

Section 2 amends G.S. 7A-507 to provide that of the three ex officio members of the Commission, only the Administrative Officer of the Courts will have no vote. Under present law, the representatives of the N. C. State Bar and the N. C. Bar Association, as well as the Administrative Officer of the Courts have no vote.

This act would become effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

Judiciary I 3-6-97

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Jill Miller	NCATL
2.	John Kennedy	Clerk of Superior Court - Wake Co
3.	Patricia Lockey	NCAGC
4.		DOE
5.	Tom Bean	NC Wildlife Federation
6.	Lisa Hocutt	NCWRC
7.		
8.		
9.		
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11.		
22.		
23.		
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25.		
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30.		
31.		

North Carolina House of Representatives
JUDICIARY I COMMITTEE

Roll Call

- Alexander
- Arnold
- Blue
- Braswell
- Capps
- Clary
- Crawford
- (Daughtry)
- Ellis
- Esposito
- Fitch
- Gray
- Hall
- Hardaway
- Hardy
- Holmes
- Hunter
- Hurley
- Jeffus
- Justus
- Micheux
- Miller
- Morgan
- Sherrill
- Thompson

North Carolina House of Representatives

JUDICIARY I COMMITTEE

1 tape
minutes are not found in computer

March 11, 1997
10:00 a.m.
1327 Legislative Bldg.

N. Leo Daughtry and Edwin M. "Sandy" Hardy, Chairmen

Members Present

Martha B. Alexander	Gene G. Arnold
J. Russell Capps	Debbie Clary
J. Sam Ellis	Theresa H. Esposito
George M. Holmes	Lyons Gray
Bobby Ray Hall	Thomas C. Hardaway
Robert C. Hunter	John W. Hurley
Margaret M. Jeffus	Larry T. Justus
H. M. Michaux, Jr.	George W, Miller, Jr.
Wilma M. Sherrill	Gregg Thompson

The House Committee on JUDICIARY I met at 10:00 a.m. on Tuesday, March 11 1997 in Room 1327 of the Legislative Building with Chairmen N. Leo Daughtry and E.M. "Sandy" Hardy presiding.

Committee Counsel Steven Rose and Karen Cochrane-Brown were present to assist the Committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

Chairman Daughtry introduced House Pages Leslie McNeill of Carteret County and Sarah Moseley of Cleveland County who were present to assist the Committee.

The Chairman introduced Representative Arnold for the purpose of introducing for discussion H.B. 336 VICTIM'S FAMILY WITNESS EXECUTION.

Committee Counsel Steven Rose had prepared a memorandum explaining the Proposed Committee Substitute for H.B. 336, a copy of which is attached and made a part of the minutes.

On a motion by Rep. Ellis, the Committee agreed to favorably report H.B. 336.

The Chairman introduced Representative Preston for the purpose of discussing

House Bill 88, STATE BOARD OF EDUCATION/SUBPOENA POWER.

There being many question regarding the bill, on a motion by Representative Arnold, the Committee directed a Subcommittee on House Bill 79 be appointed to answer certain questions. The Chairman appointed Representative Arnold as Subcommittee Chairman, and
Representatives Hunter, Miller, Hall and Clary as members.

Committee Counsel Karen Cochrane-Brown had prepared a memorandum explaining House Bill 88, a copy of which is attached and made a part of the minutes.

The Subcommittee on Senate Bill 3 reported to the Committee a Proposed Committee Substitute. On a motion by Rep. Ellis, the Committee voted, without objection to agree to a favorable report to the Committee Substitute to Senate Bill 3, which changes the title, unfavorable to the original bill, and re-referred the measure to the Committee on RULES.

Representative Buchanan was introduced for the purpose of explaining House Bill 102 MITCHELL PRECINCTS. On a motion by Rep. Ellis, and without objection, the Committee agreed to the measure with a favorable report.

Senator Hartsell was introduced for the purpose of explaining Senate Bill 79 REPEAL MORE ANTIQUATED LAWS.

Committee Counsel Karen Cochrane-Brown had prepared a Memorandum on S. 79 which is attached and made a part of the minutes.

The General Statutes Commission distributed a MEMORANDUM on S.79 which is attached and made a part of the minutes.

On a motion by Rep. Michaux, and without objection, the Committee agreed to a favorable report for S. 79.

The Committee adjourned at 10:45 a.m.

Joel Raupe, committee clerk

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

ATTACHMENTS:

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on JUDICIARY I .

☐ Committee Substitute for
H.B. 336 A BILL TO BE ENTITLED AN ACT TO ALLOW TWO MEMBERS OF THE VICTIM'S FAMILY TO BE PRESENT AT AN EXECUTION.

x With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 336

Short Title: Victim's Family Witness Execution. (Public)

Sponsors: Representatives Eddins; Culp, Dedmon, R. Hunter, Sexton, and Starnes.

Referred to: Judiciary I.

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW TWO MEMBERS OF THE VICTIM'S FAMILY TO BE PRESENT AT AN EXECUTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15-190 reads as rewritten:

"**§ 15-190. Person or persons to be designated by warden to execute sentence; supervision of execution; who shall be present.**

Some guard or guards or other reliable person or persons to be named and designated by the warden from time to time shall cause the person, convict or felon against whom the death sentence has been so pronounced to be executed as provided by this Article and all amendments thereto. The execution shall be under the general supervision and control of the warden of the penitentiary, who shall from time to time, in writing, name and designate the guard or guards or other reliable person or persons who shall cause the person, convict or felon against whom the death sentence has been pronounced to be executed as provided by this Article and all amendments thereto. At such execution there shall be present the warden or deputy warden or some person designated by the warden in ~~his stead;~~ the warden's place, and the surgeon or physician of the ~~penitentiary~~ penitentiary. ~~and six~~ Four respectable citizens, two members of the victim's family, the counsel and any relatives of such person, convict or felon and a minister or ministers of the gospel may be present if they so ~~desire,~~ desire. ~~and the~~ The board of directors of the penitentiary may provide for and pay the fee for each execution not to exceed thirty-five dollars ($35.00)."

Section 2. This act is effective when it becomes law.

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March 11, 1997

MEMORANDUM

TO: House Judiciary I Committee

FROM: Steven Rose, Committee Counsel

RE: **House Bill 336; Victim's family may witness execution**

House Bill 336 amends G.S. 15-190. This statute deals with the carrying out of executions when there has been a sentence of death. The statute states who must and who may attend such executions. The amendment to the statute reduces the number of citizen witnesses from six to four and adds two members of the victim's family to those who may witness the execution if they so desire. It also changes the penitentiary physician from one who may attend the execution to one who is required to attend. As a practical matter, a physician would always be present at an execution.

The existing statute provides that executions are under the general supervision and control of the warden of the penitentiary.

The act is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

Arnold
Hunter
Miller
Hall
Clary

H

HOUSE BILL 88*

Short Title: St. Bd. of Ed./Subpoena Power. (Public)

Sponsors: Representatives Preston, Grady, Black, McMahan, Owens, Rogers; Culp, Dockham, Moore, Mosley, Shubert, Warner, and Watson.

Referred to: Education, if favorable, Judiciary I.

February 10, 1997

A BILL TO BE ENTITLED

AN ACT TO GRANT SUBPOENA POWER TO THE STATE BOARD OF EDUCATION IN CASES INVOLVING THE SUSPENSION OR REVOCATION OF CERTIFICATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-296(d) reads as rewritten:

"(d) The State Board shall adopt rules to establish the reasons and procedures for the suspension and revocation of certificates. In addition, the State Board ~~of Education~~ may revoke or refuse to renew a teacher's certificate when:

(1) The Board identifies the school in which the teacher is employed as low-performing under G.S. 115C-105.37; and

(2) The assistance team assigned to that school under G.S. 115C-105.38 makes the recommendation to revoke or refuse to renew the teacher's certificate for one or more reasons established by the State Board in its rules for certificate suspension or revocation.

The State Board may issue subpoenas for the purpose of obtaining documents or the testimony of witnesses in connection with proceedings to suspend or revoke certificates."

Section 2. This act is effective when it becomes law.

Limit power to certain records
Criminal investigations

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March 10, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel

RE: **House Bill 88 - State Board of Education Subpoena Power.**

House Bill 88 is recommended by the Joint Legislative Education Oversight Committee at the request of the State Board of Education. The Bill would allow the State Board to issue subpoenas for the purpose of obtaining documents or the testimony of witnesses in connection with Board proceedings to suspend or revoke certificates.

The Bill also directs the Board to adopt rules for the suspension and revocation of certificates. The Board, in fact, has rules it adopted under the authority of the State Constitution, which provides the Board is to "supervise and administer the free public school system and the educational funds provided for its support," and to "make all needed rules and regulations in relation thereto, subject to the laws enacted by the General Assembly." Attached is a copy of the Board's current rule pertaining to certificate suspension and revocation.

This bill is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

(2) the candidate has not had the opportunity to satisfy this requirement after becoming aware of it.

(b) A temporary permit is valid for the remainder of the fiscal year during which certification is established. Graduates of in-state approved programs are not eligible for a temporary permit.

History Note: Authority N.C. Constitution, Article IX, Sec. 5; G.S. 115C-12(9)a.;
Eff. July 1, 1986;
Amended Eff. March 1, 1990.

.0312 CERTIFICATE SUSPENSION AND REVOCATION

(a) The SBE may deny an application for certification or may suspend or revoke a certificate issued by the department only for the following reasons:

(1) fraud, material misrepresentation or concealment in the application for certification;
(2) changes in or corrections of the certificate documentation which makes the individual ineligible to hold a certificate;
(3) conviction or entry of a plea of no contest, as an adult, of a crime if there is a reasonable and adverse relationship between the underlying crime and the continuing ability of the person to perform any of his/her professional functions in an effective manner;
(4) final dismissal of a person by a local board pursuant to G.S. 115C-325(e)(1)b., if there is a reasonable and adverse relationship between the underlying misconduct and the continuing ability of the person to perform any of his/her professional functions effectively;
(5) final dismissal of a person by a LEA under G.S. 115C-325(e)(1)e.;
(6) resignation from employment with a LEA without thirty work days' notice, except with the prior consent of the local superintendent;
(7) revocation of a certificate by another state; and
(8) any other illegal, unethical or lascivious conduct by a person, if there is a reasonable and adverse relationship between the underlying conduct and the continuing ability of the person to perform any of his/her professional functions in an effective manner.
(9) Failure to report revocable conduct as required under paragraph (b) of this Rule.

(b) In addition to any duty to report suspected child abuse under G.S. 7A-543, any superintendent, assistant superintendent, associate superintendent, personnel administrator or principal who knows or has substantial reason to believe that a certified employee of the LEA has engaged in behavior that would justify revocation of the employee's certificate under sections (3), (4) or (8) of paragraph (a) of this Rule and which behavior involves physical or sexual abuse of a child shall report that information to the Superintendent of Public Instruction. For purposes of this section, the term "physical abuse" means the infliction of serious physical injury other than by accidental means and other than in self-defense. The term "sexual abuse" means the commission of any sexual act upon a student or causing a student to commit a sexual act, regardless of the age of the student and regardless of the presence or absence of consent. This paragraph applies to acts that occur on or after October 1, 1993.

(c) Upon the receipt of a written request and substantiating information from any LEA, local superintendent or other person in a position to present information as a basis for the suspension or revocation of a person's certificate, the Superintendent of Public Instruction will conduct an investigation sufficient to determine whether reasonable cause exists to believe that the person's certificate should be suspended or revoked.

(1) If the Superintendent determines that reasonable cause exists to believe that the person's certificate should be suspended or revoked on one or more of the grounds specified in paragraph (a) of this Rule, the Superintendent shall prepare and file written charges with the SBE.
(2) The SBE will review the written charges and determine whether the person's certificate should be suspended or revoked based on the information contained in the written charges. If the SBE determines that the written charges constitute grounds for suspension or revocation, it shall provide the person with a copy of the written charges, and

notify the person that it will revoke the person's certificate unless the person, within 30 days of receipt of notice, initiates administrative proceedings under Article 3, Chapter 150B of the General Statutes. The notice will be sent certified mail, return receipt requested.

(3) If the person initiates administrative proceedings the SBE will defer final action on the matter until receipt of a proposed decision as provided for in G.S. 150B-34. If the person does not initiate administrative proceedings within 30 days of receipt of notice, the SBE may suspend or revoke the person's certificate at its next meeting.

(d) The SBE may suspend an individual's certificate for a stated period of time or may permanently revoke the certificate, except as limited by G.S. 115C-325(o).

(e) The SBE may reinstate a suspended or revoked certificate or may grant a new certificate after denial of certification under paragraph (a) of this Rule upon application and showing of good cause by the individual. The burden of proving good cause is on the applicant. The SBE will not grant any request for reinstatement or for granting a new certificate unless it finds as facts that:

(1) the action that resulted in revocation or denial of certification did not involve abuse of minors; possession, sale or use of controlled substances; moral turpitude or grounds listed in G.S. 115C-325 (e)(1)b. or e.;

(2) the person has no record of subsequent behavior that could have resulted in certificate revocation; and

(3) there is no court order or judicial determination that would prohibit the person from returning to or holding a certificated position.

(f) The SBE will notify all other states of all actions which involve the suspension, revocation or reinstatement of a certificate.

History Note: *Authority N.C. Constitution, Article IX, Sec. 5; G.S. 115C-12(9)a.;*
Eff. July 1, 1986;
Amended Eff. January 1, 1988;
ARRC Objection Lodged February 22, 1990;
ARRC Objection Removed Eff. March 15, 1990;
Amended Eff. October 1, 1993; November 1, 1990; August 1, 1990.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on JUDICIARY I .

☐ Committee Substitute for
S. 3 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE ADVISABILITY OF ESTABLISHING A WAITING PERIOD BEFORE FORMER LEGISLATORS, FORMER MEMBERS OF THE COUNCIL OF STATE, OR THER OFFICERS OR EMPLOYEES OF STATE GOVERNMENT MAY BECOME LOBBYISTS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

X With a favorable report as to House committee substitute bill **X** which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 3
Judiciary Committee Substitute Adopted 2/19/97
Third Edition Engrossed 2/24/97
Proposed House Committee Substitute S3-PCS6574

Short Title: Lobbyist Waiting Period. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE ADVISABILITY OF ESTABLISHING A WAITING PERIOD BEFORE FORMER LEGISLATORS, FORMER MEMBERS OF THE COUNCIL OF STATE, OR OTHER OFFICERS OR EMPLOYEES OF STATE GOVERNMENT MAY BECOME LOBBYISTS.

The General Assembly of North Carolina enacts:

Section 1. The Legislative Research Commission is authorized to study the advisability of setting a limit of one year or some other period of time as a waiting period before a former legislator or a former member of the Council of State may be employed as a lobbyist. The Commission may also study the advisability of applying such a waiting period to any other appointed or elected officer or employee of State government.

Section 2. The Commission may make an interim report, including any legislative proposals, to the 1997 General Assembly, Regular Session 1998, and a final report, including any legislative proposals, to the 1999 General Assembly.

Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 3
Judiciary Committee Substitute Adopted 2/19/97
Third Edition Engrossed 2/24/97
Proposed House Committee Substitute
S3-CSRO-003
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Lobbyist Waiting Period. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE ADVISABILITY OF ESTABLISHING A WAITING PERIOD BEFORE FORMER LEGISLATORS, FORMER MEMBERS OF THE COUNCIL OF STATE, OR OTHER OFFICERS OR EMPLOYEES OF STATE GOVERNMENT MAY BECOME LOBBYISTS.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 3
Judiciary Committee Substitute Adopted 2/19/97
Third Edition Engrossed 2/24/97

Short Title: Lobbyist Waiting Period. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A ONE-YEAR WAITING PERIOD BEFORE FORMER LEGISLATORS AND FORMER MEMBERS OF THE COUNCIL OF STATE MAY BECOME LOBBYISTS.

The General Assembly of North Carolina enacts:

Section 1. Article 9A of Chapter 120 of the General Statutes is amended by adding a new section to read:

"**§ 120-47.5A. Waiting period before certain former State officials may lobby.**

Notwithstanding the provisions of G.S. 120-47.8, no individual who has served as a member of the General Assembly or the Council of State may act as a lobbyist as defined in this Article within one year after the expiration of the term for which the individual was elected or appointed to serve in that position."

Section 2. G.S. 120-47.2(b) reads as rewritten:

"(b) The form of the registration shall be prescribed by the Secretary of State and shall include the registrant's full name, firm, and complete address; the registrant's place of business; the full name and complete address of each person by whom the registrant is employed or retained; an indication of whether the registrant has served as a member of the General Assembly or the Council of State, and the period served; and a general description of the matters on which the registrant expects to act as a lobbyist."

Section 3. This act is effective when it becomes law and applies to individuals who serve terms beginning on or after January 1, 1997.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on JUDICIARY I .

☐ Committee Substitute for
H.B. 102 A BILL TO BE ENTITLED AN ACT TO REQUIRE THAT THERE BE AT LEAST ONE VOTING PLACE IN MITCHELL COUNTY WITHIN EVERY TOWNSHIP THAT EXISTED IN 1995.

x With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 102

Short Title: Mitchell Precincts. (Local)

Sponsors: Representative Buchanan.

Referred to: Judiciary I.

February 11, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT THERE BE AT LEAST ONE VOTING PLACE IN MITCHELL COUNTY WITHIN EVERY TOWNSHIP THAT EXISTED IN 1995.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S.163-128, 163-132.5C, or 163-132.3, the Mitchell County Board of Elections shall provide for at least one voting place within every township in Mitchell County that was in existence on January 1, 1995.

Section 2. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
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Room 5, Legislative Building
16 W. Jones Street
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Raleigh, NC 27603-5925
(919) 733-2578

February 13, 1997

TO: House Judiciary I Committee.

FROM: William R. Gilkeson, Staff Attorney.

RE: House Bill 102. – Mitchell County Precincts.

House Bill 102, introduced by Rep. Buchanan, would require that Mitchell County have at least one voting place in every township in the county that existed on January 1, 1995.

The effect of the bill would be to overturn an action of the Mitchell County Board of Elections in February 1995 reducing the number of precincts from 11 to five. Mitchell County had 11 townships in January 1995 — the precincts and townships were coterminous.

The general election law gives a county board of elections the discretion to determine how many precincts that county will have and where the precinct lines will be. G.S. 163-128. That discretion is limited by a statute that says lines must follow 1990 Census blocks, certain visible features, municipal lines, or township lines. G.S. 163-132.3. That statute is designed to give redistricters using Census maps the ability to avoid splitting precincts. It is enforced by the Executive Secretary-Director of the State Board of Elections, with the advice of the Legislative Services Office. Both the 11 old precincts and the five new precincts of Mitchell County have been approved under this program.

Later this decade, when the Census Bureau determines its block boundaries for the 2000 Census, State law will require that the county elections boards re-examine their precincts to make sure they follow those block lines. G.S. 163-132.1. County boards have just completed a program using preliminary Census 2000 maps to suggest the lines they will need as 2000 block boundaries to underly their precincts. Mitchell County has completed that program. Unless township lines change, Mitchell County should be able to comply with the 2000 requirement using either the 11 precincts or the five precincts.

The general law gives the county commissioners the authority to decide how many townships their county will have. G.S. 153A-19. That law also requires that the county manager report the location of the townships to the Census Bureau so that they can appear on the official Census maps as block boundaries.

The State Constitution prohibits the General Assembly from changing townships by local act. But there is not such prohibition for changing precinct lines by local act.

Traditionally, especially in non-urban North Carolina, precincts and townships were the same. Until 1992, state law required that be at least one polling place in every township. That requirement was repealed, however, and now county elections boards can draw precincts without regard to townships. Precinct lines often still follow township

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on JUDICIARY I .

☐ Committee Substitute for
S. 79 A BILL TO BE ENTITLED AN ACT TO REPEAL MORE ANTIQUATED LAWS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

x With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 79

Short Title: Repeal More Antiquated Laws. (Public)

Sponsors: Senators Hartsell; and Jordan.

Referred to: Judiciary.

February 10, 1997

A BILL TO BE ENTITLED

AN ACT TO REPEAL MORE ANTIQUATED LAWS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

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

Attorney at Law

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

Attorney General, State District Attorneys and County Attorneys

I, A. B., do solemnly swear (or affirm) that I will well and truly serve the State of North Carolina in the office of Attorney General (district attorney for the State or attorney for the State in the county of . . . . . .); I will, in the execution of my

office, endeavor to have the criminal laws fairly and impartially administered, so far as in me lies, according to the best of my knowledge and ability; so help me, God.

Auditor

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

Book Debt Oath

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

Book Debt Oath for Administrator

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

Clerk of the Supreme Court

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

Clerk of the Superior Court

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

Commissioners Allotting a Year's Provisions

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

Commissioners Dividing and Allotting Real Estate

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

~~Entry-Taker~~

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

Executor

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

Grand Jury--Foreman of

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

Grand Jurors

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

Grand Jury--Officer of

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

Jury--Officer of

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

Oath for Petit Juror

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

Justice, Judge, or Magistrate of the General Court of Justice

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

Register of Deeds

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

Secretary of State

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

Sheriff

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

Law Enforcement Officer

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

State Treasurer

I, A. B., do swear (or affirm) that, according to the best of my abilities and judgment, I will execute impartially the office of State Treasurer, in all things according to law, and account for the public taxes; and I will not, directly or indirectly, apply the public money to any other use than by law directed; so help me, God.

Surveyor for a County

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

Treasurer for a County

I, A. B., do solemnly swear (or affirm) that, according to the best of my skill and ability, I will execute impartially the office of treasurer for the county of . . . . . ., in all things according to law; that I will duly and faithfully account for all public moneys that may come into my hands, and will not, directly or indirectly, apply the same, or any part thereof, to any other use than by law directed; so help me, God.

Witness to Depose before the Grand Jury

You swear (or affirm) that the evidence you shall give to the grand jury, upon this bill of indictment against A. B., shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness in a Capital Trial

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

Witness in a Criminal Action

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

Witness in Civil Cases

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

Witness to Prove a Will

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

Witness before a Legislative Committee or Commission

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

General Oath

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

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

Section 2. G.S. 58-76-5 reads as rewritten:

"**§ 58-76-5. Liability and right of action on official bonds.**

Every person injured by the neglect, misconduct, or misbehavior in office of any clerk of the superior court, register, ~~entry-taker,~~ surveyor, sheriff, coroner, county treasurer, or other officer, may institute a suit or suits against said officer or any of them and their sureties upon their respective bonds for the due performance of their duties in office in the name of the State, without any assignment thereof; and no such bond shall become void upon the first recovery, or if judgment is given for the defendant, but may be put in suit and prosecuted from time to time until the whole penalty is recovered; and every such officer and the sureties on his official bond shall be liable to the person injured for all acts done by said officer by virtue or under color of his office."

Section 3. G.S. 147-12(11) reads as rewritten:

"(11) Upon being furnished information from law-enforcement officers that public roads or highways or other public vehicular areas, as defined in G.S. ~~20-16.2(h),~~ 20-4.01, are being blocked by privately owned and operated vehicles or by any other means, thereby impeding the free flow of goods and merchandise in North Carolina, he, if such information warrants, is authorized to declare that a state of emergency exists in the affected area, and is further authorized to order that the Highway Patrol and/or national guard

remove the offending vehicles or other causes of the blockade from the emergency area."

Section 4. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
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Terrence D. Sullivan, Director
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Raleigh, NC 27603-5925
(919) 733-2578

March 10, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **Senate Bill 79 - Repeal More Antiquated Laws.**

Senate Bill 79 is recommended by the General Statutes Commission and results from a study which the Commission was directed to perform by the General Assembly. The Commission was directed to study and identify antiquated laws in the General Statutes and make recommendations regarding removal of those laws.

Section 1 amends G.S. 11-11 to delete the oath of office for an "Entry-taker". An entry-taker was the county official who actually recorded "entries", or claims, made by persons obtaining land under the State land grant program prior to 1959. The statutory provisions covering the land grant program and establishing the county office of "Entry-taker" were deleted when Chapter 146 of the General Statutes was revised in 1959.

Section 2 amends G.S. 58-76-5 to delete the reference to "entry-taker". The statute, in pertinent part, renders an "entry-taker" liable on the entry-taker's official bond to one injured by the entry-taker's neglect, misconduct, or misbehavior in office. Since the county office of entry-taker no longer exists, the reference to "entry-taker" in G.S. 58-76-5 should be deleted.

Section 3 amends G.S. 147-12(11) to delete the reference to repealed G.S. 20-16.2(h) which defined the term "public vehicular area" and to replace it with G.S. 20-4.01(32) which presently defines that term.

This act would become effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
P.O. BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 733-6026

MEMORANDUM

TO: House Judiciary I Committee

FROM: General Statutes Commission

DATE: March 7, 1997

RE: Senate Bill 79 (Repeal More Antiquated Laws)

General Comments

Senate Bill 79 is the result of a study assigned to the General Statutes Commission last year by the General Assembly in Chapter 17 of the 1996 Session Laws, Second Extra Session. Section 9.1 of Chapter 17 required the Commission to study and identify antiquated laws in the North Carolina General Statutes and make recommendations regarding removal of those laws from the books.

The Commission made requests for the identification of antiquated laws in the North Carolina General Statutes to the staff of the Attorney General's Office, the Research Division of the General Assembly, the Legislative Bill Drafting Division of the General Assembly, and the Institute of Government. In addition, the following organizations agreed to publish a notice of the study along with a request for the identification of antiquated laws in their respective publications: The North Carolina State Bar, North Carolina Bar Association, North Carolina Lawyers Weekly, North Carolina League of Municipalities, and North Carolina Association of County Commissioners.

As is set forth more fully in the Commission's 1997 Report on Antiquated Laws in the North Carolina General Statutes, filed January 29, 1997, the Commission received very few suggestions for the removal of perceived antiquated laws, and only some were found to warrant recommendations to the General Assembly. While Senate Bill 79 is recommended pursuant to the study authorized by the General Assembly, the Commission identifies antiquated laws in the North Carolina General Statutes and makes recommendations regarding their removal on a

continuing basis pursuant to its authority under G.S. 164-13.

Specific Comments

Section 1 amends G.S. 11-11 (Oaths of sundry persons; forms) to delete the oath of office for an "Entry-Taker." An entry-taker was the county official who actually recorded "entries," or claims, made by persons obtaining land under the State land grant program prior to 1959. The statutory provisions covering the land grant program and establishing the county office of "Entry-Taker" were deleted when Chapter 146 of the General Statutes (State Lands) was revised in 1959.

Section 2 amends G.S. 58-76-5 (Liability and right of action on official bonds) to delete the reference to "entry taker." The statute, in pertinent part, renders an "entry taker" liable on the entry-taker's official bond to one injured by the entry-taker's neglect, misconduct, or misbehavior in office. Since the county office of entry-taker no longer exists, the reference to "entry taker" in G.S. 58-76-5 should be deleted.

Section 3 amends G.S. 147-12 (Powers and duties of Governor) in Subdivision (11) to change the reference to repealed "G.S. 20-16.2(h)," which defined the term "public vehicular area," to the reference "G.S. 20-4.01(32)," which presently defines the term "public vehicular area." The present definition is somewhat broader in scope than the repealed definition.

VISITOR REGISTRATION SHEET

Judiciary I 3/11/97

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Thomas V. Bennett	N.C. Child Fatality Task Force
2.	Ann Belcher	SBE
3.	Laura Crumpler	AG/SBE
4.	[illegible]	GA - Intern
5.	Nancy Kerdig	Rep. Esposito's office
6.	[illegible]	NCSU
7.	[illegible]	CABARRUS HOSPITAL.
8.	[illegible]	NCCDAs
9.	Leigh Honse	NCCDA's
10.	[illegible]	NCAA
11.		
22.		
23.		
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27.		
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31.		

North Carolina House of Representatives

JUDICIARY I COMMITTEE

March 18, 1997
10:00 a.m.
1327 Legislative Building

N. Leo Daughtry, Chairman

Members Present

Edwin M. Hardy	Jerry Braswell
J. Russell Capps	James W. Crawford
J. Sam Ellis	Bobby Ray Hall
Thomas C. Hardaway	Robert C. Hunter
John W. Hurley	Margaret M. Jeffus
Larry T. Justus	H. M. Michaux, Jr.
Richard T. Morgan	George W. Miller, Jr.
Wilma Sherill	Gregg Thompson

The House Committee on JUDICIARY I met at 10:00 a.m. on Tuesday, March 18, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry presiding.

Reps. Alexander and Arnold were excused.

Committee counsels Steven Rose and Karen Cochrane-Brown were present to assist the committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

Chairman Daughtry introduced House Pages Tamika Phillips of Wake County and Anna Yarborough of Guilford County who were present to assist the committee.

The Chair announced House Bill 328, scheduled for deliberation, had been removed from the calendar at the request of the sponsor, Mr. Arnold, who was ill. For the same reason, House Bill 88, referred to a subcommittee chaired by Mr. Arnold was also deferred from the calendar. In addition, the Chair announced House Bill 150, scheduled for deliberation, had been removed from the calendar at the request of the sponsor.

The Chair brought before the Committee House Bill 389, on Felony Child Abuse/Increase Penalty, and introduced the bill's sponsor, Rep. Rayfield, for the purpose of explaining his proposal.

Committee Council Karen Cochrane-Brown prepared a memorandum on H.B. 389, which is attached an made a part of these minutes.

On a motion made by Rep. Sherrill, the Committee voted to approve the measure with a favorable report.

The Chair brought before the Committee H.B. 348 on Cider/Vinegar Manufacturer Permit. On a motion made by Rep. Capps, the Committee voted to consider the Proposed Committee Substitute to H.B. 348. A memorandum prepared by Mr. Rose on H.B. 348 was introduced, and a copy is attached and made a part of the minutes.

On a motion made by Rep. Ellis, the Committee voted without objection to approve the Proposed Committee Substitute to H.B. 348 and recommended the committee substitute bill be re-referred to the Committee on FINANCE.

The Chair introduced Senator Rand for the purpose of explaining Senate Bill 95 - to Validate Notarial Acts.

A technical amendment having been introduced by Rep. Hunter, and approved by the Committee, and on a motion made by Rep. Ellis, the Committee voted to approve a Proposed Committee Substitute to H.B. 95 with a favorable report, unfavorable to the original.

The Committee Adjourned at 10:25 a.m.

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS

HOUSE COMMITTEE ON JUDICIARY I

Tuesday, March 18, 1997
Room 1327 LB
10:00 a.m.

OPENING REMARKS:
Representative N. Leo Daughtry, Chairman
Judiciary I Committee

BILLS TO BE CONSIDERED:

H.B. 88 STATE BD OF EDUC SUBPOENA
Sponsor: Representative Preston

H. B. 150 PROHIBIT SALE OF SOME PYROTECHNICS
Sponsor: Representative Easterling

H.B. 328 BAN TOBACCO SALES TO MINORS
Sponsor: Representative Arnold

H.B. 348 CIDER/VINEGAR MANUFACTURER PERMIT
Sponsor: Representative Eddins

H.B. 389 FELONY CHILD ABUSE/INCR. PENALTY
Sponsor: Representative Rayfield

S. 95 VALIDATE NOTARIAL ACTS
Sponsor: Senator Rand

ADJOURNMENT

3/7 ?

North Carolina House of Representatives
JUDICIARY I COMMITTEE

ATTENDANCE
~~Roll Call~~

- **Alexander**
- **Arnold**
- **Blue**
- **Braswell**
- **Capps**
- **Clary**
- **Crawford**
- **(Daughtry)** X
- **Ellis** X
- **Esposito**
- **Fitch**
- **Gray**
- **Hall**
- **Hardaway**
- **Hardy** X
- **Holmes**
- **Hunter**
- **Hurley**
- **Jeffus** X
- **Justus** X
- **Micheux** X
- **Miller**
- **Morgan**
- **Sherrill**
- **Thompson** X

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on JUDICIARY I .

☐ Committee Substitute for
H.B. 389 A BILL TO BE ENTITLED AN ACT TO INCREASE THE PENALTY FOR THE CRIMINAL OFFENSE OF FELONY CHILD ABUSE.

X With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
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Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

March 17, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **House Bill 389 - Felony Child Abuse/Increase Penalty**

House Bill 389 proposes to increase the penalty for felony child abuse. This bill amends G.S. 14-318.4 which makes it a felony for a parent or other person who provides care or supervision to a child under 16, to intentionally inflict serious physical injury on the child, intentionally assault the child resulting in serious physical injury to the child, commit, permit or encourage any act of prostitution with or by the child, or commit or allow the commission of any sexual act upon the child.

Under current law, felony child abuse is punishable as a Class E felony. This bill would raise the felony offense class to Class D. Assuming prior record level I, the minimum presumptive sentence for a Class E felony is 20-25 months intermediate or active punishment; and 51-64 months active punishment for a Class D felony.

The North Carolina Sentencing and Policy Advisory Commission has reviewed this bill in accordance with G.S. 164-43 and found that this bill is inconsistent with its Offense Classification Criteria. The Sentencing Commission classified offenses which reasonably tend to result or do result in serious personal injury as Class E felonies and offenses which reasonably tend to result or do result in serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling as Class D felonies. The Sentencing Commission has also estimated that this bill would add 15 inmates to the prison by 1999 and 101 inmates by 2002.

This bill would become effective December 1, 1997 and apply to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 389

Short Title: Felony Child Abuse/Increase Penalty. (Public)

Sponsors: Representatives Rayfield; Alexander, Allred, Arnold, Baddour, Baker, Barbee, Beall, Berry, Bowie, Brawley, Brown, Buchanan, Cansler, Capps, Carpenter, Church, Clary, Cole, Crawford, Creech, Culp, Culpepper, Davis, Decker, Dedmon, Dickson, Dockham, Eddins, Ellis, Esposito, Fox, Gardner, Goodwin, Grady, Gulley, Hall, Hardy, Hiatt, Hill, Holmes, Ives, Justus, Kiser, McComas, McCombs, Mitchell, Moore, Morris, Nichols, Nye, Owens, Preston, Ramsey, Reynolds, Sexton, Sherrill, Shubert, Starnes, Tolson, Wainwright, Watson, Weatherly, G. Wilson, and Wood.

Referred to: Judiciary I.

March 4, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR THE CRIMINAL OFFENSE OF FELONY CHILD ABUSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-318.4 reads as rewritten:

"**§ 14-318.4. Child abuse a felony.**

(a) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious physical injury upon or to the child or who intentionally commits an assault upon the child which results in any serious physical injury to the child is guilty of a Class ~~E~~ D felony.

(a1) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of the child, who commits, permits, or encourages any act of prostitution with or by the juvenile is guilty of child abuse and shall be punished as a Class ~~E~~ D felon.

(a2) Any parent or legal guardian of a child less than 16 years of age who commits or allows the commission of any sexual act upon a juvenile is guilty of a Class ~~E~~ D felony.

(b) The felony of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies."

Section 2. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

March 19

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **DAUGHTRY and HARDY** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
H.B. 348 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR A CIDER AND VINEGAR MANUFACTURER PERMIT TO BE ISSUED BY THE ALCOHOLIC BEVERAGE CONTROL COMMISSION.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

X With a favorable report as to committee substitute bill, **X** which changes the title, unfavorable as to original bill and recommendation that the committee substitute bill be re-referred to the Committee on FINANCE.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

March 19

1

HOUSE BILL 348

Short Title: Cider/Vinegar Manufacturer Permit. (Public)

Sponsors: Representatives Eddins; and McMahan.

Referred to: Judiciary I, if favorable, Finance.

February 27, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A CIDER AND VINEGAR MANUFACTURER'S PERMIT TO BE ISSUED BY THE ALCOHOLIC BEVERAGE CONTROL COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1100 reads as rewritten:

"**§ 18B-1100. Commercial permits.**

The Commission may issue the following commercial permits:

(1) Unfortified winery
(2) Fortified winery
(3) Limited winery
(4) Brewery
(5) Distillery
(6) Fuel alcohol
(7) Wine importer
(8) Wine wholesaler
(9) Malt beverages importer
(10) Malt beverages wholesaler
(11) Bottler
(12) Salesman
(13) Vendor representative
(14) Nonresident malt beverage vendor
(15) Nonresident wine vendor
(16) Winery special show

(17) Liquor importer/bottler ~~permit.~~ permit
(18) Cider and vinegar manufacturer."

Section. 2. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-1114.2. Effect of cider and vinegar manufacturer permit.**

The holder of a cider and vinegar manufacturer permit may purchase and transport unlimited quantities of out-of-date malt beverages from malt beverage wholesalers or out-of-date unfortified or fortified wines from wine wholesalers for the sole purpose of manufacturing a food product item. Any manufacturer of cider or vinegar may apply for this permit."

Section. 3. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. -- An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit -- $200.00.
(2) Off-premises malt beverage permit -- $200.00.
(3) On-premises unfortified wine permit -- $200.00.
(4) Off-premises unfortified wine permit -- $200.00.
(5) On-premises fortified wine permit -- $200.00.
(6) Off-premises fortified wine permit -- $200.00.
(7) Brown-bagging permit -- $200.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $100.00.
(8) Special occasion permit -- $200.00.
(9) Limited special occasion permit -- $25.00.
(10) Mixed beverages permit -- $750.00.
(11) Culinary permit -- $100.00.
(12) Unfortified winery permit -- $150.00.
(13) Fortified winery permit -- $150.00.
(14) Limited winery permit -- $150.00.
(15) Brewery permit -- $150.00.
(16) Distillery permit -- $150.00.
(17) Fuel alcohol permit -- $50.00.
(18) Wine importer permit -- $150.00.
(19) Wine wholesaler permit -- $150.00.
(20) Malt beverage importer permit -- $150.00.
(21) Malt beverage wholesaler permit -- $150.00.
(22) Bottler permit -- $150.00.
(23) Salesman permit -- $25.00.
(24) Vendor representative permit -- $25.00.
(25) Nonresident malt beverage vendor permit -- $50.00.
(26) Nonresident wine vendor permit -- $50.00.
(27) Any special one-time permit under G.S. 18B-1002 -- $25.00.
(28) Winery special event permit -- $100.00.
(29) Mixed beverages catering permit -- $100.00.

(30) Guest room cabinet permit -- $750.00.
(31) Liquor importer/bottler permit -- $250.00.
(32) Cider and vinegar manufacturer permit. -- $100.00."

Section 4. G.S. 18B-1109(a) reads as rewritten:

"(a) Authorization. -- The holder of a malt beverages wholesaler permit may:

(1) Receive, possess and transport shipments of malt beverages;
(2) Sell, deliver and ship, in closed containers and in quantities of one case or container or more, malt beverages of any brand filed pursuant to G.S. 18B-1303(a), to wholesalers or retailers licensed under this Chapter, as authorized by the ABC laws;
(3) Furnish and sell malt beverages filed pursuant to G.S. 18B-1303(a) to its employees subject to the rules of the Commission and the Department of Revenue;
(4) In locations where the sale is legal, furnish malt beverages of any brand filed pursuant to G.S. 18B-1303(a) to guests and any other person who does not hold an ABC permit, for promotional purposes, subject to the rules of the ~~Commission.~~ Commission;
(5) Sell out-of-date malt beverages to holders of cider and vinegar manufacturer permits."

Section 5. G.S. 18B-1107(a) reads as rewritten:

"(a) Authorization. -- The holder of a wine wholesaler permit may:

(1) Receive, possess and transport shipments of fortified and unfortified wine;
(2) Sell, deliver and ship wine in closed containers for purposes of resale to wholesalers or retailers licensed under this Chapter as authorized by the ABC laws;
(3) Furnish and sell wine to its employees, subject to the rules of the Commission and the Department of Revenue;
(4) In locations where the sale is legal, furnish wine to guests and any other person who does not hold an ABC permit, for promotional purposes, subject to rules of the ~~Commission.~~ Commission;
(5) Sell out-of-date unfortified and fortified wines to holders of cider and vinegar manufacturer permits."

Section 6. This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on JUDICIARY I .

☐ Committee Substitute for
H.B. 348 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR A CIDER AND VINEGAR MANUFACTURER PERMIT TO BE ISSUED BY THE ALCOHOLIC BEVERAGE CONTROL COMMISSION.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

X With a favorable report as to committee substitute bill, unfavorable as to original bill and recommendation that the committee substitute bill be re-referred to the Committee on **FINANCE**.)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H348-PHCSRL-001

PROPOSED HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 348
THIS IS A DRAFT

Short Title: Cider/Vinegar Manufacturer Permit. (Public)

Sponsors:

Referred to: Judiciary I, if favorable, Finance.

February 27, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A CIDER AND VINEGAR MANUFACTURER PERMIT TO BE ISSUED BY THE ALCOHOLIC BEVERAGE CONTROL COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1100 reads as rewritten:

"**§ 18B-1100. Commercial permits.**

The Commission may issue the following commercial permits:

(1) Unfortified winery
(2) Fortified winery
(3) Limited winery
(4) Brewery
(5) Distillery
(6) Fuel alcohol
(7) Wine importer
(8) Wine wholesaler
(9) Malt beverages importer
(10) Malt beverages wholesaler
(11) Bottler
(12) Salesman
(13) Vendor representative
(14) Nonresident malt beverage vendor

(15) Nonresident wine vendor
(16) Winery special show
(17) Liquor importer/bottler ~~permit.~~ permit
(18) Cider and vinegar manufacturer."

Section. 2. Chapter 18B of the General Statutes is amended by adding a new section to read:

"§ 18B-1114.2. Effect of cider and vinegar manufacturer permit.

The holder of a cider and vinegar manufacturer permit may purchase and transport unlimited quantities of out-of-date unfortified or fortified wines from wine wholesalers for the sole purpose of manufacturing a food product item. Any manufacturer of cider or vinegar may apply for this permit."

Section. 3. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. -- An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit -- $200.00.
(2) Off-premises malt beverage permit -- $200.00.
(3) On-premises unfortified wine permit -- $200.00.
(4) Off-premises unfortified wine permit -- $200.00.
(5) On-premises fortified wine permit -- $200.00.
(6) Off-premises fortified wine permit -- $200.00.
(7) Brown-bagging permit -- $200.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $100.00.
(8) Special occasion permit -- $200.00.
(9) Limited special occasion permit -- $25.00.
(10) Mixed beverages permit -- $750.00.
(11) Culinary permit -- $100.00.
(12) Unfortified winery permit -- $150.00.
(13) Fortified winery permit -- $150.00.
(14) Limited winery permit -- $150.00.
(15) Brewery permit -- $150.00.
(16) Distillery permit -- $150.00.
(17) Fuel alcohol permit -- $50.00.
(18) Wine importer permit -- $150.00.
(19) Wine wholesaler permit -- $150.00.
(20) Malt beverage importer permit -- $150.00.
(21) Malt beverage wholesaler permit -- $150.00.
(22) Bottler permit -- $150.00.
(23) Salesman permit -- $25.00.
(24) Vendor representative permit -- $25.00.
(25) Nonresident malt beverage vendor permit -- $50.00.
(26) Nonresident wine vendor permit -- $50.00.

(27) Any special one-time permit under G.S. 18B-1002 -- $25.00.
(28) Winery special event permit -- $100.00.
(29) Mixed beverages catering permit -- $100.00.
(30) Guest room cabinet permit -- $750.00.
(31) Liquor importer/bottler permit -- $250.00.
(32) Cider and vinegar manufacturer permit. -- $100.00."

Section 4. G.S. 18B-1107(a) reads as rewritten:

"(a) Authorization. -- The holder of a wine wholesaler permit may:

(1) Receive, possess and transport shipments of fortified and unfortified wine;
(2) Sell, deliver and ship wine in closed containers for purposes of resale to wholesalers or retailers licensed under this Chapter as authorized by the ABC laws;
(3) Furnish and sell wine to its employees, subject to the rules of the Commission and the Department of Revenue;
(4) In locations where the sale is legal, furnish wine to guests and any other person who does not hold an ABC permit, for promotional purposes, subject to rules of the ~~Commission.~~ Commission;
(5) Sell out-of-date unfortified and fortified wines to holders of cider and vinegar manufacturer permits, provided that each bottle is marked 'out-of-date' by the wholesaler."

Section 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 348
Proposed Committee Substitute H348-PCSA218

Short Title: Cider/Vinegar Manufacturer Permit. (Public)

Sponsors:

Referred to:

February 27, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A CIDER AND VINEGAR MANUFACTURER PERMIT TO BE ISSUED BY THE ALCOHOLIC BEVERAGE CONTROL COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1100 reads as rewritten:

"**§ 18B-1100. Commercial permits.**

The Commission may issue the following commercial permits:

(1) Unfortified winery
(2) Fortified winery
(3) Limited winery
(4) Brewery
(5) Distillery
(6) Fuel alcohol
(7) Wine importer
(8) Wine wholesaler
(9) Malt beverages importer
(10) Malt beverages wholesaler
(11) Bottler
(12) Salesman
(13) Vendor representative
(14) Nonresident malt beverage vendor

(15) Nonresident wine vendor
(16) Winery special show
(17) Liquor importer/bottler ~~permit.~~ permit
(18) Cider and vinegar manufacturer."

Section. 2. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-1114.2. Effect of cider and vinegar manufacturer permit.**

The holder of a cider and vinegar manufacturer permit may purchase and transport unlimited quantities of out-of-date unfortified or fortified wines from wine wholesalers for the sole purpose of manufacturing a food product item. Any manufacturer of cider or vinegar may apply for this permit."

Section 3. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. -- An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit -- $200.00.
(2) Off-premises malt beverage permit -- $200.00.
(3) On-premises unfortified wine permit -- $200.00.
(4) Off-premises unfortified wine permit -- $200.00.
(5) On-premises fortified wine permit -- $200.00.
(6) Off-premises fortified wine permit -- $200.00.
(7) Brown-bagging permit -- $200.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $100.00.
(8) Special occasion permit -- $200.00.
(9) Limited special occasion permit -- $25.00.
(10) Mixed beverages permit -- $750.00.
(11) Culinary permit -- $100.00.
(12) Unfortified winery permit -- $150.00.
(13) Fortified winery permit -- $150.00.
(14) Limited winery permit -- $150.00.
(15) Brewery permit -- $150.00.
(16) Distillery permit -- $150.00.
(17) Fuel alcohol permit -- $50.00.
(18) Wine importer permit -- $150.00.
(19) Wine wholesaler permit -- $150.00.
(20) Malt beverage importer permit -- $150.00.
(21) Malt beverage wholesaler permit -- $150.00.
(22) Bottler permit -- $150.00.
(23) Salesman permit -- $25.00.
(24) Vendor representative permit -- $25.00.
(25) Nonresident malt beverage vendor permit -- $50.00.
(26) Nonresident wine vendor permit -- $50.00.
(27) Any special one-time permit under G.S. 18B-1002 -- $25.00.
(28) Winery special event permit -- $100.00.

(29) Mixed beverages catering permit -- $100.00.
(30) Guest room cabinet permit -- $750.00.
(31) Liquor importer/bottler permit -- $250.00.
(32) Cider and vinegar manufacturer permit -- $100.00."

Section 4. G.S. 18B-1107(a) reads as rewritten:

"(a) Authorization. -- The holder of a wine wholesaler permit may:

(1) Receive, possess and transport shipments of fortified and unfortified wine;
(2) Sell, deliver and ship wine in closed containers for purposes of resale to wholesalers or retailers licensed under this Chapter as authorized by the ABC laws;
(3) Furnish and sell wine to its employees, subject to the rules of the Commission and the Department of Revenue;
(4) In locations where the sale is legal, furnish wine to guests and any other person who does not hold an ABC permit, for promotional purposes, subject to rules of the ~~Commission.~~ Commission;
(5) Sell out-of-date unfortified and fortified wines to holders of cider and vinegar manufacturer permits, provided that each bottle is marked 'out-of-date' by the wholesaler."

Section 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 348

Short Title: Cider/Vinegar Manufacturer Permit. (Public)

Sponsors: Representatives Eddins; and McMahan.

Referred to: Judiciary I, if favorable, Finance.

February 27, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A CIDER AND VINEGAR MANUFACTURER'S PERMIT TO BE ISSUED BY THE ALCOHOLIC BEVERAGE CONTROL COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1100 reads as rewritten:

"**§ 18B-1100. Commercial permits.**

The Commission may issue the following commercial permits:

(1) Unfortified winery
(2) Fortified winery
(3) Limited winery
(4) Brewery
(5) Distillery
(6) Fuel alcohol
(7) Wine importer
(8) Wine wholesaler
(9) Malt beverages importer
(10) Malt beverages wholesaler
(11) Bottler
(12) Salesman
(13) Vendor representative
(14) Nonresident malt beverage vendor
(15) Nonresident wine vendor
(16) Winery special show

(17) Liquor importer/bottler ~~permit.~~ permit

(18) Cider and vinegar manufacturer."

Section. 2. Chapter 18B of the General Statutes is amended by adding a new section to read:

"**§ 18B-1114.2. Effect of cider and vinegar manufacturer permit.**

The holder of a cider and vinegar manufacturer permit may purchase and transport unlimited quantities of out-of-date malt beverages from malt beverage wholesalers or out-of-date unfortified or fortified wines from wine wholesalers for the sole purpose of manufacturing a food product item. Any manufacturer of cider or vinegar may apply for this permit."

Section. 3. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. -- An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit -- $200.00.
(2) Off-premises malt beverage permit -- $200.00.
(3) On-premises unfortified wine permit -- $200.00.
(4) Off-premises unfortified wine permit -- $200.00.
(5) On-premises fortified wine permit -- $200.00.
(6) Off-premises fortified wine permit -- $200.00.
(7) Brown-bagging permit -- $200.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $100.00.
(8) Special occasion permit -- $200.00.
(9) Limited special occasion permit -- $25.00.
(10) Mixed beverages permit -- $750.00.
(11) Culinary permit -- $100.00.
(12) Unfortified winery permit -- $150.00.
(13) Fortified winery permit -- $150.00.
(14) Limited winery permit -- $150.00.
(15) Brewery permit -- $150.00.
(16) Distillery permit -- $150.00.
(17) Fuel alcohol permit -- $50.00.
(18) Wine importer permit -- $150.00.
(19) Wine wholesaler permit -- $150.00.
(20) Malt beverage importer permit -- $150.00.
(21) Malt beverage wholesaler permit -- $150.00.
(22) Bottler permit -- $150.00.
(23) Salesman permit -- $25.00.
(24) Vendor representative permit -- $25.00.
(25) Nonresident malt beverage vendor permit -- $50.00.
(26) Nonresident wine vendor permit -- $50.00.
(27) Any special one-time permit under G.S. 18B-1002 -- $25.00.
(28) Winery special event permit -- $100.00.
(29) Mixed beverages catering permit -- $100.00.

(30) Guest room cabinet permit -- $750.00.
(31) Liquor importer/bottler permit -- $250.00.
(32) Cider and vinegar manufacturer permit. -- $100.00."

Section 4. G.S. 18B-1109(a) reads as rewritten:

"(a) Authorization. -- The holder of a malt beverages wholesaler permit may:

(1) Receive, possess and transport shipments of malt beverages;
(2) Sell, deliver and ship, in closed containers and in quantities of one case or container or more, malt beverages of any brand filed pursuant to G.S. 18B-1303(a), to wholesalers or retailers licensed under this Chapter, as authorized by the ABC laws;
(3) Furnish and sell malt beverages filed pursuant to G.S. 18B-1303(a) to its employees subject to the rules of the Commission and the Department of Revenue;
(4) In locations where the sale is legal, furnish malt beverages of any brand filed pursuant to G.S. 18B-1303(a) to guests and any other person who does not hold an ABC permit, for promotional purposes, subject to the rules of the ~~Commission.~~ Commission;
(5) Sell out-of-date malt beverages to holders of cider and vinegar manufacturer permits."

Section 5. G.S. 18B-1107(a) reads as rewritten:

"(a) Authorization. -- The holder of a wine wholesaler permit may:

(1) Receive, possess and transport shipments of fortified and unfortified wine;
(2) Sell, deliver and ship wine in closed containers for purposes of resale to wholesalers or retailers licensed under this Chapter as authorized by the ABC laws;
(3) Furnish and sell wine to its employees, subject to the rules of the Commission and the Department of Revenue;
(4) In locations where the sale is legal, furnish wine to guests and any other person who does not hold an ABC permit, for promotional purposes, subject to rules of the ~~Commission.~~ Commission;
(5) Sell out-of-date unfortified and fortified wines to holders of cider and vinegar manufacturer permits."

Section 6. This act is effective when it becomes law.

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March 18, 1997

MEMORANDUM

TO: House Judiciary I Committee

FROM: Steven Rose, Committee Counsel

RE: **Proposed Committee Substitute for House Bill 348; Cider and Vinegar Manufacturer Permit**

The proposed committee substitute for House Bill 348 amends Chapter 18B to provide for permits for manufacturers of cider and vinegar to enable them to purchase and transport unlimited quantities of out-of-date unfortified and fortified wines.

Section 1 amends G.S. 18B-1100 by adding to the list of permits available from the Alcoholic Beverage Commission a permit for a cider and vinegar manufacturer.

Section 2 amends Chapter 18B by adding a new section G.S. 18B-1114.2. This section describes the scope of a cider and vinegar manufacturer permit. It specifically allows the permittee to purchase and transport unlimited quantities of out-of-date unfortified and fortified wines from wine wholesalers for the sole purpose of manufacturing a food product item. Any manufacturer of cider or vinegar may apply for the permit.

Section 3 amends G.S. 18B-902(d). This lists the fees charged for the various permits. It adds the cider and vinegar manufacturer permit with a fee of $100.

Section 4 of the bill amends G.S. 18B-1107(a). This subsection deals with the authorization granted to a holder of a wine wholesaler permit. It adds the ability to sell out-of-date unfortified and fortified wine to holders of cider and vinegar manufacturer permits. The wholesaler must mark "out-of-date" on the bottles.

The act is effective when it becomes law.

H348-SMRL-002

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

March 26

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 328
Proposed Committee Substitute H328-PCSRL-003-97d
THIS IS A DRAFT: LINE NUMBERS MAY CHANGE AFTER ADOPTION
17-MAR-97 10:43:33

Short Title: Stop Tobacco Sales to Minors. (Public)

Sponsors:

Referred to: Judiciary I.

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE SALE OR PURCHASE OF TOBACCO PRODUCTS TO PERSONS LESS THAN EIGHTEEN YEARS OF AGE AND TO REQUIRE THAT CERTAIN PERSONS BE TRAINED REGARDING THESE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-313(a) reads as rewritten:

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

(1) Distribute. -- To sell, furnish, give, or provide tobacco products, including tobacco product samples, or cigarette wrapping papers to the ultimate consumer.

(2) Proof of age. -- A drivers license or other ~~documentary or written evidence~~ photographic identification that includes the bearer's date of birth that purports to establish that the person is 18 years of age or older.

(3) Sample. -- A tobacco product distributed to members of the general public at no cost for the purpose of promoting the product.

(4) Tobacco product. -- Any product that contains tobacco and is intended for human consumption."

Section 2. G.S. 14-313(b) reads as rewritten:

"(b) Sale or distribution to persons under the age of 18 years. -- If any person shall ~~knowingly~~ distribute, or ~~knowingly~~ aid, assist, or abet any other person in distributing tobacco products or cigarette wrapping papers to any person under the age of 18 years, or if any person shall ~~knowingly~~ purchase tobacco products or cigarette wrapping papers on behalf of a person, less than 18 years, the person shall ~~be guilty of a Class 2 misdemeanor;~~ have committed an infraction and pay the following penalties:

(1) Twenty-five dollars ($25.00) upon the first violation.

(2) One hundred dollars ($~~1~~00.00) upon the second violation.

(3) Three hundred dollars ($~~3~~00.00) upon the third and subsequent violation.

~~provided, however, that it~~ It shall not be unlawful to distribute tobacco products or cigarette wrapping papers to an employee when required in the performance of the employee's duties. Retail distributors of tobacco products shall prominently display near the point of sale a sign in letters at least five-eighths of an inch high which states the following:

N.C. LAW STRICTLY PROHIBITS
THE PURCHASE OF TOBACCO PRODUCTS
BY PERSONS UNDER THE AGE OF 18.
PROOF OF AGE REQUIRED.

Failure to post the required sign shall be an infraction with a penalty of twenty-five dollars ($25.00) for the first violation and seventy-five dollars ($75.00) for each succeeding violation.

A person engaged in the sale of tobacco products shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is ~~a Class 2 misdemeanor.~~ an infraction with a penalty of two hundred fifty dollars ($250.00). Proof that the defendant demanded, was shown, and reasonably relied upon proof of age in the case of a retailer, or any other documentary or written evidence of age in the case of a nonretailer, shall be a defense to any action brought under this subsection. Retail distributors of tobacco products shall train their sales employees in the requirements of this law."

Section 3. G.S. 14-313(c) reads as rewritten:

"(c) Purchase by persons under the age of 18 years. -- If any person under the age of 18 years purchases or accepts receipt, or

attempts to purchase or accept receipt, of tobacco products or cigarette wrapping papers, ~~or presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product,~~ the person shall ~~be guilty of~~ have committed an infraction ~~as provided in G.S. 14-3.1.~~ and pay the following penalties:

(1) Twenty-five dollars ($25.00) upon the first violation.

(2) One hundred dollars ($~~1~~50.00) upon the second violation.

(3) Three hundred dollars ($~~3~~150.00) upon the third and subsequent violation.

If any person presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco products or cigarette wrapping papers, the person shall have committed an infraction and pay a penalty of two hundred fifty dollars ($250.00)."

Section 4. G.S. 14-313(d) reads as rewritten:

"(d) Send or assist person less than 18 years to purchase or receive tobacco product. -- If any person shall ~~knowingly~~ send or assist a person less than 18 years of age to purchase, acquire, receive, or attempt to purchase, acquire, or receive tobacco products or cigarette wrapping papers, the person shall be guilty of a Class 2 misdemeanor; provided, however, persons under the age of 18 may be enlisted by police or local sheriffs' departments to test compliance if the testing is under the direct supervision of that law enforcement department and written parental consent is provided; provided further, that the Department of Human Resources shall have the authority, pursuant to a written plan prepared by the Secretary of Human Resources, to use persons under 18 years of age in annual, random, unannounced inspections, provided that prior written parental consent is given for the involvement of these persons and that the inspections are conducted for the sole purpose of preparing a scientifically and methodologically valid statistical study of the extent of success the State has achieved in reducing the availability of tobacco products to persons under the age of 18, and preparing any report to the extent required by section 1926 of the federal Public Health Service Act (42 USC § 300x-26)."

Section 5. G.S. 14-313 is amended by adding a new subsection to read:

"(b1) Vending machines. -- Tobacco products shall not be distributed in vending machines; provided, however, vending machines distributing tobacco products are permitted (i) in any establishment which is open only to persons 18 years of age and older; or (ii) in any establishment if the vending machine is under the continuous control of the owner or licensee of the premises or an employee thereof and can be operated only upon activation by the owner, licensee or employee prior to each purchase and the vending machine is not accessible to the public when the establishment is closed. The owner, licensee or employee shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to any action brought under this subsection. Vending machines distributing tobacco products in establishments not meeting the above conditions shall be removed by July 31, 1997. Any person distributing tobacco products through vending machines in violation of this subsection shall be guilty of a Class 2 misdemeanor."

Section 6. G.S. 14-313 is amended by adding a new subsection to read:

"(b2) Out-of-package sales. -- If any person engaged in the sale of cigarettes shall sell cigarettes other than in unopened packages originating with the manufacturer, the person shall be guilty of a Class 2 misdemeanor."

Section 7. This act becomes effective August 1, 1997, and applies to violations committed on or after that date.

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March 18, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **House Bill 328; Prohibit Tobacco Sales to Minors - Proposed Committee Substitute**

The proposed committee substitute for House Bill 328 amends G.S. 14-313 which prohibits sale or distribution of tobacco products to minors. The amendments will require photographic proof of age; remove the requirement that a person knowingly sell to the minor in order to be found guilty; change penalties for violation; restrict vending machine sales; and prohibit out-of-package cigarette sales.

Section 1 amends G.S. 14-313(a). It changes the definition of "proof of age" so that proof of age may only be a drivers license or other photographic identification that includes the bearer's date of birth. The present definition allows a drivers license or other documentary or written evidence.

Section 2 amends G.S. 14-313(b). This is the subsection that specifically prohibits distribution of tobacco products to persons under 18 years of age. Under present law, a person can only be guilty of violating this subsection if they act "knowingly." The amendments remove the requirement that the person act "knowingly." Further, retail distributors will be required to display a sign stating that North Carolina law prohibits purchase of tobacco products by persons under 18. Failure to post a sign is an infraction punishable by a $25.00 penalty for the first offense and a $75.00 penalty for each succeeding offense. A retailer may rely on proper (with photo) proof of age. A nonretailer may still rely on documentary or other written evidence (without a photo) of age. Retail distributors of tobacco products must train their sales employees in the requirements of the law. The penalty for selling to a minor changes from a Class 2 misdemeanor to an

infraction. A first offense is punishable by a $25.00 penalty, a second offense by a $100.00 penalty, and a third offense or subsequent offense by a $300.00 penalty.

Failure to demand proof of age changes from a Class 2 misdemeanor to an infraction with a penalty of $250.00.

Section 3 amends G.S. 14-313(c). This subsection prohibits minors from purchasing tobacco products. The amendments change the penalties. Under the present law, if a minor purchases or accepts receipt of tobacco products or uses false identification to purchase tobacco products, the person is guilty of an infraction with a maximum penalty of $100.00. Violation remains an infraction. The amendments change the penalties. For an underage purchase, the first offense penalty becomes $25.00, the second offense becomes $100.00, and the third offense becomes $300.00. The penalty for using false identification remains an infraction, but the penalty goes from a maximum $100.00 to $250.00

Section 4 amends G.S. 14-313(d) which prohibits knowingly sending or assisting a minor to purchase or receive tobacco products. The amendment removes the term "knowingly."

Section 5 of the bill adds a new subsection (b1) to G.S. 14-313. The new subsection regulates vending machines by prohibiting distribution of tobacco products in vending machines except under specific circumstances. Vending machines may be used in establishments open only to persons 18 years of age and older, or in establishments where the machine is under the continuous control of the owner or licensee of the premises, or an employee, the machine is activated by the owner, licensee, or employee prior to each purchase, and the machine is not accessible to the public when the establishment is closed. The person in control of the vending machine must demand proof of age if he has reasonable grounds to believe that the prospective purchaser is under 18 years of age, and failure to demand proof of age is a Class 2 misdemeanor. It is a defense to prosecution that the person in control of the vending machine demanded, was shown, and reasonably relied upon proof of age. Vending machines distributing tobacco products and not meeting the new requirements must be removed by July 31, 1997. Distribution of tobacco products in violation of this subsection is a Class 2 misdemeanor.

Section 6 amends G.S. 14-313 by adding a new subsection (b2). The new subsection prohibits sale of cigarettes other than in unopened packages originating with the manufacturer. A violation is a Class 2 misdemeanor.

The act is effective August 1, 1997 and applies to offenses committed on or after that date.

An incarceration fiscal note is required.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 328

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H328-ARL-005

Date_____,1997

Comm. Sub. [YES] (PCSH328-PCSRL-003-97d)
Amends Title []

moves to amend the bill on page 4, line 14, by deleting the words: "a Class 2" and substituting the words "an infraction with a penalty of two hundred fifty dollars ($250.00)."; and

on page 4, line 15, by deleting the word "misdemeanor."; and

on page 4, lines 21 and 22, by rewriting those lines to read: "violation of this subsection shall have committed an infraction and pay the following penalties:

(1) Twenty five dollars ($25.00) upon the first violation.
(2) One hundred dollars ($100.00) upon the second violation.
(3) Three hundred dollars ($300.00) upon the third and subsequent violation.'".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 328

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H328-ARL-003 Page 1 of 1

Date_____,1997

Comm. Sub. [YES] (PCSH328-PCSRL-003-97d)
Amends Title []

moves to amend the bill on page 2, lines 34 and 35, by rewriting those lines to read:
"by this subsection ~~is~~ is, on the first such occasion, an infraction with a penalty of $250.00, and on a subsequent occasion the person shall be guilty of a Class 2 misdemeanor. Proof that the"; and

further amends the bill on page 3, lines 17-19, by rewriting those lines to read:
"products or cigarette wrapping papers, the person shall, on the first such occasion, have committed an infraction and pay a penalty of $250.00, and on a subsequent occasion the person shall be guilty of a Class 2 misdemeanor.'".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 328

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H328-ARL-002

Date_____,1997

Comm. Sub. [YES] (PCSH328-PCSRL-003-97d)
Amends Title []

moves to amend the bill on page 2, lines 8 through 17, by rewriting those lines to read:
"than 18 years, the person shall, on the first such occasion, have committed an infraction, and on a subsequent occasion the person shall be guilty of a Class 2 misdemeanor; provided, however, that it shall not be unlawful to distribute"; and

further amends the bill on page 3, lines 5 through 13 by rewriting those lines to read:
"~~receiving any tobacco products,~~ the person ~~shall~~ shall, on the first such occasion, ~~be guilty of~~ have committed an ~~infraction~~ infraction, and on a subsequent occasion the person shall be guilty of a Class 2 misdemeanor.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 328

AMENDMENT NO. _____
(to be filled in by Principal Clerk) _____
Page 1 of 1

H328-ARL-007

Date _____ ,1997

Comm. Sub. [YES] (PCSH328-PCSRL-003-97d)
Amends Title []

1 moves to amend the bill on page 4, line 21,
2 by deleting the word:
3 "shall" and substituting the words "shall, on the first such
4 occasion have committed an infraction, and on a subsequent
5 occasion".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 328

AMENDMENT NO. _____
(to be filled in by Principal Clerk)

H328-ARL-006

Date _____ ,1997

Comm. Sub. [YES] (PCSH328-PCSRL-003-97d)
Amends Title []

1 moves to amend the bill on page 4, line 14,
2 by deleting the word:
3 "is" and substituting the words "is, on the first such occasion, an
4 infraction with a penalty of two hundred fifty dollars ($250.00),
5 and on a subsequent occasion".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

History of NC Law Prohibiting
Tobacco Sales to Children and Adolescents

Effective Date	Overview of Legislation Regarding Sale and Distribution	Penalties for Violations
1891	Prohibited any person to sell, give away cigarettes to any minor under age 17 or aid, assist or abet any other person in selling cigarettes to a minor.	- Punishable by a misdemeanor - Fine not to exceed $500.00, imprisonment for not more than six months or both.
July 1991	Prohibited any person to knowingly sell, give away or dispose of cigarettes, cigarette wrapping papers, or smokeless tobacco products to any minor under the age of 18.	- Punishable by a misdemeanor - Fine not to exceed $500.00, imprisonment for not more than six months or both.
December 1995	- Prohibits any person to knowingly distribute tobacco products or cigarette wrapping papers to anyone under age 18. - Requires retail sellers to check ID's of prospective purchasers if the seller has reasonable grounds to believe the purchaser is under 18. - Prohibits any person under age 18 from purchasing, attempting to purchase or receive tobacco products or present false ID for the purpose of buying any tobacco products. - Prohibits or preempts all forms of local government from further restrictions on tobacco sales to minors. Exceptions on vending machines regulations.	- Punishable by a Class 2 misdemeanor. - Punishable by a Class 2 misdemeanor. - Punishable by an Infraction.
1997 (as of 3-14-97) Senate Bill 143	- Prohibits any person to distribute tobacco products or cigarette wrapping papers to anyone under 18. (removes knowingly) - Requires retail sellers to check IDs of prospective purchasers if the seller has reasonable grounds to believe the purchaser is under 18. - Prohibits any person under age 18 from purchasing, attempting to purchase or receive tobacco products. - Prohibits any person to use a false ID for the purpose of buying any tobacco products. - Requires signage on age of purchaser. - Prohibits sale and distribution of tobacco products through vending machines except in establishments where minors are not allowed or through "lock out" devices and "tokens". - Prohibits the sale of single cigarettes or packages less than manufacturers.	- Punishable by a Class 2 misdemeanor. - Punishable by a Class 2 misdemeanor. - Punishable by an Infraction. - Punishable by a Class 2 misdemeanor. - Failure to post signage is punishable by an infraction ($25.00) for first offense and ($75.00) for each succeeding offense. - Punishable by a Class 2 misdemeanor. - Punishable by a Class 2 misdemeanor.

cyb/a/SB

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on JUDICIARY I .

☐ Committee Substitute for
S. B. 95 A BILL TO BE ENTITLED AN ACT TO VALIDATE NOTARIAL ACTS PERFORMED BY CERTAIN NOTARIES BEFORE DECEMBER 31, 1996.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

X With a favorable report as to committee substitute bill, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 95
Proposed House Committee Substitute S95-PCS7608

Short Title: Validate Notarial Acts. (Public)

Sponsors:

Referred to:

February 12, 1997

A BILL TO BE ENTITLED

AN ACT TO VALIDATE NOTARIAL ACTS PERFORMED BY CERTAIN NOTARIES BEFORE DECEMBER 31, 1996.

The General Assembly of North Carolina enacts:

Section 1. G.S. 10A-16 reads as rewritten:

"**§ 10A-16. Acts of notaries public in certain instances validated.**

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, or by a person whose notary commission has expired, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act.

(b) All documents bearing a notarial seal in which the date of the expiration of the notary's commission is erroneously stated, or having a notarial seal that does not contain a readable impression of the notary's name, or contains an incorrect spelling of the notary's name, fails to contain the words 'North Carolina' or the abbreviation 'N. C.', or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for Georgia, are validated and given the same legal effect as if the errors had not occurred.

(c) All deeds of trust in which the notary was named in the document as a trustee only are validated.

(d) This section applies to notarial acts performed before ~~October 1, 1991.~~ December 31, 1996."

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 95

Short Title: Validate Notarial Acts. (Public)

Sponsors: Senators Rand; Ballance, Blust, Cooper, Dalton, Hartsell, Horton, Kinnaird, Miller, Odom, Reeves, Soles, Wellons, and Winner.

Referred to: Judiciary.

February 12, 1997

A BILL TO BE ENTITLED

AN ACT TO VALIDATE NOTARIAL ACTS PERFORMED BY CERTAIN NOTARIES BEFORE DECEMBER 31, 1996.

The General Assembly of North Carolina enacts:

Section 1. G.S. 10A-16 reads as rewritten:

"**§ 10A-16. Acts of notaries public in certain instances validated.**

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, or by a person whose notary commission has expired, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act.

(b) All documents bearing a notarial seal in which the date of the expiration of the notary's commission is erroneously stated, or having a notarial seal that does not contain a readable impression of the notary's name, fails to contain the words 'North Carolina' or the abbreviation 'N. C.', or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for Georgia, are validated and given the same legal effect as if the errors had not occurred.

(c) All deeds of trust in which the notary was named in the document as a trustee only are validated.

(d) This section applies to notarial acts performed before ~~October 1, 1991.~~ December 31, 1996."

Section 2. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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March 17, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel

RE: **Senate Bill 95 - Validate Notarial Acts.**

Senate Bill 95 amends G.S. 10A-16 to validate certain notarial acts performed before December 31, 1996. G.S. 10A-16 validates acts of notaries public in certain instances including acknowledgments taken prior to a person's qualification as a notary public but after that person has been commissioned or recommissioned, or by a person whose commission has expired. Also validated are documents bearing an erroneously stated date of expiration on the notarial seal, and deeds of trust in which the notary was named in the document as a trustee only.

In 1991, the Chapter of the General Statutes relating to Notaries was recodified as Chapter 10A.(Chap. 683, 1991 Session Laws) At that time this provision was made applicable to acts performed before October 1, 1991. Prior to 1991, the equivalent of this provision had been updated approximately every two years. It has not been updated since 1991. This bill will validate any documents containing these technical defects which were notarized prior to December 1, 1996.

This act would become effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

3/18

North Carolina House of Representatives
JUDICIARY I COMMITTEE

Roll Call

EXCUSED — **Alexander**
EXCUSED — **Arnold**
Blue
Braswell
Capps
Clary
Crawford
(Daughtry)
Ellis
Esposito
Fitch
Gray
Hall
Hardaway
Hardy
Holmes
Hunter
Hurley
Jeffus
Justus
Micheux
Miller
Morgan
Sherrill
Thompson

VISITOR REGISTRATION SHEET

Judiciary I 3/18/97

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Trevor V. Bennett	NCCFTF
2.	Lauren R Payne	Chatham Co.
3.	Brenda Coleman	NCDOR
4.	Alice Garland	Electricities
5.	Ann Case	DEHNR
6.	Pam Seamans	United Way & Covenant w/ NC's Children
7.	Paula Hall	Covenant w/ NC's Children
8.	Julie Rehder	NC Child Advocacy
9.	Bill Scogin	NC BAR ASSOC.
10.	Jill Miller	NCATL
11.	Paula H. McInroy	NC Dept of INS
22.	Jamie Callenwyn	Senator Rand's Intern
23.	Nancy C. Kendig	Rep. Esposito's Office
24.	Kelly Sandberg	Rep-Black's Intern
25.	Edward Jenkins	Monsanto
26.		
27.		
28.		
29.		
30.		
31.		

North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

I tape minutes are not filed in computer

March 20, 1997
10:00 a.m.
1327 Legislative Bldg.

N. Leo Daughtry and Edwin M. "Sandy" Hardy, Chairman

Members Present

Martha B. Alexander
Daniel T. Blue, Jr.
J. Russell Capps
James W. Crawford
J. Sam Ellis
Milton F. Fitch, Jr.
Bobby Ray Hall
Edwin M. "Sandy" Hardy
Robert C. Hunter
Margaret M. Jeffus
H. M. Michaux, Jr.
Richard T. Morgan
Gregg Thompson
Gene G. Arnold
Jerry Braswell
Debbie Clary
N. Leo Daughtry
Theresa Harlow Esposito
Lyons Gray
Thomas C. Hardaway
George M. Holmes
John W. Hurley
Larry T. Justus
George W. Miller, Jr.
Wilma M. Sherrill

The House Committee on JUDICIARY I met at 10:00 a.m. on Thursday, March 20, 1997 in Room 1327 of the Legislative Building with Chairmen N. Leo Daughtry and Edwin M. "Sandy" Hardy presiding.

Committee Counsels Steven Rose and Karen Cochrane-Brown were present to assist the Committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

Chairman Daughtry introduced House Pages Dustin Miller of Onslow County and Andy Moretz of Buncombe County who were present to assist the Committee.

The Chairman introduced Representative Baker for the purpose of resuming discussion of House Bill 30, USE OF MOTORCYCLE HELMETS. Rep. Baker distributed a copy of a Newspaper column by Mr. Dennis Rogers, from the Raleigh *NEWS and OBSERVER*, March 9, 1997; a copy of *SELECTED STATISTICS* he had gathered comparing accidents in the various states, *ESTIMATED IMPACT of MANDATORY HELMET LAWS* he had prepared, and an article from The ASSOCIATED PRESS, which was re-printed from the *WINSTON-SALEM JOURNAL*, March 27, 1997, all of which are attached and made a part

of these minutes.

Rep. Baker introduced Dr. Jim Weaver, a surgeon, for the purpose of speaking in favor of the measure. A copy of his prepared remarks is attached and made a part of these minutes.

After discussion on the measure, Rep. Capps made a motion to report H.B. 30 "without prejudice," with a recommendation that it subsequently be re-referred to the Committee on TRANSPORTATION.

On a motion made by Rep. Holmes, the Committee voted to accept a substitute motion, to refer the bill to the House with an unfavorable report.

Representable Arnold was recognized for the purpose of reporting for the Subcommittee on House Bill 328 STOP TOBACCO SALES TO MINORS, and the Committee voted to accept a Proposed Committee Substitute to H. B. 328, which subsequently was before the Committee for discussion.

Rep. Arnold reported the Subcommittee on H.B. 328, in the Proposed Committee Substitute, sought to decriminalize the purchase of cigarettes.

Jane P. Gray, Deputy Attorney General for Policy and Planning, was recognized for the purpose of speaking against decriminalizing the offense of selling cigarettes to minors and in favor of criminal penalties.

Rep. Hall was recognized for the purpose of speaking to the bill, saying it was his belief that it was inappropriate to make criminals out of teenagers and convenience store clerks, saying he was in favor of treating these offenses as infractions.

Lieut. Christopher Hoina, of the Police Department of the City of Cary was present once again, to answer question regarding the measure, and he spoke on behalf of maintaining the felonious criminality in the original bill.

Rep. Hunter was recognized, saying his concerns about consistent penalties as regards enforcement of the bill as law, caused him to suggest the bill be examined further before he could vote to report favorably.

Chairman Daughtry suggested to Rep. Hunter he offer an amendment to the measure, which he would have time to prepare since the Committee would not be voting on the bill at this meeting.

Deborah Bryant, of the North Carolina Lung Association, was recognized for the purpose of speaking of concerns regarding the level of infractions.

Roger W. Bone of the Tobacco Institute was recognized for the purpose of speaking in favor of the measure, supporting a bill in which the word "knowingly" is taken out for the

Purpose of holding the various proponents of the measure together

Fran E. Preston of the North Carolina Retail Merchants Association was recognized for the purpose of speaking in favor of the Proposed Committee Substitute, saying the Federal Regulations were ammunition enough against store owners.

The meeting adjourned at 11:00 a.m.

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS

HOUSE COMMITTEE ON JUDICIARY I

Thursday, March 20, 1997
Room 1327 LB
10:00 a.m.

OPENING REMARKS:
Representative N. Leo Daughtry, Chairman
Judiciary I Committee

BILLS TO BE CONSIDERED:

H.B. 30 USE OF MOTORCYCLE HELMETS
Sponsor: Representative Baker

H.B. 88 STATE BD OF EDUC SUBPOENA
Sponsor: Representative Preston

H.B. 328 BAN TOBACCO SALES TO MINORS-2
Sponsor: Representative Arnold and Fitch

ADJOURNMENT

March 20, 1997

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I** .

☐ Committee Substitute for
H.B. 30 A BILL TO BE ENTITLED AN ACT TO MODIFY THE REQUIREMENT FOR THE USE OF HELMETS BY OPERATORS AND PASSENGERS ON MOTORCYCLES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

X With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

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Raleigh, NC 2760
(919) 733-2578

February 20, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel

RE: House Bill 30 - Use of Motorcycle Helmets.

House Bill 30 amends G.S. 20-140.4 to allow a motorcycle operator who is 21 years of age or older and who has had a driver's license with motorcycle endorsement or, in the case of out-of-state drivers, a motorcycle license for at least 12 months to operate a motorcycle without a helmet. The bill also provides that when the motorcycle is being operated by a person who meets the above requirements, and the passenger is at least 21 years old, the passenger may ride without a helmet.

Currently, the law requires that no person shall operate a motorcycle or moped unless the operator and all passengers wear safety helmets of a type approved by the Commissioner of Motor Vehicles. Any person convicted of violating this provision is guilty of an infraction and shall pay a fine of $25.00.

According to the American Automobile Association's 1996 Digest of Motor Laws, 18 states require the use of helmets only by drivers under the age of 18. Two states require them for those under age 19, and South Carolina is the only state that presently requires the use of a helmet only by persons under age 21. Colorado, Illinois, and Iowa do not require use of helmets by anyone. Twenty-five states continue to require that all drivers and passengers wear a helmet while operating a motorcycle .

The act would become effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 30

Short Title: Use of Motorcycle Helmets. (Public)

Sponsors: Representatives Baker; Davis, Hill, Church, Cansler, Culp, and Gulley.

Referred to: Judiciary I.

February 4, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE REQUIREMENT FOR THE USE OF HELMETS BY OPERATORS AND PASSENGERS ON MOTORCYCLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-140.4(a) reads as rewritten:

"(a) No person shall operate a motorcycle or moped upon a highway or public vehicular area:

(1) When the number of persons upon such motorcycle or moped, including the operator, shall exceed the number of persons which it was designed to carry.

(2) Unless the operator and all passengers thereon wear safety helmets of a type approved by the Commissioner of Motor ~~Vehicles.~~ Vehicles, except that:

a. If the operator is 21 years of age or older and has had a motorcycle license or a motorcycle endorsement for more than 12 months, then the operator may operate the motorcycle without a helmet; and

b. If the operator is allowed to operate a motorcycle without a helmet pursuant to sub-subdivision a. of this subdivision and the passenger is 21 years of age or older, then the passenger may ride without a helmet."

Section 2. This act is effective when it becomes law.

Remarks to the House Judiciary I Committee
February 20, 1997

Thank you very much for the opportunity to speak. Your time is precious so I will be brief.

My name is Herb Garrison. I am here from Greenville where I am an Associate Professor of Emergency Medicine at the East Carolina University School of Medicine and Director of the Eastern Carolina Injury Prevention Program. I am also member of the medical staff of Pitt County Memorial Hospital.

I am here to urge you to reject House Bill 30. My recommendation is based on my 10 years experience as an emergency physician, on my knowledge as an injury prevention specialist, and as a native of our state who cares deeply about his fellow North Carolinians.

First, I give you my perspective as a doctor who works in one of the busiest emergency rooms in the state. Almost every time I work I care for someone who has sustained a severe head injury. What does it mean to suffer a head injury? Well often times it means that you come into the ER and we pronounce you dead. As you might guess, the worse part of my job is to tell a family that their loved one has just died.

In some ways it can be even worse on families when their loved one hasn't died. For a bad head injury can leave you severely disabled. This often means that as part of the job of caring for their disabled relative, the family will have to build a ramp to their front door, will have to get their plumbing changed, and will frequently be changing the diaper of their incapacitated son, daughter, husband or wife. Just as often it means they will have to quit work to take care of them.

Now what does this have to do with House Bill 30. Well the fact is that unhelmeted

motorcylists involved in crashes are three times as likely to sustain a head injury as helmeted cyclists. Motorcycle helmets offer the best protection from head injuries.

Another hat that I wear is that of an injury prevention specialist. Our hospital started its injury prevention program as a way to keep people healthy and injury free and, frankly, as a way to save money. This is because society has asked physicians and hospitals to contain the costs of health care and one of the best ways we can do that is by establishing prevention programs. The passage of House Bill 30 and the resulting head injuries it will permit will cost the hosptals of North Carolina a lot of money.

The problem comes about because at least one third of injured motorcyclists have no medical insurance and unhelmeted motorcyclists involved in crashes ~~as~~ are even less likely to be insured. As you know, the care of head injuries is very expensive. In Illinois, among unhelmeted motorcyclists admitting to the hospital, charges for those suffering brain injuries are 3 times higher than those who are helmeted. In Conneticutt, hospitals there had to absorb forty two percent of medical care costs for uninjured motorcyclists. This amounted to $12 million dollars in costs over five years that were not reimbursed to hospitals.

In the past, the additional cost from unhelmeted motorcycle crash head injury victims wouldn't have been much of a burden for hospitals. Then hospitals could shift the cost of care for the uninsured to the insured. But, insurance companies no longer compensate hospitals such that they can shift the cost of uninsured motorcyclists. Passage of this bill is guaranteed to add a significant burden to hospitals. And as you know, many of the hospitals, particularly in rural areas of our state, are already struggling to stay open. Hospitals ~~and insurance companies~~ appreciate the fact that acute medical care costs are 40% less with helmet use.

Last but certainly not least I'd like to give you my viewpoint on this issue as a taxpaying citizen. Not only will the enactment of House Bill 30 cost the state's

hospitals, it will cost the citizens of North Carolina. Remember that unhelmeted motorcylists are more likely to sustain a severe head injury and less likely to be insured. The state of Conneticutt, which is smaller and has a shorter riding season, estimates that the lack of a helmet law cost their state about $5 million dollars a year.

In the end, we the people are the ones who will have to absorb the additional cost of hospital and rehabilitation care, we will have to pay unemployemnt compensation, and, in some cases, have to support the family of the incapacitated head injured motorcyclist who must go on welfare.

North Carolina already has many important needs. We don't need to create further uses of our limited state revenues by enacting House Bill 30. To keep people healthy and productive, to save our hospitals money, and, ~~in the end~~, to safeguard the resources of our state and our people, I urge you to reject House Bill 30.

Thank you for your time and attention. I would be happy to answer any questions.

CENTRAL CAROLINA CARDIOVASCULAR
& THORACIC SURGICAL ASSOCIATES, P.A.
4125 BEN FRANKLIN BOULEVARD
SUITE 100

JAMES P. WEAVER, M.D.
VASCULAR & THORACIC SURGERY

THOMAS H. MARSICANO, M.D.
CHARLES E. MURPHY, M.D.
CARDIAC, VASCULAR & THORACIC SURGERY

February 19, 1997

Representative Rex Baker
632 Legislative Office Building
Raleigh, N.C. 27601-1096

Dear Representative Baker:

I am writing to you as a surgeon and as a motorcyclist to let you know that I appreciate your efforts in sponsoring legislation that would allow 21 year olds, and over, to chose whether or not to wear a motorcycle helmet. I have been in Ohio, where this type of legislation exists, and, quite frankly, I feel it is the most reasonable and effective choice for the people of North Carolina.

The motorcycle accidents I have witnessed as a surgeon for 20 years are most frequently the result of irresponsibility of the other vehicle, not the motorcyclist. Injuries that I have seen would not have changed if the patient were wearing a helmet.

Even more important is the fact that motorcyclists are essentially being "picked on" as a group because of the inference that they have less insurance than other people. I do not believe there is any evidence to support this as motorcyclists are at least as responsible, if not more so, than most drivers on the highways.

Moreover, if the legislature wishes to pass laws to protect us from ourselves, I would suggest that they outlaw the use of any stepladders that are over six feet tall in this state. The falls that occur from people climbing on stepladders, and the irresponsible behavior involved, must cost the taxpayers enormous amounts of money. In addition, I suggest a "fat tax." This would be a tax on every pound that a person weighs over 10% of their ideal body weight. This, again, would protect the taxpayers from numerous expenses incurred because of obesity. Both of these suggestions follow the same logic that the helmet law does. I believe that this logic is flawed and that motorcyclists have been singled out for restrictions that are basically unnecessary.

Thank you so very much for your assistance with this matter. I would like you to know that your approach to the position of government in legislation will encourage a more responsible society. I believe that is what we all would like. God bless you.

Sincerely,

JAMES P. WEAVER, M.D.

JPW:ck

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE DRH6005-LK002A(12.3)

Short Title: Use of Motorcycle Helmets. (Public)

Sponsors: Representative Baker.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE REQUIREMENT FOR THE USE OF HELMETS BY OPERATORS AND PASSENGERS ON MOTORCYCLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-140.4(a) reads as rewritten:

"(a) No person shall operate a motorcycle or moped upon a highway or public vehicular area:

(1) When the number of persons upon such motorcycle or moped, including the operator, shall exceed the number of persons which it was designed to carry.

(2) Unless the operator and all passengers thereon wear safety helmets of a type approved by the Commissioner of Motor ~~Vehicles.~~ Vehicles, except that:

a. If the operator is 21 years of age or older and has had a motorcycle license or a motorcycle endorsement for more than 12 months, then the operator may operate the motorcycle without a helmet; and

b. If the operator is allowed to operate a motorcycle without a helmet pursuant to sub-subdivision a. of this subdivision and the passenger is 21 years of age or older, then the passenger may ride without a helmet."

Section 2. This act is effective when it becomes law.

Unhelmeted Riders Not A Social Burden

By Lem Sprinkle

Legislation introduced into the North Carolina General Assembly in it's 1997 session seeks to make protective headgear voluntary for adult motorcyclists, over the age of 21, with one year (12 months) of licensed riding experience. Also addressed is protective headgear for the passenger. This attempt comes after the 1995 repeal of federal penalties on states that do not mandate helmet use.

A close look at the experience of states that have eliminated mandatory use requirements supports reform proponents assertions that experienced adult riders alone deserve the right to decide this issue on a ride-by-ride basis.

A careful study of motorcycle accident data was undertaken in 1991 by the National Highway Transportation Safety Administration at the behest of Congress. Submitted in 1995 as the "Crash Outcome Data Evaluation System" report, the investigation has quantified what until now was merely speculation by motorcyclists. The CODES report sampled accident data from seven states and reported that the average in-patient charge for a helmeted motorcyclists receiving a brain injury was $26,985, as compared to $26,805 for an unhelmeted motorcyclist.

Additionally, the average in-patient charge for a helmeted motorcyclist not receiving a brain injury was $12,736 as compared to $11,730 for an unhelmeted motorcyclist. Finally, the report indicated that motorcyclists are no more dependent upon public sources for medical costs than any other vehicle operator.

As indicated in the CODES report, the lack of a significant monetary benefit attributable to helmet use when caring for injured riders leads to the conclusion that mandating such use to eliminate a perceived social burden is a flawed approach toward social stewardship.

Nationally, the 25 states with mandatory helmet use laws contain 61 percent of all registered motorcyclists. At the same time they account for 64 percent of all accidents and 66 percent of all fatalities. These states have a combined rate of 6.41 fatalities per 10,000 motorcyclists.

The remaining 25 states, with either no helmet law or a modified restriction such as that sought in North Carolina, averaged 5.33 fatalities per 10,000 riders. The overall accident rate in helmet law states is 215.47 per 10,000 while the states with no helmet law or a modified restriction law is 190.93 per 10,000.

The "social burden" or "cost to the taxpayer" theory has dominated the thinking of politicians discussing the elimination of helmet mandates. In addressing the seemingly related issues of personal protection and cost avoidance, reform opponents regularly argue helmet use alone saves lives and reduces the cost to the public of caring for injured motorcyclists.

If helmet use actually provided the protection that members of safety groups claim, it would be logical to deduce that the fatality and accident rate would be significantly lower in states that mandates the protection. In fact, the opposite is true. While the nationwide motorcycle fatality rate average is 2.91 deaths per 100 accidents, the rate in helmet law states is 2.97 versus 2.79 in states with modified or no helmet law. This seemingly minor difference translates to 18 additional deaths per 10,000 accidents in the helmet states.

It remains clear that the most effective way to reduce motorcycle injuries and fatalities is to prevent accidents from occurring through public awareness and education. Helmets and helmet laws do not prevent accidents.

The Concerned Bikers Association of North Carolina is a strong advocate of motorcycle rider education, improved licensing and testing, and increased public awareness; all of these are measures that are proven to reduce accidents and improve safety. This comprehensive approach did not exist 30 years ago, when it was first determined that mandatory helmet use laws were the panacea for improving motorcycle safety. Society's role is not to mandate personal safety, but rather to provide the education and experience necessary to aid us in making these decisions ourselves.

The Concerned Bikers Association believes there is a clear distinction between the use of helmets and mandatory helmet use laws. Some view the helmet solely as a mechanical safety device. In reality, helmets reduce visual and hearing ability and actually contribute to many accidents. Many motorcyclists view the helmet as an accessory of personal apparel--its use or non-use is a matter of personal choice and their right as experienced adults to make their own decisions. The only reasoned conclusion is that an informed decision on this issue can best be made by the individual motorcycle rider.

Lem Sprinkle, President
Concerned Bikers Association of North Carolina
[redacted]ute #1 Box 544
[redacted]nacle, North Carolina 27043
910-983-9117

AMERICAN MOTORCYCLIST ASSOCIATION
33 Collegeview Road, Westerville, Ohio 43081-1484
Telephone (614) 891-2425
Fax: (614) 891-5012

Motorcycle Safety Facts

- ***Less than 5/10ths of one percent of the crash-involved vehicles nationwide are motorcycles.***

- ***Motorcycle accidents contribute less than 1/1000th of a percent to our nation's total health care costs.***

- ***The average motorcyclist is 32 years old, is married, has attended college, and earns about $33,100 a year.***

- NHTSA's Strategic Execution Plan (released this year) calls for reducing the motorcyclist fatality rate per 100 million vehicle miles traveled (VMT) from 24.8 in 1993 to 23.5 in the year 2000. ***Motorcyclists, through their support and participation in comprehensive rider education programs, have already reduced this rate to 22.6 in 1994, bettering NHTSA's year 2000 goal!***

- NHTSA's Strategic Execution Plan also calls for reducing the motorcyclist injury rate per 100 million VMT from 582 in 1993 to 553 in the year 2000. ***Motorcyclists have also already reduced this rate to 549 in 1994, again bettering NHTSA's year 2000 goal!***

- ***Over the past decade, the fatality rate for motorcyclists per 100 million vehicle miles traveled has declined by 55 percent.***

- ***Twenty-five states support voluntary helmet use. These states are experiencing the same gains in motorcycle safety records as those states that impose mandatory helmet laws.***

- ***The average Motorcycle Accidents per 10,000 Registrations rate for voluntary helmet use states is 194.02, compared to 222.21 for mandatory helmet law states.***

- ***The average Motorcycle Fatalities per 100 Accidents rate for voluntary helmet use states is 2.9, compared to 2.98 for mandatory helmet law states.***

- ***Eighteen of the 25 states that support voluntary helmet use have motorcycle fatality rates lower than North Carolina's.***

- ***A University of North Carolina study found that injured motorcyclists were just as likely to be insured as other road trauma victims. This analysis failed to support earlier studies suggesting motorcyclists disproportionately rely on public health-care funds to pay for their hospitalization.***

Comprehensive Programs That Promote Motorcycle Safety

Motorcycles represented only 6/10 of one percent of crash-involved vehicles in 1994. Since 1975, the fatality rate for motorcyclists per 100 million vehicle miles traveled has declined nearly 56 percent even though the average vehicle miles traveled has increased 85 percent. Although these statistics are unmatched by any other category of road user, there remains room for improvement. Several less personally intrusive measures can be taken to make motorcycling safer:

- Creative motorcycle safety programs that provide incentives to promote licensing and testing can reduce accident and fatality statistics further. One out of five motorcycle operators (22 percent) involved in fatal crashes in 1994 was operating with an invalid license.
- Nearly 50 percent of all fatal motorcycle crashes involve alcohol. Alcohol awareness programs and "Dial a Ride" campaigns can drastically reduce alcohol-related accidents and fatalities.
- Two out of three motorcycle related multi-vehicle crashes are caused by the driver of another vehicle. The most common accident involves an automobile failing to yield the right of way to the motorcyclist. Motorist awareness campaigns and conspicuity programs can reduce the frequency of these types of accidents.

Motorcycling Facts

- Motorcycles represent only 6/10 of one percent of the accident-involved vehicles nationwide.
- Motorcycle accidents have declined by 60 percent since 1985.
- Over 100,000 motorcyclists complete the Motorcycle Safety Foundation's Rider and Street Skills rider education course each year.
- Forty-four states have rider education programs designated through legislation.
- The economic value of motorcycling in the U.S. is 5.9 billion dollars a year.

What is the AMA?

The American Motorcyclist Association has been in service to the nation's motorcycling community since 1924. Headquartered in the historic community of Westerville, Ohio, on the northern edge of Columbus, AMA is a not-for-profit organization with 210,000 enthusiast members nationwide. The average AMA member is 40 years old, married, college-educated and has an annual household income of $57,000.

The corporate purpose of the AMA is to "pursue, promote and protect the rights of motorcyclists." Its professional staff of 85 and volunteer network numbering in the thousands provide a wide range of services and actions toward this end. From amateur competition to professional racing, from family outings to effective government relations, if it has to do with motorcycling, the AMA does it.

More Information

If you have questions regarding the information in this pamphlet or other motorcycling issues, please contact the AMA Government Relations Department at (614) 891-2425 for more information.

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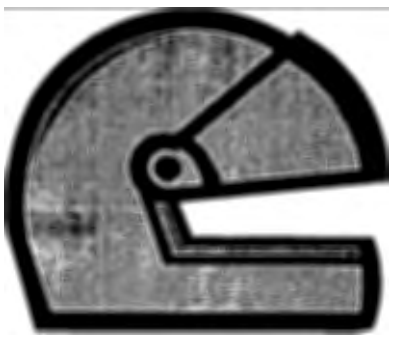
AMERICAN MOTORCYCLIST ASSOCIATION

Position and Comments In Support of

Voluntary Helmet Use



AMA POSITION IN SUPPORT OF VOLUNTARY HELMET USE

The American Motorcyclist Association (AMA) encourages the use of helmets, gloves, sturdy foo and protective garments as part of a comprehensiv motorcycle safety program to help reduce injuries an fatalities in the event of a motorcycle accident. However, the AMA maintains a fundamental belief that adults should have the right to voluntarily decide when to wear a helmet.

The AMA will not oppose laws that require helmets for riders and passengers who are minors. Many young motorcyclists may lack the maturity to make an informed decision regarding their use.

The AMA further believes that helmet use alone is insufficient to ensure a motorcyclist's safety. A broad range of measures exist that not only improve the skills of motorcycle operators, but also reduce the frequency of motorcycle accidents caused by other vehicle operators.

HELMET USE AND HELMET LAWS

The AMA believes there is a clear distinction between the use of helmets and mandatory helmet use laws. Some view the helmet solely as a mechanical safety device, similar to seat belts. Many motorcyclists view the helmet as an accessory of personal apparel -- its use or non-use is connected with a chosen lifestyle and their right as adults to make their own decisions.

Regardless of the protective equipment worn, the accident-involved motorcyclist is at considerable risk. This makes it all the more vital to avoid motorcycle accidents in the first place, a strategy widely recognized and pursued in the motorcycling community. Mandatory helmet laws do nothing to prevent accidents.

Helmet laws remove a personal freedom -- the freedom to choose helmet use. They are a manifestation of the misguided belief that citizens lack the wisdom to make personal safety decisions for themselves and must therefore be subjected to increasingly intrusive laws.

Helmet law proponents argue that losing this freedom is a small price to pay for the benefits reaped by society. They suggest that the health care costs associated with unhelmeted motorcyclists place an excessive burden on taxpayers. However, when the costs of motorcycle related injuries are examined in the context of the total social health care picture, the figures are not unusually startling.

"social burden" or "cost to the taxpayer" nt is a recurring theme in a variety of issues. It is ntly used in attempts to enact increasingly onerous laws. The targets of these laws are portrayed in the poorest possible light and usually overlooked as taxpayers themselves. Such has been the case with motorcyclists and the helmet issue.

Long ago, we decided as a civilized society to balance individual freedoms with social costs. Unfortunately, the research which we, as taxpayers, fund for the purposes of educating ourselves is increasingly turned against us; it is used as ammunition to assault this balance and to erode individual freedoms. This is unacceptable.

The AMA is a strong advocate of motorcycle rider education, improved licensing and testing, and increased public awareness; all are measures proven to reduce accidents and improve safety. This comprehensive approach has contributed significantly to a dramatic improvement in motorcycle safety over the years. Such programs did not exist thirty years ago, when it was first determined that mandatory helmet use laws were the panacea for improving motorcycle safety.

The AMA believes that a common principle should be applied when consideration is given to mandating nal safety, whether it be for motorcycling or some risk-related activity: adults are capable of making onal safety decisions for themselves. Society's role is not to mandate personal safety, but rather to provide the education and experience necessary to aid us in making these decisions for ourselves.

Responses to Claims Made by Helmet Law Advocates

Claim: ***Injured motorcyclists are uninsured and rely upon the public to pay for their injuries.***

Response: Motorcyclists are just as likely to be privately insured as any other road user. If a motorcyclist's injuries are not covered by insurance, it is often because their employer has denied them these benefits.

- A Harborview Medical Center study reported 63.4% of the injured motorcyclists in the trauma center relied on public funds to pay their hospital bills. However, according to testimony by D Gitch, director of the trauma center, 67% of general patient population also relied on pub dollars to pay their hospital bills in the same ti period.
- A study by the University of North Carolina's Highway Safety Research Center reported that 49.5% of injured motorcyclists had their medical costs covered by insurance, while 50.4% of the other road trauma victims were similarly insured.
- Many self-insured employer health plans simply deny medical payments for injuries sustained in motorcycle accidents. This is a policy adopted by the employer, not the motorcyclist.

Claim: ***The costs associated with unhelmeted motorcyclist injuries and fatalities compel the enactment of mandatory helmet laws to save taxpayer dollars.***

Response: The costs associated with the treatment of motorcyclist injuries account for less than 1/1000 of one percent of total US health care costs. Only a portion of these costs are attributable to unhelmeted motorcyclists, the majority of which are paid by private insurance. The remainder, spread across the taxpayer base (which includes millions of motorcyclists), becomes insignificant.

- Approximately 12.5% of total US health care costs are attributable to motor vehicle acciden
- Motorcycles represent only 6/10 of one percent of the accident-involved vehicles nationwide.
- There are 30 million motorcyclists nationwide.
- The average motorcyclist is 33 years old, married, college-educated and earns slightly more than $33,000 a year. Motorcyclists pay taxes, too.

Claim: ***Mandatory helmet laws are the most effective way to reduce the injuries and fatalities that result from motorcycle accidents.***

Response: The most effective way to reduce motorcycle injuries and fatalities is to prevent accidents from occurring. Helmets and helmet laws do not prevent accidents.

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#2 2/20

Statement of

Wayne T. Curtin

Vice President of Government Relations

Before The

North Carolina House of Representatives'

Judiciary One Committee

In Support Of

House Bill 30

February 20, 1997

Chairman Daughtry, co-chairman Hardy and members of the Judiciary One Committee, thank you for allowing me to testify before your committee today. I am here today to provide testimony in favor of House Bill 30, which would provide for adults 21 years of age and older the ability to decide for themselves whether to wear a helmet while riding a motorcycle. My name is Wayne Curtin and I am vice president of government relations for the Motorcycle Riders Foundation (MRF), which is headquartered in Washington, D.C. The MRF is an association of state motorcyclists' rights organizations, like the Concerned Bikers Association of North Carolina, with a combined membership of between 250,000 and 275,000 motorcyclists.

Representative Baker and the Concerned Bikers Association have asked me to talk to you today about what is happening nationally with the helmet law issue. First, you should know that in 1995, Congress repealed the federal law that financially penalized states without helmet laws. So, passage of House Bill 30 would not affect North Carolina's federal-aid highway funding.

There are 25 states that mandate helmet use for all motorcyclists and 25 states that allow varying degrees of choice. Three states have no helmet law of any kind and 22 have age based helmet laws, ranging between 18 and 21 years of age. The 25 states without helmet laws have just endured three years of sanctions on their highway funds for not having helmet laws. However, those 25 states stood up to the federal government and by refusing to pass helmet laws helped motorcyclists repeal the federal penalties in 1995. Only one state, Maryland, passed a helmet law as a result of the federal penalties.

Currently, there is a lot of debate going on and action taking place in the state legislatures with the helmet law issue. When the federal repeal passed many people thought states would rush to repeal helmet laws, much like they did with the speed limits. But that has not been the case, state legislatures have taken a couple of years to consider this issue and now seem ready to act. Legislation to modify helmet laws to give adults choice is a very live issue in about 15 states. Last year, either the House or Senate passed such legislation in several states. In action just last week the Arkansas Senate passed a bill virtually identical to House Bill 30 on a vote of 23 to 10. And, the Texas Senate Transportation Committee passed an 18 years or older bill nine to two. There will considerably more action on this issue in state legislatures in 1997, and I hope, and respectfully ask, this committee to join them and pass out House Bill 30.

For me, the core issue is: Should any government mandate any "safety" equipment, especially on adults, if that government can not guarantee the equipment will work 100% of the time and never cause or in anyway contribute to an accident or injury? My answer to that question is NO! As an example, take the recent controversy over federal mandated air bags. Yes, air bags have saved some lives and reduced some injuries. But, over fifty children and adults of smaller stature have been killed by them. These people, who in most cases would have survived the accident, have died because of a piece of "safety" equipment mandated by the federal government. Where does any government, either under the Constitution or morally, get that right? Motorcyclists believe

the helmet law is one of those cases where the government has stepped too far into our lives, especially when it can not assure us the helmet will not contribute to an accident or injury and protect us 100%.

There may be people today who claim this is a financial issue. I argue it is not, for several reasons. First, if it saves money but is not 100% effect and may put me at risk of injury or death, even just 1% of the time, then it is an effort to put a dollar value trade-off on my life or well being. I do not believe governments should make those decisions or laws about my life based solely on saving money.

In addition, motorcyclists are more responsible about being insured and paying their medical bills than other road users and the general. In 1992, the University of North Carolina Highway Safety Research Center published a study titled: An Examination of Motorcyclist Injuries and Costs Using North Carolina Motor Vehicle Crash and Trauma Registry Data. The study reveled the following:

1. Motorcyclists admitted to trauma centers for treatment of crash-related injuries were just as likely as other road trauma cases to be medically insured, and considerably better insured than non-road trauma cases.
2. Motorcyclists had the highest insurance payment rate of all groups.
3. Motorcyclists relied on Medicare and Medicaid considerably less than any other group.
4. Motorcyclists had a higher rate of self-pay than any other group.
5. Motorcyclists average medical costs were less than other road trauma cases.

In summary, North Carolina motorcyclists have lower medical bills from accidents, were better at paying with insurance, when they did not have insurance were better at paying with their own money, and relied on Medicare and Medicaid less than all other North Carolina trauma victims.

So, if a group of North Carolina citizens are better at taking care of themselves than the rest of North Carolina citizens why should the government mandate them to wear a piece of "safety" equipment?

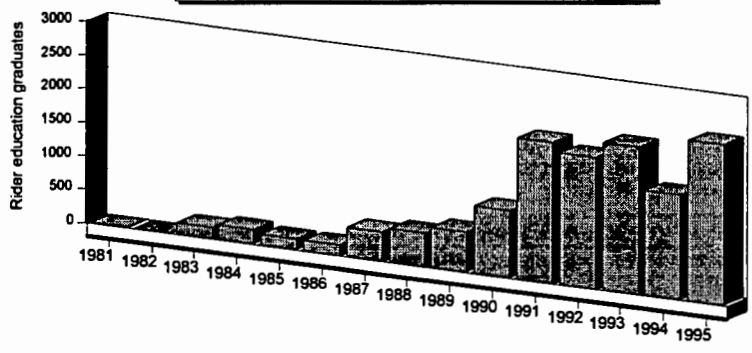
You may hear that helmet laws reduce fatalities. But, helmet laws do not cause the fatalities per accidents to drop. What they cause is less riding, therefore less accidents and fatalities, but no better protection for those riding. And, less riding means an economic loss to the state. Motorcyclists, through buying motorcycles, equipment, riding gear, gasoline and through tourism spend millions of dollars each year in North Carolina. Without a helmet law, North Carolina would see increased riding by North Carolina motorcyclists and by out-of-state tourists. Thereby, increasing the positive economic impact of motorcycling in North Carolina.

In closing, I would be happy to respond to any questions you may have. And, I encourage you to vote in favor of House Bill 30. Thank You.

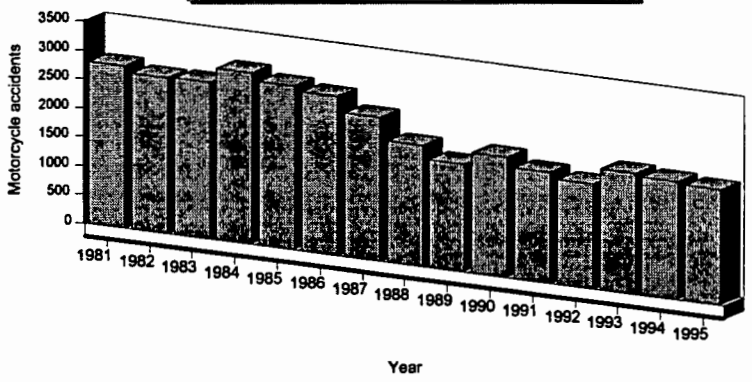
North Carolina Motorcycle Statistics 1981-1995

Year	Motorcycle Registrations	Motorcycles Operators	Accidents	Fatalities	Rider Education Graduates	Fatalities per 100 Accidents	Accidents per 10,000 Registrations
1995	65546	245220	2004	72	2404	3.59	305.74
1994	65247	245220	2049	60	1566	2.93	314.04
1993	61374	239100	2106	74	2214	3.51	343.14
1992	59219	239100	1822	62	1958	3.4	307.67
1991	58121	238441	1927	67	2095	3.48	331.55
1990	56799	237427	2087	72	997	3.45	367.44
1989	55844	233857	1857	52	602	2.8	332.53
1988	59991	227167	2114	75	516	3.55	352.39
1987	64129	227167	2489	91	439	3.66	388.12
1986	64129	210146	2750	94	171	3.42	428.82
1985	67632	210146	2846	98	172	3.44	420.81
1984	67615	195504	2957	99	226	3.35	437.33
1983	69616	173957	2715	60	182	2.21	390
1982	110000		2691	85		3.16	244.64
1981	110156	185000	2805	91		3.24	254.64

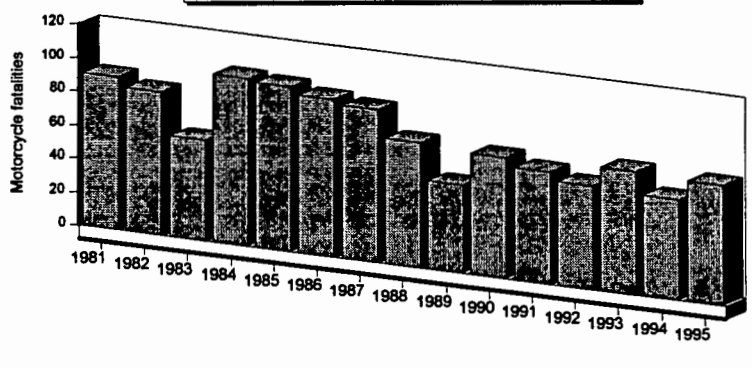
Annual Rider Education Graduates



Motorcycle Accidents, 1981-1995



Motorcyclist Fatalities, 1981-1995



(7)

Selected Statistics

Motorcycle Helmet Data

	Helmet States		Choice States		National	
	Accidents	Fatalities	Accidents	Fatalities	Accidents	Fatalities
1992	215.47	2.97	190.93	2.79	206.00	2.91
1993	222.21	2.98	194.02	2.90	211.24	2.95
1994	201.19	2.93	189.78	3.28	196.93	3.06
1995	195.77	2.95	169.89	3.17	185.89	3.03

Notes: Accidents are per 10,000 registrations
Fatalities are per 100 Accidents

(3)

SELECTED STATISTICS
Motorcycle Helmet Data

1. National

	Helmet States			Choice States			Total-National		
	Reg.*	Acc.	Fat.	Reg. *	Acc.	Fat.	Reg.*	Acc.	Fat.
1992	2,458	52,955	1,575	1,544	29,473	823	4,001	82,428	2,398
1993	2,352	52,270	1,557	1,498	29,062	844	3,850	81,332	2,401
1994	2,413	48,539	1,425	1,494	28,349	929	3,907	76,906	2,354
1995	2,441	47,795	1,410	1,509	25,637	812	3,950	73,432	2,221
4-year average	2,416	50,395	1,492	1,511	28,130	852	3,927	78,525	2,344
Acc./ 10 M reg.		208.57			186.16			199.95	
Fatalities/100 Acc.			2.96			3.03			2.99
% of National	61.5	64.2	63.7						

* Registrations in Thousands

(4)

SELECTED STATISTICS - MOTORCYCLES
NORTH CAROLINA

2. North Carolina

	Reg.	Acc.	Fat.	Fat/100 Acc.	Acc/10M Reg.
1992	59,219	1,822	62	3.40	307.67
1993	61,374	2,106	74	3.51	343.14
1994	65,247	2,049	60	2.93	314.04
1995	65,546	2,004	72	3.59	305.74
Average	62,847	1,995	67	3.35	317.44
% of Nation	2.6	3.95	4.49		

(5)

Estimated Impact of Mandatory Helmet Laws

A. Nationally

* Mandatory Helmet States Registrations - 4-Year Average	2,416,000
x 4-Year Average Accident Rate - Choice States	186.16 /10,000 Registrations
Projected Average Accidents	44,976
x 4-Year Average Fatality Rate - Choice States	3.03 /100 Accidents
Projected Average Fatalities	1,362
Actual Average Fatalities	1,492
** Additional Average Fatalities Attributable to Mandatory Helmets	130

B. North Carolina

* North Carolina Registrations - 4-Year Average	62,847
x 4-Year Average Accident Rate - Choice States	186.16/10,000 Registrations
Projected Average Accidents	1170
x 4-Year Average Fatality Rate - Choice States	3.03/100 Accidents
Projected Average Fatalities	35
Actual Average Fatalities	67
** Additional Average Fatalities Attributable to Mandatory Helmets	32

Table 6.
1995 State Motorcycle Accident Statistics, Voluntary Helmet Use States.

State	Registrations	Reported Accidents	Fatalities	Accidents Per 10,000 Registrations	Fatalities Per 100 Accidents
Alaska	12,917	145	3	112.26	2.07
Arizona	57,454	2,131	65	370.91	3.05
Colorado	90,179	1,279	36	141.83	2.81
Connecticut	51,433	972	33	188.98	3.4
Delaware	9,169	223	9	243.21	4.04
Hawaii	17,388	690	19	396.83	2.75
Idaho	33,949	330	18	97.20	5.45
Illinois	191,127	3,158	101	165.23	3.2
Indiana	95,710	2,386	67	249.29	2.81
Iowa	111,503	950	42	85.20	4.42
Kansas	43,120	680	14	157.7	2.06
Maine	28,523	595	14	208.6	2.35
Minnesota	113,981	1,126	35	98.79	3.11
Montana	18,225	317	16	173.94	5.05
New Hampshire	34,172	558	16	163.29	2.87
New Mexico	31,350	967	33	308.45	3.41
North Dakota	16,368	168	6	102.64	3.57
Ohio	218,114	3,286	112	150.66	3.41
Oklahoma	55,146	829	38	150.33	4.58
Rhode Island	16,129	265	6	164.3	2.26
South Carolina	36,218	1,249	50	344.86	4
South Dakota	25,155	375	14	149.08	3.73
Utah	20,210	680	11	336.47	1.62
Wisconsin	168,287	2,057	47	122.23	2.28
Wyoming	13,184	221	7	167.63	3.17
Voluntary Helmet States	1,509,011	25,637	812	169.89	3.17

Table 7.
1995 State Motorcycle Accident Statistics, Mandatory Helmet Law States.

State	Registrations	Reported Accidents	Fatalities	Accidents Per 10,000 Registrations	Fatalities Per 100 Accidents
Alabama	40,124	1,024	34	255.21	3.32
Arkansas	15,521	660	20	425.23	3.03
California	531,192	9,827	261	185	2.66
Florida	184,429	4,703	181	255	3.85
Georgia	72,000	2,805	44	389.58	1.57
Kentucky	30,932	853	22	275.77	2.58
Louisiana	65,312	975	30	149.28	3.08
Maryland	47,950	1,006	27	209.8	2.68
Mass.	60,000	1,480	28	246.67	1.89
Michigan	131,038	2,744	80	209.4	2.92
Mississippi	15,500	488	13	314.84	2.66
Missouri	74,160	1,194	41	161	3.43
Nebraska	18,696	315	6	168.49	1.9
Nevada	21,242	694	24	326.71	3.46
New Jersey	87,912	1,289	34	146.62	2.64
New York	165,456	3,753	92	226.83	2.45
North Carolina	65,546	2,004	72	305.74	3.59
Oregon	59,468	358	24	60.2	6.7
Pennsylvania	171,850	2,501	85	145.53	3.4
Tennessee	69,840	1,484	52	212.49	3.5
Texas	321,507	3,650	129	113.53	3.53
Vermont	16,000	101	8	63.13	7.92
Virginia	61,507	1,372	34	223.06	2.48
Washington	95,047	1,788	36	188.12	2.01
West Virginia	17,831	393	27	220.4	6.87
Distr. of Columbia	1,321	334	6	2,528.39	1.8
Mandatory Helmet States	2,441,381	47,795	1,410	195.77	2.95

CONCERNED BIKERS ASSOCIATION of North Carolina

*** POSITION:** *MANDATORY HELMET USE LAW*

The Concerned Bikers Association of North Carolina encourages and contributes to motorcycle safety education programs. We believe motorcyclists should be educated about the hazards and benefits of motorcycling and that with the education that comes from experience, the motorcyclists should be able to make educated choices about proper riding gear to suit the conditions into which they are riding. For this reason, we do not support laws mandating use of helmets at all times for experienced adult riders.

We have not nor will we ever oppose mandatory helmet use laws for minors as young riders may lack the maturity to make informed decisions regarding the use of motorcycle helmets. We believe that education and experience helps prevent accidents and hones better riding skills. In fact, information gathered from across this nation shows this to be true.

Mandatory helmet use laws were initiated by the Federal government in the Highway Safety Act of 1966 and subsequently repealed by the Federal Aid Highway Act of 1975. Most states repealed the imposed mandatory helmet use laws for adults after the Federal pressure was removed. Yet, motorcycle safety statistics improved dramatically throughout the 1980's with National Highway Traffic Safety Administration (NHTSA) figures showing a 30% decline in motorcyclist fatalities in the decade. (1)

More recently, Federal "incentives" to require state compliance with passage of mandatory helmet use laws were attempted again in the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. Only one state (Maryland) complied with these "incentives", which were also repealed by the National Highway Systems Act of 1995. There is currently no Federal Penalty against states which do not have or modify existing mandatory helmet use laws.

Motorcyclists generally exhibit a high rate of voluntary compliance with use of helmets. Where helmet use is not required by law, rates of use typically range from 60 to 75%. Rates as high as 82% have been achieved with active promotion of voluntary use, and in no case does voluntary use fall below 50 to 55%, far exceeding the voluntary use rates for automobile seatbelts, and comparing favorably with rates of compliance achieved with mandatory seatbelt use laws. (2). This may account for the fact that there is no significant difference in overall motorcyclist fatalities between states that require helmet use and those that do not (2.98 versus 2.90 fatalities per 100 accidents) (3,4).

Some advocates of mandatory helmet use laws believe that uninsured costs of injured motorcyclists which must be borne by the public would increase if voluntary use is permitted. This is not supported by the experience of states which have repealed mandatory use laws. So for any burden that uninsured motorcyclists may be thought to place on health care resources, it has been consistently found that motorcyclists are as likely to be privately insured as any other motor vehicle accident victim and in some cases, more likely to be privately insured than the general population of trauma patients. (5).

Motorcyclists do not represent any greater potential cost to taxpayers than a person driving a car or engaging in any other activity with a potential risk, be it skiing, horseback riding, or climbing the stairs in the house. Motorcycle accidents represent less than 1% of all vehicular accidents. Compared with automobile drivers, motorcyclists represent a minuscule part of all motor vehicle accident costs.

Considering the facts that helmets do not prevent accidents, mandatory helmet use does not result in lower fatality rates, 50% of fatal motorcycle accidents involve alcohol use (6), and 40% of all fatally injured motorcyclists are unlicensed (7). The Concerned Bikers Association of North Carolina maintains that the decision on when to wear a helmet while operating a motorcycle should remain with each responsible, experienced, adult rider.

Once this stumbling block facing the motorcyclists of North Carolina is removed, we will be in a much better position to direct our energies toward programs geared toward reducing riding under the influence, helping to expand the current Motorcycle Safety Education program, and fine tuning the current licensing programs in this state. Education, not legislation, is the key to safer riding!

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1. "Motorcyclists Lead Nation in Casualty Reduction", American Motorcyclist. Westerville, Ohio (October 1989)
2. A review and Analysis of Government Claims About the Effect of Motorcycle Helmet Laws, American Motorcyclist Assn., Westerville, Ohio (April 1981).
3. In Support of Voluntary Helmet Use: Facts and Fallacies Surrounding the Current Helmet Law Debate" American Motorcyclist Assn. Westerville, Ohio (1992)
4. Motorcycle Statistical Annual, Motorcycle Industry Council (1994)
5. An Analysis of Injury Outcome and Insurance Status of Hospitalized Motorcyclists, Stutts, Rutledge, and Martell, University of North Carolina (1991)
6. Fatal Accident Reporting System 1990, National Highway Safety Admin., U.S. Dept. Of Transportation
7. Highway Safety Priority Plan 1991-1993, National Highway Safety Admin, U.S. Dept. Of Transportation

* *special thanks to A.B.A.T.E. of Pennsylvania.*

SUMMARY OF NORTH CAROLINA MOTORCYCLE CRASHES - 1995

SEVERITY OF CRASH				
	No.	**%**		**No.**
Fatal Crashes	72	3.6%	Persons Killed	72
Injury Crashes	1,683	84.0%	Persons Injured	2,078
Property Damage Crashes	249	12.4%	Severely - A	474
			Slightly - B	1,000
			Complaint - C	604
Total Crashes	**2,004**			

TYPE OF CRASH				
	All MC Crashes		**Fatal MC Crashes**	
	No.	**%**	**No.**	**%**
Single Vehicle Crash	982	49%	35	49%
Multiple Vehicle Crash	1,022	51%	37	51%
Total Crashes	**2,004**		**72**	

All Crashes 29%

AGE OF DRIVER				
	K		**A Injury**	
	D	**P**	**D**	**P**
15 and Younger	1	0	5	6
16	0	0	5	4
17	1	0	7	2
18-19	4	1	31	4
20	1	0	20	2
21-24	18	2	94	1
25-34	23	0	110	12
35-44	12	2	79	12
45-54	6	0	40	7
55 Thru Older	1	0	19	2
Totals	**67**	**5**	**410**	**52**

11.1%

12.6%

VIOLATIONS		
	Fatal Crashes	**%**
Exceeding Speed Limit	24	24.5%
Exceeding Safe Speed	20	20.4%
Alcohol or Drug Related	18	18.4%
Failure to Reduce Speed	5	5.1%
Reckless Driving	4	4.1%
Driving Left of Center	16	16.3%
Other	11	11.2%
Total Violations	**98**	

The University of North Carolina
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THE NEWS & OBSERVER
SUNDAY, MARCH 9, 1997

A matter of biker pride

Motorcycle riders, in the minds of many, are black-leather outlaws on loud Harleys, either buzzing in and out of traffic or tearing up the countryside on dirt bikes.

Needless to say, with a rep like that, bikers don't have a lot of political clout or public support when it comes to changing North Carolina's discriminatory helmet laws. That such unfair, unflattering and untrue stereotypes exist is why it is so difficult for lawmakers to set aside their prejudices and deal with the facts.

DENNIS ROGERS

But if the helmet issue — which has arisen this year in the form of House Bill 30 — were to be calmly considered on the basis of fact and fairness instead of politics and hysteria, well, it would be the first time.

House Bill 30 would require helmets for any rider under 21, for any rider with less than a year's experience and for any passenger riding on a bike operated by such a person. Beyond that, riders and passengers could decide for themselves.

It is, admittedly, not an easy to decision to make but one that most riders believe they should reserve for themselves. And there is much to consider when making a helmet or no-helmet choice.

For instance, the argument that helmets save lives is apparently not true.

The National Highway Transportation Safety Administration studied motorcycle accidents in seven states. What they found and reported in 1995 might surprise a lot of people:

- The 25 states with mandatory helmet laws had a fatality rate of 6.41 per 10,000 motorcycles. The 25 states with no helmet laws or with a law like that proposed for North Carolina had 5.33 fatalities per 10,000 motorcycles.
- The 25 states with mandatory helmet laws had 61 percent of all registered motorcyclists, but they accounted for 64 percent of all accidents and 68 percent of all fatalities.

This does not mean, of course, that it is more dangerous to wear a helmet. What it means is, neither helmets nor helmet laws save lives. Helmets simply do not do what many laymen think they do.

What does save lives is avoiding or preventing accidents. That worthy goal is best achieved through mandatory motorcycle rider education and mandatory automobile driver education. When it comes to really saving lives, a weekend spent in the Motorcycle Safety Foundation course offered by many community colleges will do far more good than any helmet.

One of the never-ending arguments used by those opposed to letting motorcycle riders decide for themselves what safety equipment to use — the same way skiers, horseback riders, skydivers, sports car and convertible drivers get to decide — has been the "social burden" theory. It says, in effect, that bikers riding without helmets cost society so much more when they get in accidents that it is an unfair burden on the public not to make them wear helmets.

It is simply not true, according to the federal government. Brain-injured accident victims wearing helmets averaged medical costs of $26,985. Those without helmets spent an almost identical $26,805. In addition, motorcycle riders carried insurance at the same rate as automobile drivers and are no more dependent on the public than any vehicle operator.

Today it is adult, experienced motorcycle riders who are fighting for their rights.

Who's next?

Dennis Rogers' column appears Tuesdays, Saturdays and every other Sunday. Call him at 829-4750, send e-mail to drogers@nando.com or visit his home page at http://www.nando.net/nao/staff/drogers

Selected Statistics

Motorcycle Helmet Data

	Helmet States		Choice States		National	
	Accidents	Fatalities	Accidents	Fatalities	Accidents	Fatalities
1992	215.47	2.97	190.93	2.79	206.00	2.91
1993	222.21	2.98	194.02	2.90	211.24	2.95
1994	201.19	2.93	189.78	3.28	196.93	3.06
1995	195.77	2.95	169.89	3.17	185.89	3.03
4-year average	208.6	2.96	186.16	3.03	200.0	2.99

Notes: Accidents are per 10,000 registrations
Fatalities are per 100 Accidents

Estimated Impact of Mandatory Helmet Laws

A. Nationally

* Mandatory Helmet States Registrations - 4-Year Average	2,416,000
x 4-Year Average Accident Rate - Choice States	186.16 /10,000 Registrations
Projected Average Accidents	44,976
x 4-Year Average Fatality Rate - Choice States	3.03 /100 Accidents
Projected Average Fatalities	1,362
Actual Average Fatalities	1,492
** Additional Average Fatalities Attributable to Mandatory Helmets	130

B. North Carolina

* North Carolina Registrations - 4-Year Average	62,847
x 4-Year Average Accident Rate - Choice States	186.16/10,000 Registrations
Projected Average Accidents	1170
x 4-Year Average Fatality Rate - Choice States	3.03/100 Accidents
Projected Average Fatalities	35
Actual Average Fatalities	67
** Additional Average Fatalities Attributable to Mandatory Helmets	32

No evidence found of kids' lives being saved; 38 have been killed

Public wrong about air bags, poll finds

THE ASSOCIATED PRESS

BOSTON

Though passenger-side air bags have killed at least 38 children, a majority of Americans believe that the devices are saving young lives, a survey shows.

Nearly 60 percent of adults polled by the Center for Risk Analysis at the Harvard School of Public Health mistakenly believe that air bags are helping more children than they are hurting.

Although survey participants recognized that air bags can save lives, they were unclear about the range of injuries air bags can cause. "The public has a perhaps excessively optimistic and favorable view of what air bags are doing for them," said John Graham, the director of the center and the study's lead author.

Of the 38 children killed to date by air bags, all were sitting in the front passenger seat, and most were decapitated, Graham said.

Nine of those were infants. Of the 29 older children, 25 were not wearing seat belts, and two were wearing lap belts without shoulder belts, according to Brian O'Neill, the president of the Insurance Institute for Highway Safety in Arlington, Va.

Air bags, which deploy at up to 200 mph, are credited with saving more than 1,600 lives.

Graham said, however, he hadn't found any documented cases of children's lives being saved by the air bags.

And at least 20 adults, most of them smaller women, have been killed by air bags.

"The public has missed the point that most of the (air-bag) deaths and serious injuries involve people who were unbelted or had placed children or infants improperly in seats in front of passenger air bags," said O'Neill, whose institute is financed by the insurance industry.

Automakers, the government and safety groups say that children 12 and under should sit in the back seat.

Yet fewer than 25 percent of the survey respondents with children in their homes knew the correct answer.

Children are 30 to 50 percent safer in the back seat, Graham said.

Most respondents, however, knew that it was dangerous to put an infant in a rear-facing restraint in front of a passenger-side air bag.

Rear-facing seats put a child's head close to the air bag, making him susceptible to severe or fatal brain injuries.

J. Weaver

Testimony before Judiciary One Committee

Chairman Daughtry, Co-chairman Hardy and members of the Judiciary One Committee thank you for allowing me to testify before you today.

1. **I would like to start by giving you a few facts (as if you haven't had enough from others who have testified) but I believe it is useful to put this controversy into perspective.**

   a. **AMA fact sheet**

2. **Now, I could go on, but I believe the answer to this debate over House Bill 30 resides not in the statistics, for ~~ones~~ numbers can be found to bolster either side of the argument, but rather in a clearer understanding of what we are saying about ourselves as a state, and about our fellow citizens by giving them this law, a law which stands for understanding, self-respect, and liberty.**

3. **I am a motorcyclist. I am also a surgeon. I have realized that, although many of you have not thought about it, there is a lot of similarity between these two activities. Both require careful preparation, vigilance, attentiveness**

to detail, and both are a form of adventure. Surgeons are independent people, so are motorcyclists.

4. **I have personally traveled over 25,000 miles on a motorcycle. I have crossed the United States two separate times, and gone to all four corners of this great nation, and I can truly say that I believe I understand the psyche of the motorcyclist**

   a. **Motorcycling is a special hobby, one that gives you a sense of unity with nature and a sense of freedom–or to use another almost forgotten and much maligned word today, a feeling of "liberty."**

   b. **It is this union with the need for liberty, dare I say this heightened sensitivity to liberty that drives the motorcyclist organizations to ask you to pass House Bill 30.**

5. **Motorcyclists are, by and large, a misunderstood group. Why, after all, if we are simply trying to protect people from themselves, or save the society money (even though motorcyclists have insurance at the same rate as others),**

Why do we pick on bike riders.

a. **For example, why not pass a "helmet law for equestrians" (that is the most dangerous sport in the country)or**

b. **Why not disallow step ladders taller than six feet from this state, after all, I'm sure there are many more accidents from falls from ladders than motorcycles. Has anyone tried to study the insurance coverage of ladder climbers?**

c. **And them I would suggest my favorite measure, the "fat tax": anyone who is over 10% above their ideal body weight, should pay a tax on the excess weight, after all, they too will get sick, and cost society money, won't they?**

6. **There are other examples, but my point is really** that **in spite of the statistics motorcyclists have been singled out for control. The are visible, ~~and~~ easy targets for this type of legislation.**

7. **In some ways, because the numbers don't make sense, it is**

almost as if society needs to control these people with helmets because they represent too much freedom, too much liberty.

8. **I do not know whether any of you have seen the 1960's vintage movie "Easy Rider" . I don't agree with everything I saw in that movie, but there are some relevant themes that I would like to introduce into this discussion.**

   a. **The major protagonist was named "Captain America" and he had a motorcycle with American flags painted all over it, and he wore a helmet with an American flag on it.**

   b. **Gentleman, there is an metaphor of Americanism contained in the motorcycle, and it represents American freedom and liberty. All motorcycling is asking is that our elected representatives speak to those issues of liberty with the same intensity and concern that motorcyclists feel, and grant them the freedom of choice that House Bill 30 represents.**

9. **Finally, I would like to close with a quotation from another**

perspective, explains where the motorcyclist groups are coming from.

a. In a recent PBS series on the life of Thomas Jefferson, a historian Joseph Ellis was describing Mr. Jefferson, and explaining what he gave to the American People. In the Declaration of Independence, he essentially condensed 300 years of philosophy, and defined what is meant to be an American. I would like to share Dr. Ellis' description of exactly what Mr. Jefferson gave to each American in the Declaration of Independence, for it explains our motivations in coming before you today:

b. He said,"Inside each of us there is this kernel of something sacred. Something that cannot be violated, something that cannot be coerced or tampered with by the State, by the Government, or by institutions of any sort, and that is our essence. And that essence is extremely powerful. And if we protect that essence and allow it to express itself into the world, it is the

most powerful force in human history." unquote

10. It is that "essence" which you will affirm by moving this Bill forward.

11. I thank you for your time and patience with my message.

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March 18, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **House Bill 328; Prohibit Tobacco Sales to Minors - Proposed Committee Substitute**

The proposed committee substitute for House Bill 328 amends G.S. 14-313 which prohibits sale or distribution of tobacco products to minors. The amendments will require photographic proof of age; remove the requirement that a person knowingly sell to the minor in order to be found guilty; change penalties for violation; restrict vending machine sales; and prohibit out-of-package cigarette sales.

Section 1 amends G.S. 14-313(a). It changes the definition of "proof of age" so that proof of age may only be a drivers license or other photographic identification that includes the bearer's date of birth. The present definition allows a drivers license or other documentary or written evidence.

Section 2 amends G.S. 14-313(b). This is the subsection that specifically prohibits distribution of tobacco products to persons under 18 years of age. Under present law, a person can only be guilty of violating this subsection if they act "knowingly." The amendments remove the requirement that the person act "knowingly." Further, retail distributors will be required to display a sign stating that North Carolina law prohibits purchase of tobacco products by persons under 18. Failure to post a sign is an infraction punishable by a $25.00 penalty for the first offense and a $75.00 penalty for each succeeding offense. A retailer may rely on proper (with photo) proof of age. A nonretailer may still rely on documentary or other written evidence (without a photo) of age. Retail distributors of tobacco products must train their sales employees in the requirements of the law. The penalty for selling to a minor changes from a Class 2 misdemeanor to an

infraction. A first offense is punishable by a $25.00 penalty, a second offense by a $100.00 penalty, and a third offense or subsequent offense by a $300.00 penalty.

Failure to demand proof of age changes from a Class 2 misdemeanor to an infraction with a penalty of $250.00.

Section 3 amends G.S. 14-313(c). This subsection prohibits minors from purchasing tobacco products. The amendments change the penalties. Under the present law, if a minor purchases or accepts receipt of tobacco products or uses false identification to purchase tobacco products, the person is guilty of an infraction with a maximum penalty of $100.00. Violation remains an infraction. The amendments change the penalties. For an underage purchase, the first offense penalty becomes $25.00, the second offense becomes $100.00, and the third offense becomes $300.00. The penalty for using false identification remains an infraction, but the penalty goes from a maximum $100.00 to $250.00

Section 4 amends G.S. 14-313(d) which prohibits knowingly sending or assisting a minor to purchase or receive tobacco products. The amendment removes the term "knowingly."

Section 5 of the bill adds a new subsection (b1) to G.S. 14-313. The new subsection regulates vending machines by prohibiting distribution of tobacco products in vending machines except under specific circumstances. Vending machines may be used in establishments open only to persons 18 years of age and older, or in establishments where the machine is under the continuous control of the owner or licensee of the premises, or an employee, the machine is activated by the owner, licensee, or employee prior to each purchase, and the machine is not accessible to the public when the establishment is closed. The person in control of the vending machine must demand proof of age if he has reasonable grounds to believe that the prospective purchaser is under 18 years of age, and failure to demand proof of age is a Class 2 misdemeanor. It is a defense to prosecution that the person in control of the vending machine demanded, was shown, and reasonably relied upon proof of age. Vending machines distributing tobacco products and not meeting the new requirements must be removed by July 31, 1997. Distribution of tobacco products in violation of this subsection is a Class 2 misdemeanor.

Section 6 amends G.S. 14-313 by adding a new subsection (b2). The new subsection prohibits sale of cigarettes other than in unopened packages originating with the manufacturer. A violation is a Class 2 misdemeanor.

The act is effective August 1, 1997 and applies to offenses committed on or after that date.

An incarceration fiscal note is required.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 328

Short Title: Stop Tobacco Sales to Minors. (Public)

Sponsors: Representatives Arnold, Fitch; Brawley, Cansler, Dedmon, Goodwin, Moore, and Mosley.

Referred to: Judiciary I.

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE SALE OR PURCHASE OF TOBACCO PRODUCTS TO PERSONS LESS THAN EIGHTEEN YEARS OF AGE AND TO REQUIRE THAT CERTAIN PERSONS BE TRAINED REGARDING THESE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-313(a) reads as rewritten:

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

(1) Distribute. -- To sell, furnish, give, or provide tobacco products, including tobacco product samples, or cigarette wrapping papers to the ultimate consumer.

(2) Proof of age. -- A drivers license or other ~~documentary or written evidence~~ photographic identification that includes the bearer's date of birth that purports to establish that the person is 18 years of age or older.

(3) Sample. -- A tobacco product distributed to members of the general public at no cost for the purpose of promoting the product.

(4) Tobacco product. -- Any product that contains tobacco and is intended for human consumption."

Section 2. G.S. 14-313(b) reads as rewritten:

"(b) Sale or distribution to persons under the age of 18 years. -- If any person shall ~~knowingly~~ distribute, or ~~knowingly~~ aid, assist, or abet any other person in distributing tobacco products or cigarette wrapping papers to any person under the age of 18 years, or if any person shall ~~knowingly~~ purchase tobacco products or

cigarette wrapping papers on behalf of a person, less than 18 years, the person shall be guilty of a Class 2 misdemeanor; provided, however, that it shall not be unlawful to distribute tobacco products or cigarette wrapping papers to an employee when required in the performance of the employee's duties. Retail distributors of tobacco products shall prominently display near the point of sale a sign in letters at least five-eights of an inch high which states the following:

N.C. LAW STRICTLY PROHIBITS
THE PURCHASE OF TOBACCO PRODUCTS
BY PERSONS UNDER THE AGE OF 18.
PROOF OF AGE REQUIRED.

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

A person engaged in the sale of tobacco products shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age in the case of a retailer, or any other documentary or written evidence of age in the case of a nonretailer, shall be a defense to any action brought under this subsection. Retail distributors of tobacco products shall train their sales employees in the requirements of this law."

Section 3. G.S. 14-313(c) reads as rewritten:

"(c) Purchase by persons under the age of 18 years. -- If any person under the age of 18 years purchases or accepts receipt, or attempts to purchase or accept receipt, of tobacco products or cigarette wrapping papers, ~~or presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product,~~ the person shall be guilty of ~~an infraction as provided in G.S. 14-3.1.~~ a Class 3 misdemeanor. If any person presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product, the person shall be guilty of a Class 2 misdemeanor."

Section 4. G.S. 14-313(d) reads as rewritten:

"(d) Send or assist person less than 18 years to purchase or receive tobacco product. -- If any person shall ~~knowingly~~ send or assist a person less than 18 years of age to purchase, acquire, receive, or attempt to purchase, acquire, or receive tobacco products or cigarette wrapping papers, the person shall be guilty of a Class 2 misdemeanor; provided, however, persons under the age of 18 may be enlisted by police or local sheriffs' departments to test compliance if the testing is under the direct supervision of that law enforcement department and written parental consent is provided; provided further, that the Department of Human Resources shall have the authority, pursuant to a written plan prepared by the Secretary of Human Resources, to use persons under 18 years of age in annual, random, unannounced inspections, provided that prior written parental consent is given for the involvement of these

persons and that the inspections are conducted for the sole purpose of preparing a scientifically and methodologically valid statistical study of the extent of success the State has achieved in reducing the availability of tobacco products to persons under the age of 18, and preparing any report to the extent required by section 1926 of the federal Public Health Service Act (42 USC § 300x-26)."

Section 5. G.S. 14-313 is amended by adding a new subsection to read:

"(b1) Vending machines. -- Tobacco products shall not be distributed in vending machines; provided, however, vending machines distributing tobacco products are permitted (i) in any establishment which is open only to persons 18 years of age and older; or (ii) in any establishment if the vending machine is under the continuous control of the owner or licensee of the premises or an employee thereof and can be operated only upon activation by the owner, licensee or employee prior to each purchase and the vending machine is not accessible to the public when the establishment is closed. The owner, licensee or employee shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to any action brought under this subsection. Vending machines distributing tobacco products in establishments not meeting the above conditions shall be removed by August 28, 1997. Any person distributing tobacco products through vending machines after August 28, 1997, in violation of this subsection shall be guilty of a Class 2 misdemeanor."

Section 6. G.S. 14-313 is amended by adding a new subsection to read:

"(b2) Out-of-package sales. -- If any person engaged in the sale of cigarettes shall sell cigarettes other than in unopened packages originating with the manufacturer, the person shall be guilty of a Class 2 misdemeanor."

Section 7. Section 1 of this act becomes effective February 28, 1997, and applies to offenses committed on or after that date. Section 5 is effective when this act becomes law. The remaining sections become effective December 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 328
Proposed Committee Substitute H328-PCSRL-003-97d
THIS IS A DRAFT: LINE NUMBERS MAY CHANGE AFTER ADOPTION,
17-MAR-97 10:43:33

Short Title: Stop Tobacco Sales to Minors. (Public)

Sponsors:

Referred to: Judiciary I.

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE SALE OR PURCHASE OF TOBACCO PRODUCTS TO PERSONS LESS THAN EIGHTEEN YEARS OF AGE AND TO REQUIRE THAT CERTAIN PERSONS BE TRAINED REGARDING THESE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-313(a) reads as rewritten:

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

(1) Distribute. -- To sell, furnish, give, or provide tobacco products, including tobacco product samples, or cigarette wrapping papers to the ultimate consumer.

(2) Proof of age. -- A drivers license or other ~~documentary or written evidence~~ photographic identification that includes the bearer's date of birth that purports to establish that the person is 18 years of age or older.

(3) Sample. -- A tobacco product distributed to members of the general public at no cost for the purpose of promoting the product.

(4) Tobacco product. -- Any product that contains tobacco and is intended for human consumption."

Section 2. G.S. 14-313(b) reads as rewritten:

"(b) Sale or distribution to persons under the age of 18 years. -- If any person shall ~~knowingly~~ distribute, or ~~knowingly~~ aid, assist, or abet any other person in distributing tobacco products or cigarette wrapping papers to any person under the age of 18 years, or if any person shall ~~knowingly~~ purchase tobacco products or cigarette wrapping papers on behalf of a person, less than 18 years, the person shall ~~be guilty of a Class 2 misdemeanor;~~ have committed an infraction and pay the following penalties:

(1) Twenty-five dollars ($25.00) upon the first violation.

(2) One hundred dollars ($100.00) upon the second violation.

(3) Three hundred dollars ($300.00) upon the third and subsequent violation.

~~provided, however, that it~~ It shall not be unlawful to distribute tobacco products or cigarette wrapping papers to an employee when required in the performance of the employee's duties. Retail distributors of tobacco products shall prominently display near the point of sale a sign in letters at least five-eighths of an inch high which states the following:

N.C. LAW STRICTLY PROHIBITS
THE PURCHASE OF TOBACCO PRODUCTS
BY PERSONS UNDER THE AGE OF 18.
PROOF OF AGE REQUIRED.

Failure to post the required sign shall be an infraction with a penalty of twenty-five dollars ($25.00) for the first violation and seventy-five dollars ($75.00) for each succeeding violation.

A person engaged in the sale of tobacco products shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is ~~a Class 2 misdemeanor.~~ an infraction with a penalty of two hundred fifty dollars ($250.00). Proof that the defendant demanded, was shown, and reasonably relied upon proof of age in the case of a retailer, or any other documentary or written evidence of age in the case of a nonretailer, shall be a defense to any action brought under this subsection. Retail distributors of tobacco products shall train their sales employees in the requirements of this law."

Section 3. G.S. 14-313(c) reads as rewritten:

"(c) Purchase by persons under the age of 18 years. -- If any person under the age of 18 years purchases or accepts receipt, or

attempts to purchase or accept receipt, of tobacco products or cigarette wrapping papers, ~~or presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product,~~ the person shall ~~be guilty of~~ have committed an infraction ~~as provided in G.S. 14-3.1.~~ and pay the following penalties:

(1) Twenty-five dollars ($25.00) upon the first violation.

(2) One hundred dollars ($100.00) upon the second violation.

(3) Three hundred dollars ($300.00) upon the third and subsequent violation.

If any person presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco products or cigarette wrapping papers, the person shall have committed an infraction and pay a penalty of two hundred fifty dollars ($250.00)."

Section 4. G.S. 14-313(d) reads as rewritten:

"(d) Send or assist person less than 18 years to purchase or receive tobacco product. -- If any person shall ~~knowingly~~ send or assist a person less than 18 years of age to purchase, acquire, receive, or attempt to purchase, acquire, or receive tobacco products or cigarette wrapping papers, the person shall be guilty of a Class 2 misdemeanor; provided, however, persons under the age of 18 may be enlisted by police or local sheriffs' departments to test compliance if the testing is under the direct supervision of that law enforcement department and written parental consent is provided; provided further, that the Department of Human Resources shall have the authority, pursuant to a written plan prepared by the Secretary of Human Resources, to use persons under 18 years of age in annual, random, unannounced inspections, provided that prior written parental consent is given for the involvement of these persons and that the inspections are conducted for the sole purpose of preparing a scientifically and methodologically valid statistical study of the extent of success the State has achieved in reducing the availability of tobacco products to persons under the age of 18, and preparing any report to the extent required by section 1926 of the federal Public Health Service Act (42 USC § 300x-26)."

Section 5. G.S. 14-313 is amended by adding a new subsection to read:

"(b1) Vending machines. -- Tobacco products shall not be distributed in vending machines; provided, however, vending machines distributing tobacco products are permitted (i) in any establishment which is open only to persons 18 years of age and older; or (ii) in any establishment if the vending machine is under the continuous control of the owner or licensee of the premises or an employee thereof and can be operated only upon activation by the owner, licensee or employee prior to each purchase and the vending machine is not accessible to the public when the establishment is closed. The owner, licensee or employee shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to any action brought under this subsection. Vending machines distributing tobacco products in establishments not meeting the above conditions shall be removed by July 31, 1997. Any person distributing tobacco products through vending machines in violation of this subsection shall be guilty of a Class 2 misdemeanor."

Section 6. G.S. 14-313 is amended by adding a new subsection to read:

"(b2) Out-of-package sales. -- If any person engaged in the sale of cigarettes shall sell cigarettes other than in unopened packages originating with the manufacturer, the person shall be guilty of a Class 2 misdemeanor."

Section 7. This act becomes effective August 1, 1997, and applies to violations committed on or after that date.

History of NC Law Prohibiting
Tobacco Sales to Children and Adolescents

Effective Date	Overview of Legislation Regarding Sale and Distribution	Penalties for Violations
1891	Prohibited any person to sell, give away cigarettes to any minor under age 17 or aid, assist or abet any other person in selling cigarettes to a minor.	- Punishable by a misdemeanor - Fine not to exceed $500.00, imprisonment for not more than six months or both.
July 1991	Prohibited any person to knowingly sell, give away or dispose of cigarettes, cigarette wrapping papers, or smokeless tobacco products to any minor under the age of 18.	- Punishable by a misdemeanor - Fine not to exceed $500.00, imprisonment for not more than six months or both.
December 1995	- Prohibits any person to knowingly distribute tobacco products or cigarette wrapping papers to anyone under age 18. - Requires retail sellers to check ID's of prospective purchasers if the seller has reasonable grounds to believe the purchaser is under 18. - Prohibits any person under age 18 from purchasing, attempting to purchase or receive tobacco products or present false ID for the purpose of buying any tobacco products. - Prohibits or preempts all forms of local government from further restrictions on tobacco sales to minors. Exceptions on vending machines regulations.	- Punishable by a Class 2 misdemeanor. - Punishable by a Class 2 misdemeanor. - Punishable by an Infraction.
1997 (as of 3-14-97) Senate Bill 143	- Prohibits any person to distribute tobacco products or cigarette wrapping papers to anyone under 18. (removes knowingly) - Requires retail sellers to check IDs of prospective purchasers if the seller has reasonable grounds to believe the purchaser is under 18. - Prohibits any person under age 18 from purchasing, attempting to purchase or receive tobacco products. - Prohibits any person to use a false ID for the purpose of buying any tobacco products. - Requires signage on age of purchaser. - Prohibits sale and distribution of tobacco products through vending machines except in establishments where minors are not allowed or through "lock out" devices and "tokens". - Prohibits the sale of single cigarettes or packages less than manufacturers.	- Punishable by a Class 2 misdemeanor. - Punishable by a Class 2 misdemeanor. - Punishable by an Infraction. - Punishable by a Class 2 misdemeanor. - Failure to post signage is punishable by an infraction ($25.00) for first offense and ($75.00) for each succeeding offense. - Punishable by a Class 2 misdemeanor. - Punishable by a Class 2 misdemeanor.

cyb/a/SB

VISITOR REGISTRATION SHEET

JUDICIARY I 3/20/97 10am

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Don Beyfuss	Highway Safety Research Ctr.
2.	Ann Berlam	SBE
3.	David Simmons	Zebulon, PA
4.	Laura Hartsell	MCIC
5.	Megan Carney	BSW Student - Meredith College
6.	Paula X. Wolff	Covenant W/ NC's Children
7.	Martha P. Livengood	[redacted] YAIO/DOA
8.	Harriett M. Southerland	DOA/YAIO
9.	Shannon Bullock	GHSP
10.	Bill Stout	GHSP
11.	[illegible]	DEHNR
22.	[illegible]	AG
23.	Deborah Bryan	ALA
24.	Roger Hamrick	Pres. Amer Lung Assoc of NC
25.	George Reed	NC Council of Churches
26.	[illegible]	Bowman Gray / Tobacco Institute
27.	Jack O. Gray	DOJ
28.	Bill Wilson	NCAE
29.	J. Craig Lewis	PCMH
30.	Claire Gibbons	Gov's Office
31.	Jan Neff	NO

32.	Brenda Coleman	NCDOR
33.	Steve Boyles	Raleigh Chapter CBA
34.	Sheila Boone	Raleigh Cpt Concerned Bikers Asso.
35.	CHARLES Boone	" " " " "
36.	Amy Jo Bain	Smith Anderson
37.		
38.	Andy Ellen	NC Farm Bureau
39.	Don McConnell	NCRMA
40.	Ann Case	DEHNR
41.	Cyndi Reel	NC Medical Society
42.	Ed Bowen	RW Bowen
43.	Julie Rehder	NC Child Advocacy Inst.
44.	Kathy Peterson	American Heart Association
45.	Richard E. Chard	Tri-Agency Council
46.	Chris Fitzsimon	Common Sense Foundation
47.		Rep. Morris
48.	Eddie Caldwell	NCCEP
49.	David Ferrell	Hofler, McNamara, Caldwell, McElroy & Little, PA
50.		NCRMA
	Alan Wiles	Bailey & Dixon LLP
	REGINALD RONALD HOLLEY	DOA - YAIO
	Nancy Bradley	NCCBD
	Johnie Long	Martin Marietta
	Jim D. Martin	DEHNR
	Ron Chris	CNANC
	Pam Carpenter	PCS
		RJR

North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

1 tape minutes are not filed in computer

March 25, 1997
10:00 a.m.
1327 Legislative Bldg.

N. Leo Daughtry and Edwin M. "Sandy" Hardy, Chairman

Members Present

Martha B. Alexander	**Gene G. Arnold**
Jerry Braswell	**J. Russell Capps**
Debbie Clary	**N. Leo Daughtry**
J. Sam Ellis	**Theresa Harlow Esposito**
Milton F. Fitch, Jr.	**Bobby Ray Hall**
Edwin M. "Sandy" Hardy	**Robert C. Hunter**
John W. Hurley	**Margaret M. Jeffus**
Larry T. Justus	**George W. Miller, Jr.**
Wilma M. Sherrill	**Gregg Thompson**

The House Committee on JUDICIARY I met at 10:00 a.m. on Tuesday, March 25, 1997 in Room 1327 of the Legislative Building with Chairmen N. Leo Daughtry and Edwin M. "Sandy" Hardy presiding.

Committee Counsels Steven Rose and Karen Cochrane-Brown were present to assist the Committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

Chairman Daughtry announced Rep. Easterling had asked consideration of House Bill 150 PROHIBIT SALE OF SOME PYROTECHNICS be postponed.

House Page Allison Marie Peck of Yadkin County was present to assist the Committee.

The Chairman introduced Representative Arnold for the purpose of resuming discussion of House Bill 328 BAN TOBACCO SALE TO MINORS.

Rep. Arnold distributed a proposed technical amendment and moved that the Committee adopt, for the purposes of discussion, the Proposed Committee Substitute to House Bill 328. There was no objection.

Committee Counsel Steven Rose had prepared a MEMORANDUM on House Bill 328 which was distributed, and is attached and made a part of these minutes.

The Chairman recognized Dr. David Tempest, a family physician from Chatham County, for the purpose of speaking in favor of the bill.

Rep. Arnold was recognized for the purpose of explaining his proposed amendment to the Proposed Committee Substitute, a copy of which is attached and made a part of these minutes. The amendment was accepted without objection, and the Chairman announced the Committee was considering the Proposed Committee Substitute to House Bill 328, as amended..

Rep. Hall made a motion to amend the measure on "page 2, line 13 by deleting one-hundred dollars and substituting fifty dollars, and on page 2, line 15, by deleting three-hundred dollars and substituting one-hundred dollars, and on page 3, line 10, by deleting one-hundred dollars and substituting fifty dollars and on page 3, line 12 by deleting three hundred dollars and substituting one-hundred dollars."

Rep. Hall was recognized for the purpose of speaking in favor of his amendment. The Committee vote not to accept the amendment.

Rep. Hall asked staff what the penalties to minors were for the purchase of "a fifth of whiskey" Committee Counsel Rose reported the penalty for the purchase of alcohol for a person under nineteen years of age was "a class one misdemeanor," which, he elaborated at Rep. Hall's request, amounted to "up to forty-five days in prison or community punishment, at the court's discretion, a fine, and the loss of driving privilege for up to one year. Purchase by persons over nineteen through the age of twenty is an infraction" penalized with a twenty-five dollar civil fine and "sale to any person under twenty one is a class one misdemeanor."

On a motion by Rep. Thompson, the Committee voted to roll any amendments accepted by the Committee into a Committee Substitute, and report House Bill 328 favorably to the House, unfavorable to the original bill.

Rep. Culp was recognized to explain House Bill 482 HANDICAPPED PERSONS SIGNATURE.

On a motion by Rep. Miller, the Committee voted to report House Bill 482 with a favorable report. There was no objection.

Rep. Preston was recognized for the purpose of resuming Committee consideration of House Bill 88 St. Bd. of Ed/Subpoena Power.

Edwin Speas, Jr., Deputy Attorney General was recognized to speak on behalf of the bill

Rep. Arnold, chairman of the subcommittee on House Bill 328 reported that the Subcommittee had met and reported the confidentiality of the Attorney General's records for the purpose of the proceedings in a suspension or a revocation were held in confidence

And kept in Executive Hearings, information was maintained in confidence. Representative Arnold reported a few of the other state agencies which were granted such subponea powers as was proposed be granted to the State Board of Education in House Bill 328 were "the Commissions on Banks, Insurance, Labor, the Alarm Systems Licensing Board, the Secretary of State, the State Bar, Board of Landscape Architects, Hearing Aid Dealer's Board, Employment Security Commission, Commissioner of Agriculture, Wildlife Commission, local Boards of Education, and the Burial Association Administration."

Representative Hall moved that the Committee give House Bill 88 a favorable report. There was no objection.

The meeting adjourned at 10:30 a.m.

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 328

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H328-ARL-005

Date_____,1997

Comm. Sub. [YES] (PCSH328-PCSRL-003-97d)
Amends Title []

moves to amend the bill on page 4, line 14,
by deleting the words:
"a Class 2" and substituting the words "an infraction with a penalty of two hundred fifty dollars ($250.00)."; and

on page 4, line 15, by deleting the word "misdemeanor."; and

on page 4, lines 21 and 22, by rewriting those lines to read:
"violation of this subsection shall have committed an infraction and pay the following penalties:
(1) Twenty five dollars ($25.00) upon the first violation.
(2) One hundred dollars ($100.00) upon the second violation.
(3) Three hundred dollars ($300.00) upon the third and subsequent violation.'".

SIGNED ARNOLD
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

adopted

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 328
Proposed Committee Substitute H328-PCSRL-003-97d
THIS IS A DRAFT: LINE NUMBERS MAY CHANGE AFTER ADOPTION,
17-MAR-97 10:43:33

Short Title: Stop Tobacco Sales to Minors. (Public)

Sponsors:

Referred to: Judiciary I.

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE SALE OR PURCHASE OF TOBACCO PRODUCTS TO PERSONS LESS THAN EIGHTEEN YEARS OF AGE AND TO REQUIRE THAT CERTAIN PERSONS BE TRAINED REGARDING THESE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-313(a) reads as rewritten:

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

(1) Distribute. -- To sell, furnish, give, or provide tobacco products, including tobacco product samples, or cigarette wrapping papers to the ultimate consumer.

(2) Proof of age. -- A drivers license or other ~~documentary or written evidence~~ photographic identification that includes the bearer's date of birth that purports to establish that the person is 18 years of age or older.

(3) Sample. -- A tobacco product distributed to members of the general public at no cost for the purpose of promoting the product.

(4) Tobacco product. -- Any product that contains tobacco and is intended for human consumption."

Section 2. G.S. 14-313(b) reads as rewritten:

"(b) Sale or distribution to persons under the age of 18 years. -- If any person shall ~~knowingly~~ distribute, or ~~knowingly~~ aid, assist, or abet any other person in distributing tobacco products or cigarette wrapping papers to any person under the age of 18 years, or if any person shall ~~knowingly~~ purchase tobacco products or cigarette wrapping papers on behalf of a person, less than 18 years, the person shall ~~be guilty of a Class 2 misdemeanor;~~ have committed an infraction and pay the following penalties:

(1) Twenty-five dollars ($25.00) upon the first violation.

(2) One hundred dollars ($100.00) upon the second violation.

(3) Three hundred dollars ($300.00) upon the third and subsequent violation.

~~provided, however, that it~~ It shall not be unlawful to distribute tobacco products or cigarette wrapping papers to an employee when required in the performance of the employee's duties. Retail distributors of tobacco products shall prominently display near the point of sale a sign in letters at least five-eighths of an inch high which states the following:

N.C. LAW STRICTLY PROHIBITS
THE PURCHASE OF TOBACCO PRODUCTS
BY PERSONS UNDER THE AGE OF 18.
PROOF OF AGE REQUIRED.

Failure to post the required sign shall be an infraction with a penalty of twenty-five dollars ($25.00) for the first violation and seventy-five dollars ($75.00) for each succeeding violation.

A person engaged in the sale of tobacco products shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is ~~a Class 2 misdemeanor.~~ an infraction with a penalty of two hundred fifty dollars ($250.00). Proof that the defendant demanded, was shown, and reasonably relied upon proof of age in the case of a retailer, or any other documentary or written evidence of age in the case of a nonretailer, shall be a defense to any action brought under this subsection. Retail distributors of tobacco products shall train their sales employees in the requirements of this law."

Section 3. G.S. 14-313(c) reads as rewritten:

"(c) Purchase by persons under the age of 18 years. -- If any person under the age of 18 years purchases or accepts receipt, or

attempts to purchase or accept receipt, of tobacco products or cigarette wrapping papers, ~~or presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product,~~ the person shall ~~be guilty of~~ have committed an infraction ~~as provided in G.S. 14-3.1.~~ and pay the following penalties:

(1) Twenty-five dollars ($25.00) upon the first violation.

(2) One hundred dollars ($100.00) upon the second violation.

(3) Three hundred dollars ($300.00) upon the third and subsequent violation.

If any person presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco products or cigarette wrapping papers, the person shall have committed an infraction and pay a penalty of two hundred fifty dollars ($250.00)."

Section 4. G.S. 14-313(d) reads as rewritten:

"(d) Send or assist person less than 18 years to purchase or receive tobacco product. -- If any person shall ~~knowingly~~ send or assist a person less than 18 years of age to purchase, acquire, receive, or attempt to purchase, acquire, or receive tobacco products or cigarette wrapping papers, the person shall be guilty of a Class 2 misdemeanor; provided, however, persons under the age of 18 may be enlisted by police or local sheriffs' departments to test compliance if the testing is under the direct supervision of that law enforcement department and written parental consent is provided; provided further, that the Department of Human Resources shall have the authority, pursuant to a written plan prepared by the Secretary of Human Resources, to use persons under 18 years of age in annual, random, unannounced inspections, provided that prior written parental consent is given for the involvement of these persons and that the inspections are conducted for the sole purpose of preparing a scientifically and methodologically valid statistical study of the extent of success the State has achieved in reducing the availability of tobacco products to persons under the age of 18, and preparing any report to the extent required by section 1926 of the federal Public Health Service Act (42 USC § 300x-26)."

Section 5. G.S. 14-313 is amended by adding a new subsection to read:

"(b1) Vending machines. -- Tobacco products shall not be distributed in vending machines; provided, however, vending machines distributing tobacco products are permitted (i) in any establishment which is open only to persons 18 years of age and older; or (ii) in any establishment if the vending machine is under the continuous control of the owner or licensee of the premises or an employee thereof and can be operated only upon activation by the owner, licensee or employee prior to each purchase and the vending machine is not accessible to the public when the establishment is closed. The owner, licensee or employee shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to any action brought under this subsection. Vending machines distributing tobacco products in establishments not meeting the above conditions shall be removed by July 31, 1997. Any person distributing tobacco products through vending machines in violation of this subsection shall be guilty of a Class 2 misdemeanor."

Section 6. G.S. 14-313 is amended by adding a new subsection to read:

"(b2) Out-of-package sales. -- If any person engaged in the sale of cigarettes shall sell cigarettes other than in unopened packages originating with the manufacturer, the person shall be guilty of a Class 2 misdemeanor."

Section 7. This act becomes effective August 1, 1997, and applies to violations committed on or after that date.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

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Raleigh, NC 27603-5925
(919) 733-2578

March 18, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **House Bill 328; Prohibit Tobacco Sales to Minors - Proposed Committee Substitute**

The proposed committee substitute for House Bill 328 amends G.S. 14-313 which prohibits sale or distribution of tobacco products to minors. The amendments will require photographic proof of age; remove the requirement that a person knowingly sell to the minor in order to be found guilty; change penalties for violation; restrict vending machine sales; and prohibit out-of-package cigarette sales.

Section 1 amends G.S. 14-313(a). It changes the definition of "proof of age" so that proof of age may only be a drivers license or other photographic identification that includes the bearer's date of birth. The present definition allows a drivers license or other documentary or written evidence.

Section 2 amends G.S. 14-313(b). This is the subsection that specifically prohibits distribution of tobacco products to persons under 18 years of age. Under present law, a person can only be guilty of violating this subsection if they act "knowingly." The amendments remove the requirement that the person act "knowingly." Further, retail distributors will be required to display a sign stating that North Carolina law prohibits purchase of tobacco products by persons under 18. Failure to post a sign is an infraction punishable by a $25.00 penalty for the first offense and a $75.00 penalty for each succeeding offense. A retailer may rely on proper (with photo) proof of age. A nonretailer may still rely on documentary or other written evidence (without a photo) of age. Retail distributors of tobacco products must train their sales employees in the requirements of the law. The penalty for selling to a minor changes from a Class 2 misdemeanor to an

infraction. A first offense is punishable by a $25.00 penalty, a second offense by a $100.00 penalty, and a third offense or subsequent offense by a $300.00 penalty.

Failure to demand proof of age changes from a Class 2 misdemeanor to an infraction with a penalty of $250.00.

Section 3 amends G.S. 14-313(c). This subsection prohibits minors from purchasing tobacco products. The amendments change the penalties. Under the present law, if a minor purchases or accepts receipt of tobacco products or uses false identification to purchase tobacco products, the person is guilty of an infraction with a maximum penalty of $100.00. Violation remains an infraction. The amendments change the penalties. For an underage purchase, the first offense penalty becomes $25.00, the second offense becomes $100.00, and the third offense becomes $300.00. The penalty for using false identification remains an infraction, but the penalty goes from a maximum $100.00 to $250.00

Section 4 amends G.S. 14-313(d) which prohibits knowingly sending or assisting a minor to purchase or receive tobacco products. The amendment removes the term "knowingly."

Section 5 of the bill adds a new subsection (b1) to G.S. 14-313. The new subsection regulates vending machines by prohibiting distribution of tobacco products in vending machines except under specific circumstances. Vending machines may be used in establishments open only to persons 18 years of age and older, or in establishments where the machine is under the continuous control of the owner or licensee of the premises, or an employee, the machine is activated by the owner, licensee, or employee prior to each purchase, and the machine is not accessible to the public when the establishment is closed. The person in control of the vending machine must demand proof of age if he has reasonable grounds to believe that the prospective purchaser is under 18 years of age, and failure to demand proof of age is a Class 2 misdemeanor. It is a defense to prosecution that the person in control of the vending machine demanded, was shown, and reasonably relied upon proof of age. Vending machines distributing tobacco products and not meeting the new requirements must be removed by July 31, 1997. Distribution of tobacco products in violation of this subsection is a Class 2 misdemeanor.

Section 6 amends G.S. 14-313 by adding a new subsection (b2). The new subsection prohibits sale of cigarettes other than in unopened packages originating with the manufacturer. A violation is a Class 2 misdemeanor.

The act is effective August 1, 1997 and applies to offenses committed on or after that date.

An incarceration fiscal note is required.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 328

Short Title: Stop Tobacco Sales to Minors. (Public)

Sponsors: Representatives Arnold, Fitch; Brawley, Cansler, Dedmon, Goodwin, Moore, and Mosley.

Referred to: Judiciary I.

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE SALE OR PURCHASE OF TOBACCO PRODUCTS TO PERSONS LESS THAN EIGHTEEN YEARS OF AGE AND TO REQUIRE THAT CERTAIN PERSONS BE TRAINED REGARDING THESE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-313(a) reads as rewritten:

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

(1) Distribute. -- To sell, furnish, give, or provide tobacco products, including tobacco product samples, or cigarette wrapping papers to the ultimate consumer.

(2) Proof of age. -- A drivers license or other ~~documentary or written evidence~~ photographic identification that includes the bearer's date of birth that purports to establish that the person is 18 years of age or older.

(3) Sample. -- A tobacco product distributed to members of the general public at no cost for the purpose of promoting the product.

(4) Tobacco product. -- Any product that contains tobacco and is intended for human consumption."

Section 2. G.S. 14-313(b) reads as rewritten:

"(b) Sale or distribution to persons under the age of 18 years. -- If any person shall ~~knowingly~~ distribute, or ~~knowingly~~ aid, assist, or abet any other person in distributing tobacco products or cigarette wrapping papers to any person under the age of 18 years, or if any person shall ~~knowingly~~ purchase tobacco products or

cigarette wrapping papers on behalf of a person, less than 18 years, the person shall be guilty of a Class 2 misdemeanor; provided, however, that it shall not be unlawful to distribute tobacco products or cigarette wrapping papers to an employee when required in the performance of the employee's duties. Retail distributors of tobacco products shall prominently display near the point of sale a sign in letters at least five-eights of an inch high which states the following:

N.C. LAW STRICTLY PROHIBITS
THE PURCHASE OF TOBACCO PRODUCTS
BY PERSONS UNDER THE AGE OF 18.
PROOF OF AGE REQUIRED.

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

A person engaged in the sale of tobacco products shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age in the case of a retailer, or any other documentary or written evidence of age in the case of a nonretailer, shall be a defense to any action brought under this subsection. Retail distributors of tobacco products shall train their sales employees in the requirements of this law."

Section 3. G.S. 14-313(c) reads as rewritten:

"(c) Purchase by persons under the age of 18 years. -- If any person under the age of 18 years purchases or accepts receipt, or attempts to purchase or accept receipt, of tobacco products or cigarette wrapping papers, ~~or presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product,~~ the person shall be guilty of ~~an infraction as provided in G.S. 14-3.1.~~ a Class 3 misdemeanor. If any person presents or offers to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product, the person shall be guilty of a Class 2 misdemeanor."

Section 4. G.S. 14-313(d) reads as rewritten:

"(d) Send or assist person less than 18 years to purchase or receive tobacco product. -- If any person shall ~~knowingly~~ send or assist a person less than 18 years of age to purchase, acquire, receive, or attempt to purchase, acquire, or receive tobacco products or cigarette wrapping papers, the person shall be guilty of a Class 2 misdemeanor; provided, however, persons under the age of 18 may be enlisted by police or local sheriffs' departments to test compliance if the testing is under the direct supervision of that law enforcement department and written parental consent is provided; provided further, that the Department of Human Resources shall have the authority, pursuant to a written plan prepared by the Secretary of Human Resources, to use persons under 18 years of age in annual, random, unannounced inspections, provided that prior written parental consent is given for the involvement of these

persons and that the inspections are conducted for the sole purpose of preparing a scientifically and methodologically valid statistical study of the extent of success the State has achieved in reducing the availability of tobacco products to persons under the age of 18, and preparing any report to the extent required by section 1926 of the federal Public Health Service Act (42 USC § 300x-26)."

Section 5. G.S. 14-313 is amended by adding a new subsection to read:

"(b1) Vending machines. -- Tobacco products shall not be distributed in vending machines; provided, however, vending machines distributing tobacco products are permitted (i) in any establishment which is open only to persons 18 years of age and older; or (ii) in any establishment if the vending machine is under the continuous control of the owner or licensee of the premises or an employee thereof and can be operated only upon activation by the owner, licensee or employee prior to each purchase and the vending machine is not accessible to the public when the establishment is closed. The owner, licensee or employee shall demand proof of age from a prospective purchaser if the person has reasonable grounds to believe that the prospective purchaser is under 18 years of age. Failure to demand proof of age as required by this subsection is a Class 2 misdemeanor. Proof that the defendant demanded, was shown, and reasonably relied upon proof of age shall be a defense to any action brought under this subsection. Vending machines distributing tobacco products in establishments not meeting the above conditions shall be removed by August 28, 1997. Any person distributing tobacco products through vending machines after August 28, 1997, in violation of this subsection shall be guilty of a Class 2 misdemeanor."

Section 6. G.S. 14-313 is amended by adding a new subsection to read:

"(b2) Out-of-package sales. -- If any person engaged in the sale of cigarettes shall sell cigarettes other than in unopened packages originating with the manufacturer, the person shall be guilty of a Class 2 misdemeanor."

Section 7. Section 1 of this act becomes effective February 28, 1997, and applies to offenses committed on or after that date. Section 5 is effective when this act becomes law. The remaining sections become effective December 1, 1997.

VISITOR REGISTRATION SHEET

JUDICIARY I 3/25/97

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Joe McClees	Smokeless Tobacco
[illegible]	Poyner & Spruill
Chris Horne	Cary Police Dept
Susan Crocker	DHR - Sub. Abuse Prevention
David Tempest	Moncure Health Center
Laura Crumpler	AG
Ann Belcher	SBE
Eddie Speas	AG Office
George Reed	NC Council of Churches
Charles Daugherty	American Cancer Society
Deborah Bryant	Amer Lung Assn
Lisa Greene	Am. Cancer Society
Cheryl Edwards	Tri. agency council
Alice Garland	Electricities
Martha Livengood	YAIO/DOA
Roger Bone	Room #A350/II
Paula Wolf	Covenant w/ NC's Children
Kim Smith	NCLM

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jane P. Gray	DOJ
Megan Carney	BSW Student - Meredith College
Cam Coxe	NCACS
Bobby Bryan	RRC
Mary Marcus	OAH
Dean Odey	OAH
Kathy Peterson	American Heart Association
Allen Pulley	NCCBT
Charles Ciccone	NCATL
Gary Harris	NCPMA
Don Hoyle	NCPMA
ANNA TEFFT	OSBM
Robert. Palmer	Physician of the Day
Ann Cole	DEHNR
Jackie Stallsmith	DHR - Voc. Rehab.
John Rhea	Lawrence Bailey & Assoc.
Al Sads	WCSR

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

March 26

H 1

HOUSE BILL 482

Short Title: Handicapped Persons Signature. (Public)

Sponsors: Representatives Culp; Barbee, Clary, Decker, Dickson, Jeffus, Kiser, McComas, Preston, Reynolds, Rogers, Russell, Sexton, Sherrill, Shubert, Sutton, Watson, Weatherly, Wood, and Yongue.

Referred to: Judiciary I.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW ALL HANDICAPPED PERSONS TO USE A REGISTERED SIGNATURE FACSIMILE AS A MARK OF THEIR LEGAL SIGNATURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 22A-1 reads as rewritten:

"**§ 22A-1. Use of a signature facsimile by a ~~visually~~ handicapped person.**

A ~~visually~~ handicapped person, as defined in ~~G.S. 111-11~~ G.S. 168A-3(4), may use a registered signature facsimile as a proper mark of ~~his~~ the person's legal signature. An example of the signature facsimile shall be registered by the ~~visually~~ handicapped person with the clerk of the superior court in the county ~~of his domicile.~~ where the person lives. The registered signature facsimile may be revoked at any time in writing by the ~~visually~~ handicapped person."

Section 2. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
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March 23, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **House Bill 482 - Handicapped Persons Signature.**

House Bill 482 amends the law to allow all handicapped persons to use a registered signature facsimile as a mark of their legal signature. An example of the signature facsimile must be registered with the clerk of the superior court in the county where the person lives. The registered signature facsimile may be revoked at any time in writing by the handicapped person. Under current law, only *visually* handicapped persons may use a registered signature facsimile. This bill extends the same benefit to all handicapped people.

This act becomes effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

HOUSE COMMITTEE ON JUDICIARY I

Tuesday, March 25, 1997 ✓
Room 1327 LB
10:00 a.m.

OPENING REMARKS:
Representative N. Leo Daughtry, Chairman
Judiciary I Committee

BILLS TO BE CONSIDERED:

H.B. 88 STATE BD OF EDUC SUBPOENA
Sponsor: Representative Preston

H.B. 150 PROHIBIT SALE OF SOME PYROTECHNICS
Sponsor: Representative Easterling

H.B. 328 BAN TOBACCO SALES TO MINORS
Sponsor: Representative Arnold and Fitch

H.B. 482 HANDICAPPED PERSONS SIGNATURE
Sponsor: Representative Culp

S. 187 APA TECHNICAL CHANGES
Sponsor: Senator Kerr

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 88*

Short Title: St. Bd. of Ed./Subpoena Power. (Public)

Sponsors: Representatives Preston, Grady, Black, McMahan, Owens, Rogers; Culp, Dockham, Moore, Mosley, Shubert, Warner, and Watson.

Referred to: Education, if favorable, Judiciary I.

February 10, 1997

A BILL TO BE ENTITLED

AN ACT TO GRANT SUBPOENA POWER TO THE STATE BOARD OF EDUCATION IN CASES INVOLVING THE SUSPENSION OR REVOCATION OF CERTIFICATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-296(d) reads as rewritten:

"(d) The State Board shall adopt rules to establish the reasons and procedures for the suspension and revocation of certificates. In addition, the State Board ~~of Education~~ may revoke or refuse to renew a teacher's certificate when:

(1) The Board identifies the school in which the teacher is employed as low-performing under G.S. 115C-105.37; and

(2) The assistance team assigned to that school under G.S. 115C-105.38 makes the recommendation to revoke or refuse to renew the teacher's certificate for one or more reasons established by the State Board in its rules for certificate suspension or revocation.

The State Board may issue subpoenas for the purpose of obtaining documents or the testimony of witnesses in connection with proceedings to suspend or revoke certificates."

Section 2. This act is effective when it becomes law.

North Carolina House of Representatives

JUDICIARY I COMMITTEE

1 tape recorder are not found in committee.

March 27, 1997
10:00 a.m.
1327 Legislative Bldg.

N. Leo Daughtry and Edwin M. "Sandy" Hardy, Chairmen

Members Present

Martha B. Alexander
Daniel T. Blue, Jr.
J. Russell Capps
James W. Crawford
Milton F. Fitch, Jr.
Bobby Ray Hall
George M. Holmes
John W. Hurley
Larry T. Justus
George W, Miller, Jr.
Gregg Thompson
Gene G. Arnold
Jerry Braswell
Debbie Clary
J. Sam Ellis
Lyons Gray
Thomas C. Hardaway
Robert C. Hunter
Margaret M. Jeffus
H. M. Michaux, Jr.
Wilma M. Sherrill

The House Committee on JUDICIARY I met at 10:00 a.m. on Thursday, March 27 1997 in Room 1327 of the Legislative Building with Chairmen N. Leo Daughtry and E.M. "Sandy" Hardy presiding.

Committee Counsel Steven Rose and Karen Cochrane-Brown were present to assist the Committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

Chairman Daughtry introduced House Pages Emily Griffin and Jessica Boone of Sampson County who were present to assist the Committee.

The Chairman introduced Representative Easterling for the purpose of introducing for discussion H.B. 150 PROHIBIT SALE OF SOME PYROTECHNICS.

Committee Counsel Steven Rose had prepared a memorandum explaining the Proposed Committee Substitute for H.B. 150, a copy of which is attached and made a part of the minutes.

Rep. Easterling introduced a report from the North Carolina Child Fatality Task

Force regarding H.B. 150, a copy of which is attached and made a part of the minutes.

Present to speak in favor of the measure were Tom Bennett, executive director of the North Carolina Child Fatality Task Force and Starla McKinney asst. to the State Insurance Commissioner.

On a motion by Rep. Hall, the Committee agreed to an unfavorable report for House Bill 150.

The Chairman introduced Representative Hiatt for the purpose of explaining House Bill 231, DMV MEDICAL INFORMATION IMMUNITY.

Committee Counsel Steven Rose had prepared a memorandum explaining House Bill 231, a copy of which is attached and made a part of the minutes.

3/31

Representative Capps sent forth a technical amendment changing the General Statute reference and other changes. The Committee agreed to the changes. The bill was presented to the Committee as amended.

Tony Spence and Jan Mills of the Department of Motor Vehicles was present to answer questions regarding the protection of anonymity and the proceedures used by the D.M.V. in using information gathered through disclosure of information.

Action on House Bill 231 was deferred until the next regularly scheduled committee meeting, Tuesday, April 1.

The Committee adjourned at 10:58 a.m.

_____Joel Raupe, committee clerk

REPRESENTATIVE N. LEO DAUGHTRY

REPRESENTATIVE EDWIN M. HARDY

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS:

HOUSE COMMITTEE ON JUDICIARY I

Thursday, March 27, 1997
Room 1327 LB
10:00 a.m.

OPENING REMARKS:
Representative N. Leo Daughtry, Chairman
Judiciary I Committee

BILLS TO BE CONSIDERED:

H.B. 138 DMV ENFORCEMENT AUTHORITY
Sponsor: Representative Justus

H.B. 150 PROHIBIT SALE OF SOME PYROTECHNICS
Sponsor: Representative Easterling

H.B. 231 DMV MEDICAL INFORMATION IMMUNITY
Sponsor: Representative Hiatt

H.B. 261 = S. 187 APA TECHNICAL CHANGES
Sponsors: Representative Creech & Senator Kerr

ADJOURNMENT

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on JUDICIARY I .

☐ Committee Substitute for
H.B. 150 A BILL TO BE ENTITLED AN ACT TO PROHIBIT THE SALE OF CERTAIN PYROTECHNICS IN NORTH CAROLINA.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

X With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 150

Short Title: Prohibit Sale of Some Pyrotechnics. (Public)

Sponsors: Representatives Easterling; Adams, Alexander, Boyd-McIntyre, Clary, Cunningham, Dickson, Hackney, Hensley, Luebke, McCrary, Moore, Mosley, Nye, Smith, Wright, and Yongue.

Referred to: Judiciary I.

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE SALE OF CERTAIN PYROTECHNICS IN NORTH CAROLINA.

Whereas, in North Carolina, between December 1, 1993, and July 15, 1994, over 50% of the fire departments, hospitals, and forestry departments that responded to a survey reported injury or property damage due to fireworks; and

Whereas, of the 41 injuries reported, half were second-degree burns, one person lost an eye, 51% of the victims were age 20 or younger, and 64% were male; and

Whereas, 62% of the fireworks-related fires involved fireworks that are now exempt in G.S. 14-414; and

Whereas, 22% of the fires and injuries were caused by firecrackers, 21% by rockets, 20% involved sparklers, and 16% involved smoke bombs; and

Whereas, nationally collected data indicate that legalized fireworks have proven to be costly in both human injury and property damage; and

Whereas, the United States Consumer Product Safety Commission reported that 12,900 injuries from fireworks were seen at hospital emergency departments in 1993; and

Whereas, in 1991, an estimated 28,000 fires involving fireworks were reported to fire departments across the nation, causing direct property damages estimated at $19,900,000; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-414 reads as rewritten:

"**§ 14-414. Pyrotechnics defined; exceptions.**

For the proper construction of the provisions of this Article, 'pyrotechnics,' as is herein used, shall be deemed to be and include any and all kinds of fireworks and explosives, which are used for exhibitions or amusement purposes: provided, however, that nothing herein contained shall prevent the manufacture, purchase, sale, transportation, and use of explosives or signaling flares used in the course of ordinary business or industry, or shells or cartridges used as ammunition in firearms. This Article shall not apply to the sale, use, or possession of the ~~following:~~

~~(1)~~ ~~Explosive~~ explosive caps designed to be fired in toy pistols, provided that the explosive mixture of the explosive caps shall not exceed twenty-five hundredths (.25) of a gram for each cap.

~~(2) Snake and glow worms composed of pressed pellets of a pyrotechnic mixture that produce a large, snake-like ash when burning.~~

~~(3) Smoke devices consisting of a tube or sphere containing a pyrotechnic mixture that produces white or colored smoke.~~

~~(4) Trick noisemakers which produce a small report designed to surprise the user and which include:~~

~~a. A party popper, which is a small plastic or paper item containing not in excess of 16 milligrams of explosive mixture. A string protruding from the device is pulled to ignite the device, expelling paper streamers and producing a small report.~~

~~b. A string popper, which is a small tube containing not in excess of 16 milligrams of explosive mixture with string protruding from both ends. The strings are pulled to ignite the friction-sensitive mixture, producing a small report.~~

~~c. A snapper or drop pop, which is a small, paper-wrapped item containing no more than 16 milligrams of explosive mixture coated on small bits of sand. When dropped, the device produces a small report.~~

~~(5) Wire sparklers consisting of wire or stick coated with nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition. These items must not exceed 100 grams of mixture per item.~~

~~(6) Other sparkling devices which emit showers of sparks and sometimes a whistling or crackling effect when burning, do not detonate or explode, do not spin, are hand-held or ground-based, cannot propel themselves through the air, and contain not more than 75 grams of chemical compound per tube, or not more than a total of 200 grams if multiple tubes are used.~~"

Section 2. G.S. 14-410 reads as rewritten:

"**§ 14-410. Manufacture, sale and use of pyrotechnics prohibited; exceptions; sale to persons under the age of 16 prohibited.**

~~(a)~~ It shall be unlawful for any individual, firm, partnership or corporation to manufacture, purchase, sell, deal in, transport, possess, receive, advertise, use or cause to be discharged any pyrotechnics of any description whatsoever within the State of North Carolina: provided, however, that it shall be permissible for pyrotechnics to be exhibited, used or discharged at public exhibitions, such as fairs, carnivals, shows of all descriptions and public celebrations: provided, further, that the use of said pyrotechnics in connection with public exhibitions, such as fairs, carnivals, shows of all descriptions and public celebrations, shall be under supervision of experts who have previously secured written authority from the board of county commissioners of the county in which said pyrotechnics are to be exhibited, used or discharged; provided, further, that such written authority from the board of commissioners is not required for a public exhibition authorized by The University of North Carolina or the University of North Carolina at Chapel Hill and conducted on lands or buildings in Orange County owned by The University of North Carolina or the University of North Carolina at Chapel Hill; provided, further, that it shall not be unlawful for a common carrier to receive, transport, and deliver pyrotechnics in the regular course of its business.

~~(b) Notwithstanding the provisions of G.S. 14-414, it shall be unlawful for any individual, firm, partnership, or corporation to sell pyrotechnics as defined in G.S. 14-414 (2), (3), (4)c., (5), or (6) to persons under the age of 16.~~"

Section 3. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

North Carolina Child Fatality Task Force

P.O. Box 27687, Raleigh, NC 27611 ••• (919) 715-3294 ••• fax (919) 715-3187

Ilene Nelson, JD, Co-Chair
Guardian ad Litem Program

Jennifer Toile, MA, Co-Chair
Prevent Child Abuse NC

Fact Sheet Concerning HB 150 "Prohibit Sale of Some Pyrotechnics"

Proposal: Repeal exemptions #2 through #6 of NC GS 14-414 (the 1993 statute that deregulated certain pyrotechnics by excluding them from the definition of pyrotechnic devices.) The N.C. Child Fatality Task Force finds that because of this law, children suffer injuries to their hands, faces, eyes, and other areas of their bodies as the result of easy access to these "attractive nuisances." Current law sets no age limit on who can purchase these pyrotechnic devices.

What The Bill Does:

* Identifies the parts of NC GS 14-414 that deregulated certain pyrotechnic devices and calls for these parts of the law to be repealed.
* Recognizes that current law enables unsupervised children to buy and use these deregulated fireworks and seeks to protect them from burns and other injuries, including those caused by secondary fires these devices can ignite.
* The bill would have no effect on public displays certified by local fire marshals -- the kind of fire works shows presented at state and county fairs, church fundraisers, etc.

Why The Bill Is Needed:

* According to a statewide study performed in 1996 by the Jaycee Burn Center at UNC, fireworks injured 24 people seriously enough to require treatment in hospital emergency departments. A third of the victims were younger than 16 years of age. Six of the victims were injured by deregulated pyrotechnic devices (five by *sparklers*, which can burn at temperatures of up to 1,400 degrees F.; and one by a *smoke bomb*.
* According to the *National Fire Prevention Association Journal*, in 1994, "an estimated 38,000 fires involving fireworks were reported to U.S. fire departments, the highest such total in six years. These fires were estimated to have killed 12 civilians, injured another 152, and caused $22 million in property damage."
* Secondary fires started by exempt pyrotechnic devices also present a real danger to children, adults and firefighters in North Carolina. For example, on April 6, 1992, a burned out *sparkler* was dropped outside Beach Lake Apartments in Durham. The resulting blaze destroyed the entire complex.
* Despite fireworks industry claims, these exempt devices are not "safe and sane."

Who supports HB 150? (partial list)

Commissioner Jim Long, State Fire Marshal, N.C. Dept. of Insurance
NC Fire Marshal's Association
NC County Fire Marshal's Association

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

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(919) 733-2578

March 26, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **Enforcement of Infraction Penalties**

At the Committee meeting on Tuesday, March 25, 1997, Representative Thompson asked a question concerning the method used to enforce payment of infraction penalties. My answer was that these were handled like civil penalties, meaning that the State would bring a civil suit to collect the penalties. Unfortunately, that information was incorrect. I have done further research and the correct information follows.

The procedure for disposition of infractions is outlined in Article 66 of Chapter 15A of the General Statutes. In that Article, G.S. 15A-1116 speaks to the enforcement of sanctions and penalties for infractions. G.S. 15A-1116 provides that if a person does not comply with a sanction ordered by the court, the court may proceed in accordance with Chapter 5A of the General Statutes. This is the Chapter which governs proceedings for criminal and civil contempt. G.S. 15A-1116 further provides that if a person fails to pay a penalty or costs, the court may proceed in accordance with Article 84 of Chapter 15A.

In Article 84, G.S. 15A-1364 states that a person who fails to pay a fine or costs may be required to appear in court and show cause why he should not be imprisoned. Unless the defendant shows an inability to comply and that his nonpayment was not attributable to a failure to make a good faith effort to obtain the necessary funds, the court may order the defendant imprisoned for a term not to exceed 30 days. The court may also modify the payment plan or the amount to be paid if it appears that the default is not attributable to a failure on the defendant's part to make a good faith effort.

With regard to the contempt proceedings, a person found to be in criminal contempt can be sentenced to imprisonment for up to 30 days, a fine not to exceed $500, or a combination. A

person found to be in civil contempt can be imprisoned until they purge themselves of the contempt by doing whatever it is they were ordered to do by the court and did not do.

While any of these remedies is available to the court, I have personally never heard of anyone being imprisoned for failure to pay an infraction penalty. The reason for this becomes clear when you look at a breakdown of the infractions that come before the courts. According to the Administrative Office of the Courts, over 90% of all infraction proceedings in this State are motor vehicle violations. Where motor vehicle violations are concerned, there is another method of coercing payment which is extremely effective. G.S. 20-24.2 provides that nonpayment must be reported to the Division of Motor Vehicles. G.S. 20-24.1 provides that the Division of Motor Vehicles must revoke the drivers license of a person upon receipt of notice from a court that the person was charged with a motor vehicle offense and failed to pay the fine, penalty, or court costs. The revocation remains in force until the payment is made.

With regard to other infractions, the Administrative Office of the Courts indicates that little effort is made to collect if a person does not pay the penalty voluntarily. There are simply not enough resources to go after these people.

I hope this provides complete information to the Committee. I am sorry for the incorrect information I gave at the Committee meeting.

VISITOR REGISTRATION SHEET

Judiciary I — 3/27/97

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jerry Arrowood	DMV
FRAN PRESTON	NCRMA
DON McCORQUODALE	NCRMA
TOM HINTON	USFSC 2020 Penns. Ave, NW 20006
Ruth Sappie	NCDOT
Tony Spence	DOT/DMV
Allen Mills	DMV
David Simmons	Zeb Alley, PA
John Bowdish	" " "
[illegible]	American Co.
R. Paul Williams	NCHSA
BOBBY BRYAN	NC RRC
JOS. DELUCA	" "
Paula A. Wolf	Covenant with NC's Children
AL DEITCH	YOUTH ADVOCACY + INVOLVEMENT OFFICE

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Joe Stewart	CCPS
EW Horton	SHP.
Ann Case	DEHNR
Andy Ellen	NC Farm Bureau
Bill Breeze	NC Medical Board
David Ferrell	Hofer, McNamara, Caldwell, McElroy & Cutler, P.A.
Dave Horne	Smith Anderson
Erskine Bowles	Washington, DC
Lucius PULLEN	ATTORNEY
Chuck Bowenfield	DEHNR
Tommy Wells	Carolinas Health Care System
E.L. Peters	NC TRUCKING ASSN
VL McBride	NCTA
Mike Carpenter	NCHSA
Glen Peterson	DOA
Ann Christin	NCAWA

North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

1 tape
minutes are not filed
in computer

Tuesday, April 1, 1997
1327 Legislative Building

10:00 a.m. and 1:00 p.m.

N. Leo Daughtry
Edwin M. "Sandy" Hardy
Co-Chairman

Members Present:

Jerry Braswell	Martha Alexander
Gene G. Arnold	Daniel T. Blue, Jr.
J. Russell Capps	Debbie Clary
James W. Crawford	J. Sam Ellis
Theresa H. Esposito	Milton F. Fitch, Jr.
Lyons Gray	Bobby Ray Hall
Thomas C. Hardaway	George M. Holmes
Robert C. Hunter	John W. Hurley
Margaret M. Jeffus	Larry T. Justus
H. M. Michaux, Jr.	George W. Miller, Jr.
Richard T. Morgan	Wilma M. Sherrill
Gregg Thompson	

The House Committee on JUDICIARY I met at 10:00 a.m. on Tuesday, April 1, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry and Edwin M. "Sandy" Hardy presiding.

Committee Counsels Steven Rose and Karen Cochrane-Brown were present to assist the Committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

House Pages Julie Davis of Granville County and Everette Milligan of Brunswick County were present to assist the Committee.

Chairman Daughtry resumed deliberation on House Bill 231 MEDICAL INFORMATION WAIVER, and recognized Rep. Hiatt.

Committee Counsel Steven Rose prepared a MEMORANDUM on H.B. 231 which was

distributed and is attached and made a part of these minutes.

Rep. Capps sent forth an amendment to H.B. 231, a copy of which is attached and made a part of these minutes. Mr. Rose explained the amendment, which was adopted without objection.

Rep. Hall sent forth an amendment on page 1, line 15 by deleting the word "may" and inserting the words "may, after consultation with the patient." Rep. Hall explained his amendment was intended to protect the relationship between doctor and patient.

Rep. Michaux offered a substitute amendment to the bill, proposing to add to the bill at page 1, line 19 "a copy of said information with the name of the physician or psychologist disclosing said information shall be furnished to the patient by the physician or psychologist at the time of the disclosure to the Commission," which he believed would better accomplished the same end as Rep. Hall's amendment.

The merits of the proposed amendments were discussed.

On a motion by Rep. Hall, the Committee accepted his proposed amendment, and on a motion by Rep. Sherrill, the amendment was engrossed into a Proposed Committee Substitute which the Committee agreed to give a favorable report, unfavorable to the original bill.

Chairman Daughtry brought before the Committee House Bill 527, OPTOMETRY CHANGES, introducing Rep. Justus and remarking that it was his intention to give the bill a "full and fair hearing." In accordance with House Rule Number 29.1, Rep. Holmes delivered to the chairman a written request for a Public Hearing on H.B. 527, which is attached and made a part of these minutes.

Committee Counsel Karen Cochrane-Brown prepared a MEMORANDUM on H.B. 527, which is attached and made a part of these minutes.

Chairman Daughtry announced that such a hearing was called and scheduled to take place Monday, April 7, 1997 at 3:00 p.m. in the Third Floor Auditorium of the Legislative Building, and that a vote on the bill would not take place until Tuesday, April 8. An additional meeting of the Committee for the purpose of discussion of the bill was scheduled for the afternoon of April 1, 1997 at 1 p.m.

Rep. Sherrill asked if it was the Chair's intention to call a public hearing in accordance with the rules of the House. Rep. Daughtry indicate that it was. Rep. Sherrill further asked if the chair would entertain a motion calling for a vote of the Committee on whether or not to hold such a hearing. Rep. Daughtry indicated again that it was his intention to give the bill a "fair and full hearing."

Rep. Sherrill was recognized for the purpose of asking Committee staff "what appeal a

member has if a chair will not allow this motion."

Chairman Daughtry recognized Rep. Morgan who indicated that the rules of the House allow a member to request a public hearing and that the chair may grant that public hearing. If a member wants to appeal "he may appeal to the Speaker."

Rep. Justus was recognized for the purpose of explaining House Bill 527.

Dr. Julian Crowder, an Optometrist from Candler, was recognized for the purpose of speaking in favor of the bill.

Dr. Jeff Viscardi, an Ophthalmologist from Greenville, was recognized for the purpose of speaking in favor of the bill.

Mr. David Work, executive director of the State Board of Pharmacy, was recognized for the purpose of speaking in favor of the bill.

The Committee was in recess until 1:00 p.m.

Dr. Vince Dehringer, an Ophthalmologist from Raleigh, was recognized for the purpose of speaking in favor of the bill.

Dr. Michael Clark, an Optometrist from Mt. Airy, was recognized for the purpose of speaking in favor of the bill. Dr. Clark read from a written statement which is attached and made a part of these minutes.

Dr. Mike Breman of Berlington was recognized for the purpose of speaking in opposition to the bill.

The Committee adjourned at 1:50 p.m.

REPRESENTATIVE N. LEO DAUGHTRY

REPRESENTATIVE EDWIN M. HARDY

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS:

HOUSE COMMITTEE ON JUDICIARY I

Tuesday, April 1, 1997
Room 1327 LB
10:00 a.m.

OPENING REMARKS:
Representative N. Leo Daughtry, Chairman
Judiciary I Committee

BILLS TO BE CONSIDERED:

H.B. 138 DMV ENFORCEMENT AUTHORITY
Sponsor: Representative Justus

H.B. 231 DMV MEDICAL INFORMATION IMMUNITY
Sponsor: Representative Hiatt

H.B. 527 OPTOMETRY CHANGES
Sponsor: Representative Justus

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 231

Short Title: Medical Information Waiver. (Public)

Sponsors: Representatives Hiatt; Ellis and Ramsey.

Referred to: Judiciary I.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE LIMITED IMMUNITY FOR PHYSICIANS AND PSYCHOLOGISTS PROVIDING MEDICAL INFORMATION ON DRIVERS TO THE COMMISSIONER OF MOTOR VEHICLES IMPLEMENTING THE RECOMMENDATIONS OF THE DRIVERS MEDICAL EVALUATION PROGRAM STUDY COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-9.1. Physicians and psychologists providing medical information on drivers with physical and mental disabilities.**

(a) Notwithstanding G.S. 8-51 for physicians and G.S. 8-51.3 for psychologists, or any other law relating to confidentiality of communications between physicians or psychologists and their patients, a physician or a psychologist duly licensed in the State of North Carolina may disclose to the Commissioner information about a patient who has a mental or physical disability that the physician or psychologist believes may affect the patient's ability to safely operate a motor vehicle. This information shall be limited to the patient's name, address, date of birth, and diagnosis.

(b) The information provided to the Commissioner pursuant to subsection (a) of this section shall be confidential and shall be used only for the purpose of determining the qualifications of the patient to operate a motor vehicle.

(c) A physician or psychologist disclosing information pursuant to this section is immune from any civil or criminal liability that might otherwise be incurred or

imposed based on the disclosure provided that the physician or psychologist was acting in good faith and without malice. In any proceeding involving liability, good faith and lack of malice is presumed and must be proven by the complainant."

Section 2. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Agency

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March 27, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **House Bill 231; Medical Information Waiver**

House Bill 231 creates G.S. 20-9.1. The new section provides civil and criminal immunity to a North Carolina licensed physician or psychologist for disclosing to the Commissioner of Motor Vehicles a mental or physical disability that the physician or psychologist believes impairs his or her patient's ability to safely operate a motor vehicle.

Disclosures authorized under this section could only include the patient's name, address, date of birth, and diagnosis;must be kept confidential by the Commissioner; and could only be used to determine whether the person is competent to operate a motor vehicle.

In any liability proceeding brought as a result of a disclosure under this section, the person bringing the action would have to show lack of good faith and the existence of malice.

House Bill 231 is recommended by the Drivers Medical Evaluation Study Commission.

The bill would become effective when it becomes law.

H231-SMRL-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

EDITION No. _____

H. B. No. 231 DATE 3/27/97

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE 1

Rep.)
) _____
Sen.)

moves to amend the bill on page 1, line LINE 12

( ) WHICH CHANGES THE TITLE

by deleting "8-51" and inserting in lieu there of "8-53" and by deleting "8-51.3" and inserting in lieu there of "8-53.3"

Pg 1 line 16 delete word "disability" and substitute word "condition."

Pg 1 Line 17 delete word "believes" and substitute the phrase "is diagnosing or treating and that".

Pg 1 Line 23 insert after the word "disclosing" the phrase "or not disclosing".

Pg 2 Line 1 insert after the word "disclosure", the phrase "or lack of disclosure".

Pg 2 Line 3 delete phase "and must be proven by the complainant."

SIGNED William D Hyatt

ADOPTED _____ FAILED _____ TABLED _____

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April 1, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **House Bill 527; Optometry changes**

House Bill 527 makes changes in the laws governing optometrists. The bill removes the requirement that a physician participate in the prescribing of pharmaceutical agents; permits hospital privileges to be granted to optometrists; authorizes peer review for optometrists; and provides for confidentiality of communications between optometrists and patients.

Section 1 amends G.S. 90-114 by removing the requirement that an optometrist prescribing or using pharmaceutical agents other than topical agents used in examining the eye must collaborate with a licensed physician.

Section 2 amends G.S 131E-85, one of the sections of the Hospital Licensure Act that deals with hospital privileges. It permits hospital privileges to be extended to optometrists. Presently, such privileges are limited to physicians, dentists, and podiatrists. ("Dentists" is struck through and reprinted because a comma is added.)

Section 3 amends Chapter 90 by adding a new Article 6A providing for Optometry Peer Review. It authorizes the North Carolina State Board of Examiners in Optometry to enter into agreements with the North Carolina State Optometric Society (Society) for conducting peer review activities related to the quality of health care delivered by optometrists. Such agreements shall include provisions for the Society to receive relevant information, to provide assurance of confidentiality of nonpublic information and the review process, and to require due process. Confidential patient information and other nonpublic information acquired, created, or used by the Society remains confidential and is not discoverable in a civil case. Peer review activities

conducted in good faith are deemed state directed and sanctioned and constitute state action for the purpose of anti-trust law. The Board is responsible for legal fees arising from peer review activities. (Should this be clarified as to whose legal fees are referred to?)

Section 4 amends Article 7 of Chapter 8 to add a new section providing that optometrists may not be compelled to disclose information acquired in rendering professional optometric services except where a judge deems such disclosure necessary to the proper administration of justice and such disclosure is not prohibited by another statute or rule.

The act is effective when it becomes law.

H527-SMRL-001

North Carolina General Assembly
House of Representatives
Legislative Office Building
Raleigh 27601-1096

REP. GEORGE M. HOLMES
41ST DISTRICT

HOME ADDRESS: 3927 W. OLD HIGHWAY 421
HAMPTONVILLE, N.C. 27020
PHONE: (910) 468-2401
FAX: (910) 468-6100

OFFICE ADDRESS: 631 LEGISLATIVE OFFICE BUILDING
RALEIGH, N.C. 27601-1096
PHONE: (919) 733-5900

April 1, 1997

COMMITTEES:

APPROPRIATIONS
SENIOR RANKING CO-CHAIR
FINANCIAL INSTITUTIONS
JUDICIARY I
PUBLIC UTILITIES

Representative N. Leo Daughtry
Chairman
House Judiciary I Committee

Dear Chairman Daughtry:

In accordance with the provisions of House Rule number 29.1, I hereby request a Public Hearing on HB-527. I further request that you not allow any debate or committee action on HB-527 until after the requested Public Hearing.

Sincerely,

George M. Holmes

George M. Holmes

Mr. Chairman, members of the Committee, good morning. I'm Julian Crowder, President of the NCSOS. I am a graduate of the UNC-CH with a Bachelor's degree and I received my Doctor of Optometry degree from SCO in Memphis, Tennessee. I have practiced in Candler, a suburb of Asheville, since 1980.

As all of you are aware, the health care delivery system is in the midst of significant changes. In order to continue to deliver quality ~~and expectations~~ health care, today's healing arts professions must fully utilize their educational and training ~~resources~~ for the benefit of their patients. Clearly, the future of health care is in many fields working in harmony ~~in order~~ to deliver efficient, effective, accessable and cost conscious care to the public; HB 527 ~~does this~~. helps accomplish this.

~~I would like to point out to you that~~ much of what you have heard or read in the way of negative comments about this bill has been circulated by the same few individuals since the introduction of an identical bill during the 1995 Session. Their conjecture of catastrophic harm to patients by optometric use of pharmaceutical agents is not new. If one reviews the history of enactment of the country's optometric drug laws during the past twenty five years, accusations similar to the ones now being made about our bill have always been a part of the opposition. However, Nowhere in this entire nation has any optometric use of medication ever been repealed, because the bottom line is that none of those dire predictions have come true. Patient access to care has been greatly

enhanced, patient savings in both time and money has been widely accepted and cooperation and communication between optometrists, ophthalmologists and the general medical community are at an all time high.

The assertion that optometrists would be reckless in the use of systemic medications is groundless. First, the same precautions for the use of a particular medication that are available to the physician are available to the optometrist. Second, and more important, it is highly unlikely that any optometrist will utilize medications involving high risk to a patient without involving other physicians. It is the opinion of this Society that you will find that the behavior of optometrists in prescribing systemic medications will not differ from the other medical specialities. Patient care which is beyond our scope and competence will be referred to the appropriate specialty for treatment.

I would like to reiterate that there is nothing in this bill which will expand the scope of practice of North Carolina optometry. I expect that with passage of this bill, medicine and optometry can build upon a closer working relationship and will strive to have continued dialogue for the benefit of our mutual patients. I would like to think that with a new day in health care, the old ways and the old conflicts will be forgotten.

Thank you, Mr. Chairman and members of this Committee, for affording us this opportunity to appear before you and for your thoughtful consideration of our testimony on behalf of all of the optometrists and the patients they serve in this great state. Ladies and

gentlemen, the time is now, for this bill is right for the citizenry of North Carolina. Thank you.

VISITOR REGISTRATION SHEET

JUDICIARY I — 4-1-97 — 10am
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
James Ramsey	NCSOS
William Breeze	NC Medical Board
LIZ KANOF MD	NC Medical Board
ROBERT ROSENSTEIN, OD	N.C. S.O.S.
Joseph F. Wiggins, O.D.	N.C.S.O.S.
C.R. Pruden Jr. OD	NCSOS
Douglas Kilgo, OD	NCSOS
Terry Forest MD	North Carolina Medical Society
Michael W Brennan MD	" " " "
V.L. McBride	NCDA
Jerry Arrowood	DMV
Eddie Caldwell	NCSA/NCCOA/NCCEP
William J Sender IV	NCSOS / NCSBEO
GILBERT F. SELLARS OD, FAAO	N.S. STATE OPT. SOC. INC.
Cynthia A. Hampton MD	NC Society Eye Physicians & Surgeons
Tracey Weaver	Four County Eye Assoc.

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Trudy Mitchell	NC Optometry Board
Hilary Caplan	
Nancy Bradley	NCCRD
Chris Padgett, O.D	optometrist
David Robinson O.D.	OPTOMETRIST
Michael J Stam OD	NC Optometry Board
Debra L. Wilson	ASU ~ MPA Graduate School
Dr Christopher Cage	Optometrist Henderson NC
Kelley Sandberg	Leg. Intern

North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

1 tape minutes are not saved in computer.

Thursday, April 3, 1997
1327 Legislative Building
10:00 a.m.

N. Leo Daughtry
Edwin M. "Sandy" Hardy
Co-Chairman

Members Present:

Martha Alexander	**Gene G. Arnold**
J. Russell Capps	**J. Sam Ellis**
Milton F. Fitch, Jr.	**Lyons Gray**
Bobby Ray Hall	**Thomas C. Hardaway**
George M. Holmes	**John W. Hurley**
Margaret M. Jeffus	**Larry T. Justus**
H. M. Michaux, Jr.	**George W. Miller, Jr.**
Richard T. Morgan	

The House Committee on JUDICIARY I met at 10:00 a.m. on Thursday, April 3, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry and Edwin M. "Sandy" Hardy presiding.

Committee Counsels Steven Rose and Karen Cochrane-Brown were present to assist the Committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

House Pages Julian Pugh of Randolph County and Baker Council, II of Pitt County were present to assist the Committee.

Chairman Daughtry introduced Rep. Mitchell for the purpose of explaining House Bill 618, INCREASE WORKERS' COMPENSATION FRAUD PENALTY

Committee Counsel Steven Rose prepared a MEMORANDUM on H.B. 618 which was distributed and is attached and made a part of these minutes.

On a motion by Rep. Justus, the Committee reported the bill with a favorable report.

Rep. Neely was recognized for the purpose of explaining House Bill 538, TRUTHFUL EMPLOYMENT REFERENCES.

REPRESENTATIVE N. LEO DAUGHTRY

REPRESENTATIVE EDWIN M. HARDY

JOEL C. RAUPE, Committee Clerk

ATTACHMENTS:

HOUSE COMMITTEE ON JUDICIARY I

Thursday, April 3, 1997
Room 1327 LB
10:00 a.m.

OPENING REMARKS:
Representative N. Leo Daughtry, Chairman
Judiciary I Committee

BILLS TO BE CONSIDERED:

H.B. 261 APA TECHNICAL CHANGES
Sponsor: Representative Creech

S. 187 APA TECHNICAL CHANGES
Sponsor: Senator Kerr

H.B. 485 FUNERAL ESTABLISHMENTS
Sponsor: Representative Dockham

H.B. 538 TRUTHFUL EMPLOYMENT REFERENCES
Sponsor: Representative Neely

H.B. 618 WORKERS' COMP/INCR. FRAUD PENALTY
Sponsor: Representative Mitchell

ADJOURNMENT

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March 23, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **Senate Bill 187 - APA Technical Changes.**

Senate Bill 187 was recommended by the Joint Legislative Administrative Procedure Oversight Committee. In 1995, the General Assembly made substantial changes to the Administrative Procedure Act and other statutes governing the procedure by which agencies adopt rules. Among the changes was the creation of the Administrative Procedure Oversight Committee which is charged with, among other things, reviewing the rule-making process and making recommendations for statutory changes. This bill proposes several technical and clarifying changes to the laws on administrative procedure. The changes are described below by section.

Section 1. Deletes an obsolete exception for the Department of Correctionsfrom the declaratory rulings statute. The exception was added when all of that Department's rules were made subject to the APA. The purpose of the exception was to prevent inmates from inundating the Department with requests for declaratory rulings. In 1995, the General Assembly exempted the Department from rule-making with respect to inmates. Therefore, the exception is no longer needed.

Section 2. Revises the section on petitions for rule-making to accommodate the two notices that must be published before a permanent rule can be changed. In 1995, the General Assembly changed the APA to require a notice of rule-making proceedings, also known as subject matter notice, and then a notice of text. This statute was not changed at that time and still refers to only one notice. This section conforms this provision to the 1995 change.

Section 3. Clarifies that a rule changed in response to an objection by the Rules Review Commission follows the normal effective dates set in the APA and does not become effective on the first day of the month following the change.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 4. Makes it clear that neither a notice of rule-making proceedings nor a notice of text is needed for the rule changes listed in the subdivision. It also deletes the requirement of not changing the substance of the rule because this requirement cannot be met for some of the listed changes,such as when a rule is changed to respond to an objection by RRC. The substance of the rule may change in that circumstance. These changes were recommended by the Rules Review Commission.

Section 5. Deletes the authorization to adopt by reference material that has been adopted to meet a requirement of the federal government. It is deleted because it not clear what is covered by this authorization and subdivision (2) of that subsection allows an agency to adopt by reference a code, standard, or regulation adopted by a State or federal agency or a generally recognized association. This change was recommended by the Rules Review Commission.

Section 6. Gives the Codifier of Rules the authority to omit graphics, such as diagrams and charts, from the published version of a rule when the Office has no ability to publish them or it is impracticable. This change was recommended by OAH.

Section 7. Gives agencies that are exempt from the APA additional time to file their rules with OAH for publication in the Code and makes it clear that these agencies must submit their rules in the format requested by OAH. This change was requested by OAH.

Section 8. Eliminates a conflict between G.S. 150B-21.9(a) and 150B-21.22 on the effect of including a rule in the Code. The former statute states that approval by the RRC is conclusive evidence that a rule was adopted in accordance with the APA and the latter states that entry in the Code is prima facie evidence of compliance. When RRC was given the authority to determine if a rule was adopted in accordance with the procedural requirements, the provision was added that approval was conclusive evidence of compliance. The other statute was not changed accordingly, however. The time for disputing procedural compliance is before the rule becomes part of the Code. Once it is in the Code, the substance of the rule can be contested but not the procedure. This parallels the treatment for legislation. Once a bill is enacted, a court will not look to see if it in fact passed its three readings in the General Assembly or look at any other procedural issue. A clarification was requested by both OAH and RRC.

Section 9. Clarifies that the rule manual is to include instructions on both the notice of rule-making proceedings and the notice of text.

Sections 10 and 12. Adds a reference that serving as a member of the Rules Review Commission is grounds for obtaining a continuance in a civil and a criminal court case, respectively. Lawyers are frequently members of the RRC.

Section 11. Clarifies the rule-making authority of the Office of Administrative Hearings.

Section 13. Specifies that the act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

April 7

S 1

SENATE BILL 187*

Short Title: APA Technical Changes. (Public)

Sponsors: Senators Kerr, Ballance, Foxx; and McDaniel.

Referred to: Judiciary.

February 19, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE LAWS ON ADMINISTRATIVE PROCEDURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-4(b) is repealed.

Section 2. G.S. 150B-20(c) reads as rewritten:

"(c) Action. -- If an agency denies a rule-making petition, it must send the person who submitted the petition a written statement of the reasons for denying the petition. If an agency grants a rule-making petition, it must inform the person who submitted the rule-making petition of its decision and must initiate rule-making proceedings. When an agency grants a rule-making ~~petition requesting the creation or amendment of a rule,~~ petition, the notice of ~~rule-making~~ rule-making proceedings it publishes in the North Carolina Register may state that the agency is initiating rule-making proceedings as the result of a rule-making ~~petition,~~ petition and state the name of the person who submitted the rule-making ~~petition,~~ petition. If the rule-making petition requested the creation or amendment of a rule, the notice of text the agency publishes after the notice of rule-making proceedings may set out the text of the requested rule change submitted with the rule-making ~~petition,~~ petition and state whether the agency endorses the proposed ~~rule change.~~ text."

Section 3. G.S. 150B-21.3(f) reads as rewritten:

"(f) Technical Change. -- A permanent rule for which no notice or hearing is required under G.S. ~~150B-21.5(a) or (b)~~ 150B-21.5(a)(1) through (a)(5) or G.S. 150B-21.5(b) becomes effective on the first day of the month following the month the rule is approved by the Rules Review Commission."

Section 4. G.S. 150B-21.5 reads as rewritten:

"§ 150B-21.5. Circumstances when notice and rule-making hearing not required.

(a) Amendment. -- An agency is not required to publish a notice of ~~rule-making~~ rule-making proceedings or a notice of text in the North Carolina Register or hold a public hearing when it proposes to amend a ~~rule, without changing the substance of the rule,~~ rule to do one of the following:

(1) Reletter or renumber the rule or subparts of the rule.

(2) Substitute one name for another when an organization or position is renamed.

(3) Correct a citation in the rule to another rule or law when the citation has become inaccurate since the rule was adopted because of the repeal or renumbering of the cited rule or law.

(4) Change information that is readily available to the public, such as an address or a telephone number.

(5) Correct a typographical error in the North Carolina Administrative Code.

(6) Change a rule in response to a request or an objection by the Commission.

(b) Repeal. -- An agency is not required to publish a notice of ~~rule-making~~ rule-making proceedings or a notice of text in the North Carolina Register or hold a public hearing when it proposes to repeal a rule as a result of any of the following:

(1) The law under which the rule was adopted is repealed.

(2) The law under which the rule was adopted or the rule itself is declared unconstitutional.

(3) The rule is declared to be in excess of the agency's statutory authority.

(c) OSHA Standard. -- The Occupational Safety and Health Division of the Department of Labor is not required to publish a notice of ~~rule-making~~ rule-making proceedings or a notice of text in the North Carolina Register or hold a public hearing when it proposes to adopt a rule that concerns an occupational safety and health standard and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor. The Occupational Safety and Health Division is not required to submit to the Commission for review a rule for which notice and hearing is not required under this subsection."

Section 5. G.S. 150B-21.6(3) is repealed.

Section 6. G.S. 150B-21.20 reads as rewritten:

"§ 150B-21.20. Codifier's authority to revise form of rules.

(a) Authority. -- After consulting with the agency that adopted the rule, the Codifier of Rules may revise the form of a rule submitted for inclusion in the North Carolina Administrative Code within 10 business days after the rule is submitted to do one or more of the following:

(1) Rearrange the order of the rule in the Code or the order of the subsections, subdivisions, or other subparts of the rule.

(2) Provide a catch line or heading for the rule or revise the catch line or heading of the rule.
(3) Reletter or renumber the rule or the subparts of the rule in accordance with a uniform system.
(4) Rearrange definitions and lists.
(5) Make other changes in arrangement or in form that do not change the substance of the rule and are necessary or desirable for a clear and orderly arrangement of the rule.
(6) Omit from the published rule a map, a diagram, an illustration, a chart, or other graphic material, if the Codifier of Rules determines that the Office of Administrative Hearings does not have the capability to publish the material or that publication of the material is not practicable. When the Codifier of Rules omits graphic material from the published rule, the Codifier must insert a reference to the omitted material and information on how to obtain a copy of the omitted material.

(b) Effect. -- Revision of a rule by the Codifier of Rules under this section does not affect the effective date of the rule or require the agency to readopt or resubmit the rule. When the Codifier of Rules revises the form of a rule, the Codifier of Rules must send the agency that adopted the rule a copy of the revised rule. The revised rule is the official ~~rule.~~ rule, unless the rule was revised under subdivision (a)(6) of this section to omit graphic material. When a rule is revised under that subdivision, the official rule is the published text of the rule plus the graphic material that was not published."

Section 7. G.S. 150B-21.21 reads as rewritten:

"**§ 150B-21.21. Publication of rules of North Carolina State Bar and exempt agencies.**

(a) State Bar. -- The North Carolina State Bar must submit a rule adopted or approved by it and entered in the minutes of the North Carolina Supreme Court to the Codifier of Rules for inclusion in the North Carolina Administrative Code. The State Bar must submit a rule within ~~15~~ 30 days after it is entered in the minutes of the Supreme Court. The Codifier of Rules must compile, make available for public inspection, and publish a rule included in the North Carolina Administrative Code under this subsection in the same manner as other rules in the Code.

(b) Exempt Agencies. -- Notwithstanding G.S. 150B-1, the North Carolina Utilities Commission must submit to the Codifier of Rules those rules of the Utilities Commission that are published from time to time in the publication titled 'North Carolina Utilities Laws and Regulations.' The Utilities Commission must submit a rule required to be included in the Code within ~~15~~ 30 days after it is adopted. ~~The Codifier of Rules must publish the rules submitted by the Utilities Commission in the North Carolina Administrative Code in the same format as they are submitted.~~

Notwithstanding G.S. 150B-1, an agency other than the Utilities Commission that is exempted from this Article by that statute must submit a temporary or permanent rule adopted by it to the Codifier of Rules for inclusion in the North Carolina

Administrative Code. ~~One of these~~ These exempt agencies must submit a rule to the Codifier of Rules within ~~15~~ 30 days after ~~it adopts~~ adopting the rule. ~~The~~

(c) Publication. -- A rule submitted to the Codifier of Rules under this section must be in the physical form specified by the Codifier of Rules. The Codifier of Rules must compile, make available for public inspection, and publish a rule ~~of one of these agencies in the North Carolina Administrative Code~~ submitted under this section in the same manner as other rules in the North Carolina Administrative Code."

Section 8. G.S. 150B-21.22 reads as rewritten:

"**§ 150B-21.22. Effect of inclusion in Code.**

Official or judicial notice can be taken of a rule in the North Carolina Administrative Code and shall be taken when appropriate. ~~Codification of a rule in the North Carolina Administrative Code is prima facie evidence of compliance with this Article.~~"

Section 9. GS. 150B-21.23 reads as rewritten:

"**§ 150B-21.23. Rule publication manual.**

The Codifier of Rules must publish a manual that sets out the form and method for publishing a notice of ~~rule making~~ rule-making proceedings and a notice of text in the North Carolina Register and for filing a rule in the North Carolina Administrative Code."

Section 10. G.S. 1A-1, Rule 40 reads as rewritten:

"**Rule 40. Assignment of cases for trial; continuances.**

(a) The senior resident superior court judge of any superior court district or set of districts as defined in G.S. 7A-41.1 may provide by rule for the calendaring of actions for trial in the superior court division of the various counties within his district or set of districts. Calendaring of actions for trial in the district court shall be in accordance with G.S. 7A-146. Precedence shall be given to actions entitled thereto by any statute of this State.

(b) No continuance shall be granted except upon application to the court. A continuance may be granted only for good cause shown and upon such terms and conditions as justice may require. Good cause for granting a continuance shall include those instances when a party to the proceeding, a witness, or counsel of record has an obligation of service to the State of North Carolina, including service as a member of the General ~~Assembly.~~ Assembly or the Rules Review Commission."

Section 11. G.S. 7A-751 reads as rewritten:

"**§ 7A-751. Agency head; powers and duties.**

The head of the Office of Administrative Hearings is the Chief Administrative Law ~~Judge. He~~ Judge, who shall serve as Director ~~and have~~ of the Office. The Chief Administrative Law Judge has the powers and duties conferred on ~~him~~ that position by this Chapter and the Constitution and laws of this ~~State. His~~ State and may adopt rules to implement the conferred powers and duties.

The salary of the Chief Administrative Law Judge shall be fixed by the General Assembly in the Current Operations Appropriations Act. In lieu of merit and other increment raises, the Chief Administrative Law Judge shall receive longevity pay on

the same basis as is provided to employees of the State who are subject to the State Personnel Act."

Section 12. G.S. 15A-952(g) reads as rewritten:

"(g) In superior or district court, the judge shall consider at least the following factors in determining whether to grant a continuance:

(1) Whether the failure to grant a continuance would be likely to result in a miscarriage of justice;

(2) Whether the case taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that more time is needed for adequate preparation; and

(3) Whether the case involves physical or sexual child abuse when a victim or witness is under 16 years of age, and whether further delay would have an adverse impact on the well-being of the child.

(4) Good cause for granting a continuance shall include those instances when the defendant, a witness, or counsel of record has an obligation of service to the State of North Carolina, including service as a member of the General ~~Assembly.~~ Assembly or the Rules Review Commission."

Section 13. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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April 3, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **House Bill 538 - Truthful Employment References.**

House Bill 538 adds a new section to Chapter 95, entitled "Employer immunity from civil liability for employment references." The bill results, as stated in the preamble, from a finding that there is a reluctance on the part of employers to provide potential employers with imformation about former employees as well as a reluctance to provide references for present or former employees seeking employment elsewhere.

Subsection (a) of the proposed new section states that employers are absolutely immune from civil liability for providing or responding to requests for certain factual information about an employee to a prospective employer, such as confirmation and dates of employment, salary history, job descriptions, record of absences, whether the employee was voluntarily or involuntarily separated, the reasons for the separation which are reflected in a business record, and threats of violence, harassing acts or threatening behavior related to the workplace.

Subsection (b) provides absolute immunity for employers who provide certain subjective or opinion information about an employee, such as job performance, reason for separation and suitability for employment.

Subsection (c) provides that the employer is not immune for the intentional disclosure of false information regarding an employee, and subsection (d) clarifies that this section does not create any new legal rights or limit any existing immunities.

Subsection (e) grants a qualified immunity from liability to prospective employers who reasonably rely on information provided by another employer. The prospective employers reliance is reasonable without further investigation or inquiry unless State or federal law requires such further inquiry.

Subsection (f) provides several definitions and subsection (g) states that anyone who knowingly misrepresents that they are a prospective employer of an employee is liable for damages actually suffered due to the misrepresentation. The act would become effective when it becomes law.

Investor's Business Daily

"The Newspaper For Important Decision Makers"

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Companies Mum On References Due To Lawsuit Fears

By David A. Price
Investor's Business Daily

You've interviewed a half-dozen candidates for a marketing position. Two of the candidates look promising, and you're phoning their former supervisors.

But they send your call to the human resources department. There, you are given only verification of employment, dates and titles.

It's a common situation. Since the '80's, fear of lawsuits for defamation or discrimination has silenced employers when asked for job references.

A 1995 survey of personnel managers by the Society for Human Resources Management found that 63% of respondents said their companies had refused to provide reference information out of fear of litigation. Some 17% said their companies had been sued over a job reference.

The hardest types of information to obtain from references, according to the survey, are a candidate's "personality traits" and "violent/bizarre behavior." More than half of respondents said they did not receive adequate information on those subjects.

It isn't just companies that get hurt. "The big loser has been the good employee," said Barry Lawrence, a spokesman for SHRM.

In response, 26 states have enacted laws to protect companies that provide job references in good faith. All but five of those statutes have been enacted since 1994.

Some avoidable disasters helped make the case for the laws. A Flagship Airlines commuter plane crash in 1994, killing 15, was said by government reports to have been caused by a confused pilot. That pilot had received poor performance evaluations from his former airline, Comair, and had resigned.

When Flagship checked with Comair at hiring time, though, Flagship didn't get word of any trouble.

Another publicized episode was the 1993 shooting of five co-workers by an employee of Fireman's Fund Insurance Co. Three of the victims died.

Survivors sued the shooter's former employer, Allstate Insurance Co., alleging that Allstate had fired him for coming to work with a gun — and then wrongly told Fireman's Fund he had been dismissed in a restructuring. Allstate settled for an undisclosed amount.

The new laws generally establish a presumption that an employer has given a reference in good faith. Under the laws, a plaintiff has to show "clear and convincing evidence" that a former employer acted in bad faith.

But so far, experts say, the laws aren't making employers comfortable enough to talk.

In Florida, a state with a shield law, Miami lawyer Bob Kofman estimates that 90% of employers still give only "name, rank, and serial number."

Bob Endsley, a group employee relations manager for Johnson Controls in Cape Canaveral, agrees. "It's very difficult to get any meaningful information," Endsley said.

According to Lawrence of SHRM, the effects of the laws just haven't been felt yet. "It will still take some time before employers are ready to jump in and test the waters," he said.

Some observers question whether firms will jump in. Employers still have a risk of costly litigation, according to Washington lawyer Jonathan Mook.

"In general, employers are still going to be wary, even with the laws," Mook said. "They don't give the employer an absolute immunity. There can still be questions raised about the good faith, or whether the bad reference was retaliatory."

Even a frivolous suit can be a burden. "Simply to get a case dismissed might involve considerable time and money," according to Mook.

When you're looking at an applicant, what can you do to get the background information you need? Attorney Kofman advises clients in this position to include a waiver form in their job applications. Then, when they seek a reference, they can give a copy of the signed waiver to the former employer.

This approach loosens up some ex-employers, Kofman says. But even with a waiver, the majority of firms are still unwilling to talk frankly, he says.

Endsley of Johnson Controls says that it also helps to check with services such as Equifax or TRW to see whether an applicant has a criminal record.

Don't rely on arrest records to reject a candidate, however. The Equal Employment Opportunity Commission has said that such a practice discriminates against minority groups.

THE WALL STREET JOURNAL.

MONDAY, JULY 8, 1996

LEGAL BEAT

Ex-Bosses Face Less Peril Giving Honest Job References

By FRANCES A. MCMORRIS
Staff Reporter of THE WALL STREET JOURNAL

The conventional wisdom on providing job references for former employees is that only name, rank and serial number should be divulged. Saying any more, many employers fear, may trigger a lawsuit from a disgruntled former employee.

So why is Stephen Sayler, human-resources manager at a Lenexa, Kan., sportswear-embroidery company, sharing performance evaluations and other data from his personnel files with other employers?

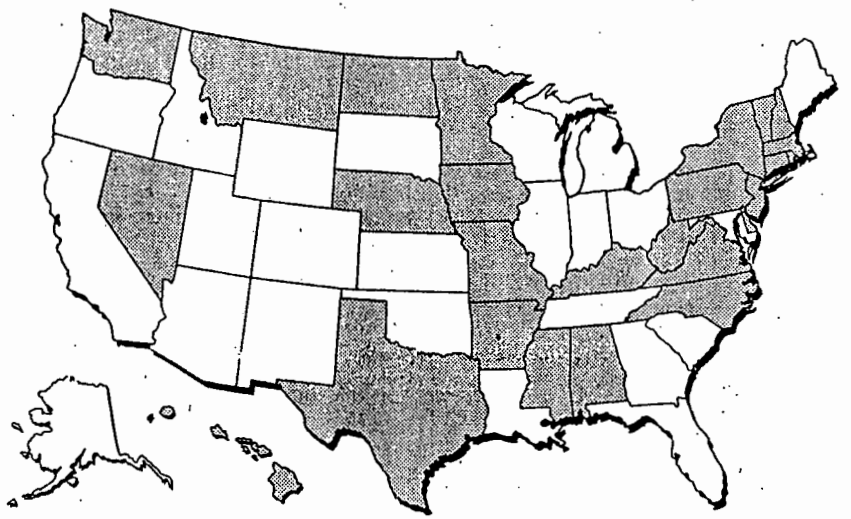
His company, Winning Ways Inc., changed its policy last year after Kansas adopted a law making it more difficult for former employees to win lawsuits over negative job references. In recent years, 21 other states have also passed laws providing employers who release truthful information with varying degrees of protection against suits alleging defamation and other claims. The laws, intended to make the workplace safer and more efficient, are prompting companies to re-evaluate their policies. Similar bills are pending in Pennsylvania and Rhode Island.

Mr. Sayler says he lobbied hard for the Kansas law because there were "some instances where we would've liked to have gotten better references—or some at all."

If more information had been available, he says, Winning Ways might not have hired a woman it wound up firing for threatening a co-worker. After discharging her, the company learned that she had been fired by a previous employer for violence on the job. The company's old policy of divulging only job titles and dates of employment also prevented him from giving glowing references, Mr. Sayler says.

New Laws Protect Employers in Many States

☐ States giving some immunity from liability when companies give job references for current or former employees



Source: Society for Human Resource Management

The new laws, some of which require job applicants to sign off on requests for references, were triggered in part by a suit brought against Allstate Insurance Co. Although the case was eventually settled, a state court judge in Florida ruled last year that the Allstate Corp. unit could be sued for punitive damages for concealing the violent nature of a former employee. The deception allegedly occurred when Allstate wrote a recommendation letter saying the employee, who had been fired after coming to work with a gun, was let go as part of a corporate restructuring.

The suit contended that Fireman's Fund Insurance Co. relied on the letter when it hired the former Allstate employee — to disastrous effect. In January 1993, the employee, Paul Calden, shot five co-workers in a Fireman's Fund cafeteria, killing three of them and injuring the others. He also fatally shot himself. The suit was filed by one survivor of the shooting and the families of those killed.

While the new laws don't require companies to disclose past violent behavior, employment lawyers are starting to advise their clients to do so. "For the first time, we are saying — with great caution — if there is a safety-sensitive issue, you should make a disclosure," says Garry Mathiason, a partner with the law firm Littler, Mendelson, Fastiff, Tichy & Mathiason in San Francisco. He adds this warning: The information "must be documented to show it was given in good faith."

Mr. Mathiason's clients see benefits to more openness. "In the ideal world, you want to be giving out more information because, when you're hiring, you want to find out about someone who may be problematic," says Douglas Amis, vice president of administration at Semiconductors Systems Inc. He says his company, a unit of FSI International Inc. that currently verifies only dates of employment, is considering changing its policy because of the new California law and the Allstate case.

In Oklahoma, meanwhile, John Goodwin, human resources manager at an oil refinery, now releases performance evaluations and other information when it gets a written request from another company that is also signed by the job applicant. In the past, he says, he gave out only dates of employment for fear of a lawsuit. But that

Please Turn to Page B5, Column 5

LAW

Honest References Pose Less Peril

Continued From Page B1

practice penalized good employees, he says, noting that he never hires people whose former employers won't give more complete references.

Companies can also try to protect themselves from liability by asking employees who leave to sign release forms promising not to sue over job references, lawyers say. The federal appeals court in San Francisco ruled last year that such release forms can give employers immunity from defamation suits.

Advocates for more openness say fuller disclosure helps most employees. "How are you going to get a job if your previous employer doesn't say how good you are?" asks Lewis Maltby, the director of the American Civil Liberties Union Workplace Rights Project. He adds that the "legal risks for candid employers are greatly exaggerated" because studies show that there "isn't an avalanche of litigation."

Nevertheless, a 1995 survey by the Society for Human Resource Management found that 63% of personnel managers refused to provide information about former employees for fear of landing in court. The society hasn't surveyed personnel managers more recently, but Sharon Horrigan, who tracks state laws for the group, says, "I think the conventional wisdom is changing but it is slow in coming."

Ex-employees sometimes make claims relating to negative job references in discrimination suits, but the courts are split on whether federal antidiscrimination laws cover such claims. The Supreme Court has agreed to take up the question in a closely watched case involving Shell Oil Co.

In the case, Charles T. Robinson, a former sales representative, sued Shell, alleging he was fired in 1991 because he is black. His lawsuit also alleges that a bad reference he received from Shell in 1992 was an act of retaliation. A federal judge threw out the latter claim, saying the antidiscrimination law doesn't protect former employees, and a federal appeals court in Richmond, Va., agreed.

Some people worry that the new state laws could be abused by employers intent on retaliating against former employees. Unfair and unfavorable evaluations could be used against employees who try to advance their careers by leaving.

"An employer-employee relationship can be like a marriage, and its termination can be like a divorce," says John B. Gage, president of the Kansas chapter of the National Employment Lawyers Association. "There are bad feelings on both sides, and giving one side a chance to vent is a pretty dangerous precedent to set."

Still another concern is the fairness of branding someone a bad employee based on a single act or a single performance review. While defending the laws, Mr. Mathiason acknowledges the problem. "Is somebody unemployed for the rest of their life for getting into a fight?" he wonders. "That's a real dilemma."

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April 3, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **House Bill 618; Increase Workers' Compensation Fraud Penalty**

House Bill 618 amends G.S. 97-88.2 to increase the penalties for willfully making a false statement or representation of a material fact for the purpose of obtaining or denying a workers' compensation benefit, or for threatening an employee with criminal prosecution for making a false statement where the purpose of the threat is to coerce the employee into agreeing to compensation. The penalties each change from a Class 1 misdemeanor to a Class I felony.

The penalty for a Class 1 misdemeanor at Level 1 is 1-45 days community punishment. There can also be a fine imposed in an amount that is discretionary with the court. The presumptive penalty for a Class I felony at Level 1 is 4-6 months community punishment.

The act becomes effective December 1, 1997 and applies to offenses committed on or after that date.

H618-SMRL-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 618

Short Title: Workers' Comp/Increase Fraud Penalty. (Public)

Sponsors: Representatives Mitchell; Wilkins, Cole, and Brawley.

Referred to: Judiciary I.

March 26, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTIES FOR MISREPRESENTATION UNDER THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-88.2 reads as rewritten:

"**§ 97-88.2. Penalty for misrepresentation.**

(a) Any person who willfully makes a false statement or representation of a material fact for the purpose of obtaining or denying any benefit or payment, or assisting another to obtain or deny any benefit or payment under this Article, shall be guilty of a ~~Class 1 misdemeanor.~~ Class I felony. The court may order restitution.

(b) The Commission shall:

(1) Perform investigations regarding all cases of suspected fraud and all violations related to workers' compensation claims, by or against insurers or self-funded employers, and refer possible criminal violations to the appropriate prosecutorial authorities;

(2) Conduct administrative violation proceedings; and

(3) Assess and collect penalties and restitution.

(c) Any person who threatens an employee with criminal prosecution under the provisions of subsection (a) of this section for the purpose of coercing or attempting to coerce the employee into agreeing to compensation under this Article shall be guilty of a ~~Class 1 misdemeanor.~~ Class I felony.

(d) The Commission shall not be liable in a civil action for any action made in good faith under this section, including the identification and referral of a person for investigation and prosecution for an alleged administrative violation or criminal

offense. Any person, including, but not limited to, an attorney, an employee, an employer, an insurer, and an employee of an insurer, who in good faith comes forward with information under this section, shall not be liable in a civil action.

(e) The Commission shall report annually to the General Assembly on the number and disposition of investigations involving claimants, employers, insurance company officials, officials of third-party administrators, insurance agents, attorneys, health care providers, and vocational rehabilitation providers."

Section 2. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

JUDICIARY I 4-3-97 10am

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4. Doug Blizzard	CHANNEL MASTER –
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7. Charles Cromer	NCATL
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31. Blue Alexander	PBA

32.	Amy Tinderman	Hunton & Williams
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VISITOR REGISTRATION SHEET

JI — 10AM

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Ed Brockett	Asheville Citizen-Times
Amanda Digby	NCATL
Robert Paschal	Young, Moore & Henderson, P.A.
Col EW Horton	SHP
Mark P Mitchell OD	Optometry Board
Anna Negmandi, MD	Doctor of the Day
C.H. Kinney	Doctors Vision Center OD
Victoria E Elmore	RN, BSN American Eye Care

NORTH CAROLINA HOUSE OF REPRESENTATIVES
NOTICE OF PUBLIC HEARING

1 tape Public Hearing 4-7-97

The House Committee on JUDICIARY I will hold a Public Hearing

Day & Date: Monday, April 7, 1997

Time: 3 p.m.

Location: Third Floor Auditorium, Legislative Building

The views of interested parties will be heard concerning
H.B. 527 OPTOMETRY CHANGES

Representatives **Daughtry and Hardy**
Chairmen

I hereby certify this notice was filed by the committee clerk at the following offices at 3 p.m. o'clock on April 1, 1997.

X Principal Clerk
X Reading Clerk - House Chamber
X Press Room

Joel Raupe (Committee Clerk)

MEMO:

TO: CHAIRMAN DAUGHTRY

FROM: REP. Larry Justus

SPEAKERS ON OPTOMETRY BILL:

4 • DR. MICHAEL BARTISS
OPHTHALMOLOGIST & OPTOMETRIST PINEHURST

2 • DR. MIKE CORNELL
OPHTHALMOLOGIST ASHEVILLE

3 • DR. VINCE DAHRINGER
OPHTHALMOLOGIST RALEIGH

— • DR. LEONARD RAPPAPORT
OPHTHALMOLOGIST HICKORY

1 • DR. JOHN MATTHEWS
OPHTHALMOLOGIST GREENSBORO

8 • DR. KARL STONECIPHER
OPHTHALMOLOGIST GREENSBORO

8 • DR. RICHARD EPES
OPHTHALMOLOGIST GREENSBORO

9 • DR. JOHN HARRINTT
OPHTHALMOLOGIST WINSTON-SALEM

5 • DR. MARC RALSTON
OPHTHALMOLOGIST GREENSBORO

Follow up 0 • DR. MICAHEL CLARK
OPTOMETRIST MOUNT AIRY

• DR. KENNY BUMGARNER
OPTOMETRIST SOUTHERN PINES

• REP. DON DAVIS

• REP. LARRY JUSTUS

American Public Health Association

1015 Fifteenth Street, N.W. • Washington, D.C. 20005–2605
202/789-5600; Fax: 202/789-5661 • e-mail: comments@msmail.apha.org • http://www.apha.org

April 4, 1997

Julian Crowder, O.D., President
North Carolina State Optometric Society
1431 Smoky Park Highway
Candler, North Carolina 28715

Dear Dr. Crowder:

I am pleased to write in support of HB 527 which would amplify the current optometric therapeutic drug law.

At its 118th Annual Meeting, the American Public Health Association (APHA), which represents a combined national and affiliate membership of over 55,000 public health professionals and community health leaders, adopted a resolution entitled "Access to Treatment for Eye Care by Optometrists." A copy is enclosed for your information.

This resolution acknowledges that the expansion of clinical privileges of optometrists has increased the availability, accessibility, and cost effectiveness of eye care to the American public. The resolution recommends that states update their optometric practice acts to allow for optometric use of those diagnostic and therapeutic pharmaceuticals which have been determined by the State Board of Examiners in Optometry as being within the scope of competency of pharmaceutically certified optometrists. We further recommend that dispensing of such pharmaceuticals be regulated by state pharmacy laws.

Currently, 46 states allow optometrists to use therapeutic drugs for the benefit of their patients. APHA urges your support for this legislation which encompasses the principles endorsed in the APHA resolution.

I am confident that the citizens of North Carolina will continue to be well served and will benefit greatly if HB 527 is adopted. I strongly endorse HB 527.

Kind personal regards,

Mohammad Akhter, MD, MPH
Executive Director

125 Years of Leadership in Public Health

9004: Access to Treatment for Eye Care by Optometrists

The American Public Health Association,

Noting that more than one-third of all Americans have a disease or physiologic abnormality in one or both eyes;[1] and

Recognizing that only about one-half of the total population in the United States needing treatment for eye disease is receiving it;[1,2] and

Noting that eye disease and blindness cost the nation an estimated $16 billion a year;[3] and

Realizing that eye health problems and vision care demands will increase significantly in the future as the US population ages;[4] and

Observing that optometric services are available in approximately 6,400 communities in the United States and that doctors of optometry are the only primary eye care providers in nearly 4,000 communities, and that nationwide optometrists outnumber ophthalmologists nearly two to one;[5,6*] and

Noting that 60 percent of primary diagnostic eye examinations in the United States[7] are provided by the 25,000 active optometrists;[8] and

Realizing that many people who need medical eye care are already being treated by optometrists in many states;[9] and

Noting that optometric reimbursement rates are typically lower than those of other providers of comprehensive eye care;[10] and

Realizing that many people who want to receive medical eye care are now being treated by optometrists;[10] and

Recognizing that it is prudent public policy to utilize appropriately trained and licensed health professionals at their highest level of skill and training as determined by state licensing laws;[11] and

Noting that Medicare reimburses diagnostic and therapeutic eye care services delivered by optometrists as authorized by state practice acts;[12] and

Noting that 25 states have passed laws and regulations that allow optometrists to use therapeutic pharmaceutical agents[7] after completing appropriate training and testing requirements, and

Observing that the US Department of Veterans Affairs, the US Armed Forces, and the US Public Health Service have regulations or credentialing statements that allow optometrists to utilize therapeutic pharmaceutical agents to the benefit of their patients, and noting that this expansion of the clinical privileges of optometrists has increased the availability, accessibility, and cost-effectiveness of eye care to the American public through lower fees for services[10] and by a reduction in double visits and hospital emergency room visits; therefore

1. Recommends that legislatures update their state optometric practice acts to allow for optometric use of those diagnostic and therapeutic pharmaceuticals which have been determined by the State Board of Examiners in Optometry as being within the scope of competency of pharmaceutically certified optometrists; and

2. Recommends that dispensing of such pharmaceuticals be regulated by state pharmacy laws.

* Aron, F: Unpublished data. The number of cities with ophthalmologists and optometrists in each state was based on hand counts from references 5 and 6, respectively. St. Louis, MO: Am Optom Assoc.

References:

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11. American Public Health Association: Policy Statement No. 8120: Vision Care Manpower Utilization. APHA Public Policy Statements, 1948-present. Washington, DC: APHA, current volume.
12. Public Law 99-509, Section 9335, 1986.

Testimony -HB 527

Introduction: Thank you Mr. Chairman and members of the comittee. I am honored to be here today to offer my thoughts regarding this legislature being considered. My name is Frank Leak. For the past 30 years almost, I have practiced family practice in Sampson County. In addition to this, I am a past-president of the NC Academy of Family Practice,a past NC Family Physician of the Year, and years ago, National Rural Health Association Practioner of the year. I've spanked over 2000 babies into this world -- which by the way, I'm proudest of -- especially since I've done this without a malpractice claim. So I feel I am qualified to talk to you about this issue, especially as I perceive it to effect my patients healthcare. I'm about to retire now - and take a new job. I'll be traveling to the state's rural underserved and the urban underserved areas to do what I can to help shore up the already devasted healthcare in many, many of these areas thanks to the generosity of the Kate Reynolds Foundation . I've never had a job before with a real boss - so I hope, I'll be successful, at least to some degree. It's a great challenge and couldn't have come along for an old dog like me at a better time. What a great way to end ones career than to have this kind of opportunity. I am so fortunate.

Position of the Academy: Mr. Chairman, you and the committee may be wondering why this rural doctor is here today to talk with you regarding a bill that has to do with treatment of the eye. Well, I'm here on behalf of the NC Academy of Family Physicians to relate to you how I and my fellow family doctors feel about this issue. To us, this is a family health issue. We feel that HB 527 as it is written represents a significant potential danger to our patients. I have been told that the Committee is considering some amendments that will make HB 527 a safer bill for those patients who seek help for medical problems that affect their eyes.

Rationale: There are numerous, potentially serious medical diseases that appear as a perceived problem of the eye - and there is a very large difference in a problem with vision and a medical problem that affects vision. The optometrist often is the first person to see such a patient. Identification of medical problems is a valuable component of any front-line medical service provision and, the optometrist is a valuable component of that frontline medical care. But, they should refer that patient to better trained medical professionals who can evaluate the patient's full medical condition for diagnosis and treatment. I work very closely with the optometrists in my community and we have a great deal of mutual respect - but - it's a fact that they are well trained in vision diagnosis and treatment and not in the

treatment of diseases -- that's just simply a fact.

As I understand the law, the prescribing privileges granted optometrists are limited to those drugs and medicines that they use in diagnosing problems related to vision. I don't believe that their current prescribing privileges extend to the treatment of medical conditions that affect the eyes. The current requirement of collaboration was placed in the law to assure that when a patient with a complicated medical history seeks help from an optometrist some communication occurs between the optometrist and a physician trained in the desease process of that patient - before a mistake is made. There are some awfully complicated patients with multiple diagnosises and on multiple different medications - and with very dangerous potential consequences.

Today's optometrist is well trained within their current scope of practice - but their training does not include the diagnosis and treatment of medical conditions. This is the job of a physician who has undergone rigorous medical school training and then has practiced under the supervision of experienced physicians for a extended time in further residency training.

Recommendations: Mr. Chairman, the NC family physicians would like to offer a suggestion to the committee that HB 527 be amended so that this can be a safer bill. We would like to recommend that there be developed a process for determing which medications are appropriate and safe for optometry use. This could be done by the professionals from both sides working together to determine the appropriate application of those medications. It won't be an easy task and it will require the best on both sides. We do beleive though that it will yield a fair result and will establish an ongoing forum for the solution to this issue.

The process is not without precedent. It has occurred in other states and is the accepted method for determining what drugs can be prescribed by physician assistants and advanced nurse practioners. The outcome has been very positive - especially for those of us in rural practice who need all the help we can get. Mr. Chairman and members of the committee, We believe this is a reasonable request and we beleive is the best approach for our patients care. I deeply appreciate your allowing me to come here today to offer these thoughts on this matter, and I appreciate the Committee's thoughtful attention to these suggestions. Thank you for having me..

Unexpectedly, healthy individuals in the prime of life are confronted by a medical diagnosis that changes their lives forever.

MS can strike anyone at any age -- but most are diagnosed between the ages of 20 and 40, and more women than men are affected. MS randomly attacks the central nervous system, wearing away control over the body. Symptoms may range from imbalance and impaired vision to paralysis and blindness. Extreme fatigue can make simple activities of daily living a struggle. People with MS never know when attacks will occur, how long they will last, or how much of their abilities will be left when the attack is over.

"Optometry defined:
2) The employment of instruments, devices, pharmaceutical agents and procedures, other than surgery, intended for the purposes of investigating, examining, treating, diagnosing or correcting, visual defects or abnormal conditions of the human eye or its adnexa; or "

1. We ask for clarification on whether "Optometry defined" includes the optic nerve
2. Multiple sclerosis can present with impaired vision, and the treatment of these first symptoms of the disease can have lifelong implications for the patient (1993 New England Journal of Medicine: ***Steroid use in Optic Neuritis {ON} and Development of Definite MS***)
3. Since 1993, three medications have been approved by the FDA for relapsing forms of MS. These drugs have helped to lessen the frequency and severity of MS attacks, lessen disability progression and reduce the accumulation of lesions in the brain. It is important that people with possible MS be evaluated by a neurologist for a diagnosis.

Optometry House Bill 527

(?) Thank you Mr. Chairman, Members of the Committee,

I am Carolyn Fenn, Pres of the N.C. Medical Society. I am here to speak on behalf of the 8000 doctors who are members of the Society - against the Bill.

EVERY STATE in the United States imposes some limits on optometrists prescribing authority BECAUSE prescribing ALL drugs is outside the training of an optometrist. Optometrists are not trained to practice medicine and prescribing ALL medicines is the practice of medicine.

Optometrists say that they will not prescribe anything they aren't qualified to prescribe. For those who make that statement, it may be true but this change in the law would be applicable to every optomentrist now licensed in N.C. plus all future optometrists.

If this bill is approved, it means that optometrists are allowd to prescirbe drugs for ANY DISEASE, no matter if ~~it relates primarily to the heart, Kidneys, brain or some other organ of the body.~~ the 1° problem is diabetes, vascular disease, kidney failure or some other disease that affects most organ systems.

that itself manifests in the eye

Genl MD's may have only a few wks of opth training, but months & years of prescribing education & experience & that's what this bill is about.

Optometrists say they will refer and collaborate just as they do now....if that is true, why change the law?? There must be something they want to do that they cannot do now. Otherwise, why this massive effort to change the law???

If this bill is passed in its current form, something will indeed will be very differnet about the practice of optometry and we are concerned that those differences will increase risks to patients seeking eye care.

The whole idea of a PRACTICE ACT is to set reasonable limits so the public is well-served and protected, NOT to remove all limits and leave the public to protect themselves.

We wouldn't repeal the law requiring us to stop at red lights, even though most of us would stop anyway, BECAUSE when someone fails to stop, people could be seriously hurt. The same is true of the collaboaration requirement that would be repealed by House Bill 527.

"Access" of care in rural area have been
touted as a reason to expand privileges & preserve
BUT even rural areas of N.C. have the lines &
collaboration should not be a hindrance to
access of care!

The consequences of failure to collaborate on prescriptions for these diseases are seriuos enough to have been addressed in the current law and statute.....Optometrists' training in pharmacology is no different than it was when the current law was adopted.

We appreciate your hard work and service to the people of NC; I simply ask that you carefully review HB527, taking into consideration the points just made, and make sure that the public's interest in safe health care comes first-

comes first.

Thank you for your time.

I would be glad to respond to any questions.

American Medical Association

Physicians dedicated to the health of America

Mr Chairman
Ladies & gentlemen of the committee –

Appreciate the opportunity to share the thoughts of the AMA on this important issue

Memo to: Nancy W. Dickey, MD

From: Kathy L. Johnson, Assistant Director
Division of State Legislation

Date: April 7, 1997

Subject: Background for testimony before North Carolina House Judiciary Committee

---

Our primary concern is our patients –

(1) • **North Carolina law currently requires communication and collaboration between an optometrist and a physician when the optometrist prescribes drugs. Optometrists are asking the General Assembly to repeal the "collaboration" requirement altogether.**

(2a) • **House Bill 527, as proposed, would enact one of the most permissive prescribing policies for optometrists in the country. It would authorize prescribing any medication, including, for example: steroids (orally, by injection or intravenously) for inflammatory eye disease; systemic antibiotics (orally, by injection or intravenously) for eye infections; and systemic anti-fungal drugs (oral, intravenous) for fungal infections of the eye - which have a high rate of serious side-effects, including irreversible kidney toxicity, liver toxicity, seizures and sudden cardiac arrest. (See enclosed listing of current prescriptive privileges for optometrists in other states).**

(2) • **If communication and collaboration are removed from the statute as proposed, then optometrists could use any drug for any disorder that causes a "defect or abnormal condition of the human eye or its adnexa."**

Blurred distinction for our patients

- **The implications for the safety of patients in North Carolina are very serious.**

- **Although optometrists provide valuable patient care that typically complements that of an ophthalmologist, optometrists do not undergo comprehensive training necessary to prescribe drugs.**

- **An ophthalmologist is a physician who has had four years of college, four years of medical school, one year of hospital internship, and three or more years of hospital-based residency training in the diagnosis and treatment of eye diseases. An optometrist is a professional who has had three to four years of college, and four years' optometry school. This practitioner does not attend medical school; receives no hospital-based internship or residency training.**

- **Eye diseases can be extremely complex, and, therefore, require the type of training and expertise that only a physician can provide. (North Carolina podiatrists and dentists do**

House Bill 527 and Patient Safety - The Rest of the Story

- House Bill 527 as proposed would enact the most permissive prescribing policy for optometrists in the entire United States. It would authorize prescribing any medication. For example:
  - Steroids (orally, by injection or intravenously) for inflammatory eye disease - (*too much steroids can destroy your kidneys*).
  - Systemic antibiotics (orally, by injection or intravenously) for eye infections - (*these can have devastating consequences in children and pregnant women*).
  - Systemic anti-fungal drugs (oral, intravenous) for fungal infections of the eye have a high rate of serious side-effects, including *irreversible* kidney toxicity, liver toxicity, seizures and sudden cardiac arrest.

kidneys 2 inf+

- EVERY STATE IN THE UNITED STATES imposes some limits on optometrists prescribing authority. Only half allow any oral medications at all and most states that allow oral medications to be prescribed by optometrists, place significant limits on that authority.
- THIRTY-THREE (33) states require collaboration with a physician or even mandate referral to a physician in some circumstances.
- North Carolina SHOULD NOT enact THE MOST LIBERAL prescribing authority for optometrists in the United States.
- Oral medications affect every system of the body. Optometrists are well trained in diagnosing poor vision but not sufficient trained to safely prescribe any and all drugs. An independent study of data provided by the Wisconsin Bureau of Health Service Professions indicates that out of sample of 725 total cases where collaboration with a physician did not occur, 65 patients received questionable or improper treatment.
- PATIENT SAFETY DEMANDS A LIMIT ON ACCESS TO THE USE OF POTENTIALLY HARMFUL (*SYSTEMIC*) DRUGS.

800-858 7905(o) Brennan
910-584 3897 (H)

BAD BILL

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

845 1418
Maureen@hbmd

H 1

HOUSE BILL 527

Short Title: Optometry Changes. (Public)

77

Sponsors: Representatives Justus, Hiatt, Davis; Adams, Aldridge, Berry, Blue, Bonner, Boyd-McIntyre, Braswell, Brawley, Brown, Buchanan, Capps, Carpenter, Church, Clary, Cole, Creech, Culpepper, Cunningham, Decker, Dedmon, Dockham, Earle, Easterling, Eddins, Fitch, Goodwin, Grady, Gulley, Hall, Hardaway, Hightower, Hill, Howard, H. Hunter, Hurley, Ives, Jarrell, Jeffus, Kinney, Kiser, Luebke, McAllister, McCrary, Mercer, Michaux, Miner, Moore, Mosley, Nichols, Oldham, Owens, Preston, Rayfield, Redwine, Saunders, Sexton, Sherrill, Smith, Starnes, Sutton, Tallent, Thompson, Tolson, Wainwright, Warner, Warwick, Watson, Weatherly, Wilkins, G. Wilson, Womble, Wood, Wright, and Yongue.

Referred to: Judiciary I.

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE ROLE OF OPTOMETRISTS IN MEDICAL COST CONTAINMENT THROUGH REVISION OF THE HOSPITAL PRIVILEGES LAW, TO REPEAL THE REQUIREMENT FOR AN OPTOMETRIST TO COLLABORATE WITH A PHYSICIAN IN THE USE OR PRESCRIPTION OF CERTAIN PHARMACEUTICAL AGENTS, TO ESTABLISH PEER REVIEW FOR OPTOMETRISTS, AND TO ESTABLISH AN OPTOMETRIST PRIVILEGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-114 reads as rewritten:

"**§ 90-114. Optometry defined.**

Any one or any combination of the following practices shall constitute the practice of optometry:

(1) The examination of the human eye by any method, other than surgery, to diagnose, to treat, or to refer for consultation or

have prescriptive privileges, so this argument may be necessary in order to distinguish optometrists).

- Awarding optometrists the legal right to dispense drugs would surely lower the standards of medical eye care and general medical care in North Carolina. It would introduce a substandard of medical practice.

- Unnecessary visual loss, suffering and delays in diagnosis and treatment may result.

- The AMA is committed to the preservation of quality patient care which includes the appropriate training and education of health care practitioners who administer this care. We urge this committee to defeat House Bill 527 in the interests of patient safety.

Edwin Swann MD
Testifying against
HB 527

I would like to present to you my concerns regarding the changes in the law regarding optometric prescribing of medication without medical collaboration. It would have been easy for me to not have come down to the legislature today to state my concern over the proposed legislation.

It is of course the responsibility of the legislature to pass laws which are in the best interest of the public.

As a practicing ophthalmologist I stand to lose nothing, or very little if this legislation is passed. On the other hand it is the public which stand to lose in the area of quality of care. There is very little to be gained by the public as a result of passage of this legislation. There is however a lot that they lose if this proposed legislation is enacted.

Access to medical care is a very poor excuse to justify this

proposed legislation. If someone in a rural area has to drive thirty or fifty miles to see a collaborating medical doctor it would be better for them to do so than to be subjected to the risk of injury as a result of inadequate, or inappropriate treatment.

It is no accident that the proponents of this bill did not come before you asking for the opportunity to have more training so as to be better able to appropriately prescribe medication. They have instead asked you to compromise the safety of the public so that they can prescribe medication without adequate training. As guardians of the public interest you should be suspicious of the motives for this inappropriate unbalanced request. You recently saw the necessity of passing legislation regarding graduated drivers license for teenage automobile driver . That legislation took

into consideration both the interest of the public , the desire of the teenager to drive, and the training and experience of the new driver. If you will no longer allow a sixteen year old new driver to drive without supervision of a more experienced driver then why would you even consider allowing practitioners who have no training in prescribing medications in a supervised setting to inflict injury on the public as a result of their lack of training and unfettered desire to prescribe medication.

I would like to think that your decision regarding graduated drivers license for teenaged drivers was a result of your concern for public safety and not a result of teenagers lacking a strong lobbying apparatus. If I am right then I know that you will do the right thing and continue to require collaboration by optometrist with medical doctors when

prescribing medications.

American Public Health Association

1015 Fifteenth Street, N.W. • Washington, D.C. 20005–2605
202/789-5600; Fax: 202/789-5661 • e-mail: comments@msmail.apha.org • http://www.apha.org

April 4, 1997

Julian Crowder, O.D., President
North Carolina State Optometric Society
1431 Smoky Park Highway
Candler, North Carolina 28715

Dear Dr. Crowder:

I am pleased to write in support of HB 527 which would amplify the current optometric therapeutic drug law.

At its 118th Annual Meeting, the American Public Health Association (APHA), which represents a combined national and affiliate membership of over 55,000 public health professionals and community health leaders, adopted a resolution entitled "Access to Treatment for Eye Care by Optometrists." A copy is enclosed for your information.

This resolution acknowledges that the expansion of clinical privileges of optometrists has increased the availability, accessibility, and cost effectiveness of eye care to the American public. The resolution recommends that states update their optometric practice acts to allow for optometric use of those diagnostic and therapeutic pharmaceuticals which have been determined by the State Board of Examiners in Optometry as being within the scope of competency of pharmaceutically certified optometrists. We further recommend that dispensing of such pharmaceuticals be regulated by state pharmacy laws.

Currently, 46 states allow optometrists to use therapeutic drugs for the benefit of their patients. APHA urges your support for this legislation which encompasses the principles endorsed in the APHA resolution.

I am confident that the citizens of North Carolina will continue to be well served and will benefit greatly if HB 527 is adopted. I strongly endorse HB 527.

Kind personal regards,

Mohammad Akhter, MD, MPH
Executive Director

9004: Access to Treatment for Eye Care by Optometrists

The American Public Health Association,

Noting that more than one-third of all Americans have a disease or physiologic abnormality in one or both eyes;[1] and

Recognizing that only about one-half of the total population in the United States needing treatment for eye disease is receiving it;[1,2] and

Noting that eye disease and blindness cost the nation an estimated $16 billion a year;[3] and

Realizing that eye health problems and vision care demands will increase significantly in the future as the US population ages;[4] and

Observing that optometric services are available in approximately 6,400 communities in the United States and that doctors of optometry are the only primary eye care providers in nearly 4,000 communities, and that nationwide optometrists outnumber ophthalmologists nearly two to one;[5,6*] and

Noting that 60 percent of primary diagnostic eye examinations in the United States[7] are provided by the 25,000 active optometrists;[8] and

Realizing that many people who need medical eye care are already being treated by optometrists in many states;[9] and

Noting that optometric reimbursement rates are typically lower than those of other providers of comprehensive eye care;[10] and

Realizing that many people who want to receive medical eye care are now being treated by optometrists;[10] and

Recognizing that it is prudent public policy to utilize appropriately trained and licensed health professionals at their highest level of skill and training as determined by state licensing laws;[11] and

Noting that Medicare reimburses diagnostic and therapeutic eye care services delivered by optometrists as authorized by state practice acts;[12] and

Noting that 25 states have passed laws and regulations that allow optometrists to use therapeutic pharmaceutical agents[7] after completing appropriate training and testing requirements, and

Observing that the US Department of Veterans Affairs, the US Armed Forces, and the US Public Health Service have regulations or credentialing statements that allow optometrists to utilize therapeutic pharmaceutical agents to the benefit of their patients, and noting that this expansion of the clinical privileges of optometrists has increased the availability, accessibility, and cost-effectiveness of eye care to the American public through lower fees for services[10] and by a reduction in double visits and hospital emergency room visits; therefore

1. Recommends that legislatures update their state optometric practice acts to allow for optometric use of those diagnostic and therapeutic pharmaceuticals which have been determined by the State Board of Examiners in Optometry as being within the scope of competency of pharmaceutically certified optometrists; and

2. Recommends that dispensing of such pharmaceuticals be regulated by state pharmacy laws.

* Aron, F: Unpublished data. The number of cities with ophthalmologists and optometrists in each state was based on hand counts from references 5 and 6, respectively. St. Louis, MO: Am Optom Assoc.

References:

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12. Public Law 99-509, Section 9335, 1986.

From Carolina Eye Associates, P.A.

FAX Cover Sheet

Pages Including This One: 4

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April 7, 1997

Representative Edwin Hardy
Raleigh, NC

Dear Representative Hardy:

I am writing in support to House Bill 50, which comes before your committee, Judiciary 1, later today. Of the provisions of this bill, there are only two that I feel are likely to be controversial. The first is the repeal of the portion of the optometric drug law requiring consultation and collaboration with a physician before an optometrist prescribes a drug for a patient. The second is the provision of the law allowing optometrists to apply for staff privileges at a hospital.

Of these, I suspect the most controversial is the first, the repeal of the requirement for collaboration and consultation prior to prescribing a therapeutic agent for a patient. When the North Carolina Optometric Drug Law was passed nearly 20 years ago, there may have been a cogent reason for this provision. Certainly, few optometrists in the state had any experience with therapeutics at that time, and the optometric schools were still feeling their way in the education of optometrists in the use of therapeutics. Times have changed. Those original optometrists who are still practicing now have 20 years of experience with therapeutics. Most of the new doctors entering the profession are far better trained than their predecessors, since the schools of optometry have made great strides in improving the curriculum in this area. Indeed, of the over 30 states which have therapeutic provisions in their optometric laws, not one of them requires consultation and collaboration other than North Carolina.

One of the usual allegations made concerning any nonmedical person performing therapeutics is that they will practice beyond their skill and, therefore, be unsafe. Certainly, this is a risk for MDs. There is nothing about my license that would prevent me, an ophthalmologist, from performing neurosurgery. However, a real desire to avoid doing harm to my patient, a sense of responsibility, ethics and morals, and an appreciation for the disastrous effects of malpractice litigation are more than ample deterrents to keep me from willfully trying to practice beyond my capabilities. I see no reason why similar deterrents won't equally apply to the optometric profession, and certainly, the experience of the other states would lead one to believe that it does. Moreover, there are other nonmedical practitioners which have the right to prescribe a range of drugs. This would include dentists and podiatrists, and there are probably a few others as well. Certainly, no one ever has suggested, to my knowledge, that all the dentists should be made to call an MD prior to giving a patient upon whom they have just extracted a tooth an analgesic.

They are not medically trained, in the sense that they do not go to medical school, but yet, they use this privilege quite successfully to the benefit of mankind.

Another measure of this is the frequency of malpractice litigation brought against optometrists vs.ophthalmologist. The fact that ophthalmologists are more frequently sued does not support the allegations that optometrists behave irresponsibly.

It might be argued that I receive many referrals from optometry and, therefore, am willing to testify in their favor, although the medicine that I prescribe for the people of the state is not the same medicine I would take myself. Again, the truth does not bear this out. My last eye exam was from an optometrist in Rock Hill. One of my sons, who wears eyeglasses and contacts, last eye exam was with an optometrist, and my in-laws, whom I love dearly, are under the care of an optometrist for their eye problems near their home in Tabor City, North Carolina. Thus, the medicine that I would prescribe for you is one that I gladly swallow myself and prescribe for my loved ones.

For all the foregoing reasons, I feel that the provision of the North Carolina Optometric Drug Bill requiring them to consult with an MD prior to prescribing any therapeutic agent for a patient is unnecessary. But more than just unnecessary, it actually has a negative impact on the ability of a patient to receive good care. MDs are not always available for consultation. What then — must the patient wait to receive a drug that is necessary for an infection? Should a patient who is sitting in a doctor's office be required to drive half an hour or more to another city to see an ophthalmologist who doesn't choose to confer on the phone? This doesn't make sense especially when one considers that, since the consultation will take place over the telephone, the information given the conferring doctor comes from the optometrist. If the optometrist doesn't understand what is going on, he can't possibly give the conferring doctor the right information and, therefore, will receive the wrong advice. If the optometrist does understand what is going on, he doesn't need the consultation, so what possible benefit is this procedure to anyone.

The second provision has to do with the ability of an optometrist to apply for staff privileges. I find this to be innocuous, although it too is one that is emotionally charged. There is nothing about the provision that requires the hospital to accept the optometrist. Certainly, most hospitals have more than adequate medical staff to keep any optometrist in their city from overturning the order of things.

Moreover, no one is required to consult with an optometrist. If a patient in the hospital, who normally sees an optometrist on the outside, develops an eye problem while under the care of his internist, there is nothing to prevent the internist from consulting with one of his ophthalmic colleagues on the staff. However, should a patient in the hospital have a problem with their glasses, contacts, or the like, it would be of benefit to have the person who has been fitting them be able to provide the patient with care. Moreover, there are hospitals in which care by an ophthalmologist is not available. An optometrist under those circumstances

could provide a very real service to the Emergency Room staff, who may not be as familiar with the eye exam.

And finally, in a big city environment, it would be a real service to the optometrist to be able to see a patient of theirs, which had developed eye problems during the night, in an Emergency Room setting, where it is lighted and there are people about rather than in the privacy of a dark office where mischief can occur. One only has to read the papers or listen to the news on a regular basis to realize that medical personnel are assaulted by persons claiming to be a patient.

I hope you find my thoughts both reasonable and persuasive. I urge you to vote for passage of House Bill 50.

Sincerely,

George W. Tate, Jr., M.D.
CHARLOTTE CENTER

GWT/mw

END

NORTH CAROLINA MEDICAL SOCIETY

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April 3, 1997

The Honorable Edwin M. Hardy
417A Legislative Office Building
Raleigh, N.C. 27601

Dear Representative Hardy:

On behalf of the North Carolina Medical Society, I am pleased to inform you that the Doctor of the Day for Wednesday, April 9, 1997 will be Charles Willson, M.D., from Greenville.

The schedule for the Doctors of the Day is as follows:

Monday -- 7:00 p.m. - 9:00 p.m.
Tuesday-Thursday -- 9:00 a.m. - 5:00 p.m.
Friday -- As necessary

I hope you will have an opportunity to introduce Dr. Willson to your colleagues.

We appreciate the many courtesies and the continuing hospitality that you and your colleagues have extended to the physicians participating in this program. I hope you will let us know if you feel there is any way in which the Doctor of the Day program can better serve the needs of the General Assembly.

Thank you.

Sincerely yours,

Lucia C. Peel, Assistant Director
Government Affairs

LCP:jel

cc: Stephen W. Keene, Director, Government Affairs

Sign-Up Sheet for Speakers

PUBLIC HEARING

HOUSE BILL 527 - OPTOMETRY CHANGES

APRIL 7, 1997

	NAME	ADDRESS/ASSOCIATION
1.	FRANK W. LEAK, MD,	N.C. Academy of Family Practice
2.	JOHN D. MATHEWS MD	SOUTHEASTERN EYE CENTER, Greensboro
3.	MARC RALSTON, M.D.	GREENSBORO, SOUTHEASTERN EYE CNTR.
4.	KARL STOVALL, MD	" " "
5.	F. Michael Connell, MD	Asheville, NC / Southeastern Eye Ctr.
6.	RICHARD FERES, MD	SOUTHEASTERN EYE CTR - ASO, NC
7.	JOHN T. HARRIOTT, M.D	" " " " "
8.	Steven M. White, MD	White Eye Assoc. Greenville
9.	WILLIAM G. HENDRIX MD	RALEIGH, N.C.
10.	John D Robison, MD	WALLACE, NC
11.	Kenny Bumgarner O.D.	Pinehurst, N.C.
12.	Vincent DAHRINGER MD	
13.	JANET MILLS	NATIONAL MS SOCIETY RALEIGH
14.	Carolyn R Ferree, MD	NC Medical Society
15.	Cindy Hampton MD	NC Eye Physicians + Surgeons

MEMO:

TO: CHAIRMAN DAUGHTRY

FROM: REP. Larry Justus

SPEAKERS ON OPTOMETRY BILL:

- DR. MICHAEL BARTISS
OPHTHALMOLOGIST & OPTOMETRIST PINEHURST

- DR. MIKE CORNELL
OPHTHALMOLOGIST ASHEVILLE

- DR. VINCE DAHRINGER
OPHTHALMOLOGIST RALEIGH

- DR. LEONARD RAPPAPORT
OPHTHALMOLOGIST HICKORY

- DR. JOHN MATTHEWS
OPHTHALMOLOGIST GREENSBORO

- DR. KARL STONECIPHER
OPHTHALMOLOGIST GREENSBORO

- DR. RICHARD EPES
OPHTHALMOLOGIST GREENSBORO

- DR. JOHN HARRINTT
OPHTHALMOLOGIST WINSTON-SALEM

- DR. MARC RALSTON
OPHTHALMOLOGIST GREENSBORO

- DR. MICAHEL CLARK
OPTOMETRIST MOUNT AIRY

- DR. KENNY BUMGARNER
OPTOMETRIST SOUTHERN PINES

- REP. DON DAVIS

- REP. LARRY JUSTUS

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Delete Interest of time

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[illegible]even R. Carter, M.D.
Shepard N. Dunn, M.D.
Neil B. Griffin, M.D.
Robert G. Martin, M.D., F.A.C.S., F.I.C.S.
Daniel K. Messner, M.D.
Gregory J. Mincey, M.D., F.A.C.S., F.I.C.S.
Thomas R. Sawyer, M.D.
Carson C. Cox, III, O.D., M.Ed., F.A.A.O.
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[illegible]ansboro Center

April 7,1997

Re: Optometric Bill #527

To Whom It May Concern:

I am writing this letter as President of Carolina Eye Associates. It has been called to my attention that House Bill #527 is coming up for vote on Tuesday, April 8. I wanted you to know that it is the position of the Board members, and staff of Carolina Eye Associates, which constitutes 200+ ophthalmologists, optometrist, nurses, technicians and other medical personnel, that we support this Bill. I personally have had experience with optometry for 20 years in North Carolina. These optometrists have co-managed patients and used their pharmaceutical law as appropriately, and probably more so, than most other medical practitioners. I have had fewer complications from this group than probably any other subspecialty in medicine. I feel they should be able to manage patients without the legislated requirement for communication and collaboration. I think it would be a blessing if they have hospital privileges, since about 95% of my hospital consultations are primary care, not tertiary care.

I understand that one independent doctor in our group wrote a note expressing his reservations about parts of the Bill. His opinion does not reflect the opinion of the Carolina Eye Associates Board or other members of Carolina Eye Associates; I want to make this very clear to you.

If I can supply you with any further information at any time or if you need me to come before you to give further testimony, don't hesitate to get in touch.

Sincerely,

Robert G. Martin, M.D.
President and Chairman of the Board

RGM/cak

American Public Health Association

1015 Fifteenth Street, N.W. • Washington, D.C. 20005–2605
202/789-5600; Fax: 202/789-5661 • e-mail: comments@msmail.apha.org • http://www.apha.org

April 4, 1997

Julian Crowder, O.D., President
North Carolina State Optometric Society
1431 Smoky Park Highway
Candler, North Carolina 28715

Dear Dr. Crowder:

I am pleased to write in support of HB 527 which would amplify the current optometric therapeutic drug law.

At its 118th Annual Meeting, the American Public Health Association (APHA), which represents a combined national and affiliate membership of over 55,000 public health professionals and community health leaders, adopted a resolution entitled "Access to Treatment for Eye Care by Optometrists." A copy is enclosed for your information.

This resolution acknowledges that the expansion of clinical privileges of optometrists has increased the availability, accessibility, and cost effectiveness of eye care to the American public. The resolution recommends that states update their optometric practice acts to allow for optometric use of those diagnostic and therapeutic pharmaceuticals which have been determined by the State Board of Examiners in Optometry as being within the scope of competency of pharmaceutically certified optometrists. We further recommend that dispensing of such pharmaceuticals be regulated by state pharmacy laws.

Currently, 46 states allow optometrists to use therapeutic drugs for the benefit of their patients. APHA urges your support for this legislation which encompasses the principles endorsed in the APHA resolution.

I am confident that the citizens of North Carolina will continue to be well served and will benefit greatly if HB 527 is adopted. I strongly endorse HB 527.

Kind personal regards,

Mohammad Akhter, MD, MPH
Executive Director

125 Years of Leadership in Public Health

9004: Access to Treatment for Eye Care by Optometrists

The American Public Health Association,

Noting that more than one-third of all Americans have a disease or physiologic abnormality in one or both eyes;[1] and

Recognizing that only about one-half of the total population in the United States needing treatment for eye disease is receiving it;[1,2] and

Noting that eye disease and blindness cost the nation an estimated $16 billion a year;[3] and

Realizing that eye health problems and vision care demands will increase significantly in the future as the US population ages;[4] and

Observing that optometric services are available in approximately 6,400 communities in the United States and that doctors of optometry are the only primary eye care providers in nearly 4,000 communities, and that nationwide optometrists outnumber ophthalmologists nearly two to one;[5,6*] and

Noting that 60 percent of primary diagnostic eye examinations in the United States[7] are provided by the 25,000 active optometrists;[8] and

Realizing that many people who need medical eye care are already being treated by optometrists in many states;[9] and

Noting that optometric reimbursement rates are typically lower than those of other providers of comprehensive eye care;[10] and

Realizing that many people who want to receive medical eye care are now being treated by optometrists;[10] and

Recognizing that it is prudent public policy to utilize appropriately trained and licensed health professionals at their highest level of skill and training as determined by state licensing laws;[11] and

Noting that Medicare reimburses diagnostic and therapeutic eye care services delivered by optometrists as authorized by state practice acts;[12] and

Noting that 25 states have passed laws and regulations that allow optometrists to use therapeutic pharmaceutical agents[7] after completing appropriate training and testing requirements, and

Observing that the US Department of Veterans Affairs, the US Armed Forces, and the US Public Health Service have regulations or credentialing statements that allow optometrists to utilize therapeutic pharmaceutical agents to the benefit of their patients, and noting that this expansion of the clinical privileges of optometrists has increased the availability, accessibility, and cost-effectiveness of eye care to the American public through lower fees for services[10] and by a reduction in double visits and hospital emergency room visits; therefore

1. Recommends that legislatures update their state optometric practice acts to allow for optometric use of those diagnostic and therapeutic pharmaceuticals which have been determined by the State Board of Examiners in Optometry as being within the scope of competency of pharmaceutically certified optometrists; and

2. Recommends that dispensing of such pharmaceuticals be regulated by state pharmacy laws.

* Aron, F: Unpublished data. The number of cities with ophthalmologists and optometrists in each state was based on hand counts from references 5 and 6, respectively. St. Louis, MO: Am Optom Assoc.

References:

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12. Public Law 99-509, Section 9335, 1986.

OPTOMETRIC SCOPE OF PRACTICE
STATUTORY RESTRICTIONS

State	Oral Medication Not Allowed 25	Steroids Restricted 18	Referral or Collaboration Required 33	Foreign Body Removal Not Allowed 13	Glaucoma Treatment Restricted 33	Standard of Care Required 23	Surgery Prohibited 46	Therapeutics With Restrictions 49
Alabama							X	X
Alaska	X						X	X
Arizona	X	X	X				X	X
Arkansas	X		X		X		X	X
California	X[1]	X	X		X	X	X	X
Colorado			X		X	X	X	X
Connecticut			X		X	X	X	X
Delaware						X	X	X
Dist of Columbia	X	X	X	X	X			
Florida	X		X		X	X	X	X
Georgia			X	X	X	X	X	X
Hawaii	X		X		X		X	X
Idaho				X				X
Illinois	X[2]		X				X	X
Indiana			X		X		X	X
Iowa						X	X	X
Kansas	X		X		X	X	X	X
Kentucky							X	X
Louisiana				X			X	X
Maine					X[3]	X	X	X
Maryland	X[4]	X	X		X	X	X	X
Massachusetts	X	X	X	X	X			
Michigan	X		X		X		X	X
Minnesota	X		X	X		X	X	X

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1 Topicals except for oral tetracycline.

2 Topicals except for non-narcotic oral analgesic agents.

3 Consultation and referral required during co-management training.

4 Topicals except for oral tetracycline.

State	Oral Medication Not Allowed	Steroids Restricted	Referral or Collaboration Required	Foreign Body Removal Not Allowed	Glaucoma Treatment Restricted	Standard of Care Required	Surgery Prohibited	Therapeutic With Restrictions
Mississippi	X		X			X	X	X
Missouri			X			X	X	X
Montana					X		X	X
Nebraska		X			X	X	X	X
Nevada					X		X	X
New Hampshire		X			X		X	X
New Jersey	X					X		X
New Mexico		X					X	X
New York	X	X	X		X	X	X	X
North Carolina	X		X	X	X		X	X
North Dakota		X	X		X	X	X	X
Ohio				X			X	X
Oklahoma								X
Oregon	X	X	X		X	X	X	X
Pennsylvania	X	X	X		X		X	X
Puerto Rico	X	X		X	X		X	
Rhode Island	X	X	X	X	X		X	X
South Carolina		X	X		X	X	X	X
South Dakota			X		X		X*	X
Tennessee				X		X	X	X
Texas		X	X		X	X	X	X
Utah	X		X		X		X	X
Vermont	X	X	X		X	X	X	X
Virginia			X		X		X	X
Washington	X			X				X
West Virginia	X		X	X			X	X
Wisconsin			X		X		X	X
Wyoming		X	X		X	X	X	X
TOTALS	25	18	33	13	33	23	46	49

NOTES:

Language in the statutes does not always reflect the drugs listed in formularies. Detailed listings of the provisions in each state are available through the American Academy of Ophthalmology State Affairs Department. Other points of note are:

- Although surgery is prohibited in 46 states, this does not necessarily mean that lasers are specifically prohibited or that a definition of surgery is included.

  The use of lasers is prohibited in 35 states. Connecticut, Delaware, Georgia, Michigan, Tennessee, and Wyoming prohibit the use of therapeutic lasers but do not specifically prohibit the use of diagnostic lasers. California and Vermont specifically allow the use of diagnostic lasers. Kentucky optometrists are not allowed to do laser surgery, though it is not stated in the statute. Indiana, Louisiana and Minnesota prohibit surgery and the use of lasers in the medical practice acts. Virginia prohibits laser surgery in optometric statute; medical practice act review pending.

  None of the 50 states, the District of Columbia, or Puerto Rico allow optometrists to perform surgery, even though it is not specifically written in all statutes. In Idaho and Oklahoma optometry boards interpreted silent statutes as permitting optometrists to perform laser surgery.

- In 3 states, (including the District of Columbia and Puerto Rico) optometrists are restricted to the use of diagnostic drugs only. The following drugs are not permitted in diagnostic states: antibiotics, antihistamines, anti-inflammatories, glaucoma and steroid drugs. Of these 3 states, Puerto Rico does not contain a statutory prohibition for optometrists making a diagnosis. The remaining 2 states do not permit optometrists to make a diagnosis, but require optometrists to refer the patient to a physician for diagnosis and treatment.

  All 50 states and the District of Columbia permit optometrists to use diagnostic pharmaceutical agents. Puerto Rico does not permit the use of diagnostic drugs.

- Almost all therapeutic states allow the use of topical antibiotics, antihistamines and anti-inflammatory and non-steroid anti-inflammatory drugs, even though they are not always listed in the statutes. Non-steroid anti-inflammatories and steroids can be used in treating the same conditions.

- Alabama, Connecticut, Louisiana, Missouri and Tennessee include optometrists as providers for clinical laboratory testing. California allows ordering of smears and cultures within scope.

- Georgia and South Carolina require optometrists to carry $1 million of malpractice insurance; Colorado requires $1.5 million; and Pennsylvania requires $600,000. Kansas board determines acceptable amount of professional liability insurance.

- Mississippi allows postophthalmic surgical or clinical care and management with advice and consultation of operating or treating physician.

- Oklahoma prohibits the use of Schedules I and II drugs for purposes of diagnosis and treatment of ocular abnormalities.

- The non-restrictive language in the optometric statutes in Oklahoma, Idaho and Tennessee, have prompted optometry to broadly interpret these statutes being especially permissive TPA laws.

sectA/A-rast.ct

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April 7, 1997

Representative Richard Morgan
570 Pinehurst South
Pinehurst, NC 28374

Dear Representative Morgan:

I am writing in support to House Bill ~~50~~ 527, which comes before your committee, Judiciary 1, later today. Of the provisions of this bill, there are only two that I feel are likely to be controversial. The first is the repeal of the portion of the optometric drug law requiring consultation and collaboration with a physician before an optometrist prescribes a drug for a patient. The second is the provision of the law allowing optometrists to apply for staff privileges at a hospital.

Of these, I suspect the most controversial is the first, the repeal of the requirement for collaboration and consultation prior to proscribing a therapeutic agent for a patient. When the North Carolina Optometric Drug Law was passed nearly 20 years ago, there may have been a cogent reason for this provision. Certainly, few optometrists in the state had any experience with therapeutics at that time, and the optometric schools were still feeling their way in the education of optometrists in the use of therapeutics. Times have changed. Those original optometrists who are still practicing now have 20 years of experience with therapeutics. Most of the new doctors entering the profession are far better trained than their predecessors, since the schools of optometry have made great strides in improving the curriculum in this area. Indeed, of the over 30 states which have therapeutic provisions in their optometric laws, not one of them requires consultation and collaboration other than North Carolina.

One of the usual allegations made concerning any nonmedical person performing therapeutics is that they will practice beyond their skill and, therefore, be unsafe. Certainly, this is a risk for MDs. There is nothing about my license that would prevent me, an ophthalmologist, from performing neurosurgery. However, a real desire to avoid doing harm to my patient, a sense of responsibility, ethics and morals, and an appreciation for the disastrous effects of malpractice litigation are more than ample deterrents to keep me from willfully trying to practice beyond my capabilities. I see no reason why similar deterrents won't equally apply to the optometric profession, and certainly, the experience of the other states would lead one to believe that it does. Moreover, there are other nonmedical practitioners which have the right to prescribe a range of drugs. This would include dentists and podiatrists, and there are probably a few others as well. Certainly, no one ever has suggested, to my knowledge, that all the dentists should be made to call an MD prior to giving a patient upon whom they have just extracted a tooth an analgesic.

They are not medically trained, in the sense that they do not go to medical school, but yet, they use this privilege quite successfully to the benefit of mankind.

Another measure of this is the frequency of malpractice litigation brought against optometrists vs.ophthalmologist. The fact that ophthalmologists are more frequently sued does not support the allegations that optometrists behave irresponsibly.

It might be argued that I receive many referrals from optometry and, therefore, am willing to testify in their favor, although the medicine that I prescribe for the people of the state is not the same medicine I would take myself. Again, the truth does not bear this out. My last eye exam was from an optometrist in Rock Hill. One of my sons, who wears eyeglasses and contacts, last eye exam was with an optometrist, and my in-laws, whom I love dearly, are under the care of an optometrist for their eye problems near their home in Tabor City, North Carolina. Thus, the medicine that I would prescribe for you is one that I gladly swallow myself and prescribe for my loved ones.

For all the foregoing reasons, I feel that the provision of the North Carolina Optometric Drug Bill requiring them to consult with an MD prior to prescribing any therapeutic agent for a patent is unnecessary. But more than just unnecessary, it actually has a negative impact on the ability of a patient to receive good care. MDs are not always available for consultation. What then — must the patient wait to receive a drug that is necessary for an infection? Should a patient who is sitting in a doctor's office be required to drive half an hour or more to another city to see an ophthalmologist who doesn't choose to confer on the phone? This doesn't make sense especially when one considers that, since the consultation will take place over the telephone, the information given the conferring doctor comes from the optometrist. If the optometrist doesn't understand what is going on, he can't possibly give the conferring doctor the right information and, therefore, will receive the wrong advice. If the optometrist does understand what is going on, he doesn't need the consultation, so what possible benefit is this procedure to anyone.

The second provision has to do with the ability of an optometrist to apply for staff privileges. I find this to be innocuous, although it too is one that is emotionally charged. There is nothing about the provision that requires the hospital to accept the optometrist. Certainly, most hospitals have more than adequate medical staff to keep any optometrist in their city from overturning the order of things.

Moreover, no one is required to consult with an optometrist. If a patient in the hospital, who normally sees an optometrist on the outside, develops an eye problem while under the care of his internist, there is nothing to prevent the internist from consulting with one of his ophthalmic colleagues on the staff. However, should a patient in the hospital have a problem with their glasses, contacts, or the like, it would be of benefit to have the person who has been fitting them be able to provide the patient with care. Moreover, there are hospitals in which care by an ophthalmologist is not available. An optometrist under those circumstances

END

could provide a very real service to the Emergency Room staff, who may not be as familiar with the eye exam.

And finally, in a big city environment, it would be a real service to the optometrist to be able to see a patient of theirs, which had developed eye problems during the night, in an Emergency Room setting, where it is lighted and there are people about rather than in the privacy of a dark office where mischief can occur. One only has to read the papers or listen to the news on a regular basis to realize that medical personnel are assaulted by persons claiming to be a patient.

I hope you find my thoughts both reasonable and persuasive. I urge you to vote for passage of House Bill ~~58~~ 527.

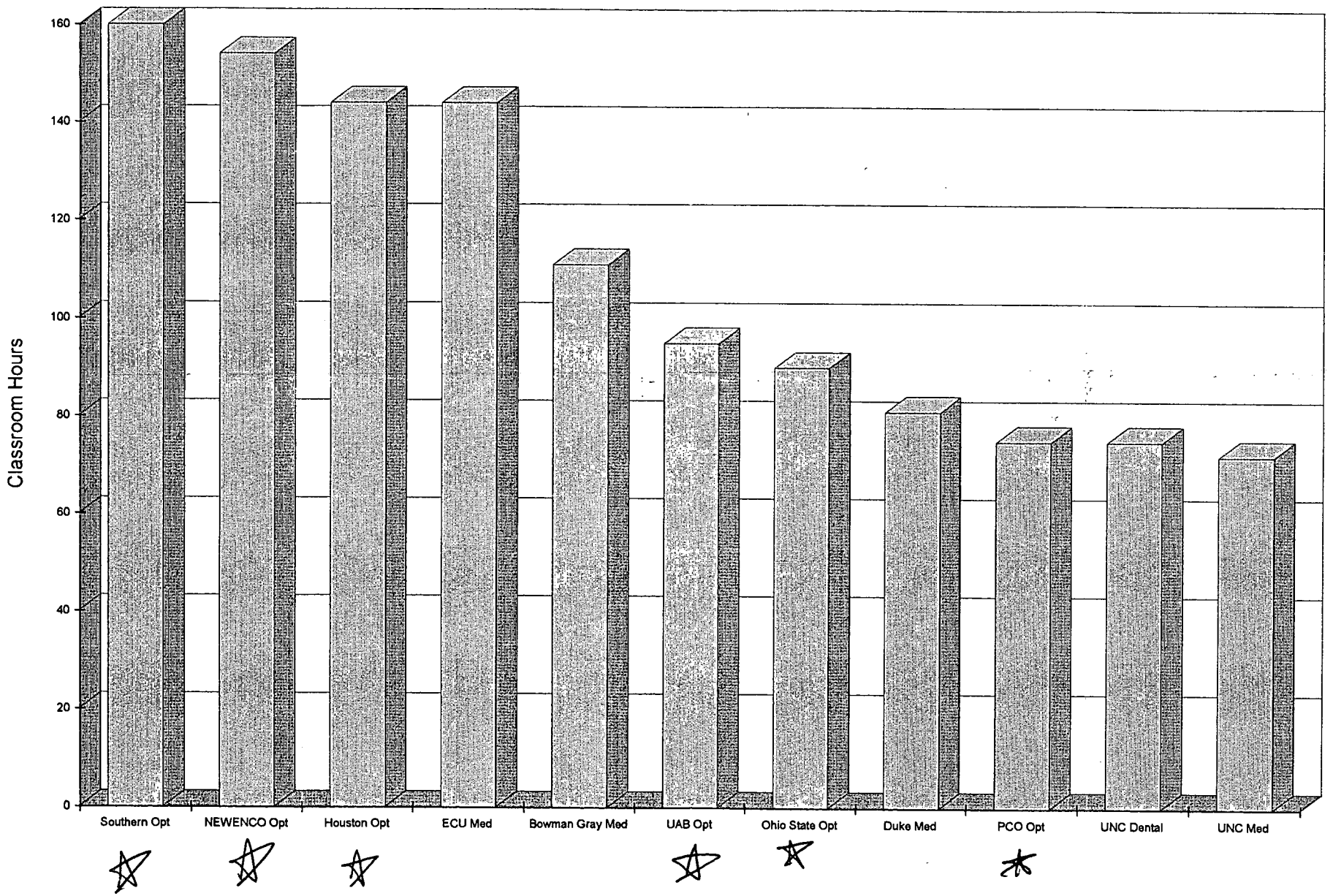
Sincerely,

George W. Tate, Jr., M.D.
CHARLOTTE CENTER

GWT/mw

Comparison of Pharmacology Requirements

At Several Professional Schools



April 9

Sign-Up Sheet for Speakers

PUBLIC HEARING
HOUSE BILL 527 - OPTOMETRY CHANGES

APRIL 7, 1997

NAME	ADDRESS/ASSOCIATION
Nancy Dickey, MD	American Medical Association

Sign-Up Sheet for Speakers

PUBLIC HEARING
HOUSE BILL 527 - OPTOMETRY CHANGES

APRIL 7, 1997

NAME	ADDRESS/ASSOCIATION
Dick Gurley	ALZHEIMERS Assn.

Sign-Up Sheet for Speakers

PUBLIC HEARING
HOUSE BILL 527 - OPTOMETRY CHANGES

APRIL 7, 1997

NAME	ADDRESS/ASSOCIATION
Edward Swan	1011 Shaw, Brwd Ld Rd

VISITOR REGISTRATION SHEET
FOR
PUBLIC HEARING ON

HB 257 OPTOMETRY CHANGES **APRIL 7, 1997**

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Len Rappaport, MD	Southeastern Eye Center
E. Glenn Likens, O.D.	Wilson NC 27896
Mona Lewis	Mona A. Lewis & Assoc
Chris Jaeger OD	Family Eye Center
Michael Hall OD	Doctors Vision Center
Scott Edwards OD	SECP
Ed Holland, OD	Louisburg, NC
John D. Robinson OD	Wilmington NC
Beth H. Mullins OD	Yadkinville, NC
John Miller, OD	Fishcreek, NC
Julie Crowder	Asheville, NC
Brady Mitchell	Optometry Board
Gilbert F. Sellers OD	
Sue Gardner	NCSOS
[illegible]	NCSOS
[illegible]	Henderson, NC
W. Andrew Newsome Jr OD	Henderson NC.
Michael Clark OD	Mil Army NC
Alan Skipper	NC Med Society
[illegible]	
[illegible]	NCSOS
[illegible]	
Michael Davis	Carolina Eye Assoc
Darin Simmons	765 Alma

VISITOR REGISTRATION SHEET
FOR
PUBLIC HEARING ON

HB 257 OPTOMETRY CHANGES **APRIL 7, 1997**

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK . . .

NAME	FIRM OR AGENCY AND ADDRESS
Dan O B Baxter	DAVID B. BAXTER, OD, PA
Amelia Alvarado	A. Alvarado, O.D. Carteret Vision Center
Dan Baxter	Four County Eye Assoc. MHC
Lucia Peel JD	NC Med Society
Gene Edwards	
Christopher Paul Thompson	N.C. Society of Eye Physicians & Surgeons

North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

2 tapes minutes are not saved in computer

Tuesday, April 8, 1997
1327 Legislative Building

10:00 a.m. and 1:00 p.m.

N. Leo Daughtry
Edwin M. "Sandy" Hardy
Co-Chairman

Members Present:

Jerry Braswell	**Martha Alexander**
Gene G. Arnold	**Daniel T. Blue, Jr.**
J. Russell Capps	**Debbie Clary**
J. Sam Ellis	**Theresa H. Esposito**
Milton F. Fitch, Jr.	**Lyons Gray**
Bobby Ray Hall	**Thomas C. Hardaway**
George M. Holmes	**Julia Howard**
Robert C. Hunter	**John W. Hurley**
Margaret M. Jeffus	**Larry T. Justus**
H. M. Michaux, Jr.	**George W. Miller, Jr.**
Richard T. Morgan	**Wilma M. Sherrill**
Gregg Thompson	**Steve Wood**

The House Committee on JUDICIARY I met at 10:00 a.m. on Tues., April 8, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry and Edwin M. "Sandy" Hardy presiding.

Rep. Hardaway requested to be excused in accordance with House Rule 24.1

Committee Counsels Steven Rose and Karen Cochrane-Brown were present to assist the Committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

House Pages Phillip Washington of Robeson County and Julia Hirschberg of Henderson County were present to assist the Committee.

Chairman Daughtry resumed deliberation on House Bill 527 OPTOMETRY CHANGES.

Committee Counsel Steven Rose prepared a MEMORANDUM on H.B. 537 which was distributed and is attached and made a part of these minutes.

Rep. Gray was recognized to ask staff question regarding the scope of present law. Rep. Gray sent forth an amendment and was recognized to explain his amendment to "ESTABLISH A JOINT FORMULARY COMMISSION," and he made a motion to accept the amendment.

Rep. Justus introduced a Policy Document of the *Pharmaceutical Research and Manufacturers of America* a copy of which is attached and made a part of these minutes, and Rep. Justus spoke against Mr. Gray's amendment.

Rep. Gray's amendment failed on a vote count taken by the Chairman.

Rep. Holmes was recognized to bring forth an amendment designed to include language which requires Optometrists to have the same course of study in pharmacology as that required of medical doctors. Rep. Holmes moved the adoption of his amendment.

Rep. Justus spoke against the amendment.

The Committee was in recess until 1:00 p.m.

The Chairman recognized Rep. Holmes who withdrew his amendment and offered a substitute amendment, a copy of which is attached and made a part of these minutes.

Rep. Holmes called the question, and a motion having been made to call the question, the Committee voted to call the question.

The question having been called, the yeas and nays having been asked, the Chairman ordered the clerk to call the roll on the amendment to House Bill 527

Roll Call
(On Agreeing to an amendment proposed by Rep. Holmes.)

Alexander	**Y**
Arnold	**-**
Blue	**-**
Braswell	**N**
Capps	**N**
Clary	**N**
Crawford	**-**
(Daughtry)	**Y**
Ellis	**Y**
Esposito	**Y**
Fitch	**N**

Gray	Y
Hall	N
Hardaway	N
(Hardy)	N
Holmes	Y
Hunter	N
Hurley	Y
Jeffus	N
Justus	N
Micheux	N
Miller	Y
Morgan	Y
Sherrill	N
Thompson	Y
(Howard)	N
(Wood)	N

The amendment was defeated by a vote of 10 to 14.

Rep. Sherrill moved the adoption of H.B. 527, with a favorable report.

Rep. Hunter was recognized, and moved to directly transcribe the language of G.S. 90-118 into the language of the proposed General Statutes. The Chairman questioned the need to print in the bill language of exiting law.

Rep. Sherrill called the question. The question having been called, the Chairman asked for a vote on calling the question. The Committee voted not to call the question.

The Chairman recognized Rep. Hunter, who repeated his motion to amend the measure by including the language to the existing law. (G.S. 90-118(e)).

The Committee voted to accept the amendment.

Rep. Sherrill moved to roll the amendment into a Proposed Committee Substitute, and that the Committee Substitute be approved with a favorable report, unfavorable to the original bill., and that the vote on the Committee Substitute be made by a voice vote.

Rep. Ellis was recognized to make an amendment, on page 3, line 18, to strike the phrase "a society" to read "the society."

Chairman Daughtry ordered such an technical amendment be made, should the bill be approved.

Roll Call

(On Agreeing to report favorably to the Proposed Committee Substitute, unfavorable to the original.)

Alexander	**N**
Arnold	**-**
Blue	**-**
Braswell	**Y**
Capps	**Y**
Clary	**Y**
Crawford	**-**
(Daughtry)	**Y**
Ellis	**N**
Esposito	**N**
Fitch	**Y**
Gray	**N**
Hall	**Y**
Hardaway	**Y**
(Hardy)	**Y**
Holmes	**N**
Hunter	**Y**
Hurley	**Y**
Jeffus	**Y**
Justus	**Y**
Micheux	**Y**
Miller	**Y**
Morgan	**N**
Sherrill	**Y**
Thompson	**Y**
(Howard)	**Y**
(Wood)	**Y**

The Committee voted to approve the Committee Substitute to House Bill 527 by a vote of 18 to 6.

The Committee adjourned at 1:50 p.m.

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE, COMMITTEE CLERK

ATTACHMENTS:

HOUSE COMMITTEE ON JUDICIARY I

Tuesday, April 8, 1997
Room 1327 LB
10:00 a.m.

OPENING REMARKS:
Representative N. Leo Daughtry, Chairman
Judiciary I Committee

BILLS TO BE CONSIDERED:

H 527 OPTOMETRY CHANGES
Sponsor: Representative Justus

H 138 DMV ENFORCEMENT AUTHORITY
Sponsor: Representative Justus

H 539 COLLATERAL SOURCE EVIDENCE
Sponsor: Representative Neely

ADJOURNMENT

PCS 527

North Carolina House of Representatives
JUDICIARY I COMMITTEE

Roll Call

(On Agreeing to report favorably to the Proposed Committee Substitute, unfavorable to the original.)

Alexander	N
Arnold	-
Blue	-
Braswell	Y
Capps	Y
Clary	Y
Crawford	-
(Daughtry)	Y
Ellis	N
Esposito	N
Fitch	Y
Gray	N
Hall	Y
Hardaway	Y
(Hardy)	Y
Holmes	N
Hunter	Y
Hurley	Y
Jeffus	Y
Justus	Y
Micheux	Y
Miller	Y
Morgan	N
Sherrill	Y
Thompson	Y
(Howard)	Y
(Wood)	Y

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 527
Proposed Committee Substitute H527-PCS7196

Short Title: Optometry Changes. (Public)

Sponsors:

Referred to:

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE ROLE OF OPTOMETRISTS IN MEDICAL COST CONTAINMENT THROUGH REVISION OF THE HOSPITAL PRIVILEGES LAW, TO REPEAL THE REQUIREMENT FOR AN OPTOMETRIST TO COLLABORATE WITH A PHYSICIAN IN THE USE OR PRESCRIPTION OF CERTAIN PHARMACEUTICAL AGENTS, TO ESTABLISH PEER REVIEW FOR OPTOMETRISTS, AND TO ESTABLISH AN OPTOMETRIST PRIVILEGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-114 reads as rewritten:

"**§ 90-114. Optometry defined.**

Any one or any combination of the following practices shall constitute the practice of optometry:

(1) The examination of the human eye by any method, other than surgery, to diagnose, to treat, or to refer for consultation or treatment any abnormal condition of the human eye and its adnexa; or

(2) The employment of instruments, devices, pharmaceutical agents and procedures, other than surgery, intended for the purposes of investigating, examining, treating, diagnosing or correcting visual defects or abnormal conditions of the human eye or its adnexa; or

(3) The prescribing and application of lenses, devices containing lenses, prisms, contact lenses, orthoptics, vision training,

pharmaceutical agents, and prosthetic devices to correct, relieve, or treat defects or abnormal conditions of the human eye or its adnexa.

~~Provided, however, in using or prescribing pharmaceutical agents, other than topical pharmaceutical agents within the definition hereinabove set out which are used for the purpose of examining the eye, the optometrist so using or prescribing shall communicate and collaborate with a physician duly licensed to practice medicine in North Carolina designated or agreed to by the patient.~~"

Section 2. G.S. 131E-85 reads as rewritten:

"**§ 131E-85. Hospital privileges and procedures.**

(a) The granting or denial of privileges to practice in hospitals to physicians licensed under Chapter 90 of the General Statutes, Article 1, ~~dentists~~ dentists, optometrists, and podiatrists and the scope and delineation of such privileges shall be determined by the governing body of the hospital on a non-discriminatory basis. Such determinations shall be based upon the applicant's education, training, experience, demonstrated competence and ability, and judgment and character of the applicant, and the reasonable objectives and regulations of the hospital, including, but not limited to appropriate utilization of hospital facilities, in which privileges are sought. Nothing in this Part shall be deemed to mandate hospitals to grant or deny to any such individuals or others privileges to practice in hospitals, or to offer or provide any type of care.

(b) The procedures to be followed by a licensed hospital in considering applications of ~~dentists~~ dentists, optometrists, and podiatrists for privileges to practice in such hospitals shall be similar to those applicable to applications of physicians licensed under Chapter 90 of the General Statutes, Article 1. Such procedures shall be available upon request.

(c) In addition to the granting or denial of privileges, the governing body of each hospital may suspend, revoke, or modify privileges.

(d) All applicants or individuals who have privileges shall comply with all applicable medical staff bylaws, rules and regulations, including the policies and procedures governing the qualifications of applicants and the scope and delineation of privileges.

(e) The Department shall not issue or renew a license under this Article unless the applicant has demonstrated that the procedures followed in determining hospital privileges are in accordance with this Part and rules of the Department."

Section 3. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 6A.

"Optometry Peer Review.

"**§ 90-127.4. Peer review agreements.**

(a) The North Carolina State Board of Examiners in Optometry may, under rules adopted by the Board in compliance with Chapter 150B of the General Statutes, enter into agreements with the North Carolina State Optometric Society (Society), for the purpose of conducting peer review activities. Peer review activities to be covered

by such agreements shall be limited in peer review proceedings to review of clinical outcomes as they relate to the quality of health care delivered by optometrists licensed by the Board.

(b) Peer review agreements shall include provisions for the Society to receive relevant information from the Board and other sources, provide assurance of confidentiality of nonpublic information and of the review process, and make reports to the Board. Peer review agreements shall include provisions assuring due process.

(c) Any confidential patient information and other nonpublic information acquired, created, or used in good faith by the Society pursuant to this section shall remain confidential and shall not be subject to discovery or subpoena in a civil case.

(d) Peer review activities conducted in good faith pursuant to any agreement under this section are deemed to be State directed and sanctioned and shall constitute State action for the purposes of application of antitrust laws. The Board shall be responsible for legal fees arising from peer review activities."

Section 4. Article 7 of Chapter 8 of the General Statutes is amended by adding the following new section to read:

"**§ 8-53.9. Optometrist/patient privilege.**

No person licensed pursuant to Article 6 of Chapter 90 of the General Statutes shall be required to disclose any information that may have been acquired in rendering professional optometric services, except that the presiding judge of a superior or district court may compel this disclosure, if, in the court's opinion, disclosure is necessary to a proper administration of justice and disclosure is not prohibited by other statute or rule."

Section 4.1. G.S. 90-118(e) reads as rewritten:

"(e) The Board shall not license any person to practice optometry in the State of North Carolina beyond the scope of the person's educational training as determined by the Board. No optometrist presently licensed in this State shall prescribe and use pharmaceutical agents in the practice of optometry unless and until he (i) has submitted to the Board evidence of satisfactory completion of all educational requirements established by the Board to prescribe and use pharmaceutical agents in the practice of optometry and (ii) has been certified by the Board as educationally qualified to prescribe and use pharmaceutical agents.

Provided, however, that no course or courses in pharmacology shall be approved by the Board unless (i) taught by an institution having facilities for both the didactic and clinical instruction in pharmacology and which is accredited by a regional or professional accrediting organization that is recognized and approved by the Council on Postsecondary Accreditation or the United States Office of Education and (ii) transcript credit for the course or courses is certified to the Board by the institution as being equivalent in both hours and content to those courses in pharmacology required by the other licensing boards in this Chapter whose licensees or registrants are permitted the use of pharmaceutical agents in the course of their professional practice."

Section 5. This act is effective when it becomes law.

North Carolina General Assembly
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April 1, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **House Bill 527; Optometry changes**

House Bill 527 makes changes in the laws governing optometrists. The bill removes the requirement that a physician participate in the prescribing of pharmaceutical agents; permits hospital privileges to be granted to optometrists; authorizes peer review for optometrists; and provides for confidentiality of communications between optometrists and patients.

Section 1 amends G.S. 90-114 by removing the requirement that an optometrist prescribing or using pharmaceutical agents other than topical agents used in examining the eye must collaborate with a licensed physician.

Section 2 amends G.S 131E-85, one of the sections of the Hospital Licensure Act that deals with hospital privileges. It permits hospital privileges to be extended to optometrists. Presently, such privileges are limited to physicians, dentists, and podiatrists. ("Dentists" is struck through and reprinted because a comma is added.)

Section 3 amends Chapter 90 by adding a new Article 6A providing for Optometry Peer Review. It authorizes the North Carolina State Board of Examiners in Optometry to enter into agreements with the North Carolina State Optometric Society (Society) for conducting peer review activities related to the quality of health care delivered by optometrists. Such agreements shall include provisions for the Society to receive relevant information, to provide assurance of confidentiality of nonpublic information and the review process, and to require due process. Confidential patient information and other nonpublic information acquired, created, or used by the Society remains confidential and is not discoverable in a civil case. Peer review activities

conducted in good faith are deemed state directed and sanctioned and constitute state action for the purpose of anti-trust law. The Board is responsible for legal fees arising from peer review activities. (Should this be clarified as to whose legal fees are referred to?)

Section 4 amends Article 7 of Chapter 8 to add a new section providing that optometrists may not be compelled to disclose information acquired in rendering professional optometric services except where a judge deems such disclosure necessary to the proper administration of justice and such disclosure is not prohibited by another statute or rule.

The act is effective when it becomes law.

H527-SMRL-001

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 527

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H527-ARL-001 Page 1 of __

Date_____,1997

Comm. Sub. [ ]
Amends Title [YES]

Representative

moves to amend the bill on page 1, line 6, by inserting the following after the word "AGENTS,": "TO ESTABLISH A JOINT FORMULARY COMMISSION,"; and

on page 2, lines 12 through 16 by rewriting those lines to read:
"Provided, however, in using or prescribing pharmaceutical agents, other than ~~topical~~ pharmaceutical agents ~~within the definintion hereinabove set out which are used for the purpose of examining the eye,~~ listed in the formulary adopted by the Joint Formulary Commission under G.S. 90-114.2, ~~or~~ the optometrist so using or prescribing shall communicate and collaborate with a physician duly licensed to practice medicine in North Carolina designated or agreed to by the patient.'"; and

on page 2, between lines 16 and 17, by inserting the following language:

"Section 1.1. Article 6 of Chapter 90 of the General Statutes is amended by adding a new section to read:

'**§ 90-114.1. Joint Formulary Commission established.**

(a) The Joint Formulary Commission is created as an agency of the State. The Commission consists of seven members appointed as follows:

(1) Three optometrists appointed by the North Carolina State Board of Examiners in Optometry.

(2) Three physicians appointed by the North Carolina Medical Board, one of whom is an internal medicine specialist.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 527

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H527-ARL-001

(3) One pharmacist with a doctorate in pharmacology appointed by the North Carolina Board of Pharmacy.

All members must be licensed to practice in and be residents of North Carolina.

(b) The terms of the first appointees to the Joint Formulary Commission are as follows:

(1) One optometrist and one physician shall each serve a term expiring June 30, 1998.

(2) One optometrist and one physician shall each serve a term expiring June 30, 1999.

(3) One optometrist, one physician, and the pharmacist shall each serve terms expiring June 30, 2000.

Thereafter, members shall serve three year terms. Members may be reappointed. The members shall elect a chair from their membership. The first chair shall serve a term expiring June 30, 1998. Thereafter, the chair shall be elected for a one year term.

(c) Chapter 150B of the General Statutes governs the adoption of rules by the Joint Formulary Commission.

(d) The expenses of the Joint Formulary Commission shall be paid by the appointing boards in proportion to the number of members they are authorized to appoint.'

Section 1.2. Article 6 of Chapter 90 of the General Statutes is amended by adding a new section to read:

'**§ 90-114.2. Duties of the Joint Formulary Commission.**

(a) The Joint Formulary Commission shall adopt a formulary of pharmaceutical agents that can be prescribed by an optometrist in the practice of optometry without communication and collaboration with a licensed physician. In developing the formulary, the Commission shall consider the education and training of optometrists relating to the use of pharmaceutical agents.

(b) The Joint Formulary Commission shall review the formulary at least two times per calendar year and revise it as necessary.'

Policy PhRMA

FORMULARIES IN GOVERNMENT PROGRAMS

Issue: In 1993, Congress decided to allow state Medicaid programs to re-establish restrictive formularies for prescription drugs. Such formularies limit the choice of medicines a physician may prescribe and a patient may receive to those specifically selected and approved for use by state bureaucrats. The primary rationale for formularies is that they save money.

PhRMA Position: PhRMA opposes Government-imposed formularies on the grounds that they can impair patient health by limiting access to pharmaceuticals and that -- while they may save drug costs -- they can boost overall healthcare expenditures by increasing the use of other, more expensive medical treatments.

Discussion: The most appropriate medicine for one patient may not be appropriate for another. For example, a 1993 study by the National Pharmaceutical Council showed that ethnic and racial differences may affect responses to medicines. Because patient needs vary, a patient's physician -- not a state bureaucrat or a state-run board -- is the best one to choose the most appropriate medicine for each individual patient.

Studies have shown that attempts to restrict access to drugs, by whatever means, are counterproductive -- increasing rather than decreasing healthcare costs. A study by Stephen B. Soumerai, Associate Professor at Harvard Medical School, and his team published in the September 8, 1994 New England Journal of Medicine showed that, when New Hampshire limited schizophrenia patients in its Medicaid program to three prescriptions a month, the state saved about $5 per patient per month on prescription-drug costs. However, the costs for visits to mental-health clinics, emergency care, and other services shot up an average of $139 per patient per month.

This finding substantiated the results of an earlier Soumerai study in the October 10, 1991 New England Journal of Medicine, which showed that New Hampshire's prescription-drug cap increased costly nursing-home admissions.

Government formularies often exclude the newest, most effective drugs. A study by Professor Henry G. Grabowski of Duke University showed that, in the 1980s, it took an average of 20 months following FDA approval for a typical new drug to be included on a Medicaid formulary.

Many groups have opposed Government formularies. These include the National Black Caucus of State Legislators, the National Depressive and Manic Depressive Association, the National Medical Association, the National Multiple Sclerosis Society, the National Black Nurses Association, the Lupus Foundation of America, the National Urban League, the Allergy and Asthma Network, the National Kidney Cancer Association, and the National Council on Aging.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 527

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H527-ARL-015 Page 1 of __

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

Representative Holmes

moves to amend the bill on page 2, line 16, by rewriting that line to read:

"~~medicine in North Carolina designated or agreed to by the patient.~~ The use or prescription of pharmaceutical agents shall be pursuant to the provisions of G.S. 90-114.1.'

Section 2.1. Chapter 90 of the General Statutes is amended by adding the following new section to read:

'§ 90-114.1. Education and standard of care for use of pharmaceutical agents.

(a) In order to use or prescribe pharmaceutical agents in the practice of optometry, and optometrists must have satisfactorily completed the educational requirements established by rules adopted by the North Carolina State Board of Examiners in Optometry. These educational requirements must be provided by an entity approved by the Board and must include an emphasis on the examination, diagnosis, and treatment of the human eye and adnexa. The rules of the Board shall require successful completion of accredited academic and clinical courses in pharmacology and related pathology that are approved by the Board and are determined by the Board to be equivalent in the total number of classroom hours to the requirements for other healthcare professionals who may be licensed to use or prescribe pharmaceutical agents in this State.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 527

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H527-ARL-015 Page 2 of __

(b) An optometrist using or prescribing pharmaceutical agents is subject to the same standards of professional care and judgment as persons practicing ophthalmology pursuant to Article I of Chapter 90 of the General Statutes.

(c) The Board shall adopt temporary rules to implement the provisions of this section by October 1, 1997.'".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 527

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H527-ARL-016 Page 1 of __

Date_____,1997

Comm. Sub. [ ]
Amends Title [YES]

Representative Holmes

moves to amend the bill on page 1, line 6, by adding the following language after the comma:

"TO ESTABLISH STANDARDS FOR THE USE OR PRESCRIPTION OF PHARMACEUTICAL AGENTS BY OPTOMETRISTS,";and

on page 2, line 16, by rewriting that line to read:

"~~medicine in North Carolina designated or agreed to by the patient.~~ The use or prescription of pharmaceutical agents shall be pursuant to the provisions of G.S. 90-114.1.'

Section 1.1. Chapter 90 of the General Statutes is amended by adding the following new section to read:

'§ 90-114.1. Education and standard of care for use of pharmaceutical agents.

(a) In order to use or prescribe pharmaceutical agents in the practice of optometry, and optometrists must have satisfactorily completed the educational requirements established by rules adopted by the North Carolina State Board of Examiners in Optometry. These educational requirements must be provided by an entity approved by the Board and must include an emphasis on the examination, diagnosis, and treatment of the human eye and adnexa. The rules of the Board shall require successful completion of accredited academic and clinical courses in pharmacology and related pathology that are approved by the Board and are determined by the Board to be equivalent in the total number of classroom hours to the

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 527

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H527-ARL-016

requirements for other healthcare professionals who may be licensed to use or prescribe pharmaceutical agents in this State.

(b) An optometrist using or prescribing pharmaceutical agents is subject to the same standards of professional care and judgment as persons practicing ophthalmology pursuant to Article I of Chapter 90 of the General Statutes.'"; and

further amends the bill on page 3, line 33, by rewriting that line to read:

"Section 5. The North Carolina State Board of Examiners in Optometry is authorized to adopt rules to implement the provisions of G.S. 90-114.1. If permanent rules are not in effect by July 1, 1999, the Board is authorized to adopt temporary rules that shall expire when permanent rules become effective.

Section 6. Section 1 and Section 1.1 of this act become effective July 1, 1999. The remainder of this act is effective when it becomes law."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

JUDICIARY I 4/8/97 10am

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
1.	Leadership Pearn Co.
2.	Leadership Person Co.
3.	Leadership Person County
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
22.	
23.	
24.	NCPA
25.	DMV
26.	NCSOS
27.	Optometrist
28.	Optometrist
29.	Insurance
30.	O.D.
31.	O.D.
	NCATE

32.	Judy Mitchell	Optometry Board
33.	JC Gagnon	Optometrist
34.	Gilbert E. Sellers O.D	Optometrist
35.	Joseph F. Wiggins O.D.	NCSOS Member
36.	Marty Clayton	Leadership Person County
37.	Ann Case	DEHNR
38.	Leslie Bullock	NCCBI
39.	Jim Anderson	NCSOS
40.	Doug Kelly	NCSOS
41.	Champ Robinson	NCSOS
42.	L. Gary Bumgarner, O.D.	NCSOS
43.	John D. Mills, OD	NCSOS
44.	Sue A. Faucher	NCSOS
45.	[illegible]	[illegible]
46.	Amy Jo Butler	Smith Anderson
47.	Linda Lee	NC Medical Society
48.	Gene Upchurch	CP&L
49.	Gene Edwards	People
50.	Stephen Keene	NC Med Soc.
	Alan Skipper	NC Med Soc
	Nancy Bradley	NCCBI
	Andrew Cline	John Locke Foundation
	Stan Williams	DHC & NC
	Walter Riddell	DHC
	Andy Ellen	NC Farm Bureau
	Don McCorquodale	NCRMA

North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

1 tape

Thursday, April 10, 1997
10:00 a.m.
1327 Legislative Building

N. Leo Daughtry
Edwin M. Hardy
Co-Chairmen

Members Present

Martha Alexander	Gene Arnold
Daniel Blue	J. Russell Capps
Debbie Clary	J. Sam Ellis
Lyons Gray	Bobby Ray Hall
Thomas C. Hardaway	Julia Howard
Robert C. Hunter	John W. Hurley
Margaret M. Jeffus	Larry T. Justus
H. M. Michaux, Jr.	Wilma Sherill
Gregg Thompson	Steve Wood

The House Committee on JUDICIARY I met at 10:00 a.m. on Thursday, April 10, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry presiding.

Committee counsels Steven Rose and Karen Cochrane-Brown were present to assist the committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

Chairman Daughtry introduced House Pages Jamie Southerland and Becky Blackman of Johnston County who were present to assist the committee.

The Chair brought before the Committee House Bill 485, on FUNERAL ESTABLISHMENTS/AB., and introduced the bill's sponsor, Rep. Dockham, for the purpose of explaining his proposal.

Committee Counsel Steven Rose prepared a memorandum on H.B. 485, which is attached an made a part of these minutes.

On a motion made by Rep. Capps, the Committee approved, for the purpose of discussion, a Proposed Committee Substitute to H.B. 485, a copy of which is attached and made a part of the minutes.

Rep. Dockham introduced H.B. 485 as making "various amendments to Chapter 90 of the General Statutes that effect the regulation and practice of funeral service, cremations and funeral and burial trust funds. It also amends Article 16, Chapter 138 with regard to disposition of bodies."

With the chairman's permission, Rep. Dockham asked Committee Counsel Rose to introduce various technical amendments addressed by the Proposed Committee Substitute.

Also present to assist the Committee were Jim Swaringen and Bill Hoake of the Board of Mortuary Science, Bill Hoake and Larry Steigel, executive director of the North Carolina Funeral Directors Association.

(Rep. Hardaway, pursuant to rule 24.1, was excuse from voting on the measure)

On a motion by Rep. Hurley, the Committee reported favorably the Proposed Committee Substitute to H.B. 485, unfavorable as to the original bill, with the recommendation the Proposed Committee Substitute be re-referred to the Committee on FINANCE.

Rep. Alexander was recognized to introduced for deliberation House Bill 560, DIVORCE EDUCATION.

Committee Counsel Steven Rose prepared a memorandum on H.B. 560, which is attached an made a part of these minutes.

Rep. Ellis moved to amend H.B. 560 as detailed in a document numbered "H560-ARL-002," which is attached and made a part of these minutes, and also as stated in a document numbered "H560-ARL-001," also attached and made a part of these minutes. There was no objection, and the bill was set forth before the Committee as amended.

Rep. Alexander, explaining the bill as being similar to a measure passed through the N.C. House in a previous session "directs the Administrative Office of the Courts to develop a program for separated or divorcing couples with children, focusing on the needs of children." Rep. Alexander confirmed that the proposal envisioned a "pilot program," and that a pending Fiscal Impact Note" was not yet prepared, though it had been requested.

Rep. Capps moved the bill be amended on page 2, line 28, removing the word "shall" to "may." The amendment was not adopted.

Chairman Hardy asked if any statements spoken during the course of mandated or voluntary attendance in "divorce education classes," as set

forth in the measure, could be used in a court proceeding. Counselor Rose's opinion was "Yes." "Whoever teaches this course can be called into court to testify in a custody trial, is that correct?" Chairman Hardy asked. Again, Counselor Rose's opinion was that this was true.

On a motion by Rep. Ellis, the amended bill was rolled into a Proposed Committee Substitute and given a favorable report, unfavorable as to the original bill, with the recommendation that the Proposed Committee Substitute be re-referred to the Committee on APPROPRIATIONS.

Rep. Justus was recognized to explain House Bill 138, D.M.V. ENFORCEMENT AUTHORITY. Rep. Ellis moved to accept a Proposed Committee Substitute to H.B. 138, for the purpose of discussion.

Committee Counsel Karen Cochrane-Brown prepared a MEMO on H.B. 138 which was distributed, a copy of which is attached and made a part of these minutes.

H.B. 138, according to Rep. Justus emanated from the Justice and Public Safety and Crime Control Study Commission and had already received a favorable report from the TRANSPORTATION Committee before being re-referred, as directed, to JUDICIARY I. Those on the Study Commission were, according to Rep. Justus, were Reps. Holmes, Creech, Esposito, Justus, Kizer and Thompson from the HOUSE *of* REPRESENTATIVES and Senators Odom, Hartsell, Parnell, Ballance, Purdue and Plyler.

The question given considerable time by the commission was, according to Rep. Justus: Should D.M.V. be given more authority. The determination of the commission was that sworn D.M.V. officers be given arrest powers, i.e. "Full arrest authority within their jurisdiction."

Rep. Justus moved to amend the bill in accordance with the document numbered "H138-ALL-001," a copy of which is attached and made a part of these minutes.

Rep. Ellis asked whether it might be more prudent to merge the D.M.V. and the Highway Patrol. Jerry Arwood of the D.M.V. addressed the amendment, saying the amendment was a procedural matter given the D.M.V. authority

to arrest subjects apprehended within their jurisdictional authority without waiting for Highway Patrol officers to perform searches normally carried out within that agency's jurisdictional authority. The role and scope of the two agencies, Arwood said, were distinct and separate.

The Committee Adjourned at 10:55 a.m.

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

April 14

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I** .

☐ Committee Substitute for
H.B. 485 A BILL TO BE ENTITLED AN ACT TO AMEND VARIOUS STATUTES RELATING TO THE PRACTICE OF FUNERAL SERVICE, CREMATIONS, AND FUNERAL AND BURIAL TRUST FUNDS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

X With a favorable report as to committee substitute bill, unfavorable as to original bill , and recommendation that the committee substitute bill be re-referred to the Committee on **FINANCE**.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

April 14

HOUSE BILL 485

Short Title: Funeral Establishments/AB. (Public)

Sponsors: Representative Dockham.

Referred to: Judiciary I, if favorable, Finance.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS STATUTES RELATING TO THE PRACTICE OF FUNERAL SERVICE, CREMATIONS, AND FUNERAL AND BURIAL TRUST FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-210.20(e1) reads as rewritten:

"(e1) 'Funeral chapel' means a chapel or other facility separate from the funeral establishment premises for the reposing of dead human bodies, visitation or funeral ceremony, which is owned, operated, or maintained by a funeral ~~establishment,~~ establishment or other licensee under this Article, and which does not use the word 'funeral' in its name, on a sign, in a directory, in advertising or in any other manner; in which or on the premises of which there is not displayed or offered for sale any caskets or other funeral merchandise; in which or on the premises of which there is not located any funeral business office or a preparation room; in which or on the premises of which no funeral sales, financing, or arrangements are made; and which no owner, operator, employee, or agent thereof represents the chapel to be a funeral establishment."

Section 2. G.S. 90-210.23(d) reads as rewritten:

"(d) Every person licensed by the Board and every resident trainee shall furnish all information required by the Board reasonably relevant to the practice of the profession or business for which ~~he~~ the person is a licensee or resident ~~trainee, and every~~ trainee. Every funeral service establishment and its records and every place of business where the practice of funeral service or embalming is carried on and its records ~~thereof~~ shall be subject to inspection by the Board during normal hours of

operation and periods shortly before or after normal hours of operation and shall furnish all information required by the Board reasonably relevant to the business therein conducted. Every licensee, resident ~~trainee~~ trainee, embalming facility, and funeral service establishment shall provide the Board with ~~his or its~~ a current post-office address which shall be placed on the appropriate register and all notices required by law or by any rule or regulation of the Board to be mailed to any licensee, resident ~~trainee~~ trainee, embalming facility, or funeral service establishment shall be validly given when mailed to the address so provided.

The Board is empowered to hold hearings in accordance with the provisions of this Article and of Chapter 150B to subpoena witnesses and to administer oaths to or receive the affirmation of witnesses before the Board."

Section 3. G.S. 90-210.23(e) reads as rewritten:

"(e) The Board is empowered to regulate and inspect, according to law, funeral service ~~establishments,~~ establishments and embalming facilities, their ~~operation~~ operation, and the licenses under which they are operated, and to enforce as provided by law the rules, ~~regulations~~ regulations, and requirements of the Division of Health Services and of the city, ~~town~~ town, or county ~~wherein any such~~ in which the funeral service establishment or embalming facility is maintained and operated. Any funeral establishment or embalming facility ~~which,~~ that, upon inspection, is found not to meet all of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain that the deficiency or other violation has been corrected. The Board is also empowered to enforce compliance with the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time."

Section 4. G.S. 90-210.24(b)(1) reads as rewritten:

"(1) Enter the office, establishment or place of business of any funeral service licensee, funeral director or embalmer in North Carolina, and any office, establishment or place in North Carolina where the practice of funeral service or embalming is carried on, or where that practice is advertised as being carried on, or where a funeral is being ~~conducted,~~ conducted or a body is being embalmed, to inspect the records, office, ~~or establishment,~~ establishment, or facility, or to inspect the practice being carried on or license or registration of any licensee and any resident trainee operating therein;"

Section 5. G.S. 90-210.25(a)(1) reads as rewritten:

"(1) To be licensed for the practice of funeral directing under this Article, a person must:

a. Be at least 18 years of ~~age,~~ age.

b. Be of good moral ~~character,~~ character.

c. Have completed a minimum of 32 semester hours or 48 quarter hours of instruction in a course of study including the subjects set out in ~~items~~ item e.1. ~~and 2.~~ of this subsection in a mortuary science college approved by the

Board, or be a graduate of a mortuary science college approved by the Board.

d. Have completed 12 months of resident traineeship as funeral director, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this ~~subsection, and~~ subsection.

e. Have passed an oral or written funeral director examination on the following subjects:

1. ~~Basic health sciences, including microbiology, hygiene, and public health,~~ Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.

~~2. Funeral service administration, including accounting, psychology, funeral principles and directing, and~~

3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies."

Section 6. G.S. 90-210.25(a)(2) reads as rewritten:

"(2) To be licensed for the practice of embalming under this Article, a person must:

a. Be at least 18 years of ~~age,~~ age.

b. Be of good moral ~~character,~~ character.

c. Be a graduate of a mortuary science college approved by the ~~Board,~~ Board.

d. Have completed 12 months of resident traineeship as an embalmer pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this ~~subsection, and~~ subsection.

e. Have passed an oral or written embalmer examination on the following subjects:

1. ~~Basic health sciences, including anatomy, chemistry, microbiology, pathology and forensic pathology,~~ Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.

~~2. Funeral service sciences, including embalming and restorative art, and~~

3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies."

Section 7. G.S. 90-210.25(a)(3) reads as rewritten:

"(3) To be licensed for the practice of funeral service under this Article, a person must:

a. Be at least 18 years of ~~age,~~ age.

b. Be of good moral ~~character,~~ character.

c. Be a graduate of a mortuary science college approved by the ~~Board,~~ Board.

d. Have completed 12 months of resident traineeship as a funeral service licensee, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this ~~subsection, and~~ subsection.

e. Have passed an oral or written funeral service examination on the following subjects:

1. ~~Basic health sciences, including anatomy, chemistry, microbiology, pathology, forensic pathology hygiene and public health,~~ Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.

2. ~~Funeral service sciences, including embalming and restorative art,~~ Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.

~~3. Funeral service administration, including accounting, psychology, funeral principles and directing, and~~

4. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies."

Section 8. G.S. 90-210.25(a)(5) reads as rewritten:

"(5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own.

All licenses shall be signed by the president and secretary of the Board and the seal of the Board affixed thereto. All licenses shall be issued, renewed or duplicated for a period not exceeding one year upon payment of the renewal fee, and all licenses, renewals or duplicates thereof shall expire and terminate the thirty-first day of December following the date of their issue unless sooner revoked and canceled; provided, that the date of expiration may be changed by unanimous consent of the Board and upon 90 days' written notice of such change to all persons licensed for the practice of funeral directing, embalming and funeral service in this State.

The holder of any license issued by the Board who shall fail to renew the same on or before January 31 of the calendar year for which the license is to be renewed shall have forfeited and

surrendered the license as of that date. No license forfeited or surrendered pursuant to the preceding sentence shall be reinstated by the Board unless it is shown to the Board that the applicant has, throughout the period of forfeiture, engaged full time in another state of the United States or the District of Columbia in the practice to which his North Carolina license applies and has completed for each such year continuing education substantially equivalent in the opinion of the Board to that required of North Carolina licensees; or has completed in North Carolina a total number of hours of accredited continuing education computed by multiplying five times the number of years of forfeiture; or has passed the North Carolina examination for the forfeited license. No additional resident traineeship shall be required. The applicant shall be required to pay all delinquent annual renewal fees and a reinstatement fee. The Board may waive the provisions of this section for an applicant for a forfeiture which occurred during his service in the armed forces of the United States provided he applies within six months following severance therefrom.

All licensees now or hereafter licensed in North Carolina shall take courses of study in subjects relating to the practice of the profession for which they are licensed, to the end that new techniques, scientific and clinical advances, the achievements of research and the benefits of learning and reviewing skills will be utilized and applied to assure proper service to the public.

As a prerequisite to the annual renewal of a license, the licensee must complete, during the year immediately preceding renewal, at least five hours of continuing education courses, approved by the Board prior to ~~enrollment; except that for renewals for calendar year 1980 the required length of study shall be a total of 15 hours in the three years immediately preceding January 1, 1980.~~ enrollment. A licensee who completes more than five hours in a year may carry over a maximum of five hours as a credit to the following year's requirement. A licensee who is issued an initial license on or after July 1 does not have to satisfy the continuing education requirement for that year.

The Board shall not renew a license unless fulfillment of the continuing education requirement has been certified to it on a form provided by the Board, but the Board may waive this requirement for renewal in cases of certified illness or undue hardship or where the licensee lives outside of North Carolina and does not practice in North Carolina, and the Board shall waive the requirement for all licensees who have been licensed in North Carolina for a continuous period of 25 years or more, and for all licensees who are, at the time of renewal, members of the General

Assembly. The waiver for 25-year licensees shall apply only to those licensees who, before January 1, 1998, are licensed, begin a course of study in a mortuary science college or a trainee program, or make an application for a license.

The Board shall cause to be established and offered to the licensees, each calendar year, at least five hours of continuing education courses in subjects encompassing the license categories of embalming, funeral directing and funeral service. The Board may charge licensees attending these courses a reasonable registration fee in order to meet the expenses thereof and may also meet those expenses from other funds received under the provisions of this Article.

Any person who having been previously licensed by the Board as a funeral director or embalmer prior to July 1, 1975, shall not be required to satisfy the requirements herein for licensure as a funeral service licensee, but shall be entitled to have such license renewed upon making proper application therefor and upon payment of the renewal fee provided by the provisions of this Article. Persons previously licensed by the Board as a funeral director may engage in funeral directing, and persons previously licensed by the Board as an embalmer may engage in embalming. Any person having been previously licensed by the Board as both a funeral director and an embalmer may upon application therefor receive a license as a funeral service licensee."

Section 9. G.S. 90-210.25 is amended by adding a new subsection to read:

"(a1) Inactive Licenses. -- Any person holding a license issued by the Board for funeral directing, for embalming, or for the practice of funeral service may apply for an inactive license in the same category as the active license held. The inactive license is renewable annually. Continuing education is not required for the renewal of an inactive license. The only activity that a holder of an inactive license may engage in is to vote pursuant to G.S. 90-210.18(c)(2). The holder of an inactive license may apply for an active license in the same category, and the Board shall issue an active license if the applicant has completed in North Carolina a total number of hours of accredited continuing education equal to five times the number of years the applicant held the inactive license. No application fee is required for the active license. The holder of an inactive license who returns to active status shall surrender the inactive license to the Board."

Section 10. G.S. 90-210.25(b)(3) reads as rewritten:

"(3) The Board may issue special permits, to be known as courtesy cards, permitting nonresident funeral directors, embalmers and funeral service licensees to remove bodies from and to arrange and direct funerals and embalm bodies in this State, but these privileges shall not include the right to establish a place of business

in or engage generally in the business of funeral directing and embalming in this State. ~~Provided,~~ Except for special permits issued by the Board for teaching continuing education programs and for work in connection with disasters, no special permits may be issued to nonresident funeral directors, embalmers, and funeral service licensees from states that do not issue similar courtesy cards to persons licensed in North Carolina pursuant to this Article."

Section 11. G.S. 90-210.25(d) reads as rewritten:

"(d) Establishment Permit. --

(1) No person, firm or corporation shall conduct, maintain, manage or operate a funeral establishment unless a permit for that establishment has been issued by the Board and is conspicuously displayed in the establishment. Each funeral establishment at a specific location shall be deemed to be a separate entity and shall require a separate permit and compliance with the requirements of this Article.

(2) A permit shall be issued when:

a. It is shown that the funeral establishment has in charge a person, known as a manager, licensed for the practice of funeral directing or funeral service, who shall not be permitted to manage more than one funeral ~~establishment,~~ establishment.

b. The Board receives a list of the names of all part-time and full-time licensees employed by the ~~establishment,~~ establishment.

c. It is shown that the funeral establishment satisfies the requirements of ~~G.S. 90-210.27A, and~~ G.S. 90-210.27A.

d. The Board receives payment of the permit fee.

(3) Applications for funeral establishment permits shall be made on forms provided by the Board and filed with the Board by the owner, a ~~partner~~ partner, a member of the limited liability company, or an officer of the corporation by January 1 of each year, and shall be accompanied by the application fee or renewal fee, as the case may be. All permits shall expire on December 31 of each year.

A penalty for late renewal, in addition to the regular renewal fee, shall be charged for renewal of registration coming after the first day of February.

(4) The Board may suspend or revoke a permit when an owner, ~~partner~~ partner, manager, member, operator, or officer of the funeral establishment violates any provision of this Article or any regulations of the Board, or when any agent or employee of the funeral establishment, with the consent of any person, firm or

corporation operating the funeral establishment, violates any of those provisions, rules or regulations.

(5) Funeral establishment permits are not transferable. A new application for a permit shall be made to the Board within 30 days of a change of ownership of a funeral establishment."

Section 12. G.S. 90-210.25 is amended by adding a new subsection to read:

"(d1) Embalming Outside Establishment. -- An embalmer who engages in embalming in a facility other than a funeral establishment or in the residence of the deceased person shall, no later than January 1 of each year, register the facility with the Board on forms provided by the Board."

Section 13. G.S. 90-210.25(e) reads as rewritten:

"(e) Revocation; Suspension; Compromise; Disclosure. --

(1) Whenever the Board finds that an applicant for a license or a person to whom a license has been issued by the Board is guilty of any of the following acts or omissions and the Board also finds that the person has thereby become unfit to practice, the Board may suspend or revoke the license or refuse to issue or renew the license, in accordance with the procedures set out in Chapter 150B:

a. Conviction of a felony or a crime involving fraud or moral ~~turpitude;~~ turpitude.

b. Fraud or misrepresentation in obtaining or renewing a license or in the practice of funeral ~~service;~~ service.

c. False or misleading advertising as the holder of a ~~license;~~ license.

d. Solicitation of dead human bodies by the licensee, his agents, assistants, or employees; but this paragraph shall not be construed to prohibit general advertising by the ~~licensee;~~ licensee.

e. Employment directly or indirectly of any resident trainee agent, assistant or other person, on a part-time or full-time basis, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular ~~licensee;~~ licensee.

f. The direct or indirect giving of certificates of credit or the payment or offer of payment of a commission by the licensee, his agents, assistants or employees for the purpose of securing ~~business;~~ business.

g. Gross immorality, including being under the influence of alcohol or drugs while practicing funeral ~~service;~~ service.

h. Aiding or abetting an unlicensed person to perform services under this Article, including the use of a picture or name in connection with advertisements or other written material

published or caused to be published by the ~~licensee;~~ licensee.

i. Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed ~~of;~~ of.

j. Violating or cooperating with others to violate any of the provisions of this ~~Article or of~~ Article, the rules and regulations of the ~~Board;~~ Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

k. Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human ~~bodies;~~ bodies.

l. Refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to the custody ~~thereof;~~ thereof.

m. Knowingly making any false statement on a certificate of ~~death;~~ death.

n. Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

In any case in which the Board is entitled to suspend, revoke or refuse to renew a license, the Board may accept from the licensee an offer in compromise to pay a penalty of not more than one thousand dollars ($1,000). The Board may either accept a compromise or revoke or refuse to renew a license, but not both.

(2) Where the Board finds that a licensee is guilty of one or more of the acts or omissions listed in subsection (e)(1) of this section but it is determined by the Board that the licensee has not thereby become unfit to practice, the Board may place the licensee on a term of probation in accordance with the procedures set out in Chapter 150B.

No person licensed under this Article shall remove or cause to be embalmed a dead human body when he has information indicating crime or violence of any sort in connection with the cause of death, nor shall a dead human body be cremated, until permission of the State or county medical examiner has first been obtained. However, nothing in this Article shall be construed to alter the duties and authority now vested in the office of the coroner.

No funeral service establishment shall accept a dead human body from any public officer (excluding the State or county medical examiner or his agent), or employee or from the official of any institution, hospital or nursing home, or from a physician or any person having a professional relationship with a decedent, without having first made due inquiry as to the desires of the ~~next of kin and of the persons who may be chargeable with the funeral expenses of such decedent.~~ persons who have the legal

authority to direct the disposition of the decedent's body. If any ~~such kin be~~ persons are found, ~~his or her~~ their authority and directions shall govern the disposal of the remains of ~~such~~ the decedent. Any funeral service establishment receiving ~~such~~ the remains in violation ~~hereof~~ of this subsection shall make no charge for any service in connection with ~~such~~ the remains prior to delivery of ~~same~~ the remains as stipulated by ~~such kin;~~ the persons having legal authority to direct the disposition of the body. ~~provided, however, this~~ This section shall not prevent any funeral service establishment from charging and being reimbursed for services rendered in connection with the removal of the remains of any deceased person in case of accidental or violent death, and rendering necessary professional services required until the ~~next of kin or the persons chargeable with the expenses~~ persons having legal authority to direct the disposition of the body have been notified.

When and where a licensee presents a selection of funeral merchandise to the public to be used in connection with the service to be provided by the licensee or an establishment as licensed under this Article, a card or brochure shall be directly associated with each item of merchandise setting forth the price of the service using said merchandise and listing the services and other merchandise included in the price, if any. When there are separate prices for the merchandise and services, such cards or brochures shall indicate the price of the merchandise and of the items separately priced.

At the time funeral arrangements are made and prior to the time of rendering the service and providing the merchandise, a funeral director or funeral service licensee shall give or cause to be given to the person or persons making such arrangements a written statement duly signed by a licensee of said funeral establishment showing the price of the service as selected and what services are included therein, the price of each of the supplemental items of services or merchandise requested, and the amounts involved for each of the items for which the funeral establishment will advance moneys as an accommodation to the person making arrangements, insofar as any of the above items can be specified at that time. The statement shall have printed, typed or stamped on the face thereof: 'This statement of disclosure is provided pursuant to the requirements of North Carolina G.S. 90-210.25(e).'"

Section 14. G.S. 90-210.27A reads as rewritten:

"**§ 90-210.27A. Funeral ~~establishments~~.**

(a) Every funeral ~~establishment~~ establishment where embalming is performed shall contain a preparation room which is strictly ~~private;~~ private and of suitable size for the embalming of dead bodies. If embalming is not performed on the premises, adequate provisions shall be made for embalming by a licensed embalmer in an embalming facility. Each preparation ~~room~~ room, whether located in a funeral establishment or in another facility, shall:

(1) Contain one standard type operating ~~table;~~ table.

(2) Contain facilities for adequate ~~drainage;~~ drainage.

(3) Contain a sanitary waste ~~receptacle;~~ receptacle.

(4) Contain an instrument ~~sterilizer;~~ sterilizer.

(5) Have wall-to-wall floor covering of tile, concrete, or other material which can be easily ~~cleaned;~~ cleaned.

(6) Be kept in sanitary condition and subject to inspection by the Board or its agents at all ~~times;~~ times.

(7) Have a placard or sign on the door indicating that the preparation room is ~~private; and~~ private.

(8) Have a proper ventilation or purification system to maintain a nonhazardous level of airborne contamination.

(b) No one is allowed in the preparation room while a dead human body is being prepared except licensees, resident trainees, public officials in the discharge of their duties, members of the medical profession, officials of the funeral home, next of kin, or other legally authorized persons.

(c) Every funeral establishment shall contain a reposing room for dead human bodies, of suitable size to accommodate a casket and visitors.

~~(d) No person who has been convicted of a felony shall:~~

~~(1) Own a funeral establishment if it is owned by a sole proprietorship;~~

~~(2) Be a partner in a funeral establishment if it is owned by a partnership;~~

~~(3) Be an officer, member of the board of directors or owner of twenty-five percent (25%) or more of the stock if it is owned by a corporation.~~

(e) If a funeral establishment is solely owned by a natural person, that person must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a partnership, at least one partner must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a corporation, the president, vice-president, or the chairman of the board of directors must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a limited liability company, at least one member must be licensed by the Board as a funeral director or a funeral service licensee. The licensee required by this subsection must be actively ~~engaged, on a day-to-day basis,~~ engaged in the operation of the funeral establishment.

(f) If a funeral establishment uses the name of a living person in the name under which it does business, that person must be licensed by the Board as a funeral director or a funeral service licensee.

(g) No funeral establishment or other licensee under this Article shall own, operate, or maintain a funeral chapel without first having registered the name, location, and ownership thereof with the Board."

Section 15. G.S. 90-210.28 reads as rewritten:

"**§ 90-210.28. Fees.**

The Board may set and collect fees, not to exceed the following amounts:

Establishment permit	
Application	$250.00
Annual renewal	175.00
Late renewal penalty	100.00

~~Establishment reinspection~~ Reinspection fee	100.00
Courtesy card	
Application	75.00
Annual renewal	50.00
Out-of-state licensee	
Application	200.00
Embalmer, funeral director, funeral service	
Application--North Carolina-Resident	150.00
-Non-Resident	200.00
Annual Renewal-embalmer or funeral director	50.00
-funeral service	100.00
Reinstatement fee	50.00
Resident trainee permit	
Application	50.00
Annual renewal	35.00
Late renewal penalty	25.00
Duplicate license certificate	25.00
Chapel registration	
Application	150.00
Annual renewal	100.00

The Board shall provide, without charge, one copy of the current statutes and regulations relating to Mortuary Science to every person applying for and paying the appropriate fees for licensing pursuant to this Article. The Board may charge all others requesting copies of the current statutes and regulations, and the licensees or applicants requesting additional copies, a fee equal to the costs of production and distribution of the requested documents."

Section 16. G.S. 90-210.41 reads as rewritten:

"**§ 90-210.41. Definitions.**

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

(1) 'Authorizing agent' means a person legally entitled to ~~order~~ order, or carry out the legal order for, the cremation of human remains. An authorizing agent shall be, in order of priority, a spouse, an adult child, a parent, any adult sibling, guardian or close relation of the deceased. In the case of indigents or any other individuals whose final disposition is the responsibility of the State, a public official charged with arranging the final disposition of the deceased, if legally authorized, may serve as the authorizing agent. In the case of individuals whose death occurred in a nursing home or other private institution, and in which the institution is charged with making arrangements for the final disposition of the deceased,

a representative of the institution, if legally authorized, may serve as the authorizing agent.

(2) 'Board' means the North Carolina State Board of Mortuary Science.

~~(3) 'Casket' means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal or other rigid material and ornamented and lined with fabric.~~

(4) 'Closed container' means any container in which cremated remains can be placed and closed in a manner so as to prevent leakage or spillage of cremated remains or the entrance of foreign material.

(5) 'Cremated remains' means all human remains recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions.

(6) 'Cremation' means the technical process, using heat, that reduces human remains to bone fragments.

(7) 'Cremation chamber' means the enclosed space within which the cremation process takes place. Cremation chambers covered by this Article shall be used exclusively for the cremation of human remains.

(8) 'Cremation container' means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet all of the standards established by the rules adopted by the Board.

(9) 'Crematory' means the building or portion of a building that houses the cremation chamber and that may house the holding facility, business office or other part of the crematory business. A crematory must comply with any applicable public health laws and rules and must contain the equipment and meet all of the standards established by the rules adopted by the Board.

(10) 'Crematory authority' means the North Carolina Crematory Authority.

(11) 'Crematory operator' means the legal entity which is licensed by the Board to operate a crematory and perform cremations.

~~(12) 'Holding facility' means an area within or adjacent to the crematory, designated for the retention of human remains prior to cremation. A holding facility must comply with any applicable public health laws and rules and must meet all of the standards established by the rules adopted by the Board.~~

(13) 'Human remains' means the body of a deceased person, including a human fetus, regardless of the length of gestation, or part of a body that has been removed from a living or deceased person.

(14) 'Niche' means a compartment or cubicle for the memorialization or permanent placement of an urn containing cremated remains.

~~(15) 'Scattering area' means a designated area for the scattering of cremated remains.~~

~~(16) 'Temporary container' means a temporary receptacle for cremated remains, usually made of cardboard, plastic film or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.~~

~~(17) 'Urn' means a receptacle designed to permanently encase the cremated remains.~~"

Section 17. G.S. 90-210.43 reads as rewritten:

"**§ 90-210.43. Licensing and inspection.**

(a) Any person doing business in this State, or any cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity may erect, maintain and conduct a crematory in this State and may provide the necessary appliances and facilities for the cremation of human remains, provided that such person has secured a license as a crematory operator in accordance with the provisions of this Article.

(b) A crematory may be constructed on or adjacent to any cemetery, on or adjacent to any funeral establishment that is zoned commercial or industrial, or at any other location consistent with local zoning regulations.

(c) Application for a license as a crematory operator shall be made on forms furnished and prescribed by the Board. The Board shall examine the premises and structure to be used as a crematory and shall issue a renewable license to the crematory operator if the applicant meets all the requirements and standards of the Board and the requirements of this Article. ~~In the event of a change of ownership of a crematory, at least 30 days prior to the change the new owners shall provide the Board with the name and address of the new owners.~~

(d) Every application for licensure shall identify the individual who is responsible for overseeing the management and operation of the crematory. The crematory operator shall keep the Board informed at all times of the name and address of the manager.

(d1) All licenses shall expire on the last day of December of each year. A license may be renewed without paying a late fee on or before the first day of February immediately following expiration. After that date, a license may be renewed by paying a late fee as provided in G.S. 90-210.48 in addition to the annual renewal fee. Licenses that remain expired six months or more require a new application for renewal. Licenses are not transferable. A new application for a license shall be made to the Board within 30 days following a change of ownership of more than fifty percent (50%) of the business.

(e) No person, cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity shall cremate any human remains, except in a crematory licensed for this express purpose and under the limitations provided in this ~~Article.~~ Article, or unless otherwise permitted by statute.

(f) Whenever the Board finds that an owner, ~~partner~~ partner, manager, member, or officer of a crematory operator or an applicant to become a crematory operator, or

that any agent or employee of a crematory operator or an applicant to become a crematory operator, with the direct or implied permission of such owner, ~~partner~~ partner, manager, member, or officer, has violated any provision of this Article, or is guilty of any of the following acts, and when the Board also finds that the crematory operator or applicant has thereby become unfit to practice, the Board may suspend, revoke, or refuse to issue or renew the license, in accordance with the procedures of Chapter 150B:

(1) Conviction of a felony or a crime involving fraud or moral ~~turpitude;~~ turpitude.

(2) Fraud or misrepresentation in obtaining or renewing a license or in the practice of ~~cremation;~~ cremation.

(3) False or misleading ~~advertising;~~ advertising.

(4) Gross immorality, including being under the influence of alcohol or drugs while performing cremation ~~services;~~ services.

(5) Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been cremated or otherwise disposed ~~of;~~ of.

(6) Violating or cooperating with others to violate any of the provisions of this Article or of the rules of the ~~Board;~~ Board.

(7) Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human ~~bodies;~~ bodies.

(8) Refusing to surrender promptly the custody of a dead human body or cremated remains upon the express order of the person lawfully entitled to the custody thereof, except as provided in ~~G.S. 90-210.47(e);~~ G.S. 90-210.47(e).

(9) Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than one thousand dollars ($1,000).

(g) The Board and Crematory Authority may hold hearings in accordance with the provisions of this Article and Chapter 150B. Any such hearing shall be conducted jointly by the Board and the Crematory Authority. The Board and the Crematory Authority shall jointly constitute an 'agency' under Article 3A of Chapter 150B of the General Statutes with respect to proceedings initiated pursuant to this Article. The Board is empowered to regulate and inspect crematories and crematory operators and to enforce as provided by law the provisions of this Article and the rules adopted hereunder. Any crematory that, upon inspection, is found not to meet any of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain whether the deficiency or other violation has been corrected.

In addition to the powers enumerated in Chapter 150B of the General Statutes, the Board shall have the power to administer oaths and issue subpoenas requiring the attendance of persons and the production of papers and records before the Board in any hearing, investigation or proceeding conducted by it or conducted jointly with the Crematory Authority. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas and other papers given to them by the President of the Board for service in the same manner as process issued by any court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a Class 1 misdemeanor."

Section 18. G.S. 90-210.44 reads as rewritten:

"**§ 90-210.44. Authorization and record keeping.**

The Board shall establish requirements for record ~~keeping and~~ keeping, authorizations, and cremation reports. ~~It~~ It shall be a violation of this Article for any crematory operator to fail to comply with the requirements."

Section 19. G.S. 90-210.45 reads as rewritten:

"**§ 90-210.45. Cremation procedures.**

(a) No human body shall be cremated before the crematory operator receives a death certificate signed by the attending physician or an authorization for cremation signed by a medical examiner.

(b) Human remains shall not be cremated within 24 hours after the time of death, unless such death was a result of an infectious, contagious or communicable and dangerous disease as listed by the Commission of Health Services pursuant to G.S. 130A-134, and unless such time requirement is waived in writing by the medical examiner, county health director, or attending physician where the death occurred. In the event such death comes under the jurisdiction of the medical examiner, the human remains shall not be received by the crematory operator until authorization to cremate has been received in writing from the medical examiner of the county in which the death occurred. In the event the crematory operator is authorized to perform funerals as well as cremation, this restriction on the receipt of human remains shall not be applicable.

(c) No unauthorized person shall be permitted in the crematory area while any human remains are in the crematory area awaiting cremation, being cremated, or being removed from the cremation chamber. Relatives of the deceased, the authorizing agent, medical examiners and law enforcement officers in the execution of their duties shall be authorized to have access to the holding facility and crematory facility.

(c1) Human remains shall be cremated only while enclosed in a cremation container.

(d) The simultaneous cremation of the human remains of more than one person within the same cremation chamber is forbidden.

(d1) Every crematory shall have a holding facility, within or adjacent to the crematory, designated for the retention of human remains prior to cremation. The holding facility must comply with any applicable public health laws and rules and must meet all of the standards established pursuant to rules adopted by the Board.

(e) Crematory operators shall comply with standards established by the Board for the reduction and pulverization of human remains by the cremation process."

Section 20. G.S. 90-210.46(a) reads as rewritten:

"(a) The authorizing agent shall provide the person with whom cremation arrangements are made with a signed statement specifying the ultimate disposition of the cremated remains, if known. ~~A copy of this statement shall be retained by the crematory operator.~~ The crematory operator may store or retain cremated remains as directed by the authorizing agent. Records of retention and disposition of cremated remains shall be kept by the crematory operator pursuant to G.S. 90-210.44."

Section 21. G.S. 90-210.47(b) reads as rewritten:

"(b) A crematory operator shall have authority to cremate human remains only upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability of a crematory operator that cremates human remains pursuant to such authorization, or that releases or disposes of the cremated remains pursuant to such authorization."

Section 22. G.S. 90-210.48(a) reads as rewritten:

"**§ 90-210.48. Fees.**

(a) The Board may set and collect fees not to exceed the following amounts from licensed crematory operators and applicants:

(1)	Licensee application fee.	$400.00
(2)	Annual renewal fee.	150.00
(3)	Late renewal penalty.	75.00
(4)	Re-inspection fee.	100.00
(5)	Per cremation fee.	10.00
(6)	Late fee, per cremation.	10.00
(7)	Late fee, cremation report.	75.00 per month."

Section 23. G.S. 90-210.60(3) reads as rewritten:

"(3) 'Insurance company' means any corporation, limited liability company, association, partnership, society, order, individual or aggregation of individuals engaging in or proposing or attempting to engage as principals in any kind of insurance business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations;"

Section 24. G.S. 90-210.63(a)(2) reads as rewritten:

"(2) The original contracting preneed licensee shall immediately pay all ~~such~~ funds received to the successor funeral establishment ~~so designated;~~ designated. ~~provided, however, regardless~~ Regardless of whether the substitution is made before or after the death of the preneed funeral contract beneficiary, the original contracting preneed licensee shall not be required to give credit for the amount retained pursuant to G.S. 90-210.61(a)(2), except when there was a substitution under G.S. 90-210.68(d1) and (e). ~~and provided further, if~~ Except when there was a substitution under G.S. 90-210.68(d1) and (e), if the original contracting preneed

licensee did not retain any portion of payments made ~~to it~~ as is permitted by G.S. 90-210.61(a)(2) then ~~such~~ the preneed licensee may retain up to ten percent (10%) of ~~said~~ the funds received from the financial institution. Upon making payments pursuant to this subsection, the financial institution and the original contracting preneed licensee shall be relieved from all further contractual liability thereon."

Section 25. G.S. 90-210.64(a) reads as rewritten:

"(a) After the death of a preneed funeral contract beneficiary and full performance of the preneed funeral contract by the preneed licensee, the preneed licensee shall promptly complete a certificate of performance or similar claim form and present it to the financial institution that holds funds in trust under G.S. 90-210.61(a)(1) or to the insurance company that issued a preneed insurance policy pursuant to G.S. 90-210.61(a)(3). Upon receipt of the certificate of performance or similar claim form, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. Within 10 days after receiving payment, the preneed licensee shall mail a copy of the certificate of performance or other claim form to the Board."

Section 26. G.S. 90-210.66(b) reads as rewritten:

"(b) From the fee ~~of fifteen dollars ($15.00)~~ for each preneed funeral contract as required by G.S. 90-210.67(d), the Board shall deposit two dollars ($2.00) into the Fund. The Board may suspend the deposits into the Fund at any time and for any period for which the Board determines that a sufficient amount is available to meet likely disbursements and to maintain an adequate reserve."

Section 27. G.S. 90-210.67 reads as rewritten:

"**§ 90-210.67. Application for license.**

(a) No person may offer or sell preneed funeral contracts or offer to make or make any funded funeral prearrangements without first securing a license from the Board. There shall be two types of licenses: a preneed funeral establishment license and a preneed sales license. Only funeral establishments holding a valid establishment permit pursuant to G.S. 90-210.25(d) shall be eligible for a preneed funeral establishment license. Employees and agents of such entities, upon meeting the qualifications to engage in preneed funeral planning as established by the Board, shall be eligible for a preneed sales license. The Board shall establish the preneed funeral planning activities that are permitted under a preneed sales license. The Board shall adopt rules establishing such qualifications and activities no later than 12 months following the ratification of this act. Preneed sales licensees may sell preneed funeral contracts, prearrangement insurance policies, and make funded funeral prearrangements only on behalf of one preneed funeral establishment licensee; provided, however, they may sell preneed funeral contracts, prearrangement insurance policies, and make funeral prearrangements for any number of licensed preneed funeral establishments that are wholly owned by or affiliated with, through common ownership or contract, the same entity; provided further, in the event they

engage in selling prearrangement insurance policies, they shall meet the licensing requirements of the Commissioner of Insurance. Every preneed funeral contract shall be signed by a person licensed as a funeral director or funeral service licensee pursuant to Article 13A of Chapter 90 of the General Statutes.

Application for a license shall be in writing, signed by the applicant and duly verified on forms furnished by the Board. Each application shall contain at least the following: the full names and addresses (both residence and place of business) of the applicant, and every partner, member, officer and director thereof if the applicant is a partnership, limited liability company, association, or corporation and any other information as the Board shall deem necessary. A preneed funeral establishment license shall be valid only at the address stated in the application or at a new address approved by the Board.

(b) An application for a preneed funeral establishment license shall be accompanied by a nonrefundable application fee of not more than one hundred fifty dollars ($150.00). The Board shall set the amounts of the application fees and renewal fees by rule, but the fees shall not exceed one hundred fifty dollars ($150.00). If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the application fee, the Board shall issue a renewable preneed funeral establishment license unless it determines that the applicant has violated any provision of G.S. 90-210.69(c) or has made false statements or representations in the application, or is insolvent, or has conducted or is about to conduct, its business in a fraudulent manner, or is not duly authorized to transact business in this State. The license shall expire on December 31 and ~~Each~~ each preneed funeral establishment licensee shall pay annually to the Board on or before ~~June 30 of each year~~ that date a license renewal fee of not more than one hundred fifty dollars ($150.00). On or before the first day of February immediately following expiration, a license may be renewed without paying a late fee. After that date, a license may be renewed by paying a late fee of not more than one hundred dollars ($100.00) in addition to the annual renewal fee.

(c) An application for a preneed sales license shall be accompanied by a nonrefundable application fee of not more than fifty dollars ($50.00). The Board shall set the amounts of the application fees and renewal fees by rule, but the fees shall not exceed fifty dollars ($50.00). If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the application fee, the Board shall issue a renewable preneed sales license provided the applicant has met the qualifications to engage in preneed funeral planning as established by the Board unless it determines that the applicant has violated any provision of G.S. 90-210.69(c). The license shall expire on December 31 and ~~Each~~ each preneed sales licensee shall pay annually to the Board on or before ~~June 30 of each year,~~ that date a license renewal fee of not more than fifty dollars ($50.00). On or before the first day of February, a license may be renewed without paying a late fee. After that date, a license may be renewed by

paying a late fee of not more than twenty-five dollars ($25.00) in addition to the annual renewal fee.

(d) Any person selling a preneed funeral contract, whether funded by a trust deposit or a prearrangement insurance policy, shall remit to the Board, within 10 days of the sale, a fee ~~of fifteen dollars ($15.00)~~ not to exceed twenty dollars ($20.00) for each ~~sale.~~ sale and a copy of each contract. The person shall pay a late fee of not more than twenty-five dollars ($25.00) for each late filing and payment. The ~~fee~~ fees shall not be remitted in cash.

(d1) The Board may also set and collect a fee of not more than twenty-five dollars ($25.00) for the late filing of a certificate of performance and a fee of not more than one hundred and fifty dollars ($150.00) for the late filing of an annual report.

(e) The fees collected under this Article, except for monies used pursuant to G.S. 90-210.66, shall be used for the expenses of the Board in carrying out the provisions of this Article. Any funds collected under this Article and remaining with the Board after all expenses under this Article for the current fiscal year have been fully provided for shall be paid over to the General Fund of the State of North Carolina. Provided, however, the Board shall have the right to maintain an amount, the cumulative total of which shall not exceed twenty percent (20%) of gross receipts under this Article for the previous fiscal year of its operations, as a maximum contingency or emergency fund.

(f) Any entity licensed by the Commissioner of Banks under Article 13B of Chapter 90 of the General Statutes before July 9, 1992 shall be entitled to have its license renewed notwithstanding that it is not a funeral establishment, provided it otherwise satisfies the requirements of this Article."

Section 28. G.S. 90-210.68 reads as rewritten:

"**§ 90-210.68. Licensee's books and records; notice of transfers, assignments and terminations.**

(a) Every preneed licensee shall keep for examination by the Board accurate accounts, books, and records in this State of all preneed funeral contract and prearrangement insurance policy transactions, copies of all agreements, insurance policies, instruments of assignment, the dates and amounts of payments made and accepted thereon, the names and addresses of the contracting parties, the persons for whose benefit funds are accepted, and the names of the financial institutions holding preneed funeral trust funds and insurance companies issuing prearrangement insurance policies. The Board, its inspectors appointed pursuant to G.S. 90-210.24 and its examiners, which the Board may appoint to assist in the enforcement of this Article, may during normal hours of operation and periods shortly before or after normal hours of operation, investigate the books, records, and accounts of any licensee under this Article with respect to trust funds, preneed funeral contracts, and prearrangement insurance policies. Any preneed licensee who, upon inspection, fails to meet the requirements of this subsection or who fails to keep an appointment for an inspection shall pay a reinspection fee to the Board in an amount not to exceed one hundred dollars ($100.00). The Board may require the attendance of and examine under oath all persons whose testimony it may require. Every preneed

licensee shall submit a written report to the Board, at least annually, in a manner and with such content as established by the Board, of its preneed funeral contract sales and performance of such contracts. The Board may also require other reports.

(b) A preneed licensee may transfer preneed funds held by it as trustee from the financial institution which is a party to a preneed funeral contract to a substitute financial institution that is not a party to the contract. Within 10 days after the transfer, the preneed licensee shall notify the Board, in writing, of the name and address of the transferee financial institution. Before the transfer may be made, the transferee financial institution shall agree to make disclosures required under the preneed funeral contract to the Board or its inspectors or examiners. If the contract is revocable, the licensee shall notify the contracting party of the intended transfer.

(c) If any preneed licensee transfers or assigns its assets or stock to a successor funeral establishment or terminates its business as a funeral establishment, the preneed licensee and assignee shall notify the Board at least 15 days prior to the effective date of the transfer, assignment or termination: provided, however, the successor funeral establishment must be a preneed licensee or shall be required to apply for and be granted such license by the Board before accepting any preneed funeral contracts, whether funded by trust deposits or preneed insurance policies. Provided further, a successor funeral establishment shall be liable to the preneed funeral contract purchasers for the amount of contract payments retained by the assigning or transferring funeral home pursuant to G.S. 90-210.61(a)(2).

(d) Financial institutions that accept preneed funeral trust funds and insurance companies that issue prearrangement insurance policies shall, upon request by the Board or its inspectors or examiners, disclose any information regarding preneed funeral trust accounts held or prearrangement insurance policies issued by it for a preneed licensee.

(d1) When a preneed funeral establishment license lapses or is terminated for any reason, the preneed licensee shall immediately divest of all the unperformed preneed funeral contracts and shall transfer them and any amounts retained under G.S. 90-210.61(a)(2) to another preneed funeral establishment licensee pursuant to the procedures of subsection (e) of this section.

(e) In the event that any preneed licensee is unable or unwilling or is for any reason relieved of its responsibility to perform as trustee or to perform any preneed funeral contract, the Board, with the written consent of the purchaser of the preneed funeral contract, or after the purchaser's death or incapacity, the preneed funeral contract beneficiary ~~may~~ shall order the contract and any amounts retained pursuant to G.S. 90-210.61(a)(2) to be assigned to a substitute preneed licensee provided that the substitute licensee agrees to accept such assignment.

(f) The substitute preneed licensee under subsections (d1) and (e) of this section shall be liable to the preneed funeral contract purchasers for the amount of contract payments that had been retained by, and that the substitute preneed licensee has received from, the assigning preneed licensee."

Section 29. G.S. 90-210.69(c) reads as rewritten:

"(c) In accordance with the provisions of Chapter 150B of the General Statutes, ~~If~~ if the Board finds that a licensee, an applicant for a license or an applicant for license renewal is guilty of one or more of the following, the Board may refuse to issue or renew a license or may suspend or revoke a license or place the holder thereof on probation upon conditions set by the Board, with revocation upon failure to comply with the conditions:

(1) Offering to engage or engaging in activities for which a license is required under this Article but without having obtained such a. ~~license;~~ license.

(2) Aiding or abetting an unlicensed person, firm, partnership, association, corporation or other entity to offer to engage or engage in such ~~activities;~~ activities.

(3) A crime involving fraud or moral turpitude by conviction ~~thereof;~~ thereof.

(4) Fraud or misrepresentation in obtaining or receiving a license or in preneed funeral ~~planning;~~ planning.

(5) False or misleading ~~advertising; or~~ advertising.

(6) Violating or cooperating with others to violate any provision of this ~~Article or~~ Article, the rules and regulations of the Board, ~~pursuant thereto.~~ or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than one thousand dollars ($1,000)."

Section 30. G.S. 90-210.69(e) reads as rewritten:

"(e) ~~All hearings under this Article shall be conducted pursuant to G.S. 150B-40(e).~~ Judicial review shall be pursuant to Article 4 of Chapter 150B of the General Statutes."

Section 31. G.S. 90-210.70(c) reads as rewritten:

"(c) If a corporation or limited liability company embezzles or fraudulently or knowingly and willfully misapplies or converts preneed funeral funds as provided in subsection (a) hereof or otherwise violates any provision of this Article, the officers, directors, members, agents, or employees responsible for committing the offense shall be fined or imprisoned as herein provided."

Section 32. G.S. 90-210.70(d) reads as rewritten:

"(d) The Board shall have the power to investigate violations of this section and shall deliver all evidence of violations of subsection (a) of this section to the district attorney in the county where the offense occurred. The Board shall, with the fees collected under this Article, employ legal counsel and other staff to monitor preneed trusts, investigate complaints, audit preneed trusts, and be responsible for delivering evidences to the district attorney when there is evidence ~~of criminal violation.~~ that a felony has been committed by a licensee. The record of complaints, auditing, and

enforcement shall be presented in an annual report from the Board to the General Assembly."

Section 33. Article 13D of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-210.73. Not public record.**

The names and addresses of the purchasers and beneficiaries of preneed funeral contracts filed with the Board shall not be subject to Chapter 132 of the General Statutes."

Section 34. Article 16 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 7. Disposition of Body or Body Parts.

"§ 130A-422. Authority to dispose of body or body parts.

(a) An individual at least 18 years of age may authorize the disposition of the individual's own dead body in a written will, pursuant to a health care power of attorney to the extent provided in Article 3 of Chapter 32A of the General Statutes, pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old.

(b) If a decedent has left no written authorization for the disposal of the decedent's body as permitted under subsection (a) of this section, the following competent persons in the order listed may authorize the type, method, place, and disposition of the decedent's body:

(1) The surviving spouse.
(2) A majority of the surviving children.
(3) The surviving parents.
(4) A majority of the surviving siblings.
(5) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate.
(6) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or to prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63.

(c) An individual at least 18 years of age may, in a writing signed by the individual, authorize the disposition of one or more of the individual's body parts that has been or will be removed. If the individual does not authorize the disposition, a person listed in subsection (b) of this section may authorize the disposition as if the individual was deceased.

(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3 of Article 16 of Chapter 130A of the General Statutes,

the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes, or the right to perform cremations under Article 13C of Chapter 90 of the General Statutes."

Section 35. G.S. 150B-1(e) is amended by adding a new subdivision to read:

"(12) The North Carolina Board of Mortuary Science regarding funeral and burial trust funds under Article 13D of Chapter 90."

Section 36. This act is effective when it becomes law.

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April 3, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **Proposed Committee Substitute for House Bill 485; Funeral establishment amendments.**

House Bill 485 makes various amendments to Chapter 90 of the General Statutes that affect the regulation of the practice of funeral service, cremations, and funeral and burial trust funds. It also amends Article 16, Chapter 130A, with regard to disposition of bodies.

Section 1 amends G.S. 90-210.20(e1) by amending the definition of "funeral chapel" to make it inclusive of funeral chapels operated by licensees other than funeral homes. The effect is to place these other funeral chapels under the control of the Board of Mortuary Science.

Section 2 amends G.S. 90-210.23(d) to allow the Board of Mortuary Science to inspect embalming facilities other than those contained in funeral homes. Those contained in funeral homes can already be inspected because the funeral homes themselves are subject to inspection.

Section 3 amends G.S. 90-210.23(e) to add embalming facilities to those facilities subject to regulation and inspection by the Board. It also grants the Board power to enforce compliance with the Federal Trade Commission Funeral Rules.

Section 4 amends G.S. 90-210.24(b)(1) to conform it to the amendments contained in sections 2 and 3 of the bill dealing with the regulation of embalming facilities.

Sections 5, 6, and 7 of the bill amend G.S. 90-210.25(a)(1), (2), and (3). These subdivisions of G.S. 90-210.25(a) deal with the examinations given for licenses to practice funeral directing, embalming, and funeral service. The amendments change the content of the examinations. The intent is to change the examinations to agree with those currently being given throughout the United States.

Section 8 of the bill amends G.S. 90-210.25(a)(5) to allow licensees to carry over a maximum of 5 hours of continuing education to be used for the following year's requirement. It also adds a provision that a licensee issued an initial license on or after July 1 does not have to satisfy the continuing education requirement for that year. Finally, it changes the standard for waiver of the continuing education requirement. The present waiver of continuing education requirements for 25 year licensees shall only apply to licensees who, before January 1, 1998, are licensed, begin a course of study in a mortuary science college or trainee program, or make an application for a license.

Section 9 amends G.S. 90-210.25 by adding a new subsection (a1) allowing the issuance of "inactive licenses." Holders of inactive licenses are limited to only voting in elections for members of the State Board of Mortuary Science. The new subsection also establishes the criteria for reactivation of a license.

Section 10 amends G.S. 90-210.25(b)(3) to allow the Board to grant special permits to nonresidents for purposes of teaching continuing education programs and for the purpose of doing work in connection with disasters.

Section 11 amends G.S. 90-210.25(d) to add limited liability companies to the list of business entities that may operate funeral establishments and clarifies that permits may be revoked or suspended for violations by various persons in charge of the operation..

Section 12 amends G.S. 90-210.25 by adding a new subsection (d1) that requires embalming facilities to register with the Board of Mortuary Science. This conform to the changes made in sections 2, 3, and 4 of the bill.

Section 13 of the bill amends G.S. 90-210.25(e). The amendments allow the board to enforce the Federal Trade Commission Funeral Rule (conforming to Section 3 of the bill), and change the provisions concerning who has authority to direct disposal of a body to conform with new, specific provisions found in Section 34 of the bill.

Section 14 of the bill amends G.S. 90-210.27A by deleting subsection (d) which presently provides that a convicted felon may not be in the funeral business. Subsection (e) is amended to recognize the existence of limited liability companies.

Section 15 of the bill is a technical correction to G..S. 90-210.28, which deals with fees. No fees are changed in this amendment.

Section 16 of the bill makes various changes in the definitions applicable to cremations. Certain definitions are eliminated because the term does not appear anywhere in the cremation article. /The definition of "human remains" is amended to include a human fetus./ References to the order of authorizing agency to authorize cremation are eliminated because this is now dealt with in another statute created in section 34 of the bill.

Section 17 of the bill amends G.S. 90-210.43 which deals with licensing and inspection of cremation establishments. A crematory license year is established. License renewal procedures and late fees are established. The amendment to subsection (e) acknowledges that the remains of terminated pregnancies may be disposed of by approved hospital type incineration. The amendments grant the Board authority to accept a monetary penalty as a compromise in an enforcement action. Fees for reinspection of crematories not meeting proper standards are authorized.

Section 18 amends G.S. 90-210.44 to authorize the Board to establish requirements for cremation reports.

Section 19 amends G.S. 90-210.45 to require that a body be enclosed in a container when cremated. This does not require an actual casket. The description of a crematory holding facility that was eliminated in the amendments contained in section 16, is moved to this statutory section.

Section 20 amends G.S. 90-210.46(a) to specifically authorize a crematory operator to store cremated remains as directed by the authorizing agent.

Section 21 amends 90-210.47(b) to clarify that a crematory operator must have a signed cremation authorization form before cremating a body.

Section 22 amends 90-210.48(a) to add late fees for late payment of cremation fees and for late filing of cremation reports. The fees authorized are the maximum amounts.

Section 23 amends 90-210.60(3) to recognize existence of limited liability companies in the definition of an insurance company.

Section 24 amends G.S. 90-210.63(a)(2) to provide that when the purchaser or beneficiary of a preneed contract changes funeral homes, the first funeral home may keep its 10% retention

except where the first funeral home is divested of its preneed contracts as provided in section 28 of the bill.

Section 25 of the bill amends G.S. 90-210.64(a) to require a funeral home to mail proof of its performance of a preneed contract to the Board within 10 day after receiving payment.

Section 26 amends G.S. 90-210.66(b) to eliminate the referenced to a specific preneed funeral contract fee since the fee is established elsewhere (see section 27 of the bill).

Section 27 of the bill amends G.S. 90-210.67 which deals with licenses to sell preneed funeral contracts. Limited liability companies are recognized as a licensable entity. A preneed license year is established as well as renewal procedures and late fees. Copies of preneed contracts are required to be filed with the Board. Other fees and late fees are established.

Section 28 of the bill amends G.S. 90-210.68. The amendments establish reinspection fees for preneed licensees, require a preneed funeral establishment to divest itself of all unperformed preneed contracts and transfer the funds if its license lapses or is terminated, and make the substitute licensee responsible to the purchaser for the money it receives from the assigning preneed licensee.

Section 29 clarifies that disciplinary action is in accordance with the provisions of Chapter 150B (Administrative Procedure Act), allows for monetary offers in compromise of violation proceedings, and specifically authorizes the Board to enforce the Federal Trade Commission Funeral Rule within its preneed regulatory authority.

Section 30 amends G.S. 90-210.69(e) to eliminate the requirement that the Board use administrative law judges for administrative hearings involving funeral trust funds.

Section 31 amends G.S. 90-210.70(c). This is a conforming amendment recognizing the existence of limited liability companies.

Section 32 of the bill amends G.S. 90-210.70(d) to eliminate the requirement that the Board report misdemeanor violations of this section (dealing with fraud and embezzlement) to the district attorney. Felony violations must be reported.

Section 33 adds a new section, G.S. 90-210.73, to the Funeral Trust Fund article. It provides that the names and addresses of purchasers and beneficiaries of preneed funeral contracts filed with the Board are not public records.

Section 34 of the bill amends Article 16 of Chapter 130A by adding a new Part 7 dealing with the disposition of bodies and body parts. The new Article allows a person 18 years of age or older to authorize disposition of their body. Where there is no written authorization, an order of priority is established to indicate who may authorize disposal of the body. The list showing the order of priority for authorization is found on page 23, lines 23 through 32 of the bill. The provision specifically provides that it does not affect authorizations for anatomical gift nor does it affect the statutes relating to autopsies.

Section 35 provides that the Board adopt temporary rules to implement the provisions of this act. Section 36 provides that the act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 485
Proposed Committee Substitute H485-PCS1225

Short Title: Funeral Establishments/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS STATUTES RELATING TO THE PRACTICE OF FUNERAL SERVICE, CREMATIONS, AND FUNERAL AND BURIAL TRUST FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-210.20(e1) reads as rewritten:

"(e1) 'Funeral chapel' means a chapel or other facility separate from the funeral establishment premises for the reposing of dead human bodies, visitation or funeral ceremony, which is owned, operated, or maintained by a funeral ~~establishment,~~ establishment or other licensee under this Article, and which does not use the word 'funeral' in its name, on a sign, in a directory, in advertising or in any other manner; in which or on the premises of which there is not displayed or offered for sale any caskets or other funeral merchandise; in which or on the premises of which there is not located any funeral business office or a preparation room; in which or on the premises of which no funeral sales, financing, or arrangements are made; and which no owner, operator, employee, or agent thereof represents the chapel to be a funeral establishment."

Section 2. G.S. 90-210.23(d) reads as rewritten:

"(d) Every person licensed by the Board and every resident trainee shall furnish all information required by the Board reasonably relevant to the practice of the profession or business for which ~~he~~ the person is a licensee or resident ~~trainee, and every~~ trainee. Every funeral service establishment and its records and every place of business where the practice of funeral service or embalming is carried on and its

records ~~thereof~~ shall be subject to inspection by the Board during normal hours of operation and periods shortly before or after normal hours of operation and shall furnish all information required by the Board reasonably relevant to the business therein conducted. Every licensee, resident ~~trainee~~ trainee, embalming facility, and funeral service establishment shall provide the Board with ~~his or its~~ a current post-office address which shall be placed on the appropriate register and all notices required by law or by any rule or regulation of the Board to be mailed to any licensee, resident ~~trainee~~ trainee, embalming facility, or funeral service establishment shall be validly given when mailed to the address so provided.

The Board is empowered to hold hearings in accordance with the provisions of this Article and of Chapter 150B to subpoena witnesses and to administer oaths to or receive the affirmation of witnesses before the Board."

Section 3. G.S. 90-210.23(e) reads as rewritten:

"(e) The Board is empowered to regulate and inspect, according to law, funeral service ~~establishments,~~ establishments and embalming facilities, their ~~operation~~ operation, and the licenses under which they are operated, and to enforce as provided by law the rules, ~~regulations~~ regulations, and requirements of the Division of Health Services and of the city, ~~town~~ town, or county ~~wherein any such~~ in which the funeral service establishment or embalming facility is maintained and operated. Any funeral establishment or embalming facility ~~which,~~ that, upon inspection, is found not to meet all of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain that the deficiency or other violation has been corrected. The Board is also empowered to enforce compliance with the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time."

Section 4. G.S. 90-210.24(b)(1) reads as rewritten:

"(1) Enter the office, establishment or place of business of any funeral service licensee, funeral director or embalmer in North Carolina, and any office, establishment or place in North Carolina where the practice of funeral service or embalming is carried on, or where that practice is advertised as being carried on, or where a funeral is being ~~conducted,~~ conducted or a body is being embalmed, to inspect the records, office, ~~or establishment,~~ establishment, or facility, or to inspect the practice being carried on or license or registration of any licensee and any resident trainee operating therein;".

Section 5. G.S. 90-210.25(a)(1) reads as rewritten:

"(1) To be licensed for the practice of funeral directing under this Article, a person must:

a. Be at least 18 years of ~~age,~~ age.

b. Be of good moral ~~character,~~ character.

c. Have completed a minimum of 32 semester hours or 48 quarter hours of instruction in a course of study including the subjects set out in ~~items~~ item e.1. ~~and 2.~~ of this

subsection in a mortuary science college approved by the Board, or be a graduate of a mortuary science college approved by the Board.

d. Have completed 12 months of resident traineeship as funeral director, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this ~~subsection, and~~ subsection.

e. Have passed an oral or written funeral director examination on the following subjects:

1. ~~Basic health sciences, including microbiology, hygiene, and public health,~~ Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.

~~2. Funeral service administration, including accounting, psychology, funeral principles and directing, and~~

3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies."

Section 6. G.S. 90-210.25(a)(2) reads as rewritten:

"(2) To be licensed for the practice of embalming under this Article, a person must:

a. Be at least 18 years of ~~age,~~ age.

b. Be of good moral ~~character,~~ character.

c. Be a graduate of a mortuary science college approved by the ~~Board,~~ Board.

d. Have completed 12 months of resident traineeship as an embalmer pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this ~~subsection, and~~ subsection.

e. Have passed an oral or written embalmer examination on the following subjects:

1. ~~Basic health sciences, including anatomy, chemistry, microbiology, pathology and forensic pathology,~~ Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.

~~2. Funeral service sciences, including embalming and restorative art, and~~

3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies."

Section 7. G.S. 90-210.25(a)(3) reads as rewritten:

"(3) To be licensed for the practice of funeral service under this Article, a person must:

a. Be at least 18 years of ~~age,~~ age.

b. Be of good moral ~~character,~~ character.

c. Be a graduate of a mortuary science college approved by the ~~Board,~~ Board.

d. Have completed 12 months of resident traineeship as a funeral service licensee, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this ~~subsection, and~~ subsection.

e. Have passed an oral or written funeral service examination on the following subjects:

1. ~~Basic health sciences, including anatomy, chemistry, microbiology, pathology, forensic pathology hygiene and public health,~~ Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.

2. ~~Funeral service sciences, including embalming and restorative art,~~ Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.

~~3. Funeral service administration, including accounting, psychology, funeral principles and directing, and~~

4. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies."

Section 8. G.S. 90-210.25(a)(5) reads as rewritten:

"(5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own.

All licenses shall be signed by the president and secretary of the Board and the seal of the Board affixed thereto. All licenses shall be issued, renewed or duplicated for a period not exceeding one year upon payment of the renewal fee, and all licenses, renewals or duplicates thereof shall expire and terminate the thirty-first day of December following the date of their issue unless sooner revoked and canceled; provided, that the date of expiration may be changed by unanimous consent of the Board and upon 90 days' written notice of such change to all persons licensed for the practice of funeral directing, embalming and funeral service in this State.

The holder of any license issued by the Board who shall fail to renew the same on or before January 31 of the calendar year for

which the license is to be renewed shall have forfeited and surrendered the license as of that date. No license forfeited or surrendered pursuant to the preceding sentence shall be reinstated by the Board unless it is shown to the Board that the applicant has, throughout the period of forfeiture, engaged full time in another state of the United States or the District of Columbia in the practice to which his North Carolina license applies and has completed for each such year continuing education substantially equivalent in the opinion of the Board to that required of North Carolina licensees; or has completed in North Carolina a total number of hours of accredited continuing education computed by multiplying five times the number of years of forfeiture; or has passed the North Carolina examination for the forfeited license. No additional resident traineeship shall be required. The applicant shall be required to pay all delinquent annual renewal fees and a reinstatement fee. The Board may waive the provisions of this section for an applicant for a forfeiture which occurred during his service in the armed forces of the United States provided he applies within six months following severance therefrom.

All licensees now or hereafter licensed in North Carolina shall take courses of study in subjects relating to the practice of the profession for which they are licensed, to the end that new techniques, scientific and clinical advances, the achievements of research and the benefits of learning and reviewing skills will be utilized and applied to assure proper service to the public.

As a prerequisite to the annual renewal of a license, the licensee must complete, during the year immediately preceding renewal, at least five hours of continuing education courses, approved by the Board prior to ~~enrollment; except that for renewals for calendar year 1980 the required length of study shall be a total of 15 hours in the three years immediately preceding January 1, 1980.~~ enrollment. A licensee who completes more than five hours in a year may carry over a maximum of five hours as a credit to the following year's requirement. A licensee who is issued an initial license on or after July 1 does not have to satisfy the continuing education requirement for that year.

The Board shall not renew a license unless fulfillment of the continuing education requirement has been certified to it on a form provided by the Board, but the Board may waive this requirement for renewal in cases of certified illness or undue hardship or where the licensee lives outside of North Carolina and does not practice in North Carolina, and the Board shall waive the requirement for all licensees who have been licensed in North Carolina for a continuous period of 25 years or more, and for all

licensees who are, at the time of renewal, members of the General Assembly. The waiver for 25-year licensees shall apply only to those licensees who, before January 1, 1998, are licensed, begin a course of study in a mortuary science college or a trainee program, or make an application for a license.

The Board shall cause to be established and offered to the licensees, each calendar year, at least five hours of continuing education courses in subjects encompassing the license categories of embalming, funeral directing and funeral service. The Board may charge licensees attending these courses a reasonable registration fee in order to meet the expenses thereof and may also meet those expenses from other funds received under the provisions of this Article.

Any person who having been previously licensed by the Board as a funeral director or embalmer prior to July 1, 1975, shall not be required to satisfy the requirements herein for licensure as a funeral service licensee, but shall be entitled to have such license renewed upon making proper application therefor and upon payment of the renewal fee provided by the provisions of this Article. Persons previously licensed by the Board as a funeral director may engage in funeral directing, and persons previously licensed by the Board as an embalmer may engage in embalming. Any person having been previously licensed by the Board as both a funeral director and an embalmer may upon application therefor receive a license as a funeral service licensee."

Section 9. G.S. 90-210.25 is amended by adding a new subsection to read:

"(a1) Inactive Licenses. -- Any person holding a license issued by the Board for funeral directing, for embalming, or for the practice of funeral service may apply for an inactive license in the same category as the active license held. The inactive license is renewable annually. Continuing education is not required for the renewal of an inactive license. The only activity that a holder of an inactive license may engage in is to vote pursuant to G.S. 90-210.18(c)(2). The holder of an inactive license may apply for an active license in the same category, and the Board shall issue an active license if the applicant has completed in North Carolina a total number of hours of accredited continuing education equal to five times the number of years the applicant held the inactive license. No application fee is required for the active license. The holder of an inactive license who returns to active status shall surrender the inactive license to the Board."

Section 10. G.S. 90-210.25(b)(3) reads as rewritten:

"(3) The Board may issue special permits, to be known as courtesy cards, permitting nonresident funeral directors, embalmers and funeral service licensees to remove bodies from and to arrange and direct funerals and embalm bodies in this State, but these

privileges shall not include the right to establish a place of business in or engage generally in the business of funeral directing and embalming in this State. ~~Provided,~~ Except for special permits issued by the Board for teaching continuing education programs and for work in connection with disasters, no special permits may be issued to nonresident funeral directors, embalmers, and funeral service licensees from states that do not issue similar courtesy cards to persons licensed in North Carolina pursuant to this Article."

Section 11. G.S. 90-210.25(d) reads as rewritten:

"(d) Establishment Permit. --

(1) No person, firm or corporation shall conduct, maintain, manage or operate a funeral establishment unless a permit for that establishment has been issued by the Board and is conspicuously displayed in the establishment. Each funeral establishment at a specific location shall be deemed to be a separate entity and shall require a separate permit and compliance with the requirements of this Article.

(2) A permit shall be issued when:

a. It is shown that the funeral establishment has in charge a person, known as a manager, licensed for the practice of funeral directing or funeral service, who shall not be permitted to manage more than one funeral ~~establishment,~~ establishment.

b. The Board receives a list of the names of all part-time and full-time licensees employed by the ~~establishment,~~ establishment.

c. It is shown that the funeral establishment satisfies the requirements of ~~G.S. 90-210.27A, and~~ G.S. 90-210.27A.

d. The Board receives payment of the permit fee.

(3) Applications for funeral establishment permits shall be made on forms provided by the Board and filed with the Board by the owner, a ~~partner~~ partner, a member of the limited liability company, or an officer of the corporation by January 1 of each year, and shall be accompanied by the application fee or renewal fee, as the case may be. All permits shall expire on December 31 of each year.

A penalty for late renewal, in addition to the regular renewal fee, shall be charged for renewal of registration coming after the first day of February.

(4) The Board may suspend or revoke a permit when an owner, ~~partner~~ partner, manager, member, operator, or officer of the funeral establishment violates any provision of this Article or any regulations of the Board, or when any agent or employee of the funeral establishment, with the consent of any person, firm or

corporation operating the funeral establishment, violates any of those provisions, rules or regulations.

(5) Funeral establishment permits are not transferable. A new application for a permit shall be made to the Board within 30 days of a change of ownership of a funeral establishment."

Section 12. G.S. 90-210.25 is amended by adding a new subsection to read:

"(d1) Embalming Outside Establishment. -- An embalmer who engages in embalming in a facility other than a funeral establishment or in the residence of the deceased person shall, no later than January 1 of each year, register the facility with the Board on forms provided by the Board."

Section 13. G.S. 90-210.25(e) reads as rewritten:

"(e) Revocation; Suspension; Compromise; Disclosure. --

(1) Whenever the Board finds that an applicant for a license or a person to whom a license has been issued by the Board is guilty of any of the following acts or omissions and the Board also finds that the person has thereby become unfit to practice, the Board may suspend or revoke the license or refuse to issue or renew the license, in accordance with the procedures set out in Chapter 150B:

a. Conviction of a felony or a crime involving fraud or moral ~~turpitude;~~ turpitude.

b. Fraud or misrepresentation in obtaining or renewing a license or in the practice of funeral ~~service;~~ service.

c. False or misleading advertising as the holder of a ~~license;~~ license.

d. Solicitation of dead human bodies by the licensee, his agents, assistants, or employees; but this paragraph shall not be construed to prohibit general advertising by the ~~licensee;~~ licensee.

e. Employment directly or indirectly of any resident trainee agent, assistant or other person, on a part-time or full-time basis, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular ~~licensee;~~ licensee.

f. The direct or indirect giving of certificates of credit or the payment or offer of payment of a commission by the licensee, his agents, assistants or employees for the purpose of securing ~~business;~~ business.

g. Gross immorality, including being under the influence of alcohol or drugs while practicing funeral ~~service;~~ service.

h. Aiding or abetting an unlicensed person to perform services under this Article, including the use of a picture or name in connection with advertisements or other written material

published or caused to be published by the ~~licensee;~~ licensee.

i. Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed ~~of;~~ of.

j. Violating or cooperating with others to violate any of the provisions of this ~~Article or of~~ Article, the rules and regulations of the ~~Board;~~ Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

k. Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human ~~bodies;~~ bodies.

l. Refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to the custody ~~thereof;~~ thereof.

m. Knowingly making any false statement on a certificate of ~~death;~~ death.

n. Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

In any case in which the Board is entitled to suspend, revoke or refuse to renew a license, the Board may accept from the licensee an offer in compromise to pay a penalty of not more than one thousand dollars ($1,000). The Board may either accept a compromise or revoke or refuse to renew a license, but not both.

(2) Where the Board finds that a licensee is guilty of one or more of the acts or omissions listed in subsection (e)(1) of this section but it is determined by the Board that the licensee has not thereby become unfit to practice, the Board may place the licensee on a term of probation in accordance with the procedures set out in Chapter 150B.

No person licensed under this Article shall remove or cause to be embalmed a dead human body when he has information indicating crime or violence of any sort in connection with the cause of death, nor shall a dead human body be cremated, until permission of the State or county medical examiner has first been obtained. However, nothing in this Article shall be construed to alter the duties and authority now vested in the office of the coroner.

No funeral service establishment shall accept a dead human body from any public officer (excluding the State or county medical examiner or his agent), or employee or from the official of any institution, hospital or nursing home, or from a physician or any person having a professional relationship with a decedent, without having first made due inquiry as to the desires of the ~~next of kin and of the persons who may be chargeable with the funeral expenses of such decedent.~~ persons who have the legal

authority to direct the disposition of the decedent's body. If any ~~such kin be~~ persons are found, ~~his or her~~ their authority and directions shall govern the disposal of the remains of ~~such~~ the decedent. Any funeral service establishment receiving ~~such~~ the remains in violation ~~hereof~~ of this subsection shall make no charge for any service in connection with ~~such~~ the remains prior to delivery of ~~same~~ the remains as stipulated by ~~such kin;~~ the persons having legal authority to direct the disposition of the body. ~~provided, however, this~~ This section shall not prevent any funeral service establishment from charging and being reimbursed for services rendered in connection with the removal of the remains of any deceased person in case of accidental or violent death, and rendering necessary professional services required until the ~~next of kin or the persons chargeable with the expenses~~ persons having legal authority to direct the disposition of the body have been notified.

When and where a licensee presents a selection of funeral merchandise to the public to be used in connection with the service to be provided by the licensee or an establishment as licensed under this Article, a card or brochure shall be directly associated with each item of merchandise setting forth the price of the service using said merchandise and listing the services and other merchandise included in the price, if any. When there are separate prices for the merchandise and services, such cards or brochures shall indicate the price of the merchandise and of the items separately priced.

At the time funeral arrangements are made and prior to the time of rendering the service and providing the merchandise, a funeral director or funeral service licensee shall give or cause to be given to the person or persons making such arrangements a written statement duly signed by a licensee of said funeral establishment showing the price of the service as selected and what services are included therein, the price of each of the supplemental items of services or merchandise requested, and the amounts involved for each of the items for which the funeral establishment will advance moneys as an accommodation to the person making arrangements, insofar as any of the above items can be specified at that time. The statement shall have printed, typed or stamped on the face thereof: 'This statement of disclosure is provided pursuant to the requirements of North Carolina G.S. 90-210.25(e).'"

Section 14. G.S. 90-210.27A reads as rewritten:

"**§ 90-210.27A. Funeral establishments.**

(a) Every funeral establishment shall contain a preparation room which is strictly private, of suitable size for the embalming of dead bodies. Each preparation room shall:

(1) Contain one standard type operating ~~table;~~ table.
(2) Contain facilities for adequate ~~drainage;~~ drainage.
(3) Contain a sanitary waste ~~receptacle;~~ receptacle.
(4) Contain an instrument ~~sterilizer;~~ sterilizer.
(5) Have wall-to-wall floor covering of tile, concrete, or other material which can be easily ~~cleaned;~~ cleaned.
(6) Be kept in sanitary condition and subject to inspection by the Board or its agents at all ~~times;~~ times.

(7) Have a placard or sign on the door indicating that the preparation room is ~~private; and~~ private.

(8) Have a proper ventilation or purification system to maintain a nonhazardous level of airborne contamination.

(b) No one is allowed in the preparation room while a dead human body is being prepared except licensees, resident trainees, public officials in the discharge of their duties, members of the medical profession, officials of the funeral home, next of kin, or other legally authorized persons.

(c) Every funeral establishment shall contain a reposing room for dead human bodies, of suitable size to accommodate a casket and visitors.

~~(d) No person who has been convicted of a felony shall:~~

~~(1) Own a funeral establishment if it is owned by a sole proprietorship;~~

~~(2) Be a partner in a funeral establishment if it is owned by a partnership;~~

~~(3) Be an officer, member of the board of directors or owner of twenty-five percent (25%) or more of the stock if it is owned by a corporation.~~

(e) If a funeral establishment is solely owned by a natural person, that person must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a partnership, at least one partner must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a corporation, the president, vice-president, or the chairman of the board of directors must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a limited liability company, at least one member must be licensed by the Board as a funeral director or a funeral service licensee. The licensee required by this subsection must be actively ~~engaged, on a day-to-day basis,~~ engaged in the operation of the funeral establishment.

(f) If a funeral establishment uses the name of a living person in the name under which it does business, that person must be licensed by the Board as a funeral director or a funeral service licensee.

(g) No funeral establishment or other licensee under this Article shall own, operate, or maintain a funeral chapel without first having registered the name, location, and ownership thereof with the Board."

Section 15. G.S. 90-210.28 reads as rewritten:

"**§ 90-210.28. Fees.**

The Board may set and collect fees, not to exceed the following amounts:

Establishment permit	
Application	$250.00
Annual renewal	175.00
Late renewal penalty	100.00
~~Establishment reinspection~~ Reinspection fee	100.00
Courtesy card	
Application	75.00
Annual renewal	50.00

Out-of-state licensee	
Application	200.00
Embalmer, funeral director, funeral service	
Application--North Carolina-Resident	150.00
-Non-Resident	200.00
Annual Renewal-embalmer or funeral director	50.00
-funeral service	100.00
Reinstatement fee	50.00
Resident trainee permit	
Application	50.00
Annual renewal	35.00
Late renewal penalty	25.00
Duplicate license certificate	25.00
Chapel registration	
Application	150.00
Annual renewal	100.00

The Board shall provide, without charge, one copy of the current statutes and regulations relating to Mortuary Science to every person applying for and paying the appropriate fees for licensing pursuant to this Article. The Board may charge all others requesting copies of the current statutes and regulations, and the licensees or applicants requesting additional copies, a fee equal to the costs of production and distribution of the requested documents."

Section 16. G.S. 90-210.41 reads as rewritten:

"**§ 90-210.41. Definitions.**

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

(1) 'Authorizing agent' means a person legally entitled to ~~order~~ order, or carry out the legal order for, the cremation of human remains. ~~An authorizing agent shall be, in order of priority, a spouse, an adult child, a parent, any adult sibling, guardian or close relation of the deceased.~~ In the case of indigents or any other individuals whose final disposition is the responsibility of the State, a public official charged with arranging the final disposition of the deceased, if legally authorized, may serve as the authorizing agent. In the case of individuals whose death occurred in a nursing home or other private institution, and in which the institution is charged with making arrangements for the final disposition of the deceased, a representative of the institution, if legally authorized, may serve as the authorizing agent.

(2) 'Board' means the North Carolina State Board of Mortuary Science.

~~(3) 'Casket' means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal or other rigid material and ornamented and lined with fabric.~~

(4) 'Closed container' means any container in which cremated remains can be placed and closed in a manner so as to prevent leakage or spillage of cremated remains or the entrance of foreign material.

(5) 'Cremated remains' means all human remains recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions.

(6) 'Cremation' means the technical process, using heat, that reduces human remains to bone fragments.

(7) 'Cremation chamber' means the enclosed space within which the cremation process takes place. Cremation chambers covered by this Article shall be used exclusively for the cremation of human remains.

(8) 'Cremation container' means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet all of the standards established by the rules adopted by the Board.

(9) 'Crematory' means the building or portion of a building that houses the cremation chamber and that may house the holding facility, business office or other part of the crematory business. A crematory must comply with any applicable public health laws and rules and must contain the equipment and meet all of the standards established by the rules adopted by the Board.

(10) 'Crematory authority' means the North Carolina Crematory Authority.

(11) 'Crematory operator' means the legal entity which is licensed by the Board to operate a crematory and perform cremations.

~~(12) 'Holding facility' means an area within or adjacent to the crematory, designated for the retention of human remains prior to cremation. A holding facility must comply with any applicable public health laws and rules and must meet all of the standards established by the rules adopted by the Board.~~

(13) 'Human remains' means the body of a deceased person, including a human fetus, regardless of the length of gestation, or part of a body ~~or limb~~ that has been removed from a living or deceased person.

(14) 'Niche' means a compartment or cubicle for the memorialization or permanent placement of an urn containing cremated remains.

~~(15) 'Scattering area' means a designated area for the scattering of cremated remains.~~

~~(16) 'Temporary container' means a temporary receptacle for cremated remains, usually made of cardboard, plastic film or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.~~

~~(17) 'Urn' means a receptacle designed to permanently encase the cremated remains.~~"

Section 17. G.S. 90-210.43 reads as rewritten:

"**§ 90-210.43. Licensing and inspection.**

(a) Any person doing business in this State, or any cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity may erect, maintain and conduct a crematory in this State and may provide the necessary appliances and facilities for the cremation of human remains, provided that such person has secured a license as a crematory operator in accordance with the provisions of this Article.

(b) A crematory may be constructed on or adjacent to any cemetery, on or adjacent to any funeral establishment that is zoned commercial or industrial, or at any other location consistent with local zoning regulations.

(c) Application for a license as a crematory operator shall be made on forms furnished and prescribed by the Board. The Board shall examine the premises and structure to be used as a crematory and shall issue a renewable license to the crematory operator if the applicant meets all the requirements and standards of the Board and the requirements of this Article. ~~In the event of a change of ownership of a crematory, at least 30 days prior to the change the new owners shall provide the Board with the name and address of the new owners.~~

(d) Every application for licensure shall identify the individual who is responsible for overseeing the management and operation of the crematory. The crematory operator shall keep the Board informed at all times of the name and address of the manager.

(d1) All licenses shall expire on the last day of December of each year. A license may be renewed without paying a late fee on or before the first day of February immediately following expiration. After that date, a license may be renewed by paying a late fee as provided in G.S. 90-210.48 in addition to the annual renewal fee. Licenses that remain expired six months or more require a new application for renewal. Licenses are not transferable. A new application for a license shall be made to the Board within 30 days following a change of ownership of more than fifty percent (50%) of the business.

(e) No person, cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity shall cremate any human remains, except in a crematory licensed for this express purpose and under the limitations provided in this ~~Article.~~ Article, or unless otherwise permitted by statute.

(f) Whenever the Board finds that an owner, ~~partner~~ partner, manager, member, or officer of a crematory operator or an applicant to become a crematory operator, or that any agent or employee of a crematory operator or an applicant to become a crematory operator, with the direct or implied permission of such owner, ~~partner~~

partner, manager, member, or officer, has violated any provision of this Article, or is guilty of any of the following acts, and when the Board also finds that the crematory operator or applicant has thereby become unfit to practice, the Board may suspend, revoke, or refuse to issue or renew the license, in accordance with the procedures of Chapter 150B:

(1) Conviction of a felony or a crime involving fraud or moral ~~turpitude;~~ turpitude.

(2) Fraud or misrepresentation in obtaining or renewing a license or in the practice of ~~cremation;~~ cremation.

(3) False or misleading ~~advertising;~~ advertising.

(4) Gross immorality, including being under the influence of alcohol or drugs while performing cremation ~~services;~~ services.

(5) Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been cremated or otherwise disposed ~~of;~~ of.

(6) Violating or cooperating with others to violate any of the provisions of this Article or of the rules of the ~~Board;~~ Board.

(7) Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human ~~bodies;~~ bodies.

(8) Refusing to surrender promptly the custody of a dead human body or cremated remains upon the express order of the person lawfully entitled to the custody thereof, except as provided in ~~G.S. 90-210.47(e);~~ G.S. 90-210.47(e).

(9) Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than one thousand dollars ($1,000).

(g) The Board and Crematory Authority may hold hearings in accordance with the provisions of this Article and Chapter 150B. Any such hearing shall be conducted jointly by the Board and the Crematory Authority. The Board and the Crematory Authority shall jointly constitute an 'agency' under Article 3A of Chapter 150B of the General Statutes with respect to proceedings initiated pursuant to this Article. The Board is empowered to regulate and inspect crematories and crematory operators and to enforce as provided by law the provisions of this Article and the rules adopted hereunder. Any crematory that, upon inspection, is found not to meet any of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain whether the deficiency or other violation has been corrected.

In addition to the powers enumerated in Chapter 150B of the General Statutes, the Board shall have the power to administer oaths and issue subpoenas requiring the

attendance of persons and the production of papers and records before the Board in any hearing, investigation or proceeding conducted by it or conducted jointly with the Crematory Authority. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas and other papers given to them by the President of the Board for service in the same manner as process issued by any court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a Class 1 misdemeanor."

Section 18. G.S. 90-210.44 reads as rewritten:

"**§ 90-210.44. Authorization and record keeping.**

The Board shall establish requirements for record ~~keeping and~~ keeping, authorizations, and cremation reports. ~~it~~ It shall be a violation of this Article for any crematory operator to fail to comply with the requirements."

Section 19. G.S. 90-210.45 reads as rewritten:

"**§ 90-210.45. Cremation procedures.**

(a) No human body shall be cremated before the crematory operator receives a death certificate signed by the attending physician or an authorization for cremation signed by a medical examiner.

(b) Human remains shall not be cremated within 24 hours after the time of death, unless such death was a result of an infectious, contagious or communicable and dangerous disease as listed by the Commission of Health Services pursuant to G.S. 130A-134, and unless such time requirement is waived in writing by the medical examiner, county health director, or attending physician where the death occurred. In the event such death comes under the jurisdiction of the medical examiner, the human remains shall not be received by the crematory operator until authorization to cremate has been received in writing from the medical examiner of the county in which the death occurred. In the event the crematory operator is authorized to perform funerals as well as cremation, this restriction on the receipt of human remains shall not be applicable.

(c) No unauthorized person shall be permitted in the crematory area while any human remains are in the crematory area awaiting cremation, being cremated, or being removed from the cremation chamber. Relatives of the deceased, the authorizing agent, medical examiners and law enforcement officers in the execution of their duties shall be authorized to have access to the holding facility and crematory facility.

(c1) Human remains shall be cremated only while enclosed in a cremation container.

(d) The simultaneous cremation of the human remains of more than one person within the same cremation chamber is forbidden.

(d1) Every crematory shall have a holding facility, within or adjacent to the crematory, designated for the retention of human remains prior to cremation. The holding facility must comply with any applicable public health laws and rules and must meet all of the standards established pursuant to rules adopted by the Board.

(e) Crematory operators shall comply with standards established by the Board for the reduction and pulverization of human remains by the cremation process."

Section 20. G.S. 90-210.46(a) reads as rewritten:

"(a) The authorizing agent shall provide the person with whom cremation arrangements are made with a signed statement specifying the ultimate disposition of the cremated remains, if known. ~~A copy of this statement shall be retained by the crematory operator.~~ The crematory operator may store or retain cremated remains as directed by the authorizing agent. Records of retention and disposition of cremated remains shall be kept by the crematory operator pursuant to G.S. 90-210.44."

Section 21. G.S. 90-210.47(b) reads as rewritten:

"(b) A crematory operator shall have authority to cremate human remains only upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability of a crematory operator that cremates human remains pursuant to such authorization, or that releases or disposes of the cremated remains pursuant to such authorization."

Section 22. G.S. 90-210.48(a) reads as rewritten:

"**§ 90-210.48. Fees.**

(a) The Board may set and collect fees not to exceed the following amounts from licensed crematory operators and applicants:

(1)	Licensee application fee.	$400.00
(2)	Annual renewal fee.	150.00
(3)	Late renewal penalty.	75.00
(4)	Re-inspection fee.	100.00
(5)	Per cremation fee.	10.00
(6)	Late fee, per cremation.	10.00
(7)	Late fee, cremation report.	75.00 per month."

Section 23. G.S. 90-210.60(3) reads as rewritten:

"(3) 'Insurance company' means any corporation, limited liability company, association, partnership, society, order, individual or aggregation of individuals engaging in or proposing or attempting to engage as principals in any kind of insurance business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations;".

Section 24. G.S. 90-210.63(a)(2) reads as rewritten:

"(2) The original contracting preneed licensee shall immediately pay all ~~such~~ funds received to the successor funeral establishment ~~so designated;~~ designated. ~~provided, however, regardless~~ Regardless of whether the substitution is made before or after the death of the preneed funeral contract beneficiary, the original contracting preneed licensee shall not be required to give credit for the amount retained pursuant to G.S. 90-210.61(a)(2), except when there was a substitution under G.S. 90-210.68(d1) and (e). ~~and provided further, if~~ Except when there was a substitution under G.S. 90-210.68(d1) and (e), if the original contracting preneed licensee did not retain any portion of payments made ~~to it~~ as is permitted by G.S. 90-210.61(a)(2) then ~~such~~ the preneed licensee

may retain up to ten percent (10%) of ~~said~~ the funds received from the financial institution. Upon making payments pursuant to this subsection, the financial institution and the original contracting preneed licensee shall be relieved from all further contractual liability thereon."

Section 25. G.S. 90-210.64(a) reads as rewritten:

"(a) After the death of a preneed funeral contract beneficiary and full performance of the preneed funeral contract by the preneed licensee, the preneed licensee shall promptly complete a certificate of performance or similar claim form and present it to the financial institution that holds funds in trust under G.S. 90-210.61(a)(1) or to the insurance company that issued a preneed insurance policy pursuant to G.S. 90-210.61(a)(3). Upon receipt of the certificate of performance or similar claim form, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. Within 10 days after receiving payment, the preneed licensee shall mail a copy of the certificate of performance or other claim form to the Board."

Section 26. G.S. 90-210.66(b) reads as rewritten:

"(b) From the fee ~~of fifteen dollars ($15.00)~~ for each preneed funeral contract as required by G.S. 90-210.67(d), the Board shall deposit two dollars ($2.00) into the Fund. The Board may suspend the deposits into the Fund at any time and for any period for which the Board determines that a sufficient amount is available to meet likely disbursements and to maintain an adequate reserve."

Section 27. G.S. 90-210.67 reads as rewritten:

"**§ 90-210.67. Application for license.**

(a) No person may offer or sell preneed funeral contracts or offer to make or make any funded funeral prearrangements without first securing a license from the Board. There shall be two types of licenses: a preneed funeral establishment license and a preneed sales license. Only funeral establishments holding a valid establishment permit pursuant to G.S. 90-210.25(d) shall be eligible for a preneed funeral establishment license. Employees and agents of such entities, upon meeting the qualifications to engage in preneed funeral planning as established by the Board, shall be eligible for a preneed sales license. The Board shall establish the preneed funeral planning activities that are permitted under a preneed sales license. The Board shall adopt rules establishing such qualifications and activities no later than 12 months following the ratification of this act. Preneed sales licensees may sell preneed funeral contracts, prearrangement insurance policies, and make funded funeral prearrangements only on behalf of one preneed funeral establishment licensee; provided, however, they may sell preneed funeral contracts, prearrangement insurance policies, and make funeral prearrangements for any number of licensed preneed funeral establishments that are wholly owned by or affiliated with, through common ownership or contract, the same entity; provided further, in the event they engage in selling prearrangement insurance policies, they shall meet the licensing requirements of the Commissioner of Insurance. Every preneed funeral contract shall

be signed by a person licensed as a funeral director or funeral service licensee pursuant to Article 13A of Chapter 90 of the General Statutes.

Application for a license shall be in writing, signed by the applicant and duly verified on forms furnished by the Board. Each application shall contain at least the following: the full names and addresses (both residence and place of business) of the applicant, and every partner, member, officer and director thereof if the applicant is a partnership, limited liability company, association, or corporation and any other information as the Board shall deem necessary. A preneed funeral establishment license shall be valid only at the address stated in the application or at a new address approved by the Board.

(b) An application for a preneed funeral establishment license shall be accompanied by a nonrefundable application fee of not more than one hundred fifty dollars ($150.00). The Board shall set the amounts of the application fees and renewal fees by rule, but the fees shall not exceed one hundred fifty dollars ($150.00). If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the application fee, the Board shall issue a renewable preneed funeral establishment license unless it determines that the applicant has violated any provision of G.S. 90-210.69(c) or has made false statements or representations in the application, or is insolvent, or has conducted or is about to conduct, its business in a fraudulent manner, or is not duly authorized to transact business in this State. The license shall expire on December 31 and ~~Each~~ each preneed funeral establishment licensee shall pay annually to the Board on or before ~~June 30 of each year~~ that date a license renewal fee of not more than one hundred fifty dollars ($150.00). On or before the first day of February immediately following expiration, a license may be renewed without paying a late fee. After that date, a license may be renewed by paying a late fee of not more than one hundred dollars ($100.00) in addition to the annual renewal fee.

(c) An application for a preneed sales license shall be accompanied by a nonrefundable application fee of not more than fifty dollars ($50.00). The Board shall set the amounts of the application fees and renewal fees by rule, but the fees shall not exceed fifty dollars ($50.00). If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the application fee, the Board shall issue a renewable preneed sales license provided the applicant has met the qualifications to engage in preneed funeral planning as established by the Board unless it determines that the applicant has violated any provision of G.S. 90-210.69(c). The license shall expire on December 31 and ~~Each~~ each preneed sales licensee shall pay annually to the Board on or before ~~June 30 of each year,~~ that date a license renewal fee of not more than fifty dollars ($50.00). On or before the first day of February, a license may be renewed without paying a late fee. After that date, a license may be renewed by paying a late fee of not more than twenty-five dollars ($25.00) in addition to the annual renewal fee.

(d) Any person selling a preneed funeral contract, whether funded by a trust deposit or a prearrangement insurance policy, shall remit to the Board, within 10 days of the sale, a fee ~~of fifteen dollars ($15.00)~~ not to exceed twenty dollars ($20.00) for each ~~sale.~~ sale and a copy of each contract. The person shall pay a late fee of not more than twenty-five dollars ($25.00) for each late filing and payment. The ~~fee~~ fees shall not be remitted in cash.

(d1) The Board may also set and collect a fee of not more than twenty-five dollars ($25.00) for the late filing of a certificate of performance and a fee of not more than one hundred and fifty dollars ($150.00) for the late filing of an annual report.

(e) The fees collected under this Article, except for monies used pursuant to G.S. 90-210.66, shall be used for the expenses of the Board in carrying out the provisions of this Article. Any funds collected under this Article and remaining with the Board after all expenses under this Article for the current fiscal year have been fully provided for shall be paid over to the General Fund of the State of North Carolina. Provided, however, the Board shall have the right to maintain an amount, the cumulative total of which shall not exceed twenty percent (20%) of gross receipts under this Article for the previous fiscal year of its operations, as a maximum contingency or emergency fund.

(f) Any entity licensed by the Commissioner of Banks under Article 13B of Chapter 90 of the General Statutes before July 9, 1992 shall be entitled to have its license renewed notwithstanding that it is not a funeral establishment, provided it otherwise satisfies the requirements of this Article."

Section 28. G.S. 90-210.68 reads as rewritten:

"**§ 90-210.68. Licensee's books and records; notice of transfers, assignments and terminations.**

(a) Every preneed licensee shall keep for examination by the Board accurate accounts, books, and records in this State of all preneed funeral contract and prearrangement insurance policy transactions, copies of all agreements, insurance policies, instruments of assignment, the dates and amounts of payments made and accepted thereon, the names and addresses of the contracting parties, the persons for whose benefit funds are accepted, and the names of the financial institutions holding preneed funeral trust funds and insurance companies issuing prearrangement insurance policies. The Board, its inspectors appointed pursuant to G.S. 90-210.24 and its examiners, which the Board may appoint to assist in the enforcement of this Article, may during normal hours of operation and periods shortly before or after normal hours of operation, investigate the books, records, and accounts of any licensee under this Article with respect to trust funds, preneed funeral contracts, and prearrangement insurance policies. Any preneed licensee who, upon inspection, fails to meet the requirements of this subsection or who fails to keep an appointment for an inspection shall pay a reinspection fee to the Board in an amount not to exceed one hundred dollars ($100.00). The Board may require the attendance of and examine under oath all persons whose testimony it may require. Every preneed licensee shall submit a written report to the Board, at least annually, in a manner and

with such content as established by the Board, of its preneed funeral contract sales and performance of such contracts. The Board may also require other reports.

(b) A preneed licensee may transfer preneed funds held by it as trustee from the financial institution which is a party to a preneed funeral contract to a substitute financial institution that is not a party to the contract. Within 10 days after the transfer, the preneed licensee shall notify the Board, in writing, of the name and address of the transferee financial institution. Before the transfer may be made, the transferee financial institution shall agree to make disclosures required under the preneed funeral contract to the Board or its inspectors or examiners. If the contract is revocable, the licensee shall notify the contracting party of the intended transfer.

(c) If any preneed licensee transfers or assigns its assets or stock to a successor funeral establishment or terminates its business as a funeral establishment, the preneed licensee and assignee shall notify the Board at least 15 days prior to the effective date of the transfer, assignment or termination: provided, however, the successor funeral establishment must be a preneed licensee or shall be required to apply for and be granted such license by the Board before accepting any preneed funeral contracts, whether funded by trust deposits or preneed insurance policies. Provided further, a successor funeral establishment shall be liable to the preneed funeral contract purchasers for the amount of contract payments retained by the assigning or transferring funeral home pursuant to G.S. 90-210.61(a)(2).

(d) Financial institutions that accept preneed funeral trust funds and insurance companies that issue prearrangement insurance policies shall, upon request by the Board or its inspectors or examiners, disclose any information regarding preneed funeral trust accounts held or prearrangement insurance policies issued by it for a preneed licensee.

(d1) When a preneed funeral establishment license lapses or is terminated for any reason, the preneed licensee shall immediately divest of all the unperformed preneed funeral contracts and shall transfer them and any amounts retained under G.S. 90-210.61(a)(2) to another preneed funeral establishment licensee pursuant to the procedures of subsection (e) of this section.

(e) In the event that any preneed licensee is unable or unwilling or is for any reason relieved of its responsibility to perform as trustee or to perform any preneed funeral contract, the Board, with the written consent of the purchaser of the preneed funeral contract, or after the purchaser's death or incapacity, the preneed funeral contract beneficiary ~~may~~ shall order the contract and any amounts retained pursuant to G.S. 90-210.61(a)(2) to be assigned to a substitute preneed licensee provided that the substitute licensee agrees to accept such assignment.

(f) The substitute preneed licensee under subsections (d1) and (e) of this section shall be liable to the preneed funeral contract purchasers for the amount of contract payments that had been retained by, and that the substitute preneed licensee has received from, the assigning preneed licensee."

Section 29. G.S. 90-210.69(c) reads as rewritten:

"(c) In accordance with the provisions of Chapter 150B of the General Statutes, ~~If~~ if the Board finds that a licensee, an applicant for a license or an applicant for license

renewal is guilty of one or more of the following, the Board may refuse to issue or renew a license or may suspend or revoke a license or place the holder thereof on probation upon conditions set by the Board, with revocation upon failure to comply with the conditions:

(1) Offering to engage or engaging in activities for which a license is required under this Article but without having obtained such a ~~license;~~ license.

(2) Aiding or abetting an unlicensed person, firm, partnership, association, corporation or other entity to offer to engage or engage in such ~~activities;~~ activities.

(3) A crime involving fraud or moral turpitude by conviction ~~thereof;~~ thereof.

(4) Fraud or misrepresentation in obtaining or receiving a license or in preneed funeral ~~planning;~~ planning.

(5) False or misleading ~~advertising; or~~ advertising.

(6) Violating or cooperating with others to violate any provision of this ~~Article or~~ Article, the rules and regulations of the Board, ~~pursuant thereto.~~ or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than one thousand dollars ($1,000)."

Section 30. G.S. 90-210.69(e) reads as rewritten:

"(e) ~~All hearings under this Article shall be conducted pursuant to G.S. 150B-40(e).~~ Judicial review shall be pursuant to Article 4 of Chapter 150B of the General Statutes."

Section 31. G.S. 90-210.70(c) reads as rewritten:

"(c) If a corporation or limited liability company embezzles or fraudulently or knowingly and willfully misapplies or converts preneed funeral funds as provided in subsection (a) hereof or otherwise violates any provision of this Article, the officers, directors, members, agents, or employees responsible for committing the offense shall be fined or imprisoned as herein provided."

Section 32. G.S. 90-210.70(d) reads as rewritten:

"(d) The Board shall have the power to investigate violations of this section and shall deliver all evidence of violations of subsection (a) of this section to the district attorney in the county where the offense occurred. The Board shall, with the fees collected under this Article, employ legal counsel and other staff to monitor preneed trusts, investigate complaints, audit preneed trusts, and be responsible for delivering evidences to the district attorney when there is evidence ~~of criminal violation.~~ that a felony has been committed by a licensee. The record of complaints, auditing, and enforcement shall be presented in an annual report from the Board to the General Assembly."

Section 33. Article 13D of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-210.73. Not public record.**

The names and addresses of the purchasers and beneficiaries of preneed funeral contracts filed with the Board shall not be subject to Chapter 132 of the General Statutes."

Section 34. Article 16 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 7. Disposition of Body or Body Parts.

"**§ 130A-422. Authority to dispose of body or body parts.**

(a) An individual at least 18 years of age may authorize the disposition of the individual's own dead body in a written will, pursuant to a health care power of attorney to the extent provided in Article 3 of Chapter 32A of the General Statutes, pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old.

(b) If a decedent has left no written authorization for the disposal of the decedent's body as permitted under subsection (a) of this section, the following competent persons in the order listed may authorize the type, method, place, and disposition of the decedent's body:

(1) The surviving spouse.
(2) A majority of the surviving children.
(3) The surviving parents.
(4) A majority of the surviving siblings.
(5) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate.
(6) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or to prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63.

(c) An individual at least 18 years of age may, in a writing signed by the individual, authorize the disposition of one or more of the individual's body parts that has been or will be removed. If the individual does not authorize the disposition, a person listed in subsection (b) of this section may authorize the disposition as if the individual was deceased.

(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3 of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes."

Section 35. The Board shall adopt temporary rules to implement the provisions of this act.

Section 36. This act is effective when it becomes law.

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April 3, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **Proposed Committee Substitute for House Bill 485; Funeral establishment amendments.**

House Bill 485 makes various amendments to Chapter 90 of the General Statutes that affect the regulation of the practice of funeral service, cremations, and funeral and burial trust funds. It also amends Article 16, Chapter 130A, with regard to disposition of bodies.

Section 1 amends G.S. 90-210.20(e1) by amending the definition of "funeral chapel" to make it inclusive of funeral chapels operated by licensees other than funeral homes. The effect is to place these other funeral chapels under the control of the Board of Mortuary Science.

Section 2 amends G.S. 90-210.23(d) to allow the Board of Mortuary Science to inspect embalming facilities other than those contained in funeral homes. Those contained in funeral homes can already be inspected because the funeral homes themselves are subject to inspection.

Section 3 amends G.S. 90-210.23(e) to add embalming facilities to those facilities subject to regulation and inspection by the Board. It also grants the Board power to enforce compliance with the Federal Trade Commission Funeral Rules.

Section 4 amends G.S. 90-210.24(b)(1) to conform it to the amendments contained in sections 2 and 3 of the bill dealing with the regulation of embalming facilities.

Sections 5, 6, and 7 of the bill amend G.S. 90-210.25(a)(1), (2), and (3). These subdivisions of G.S. 90-210.25(a) deal with the examinations given for licenses to practice funeral directing, embalming, and funeral service. The amendments change the content of the examinations. The intent is to change the examinations to agree with those currently being given throughout the United States.

Section 8 of the bill amends G.S. 90-210.25(a)(5) to allow licensees to carry over a maximum of 5 hours of continuing education to be used for the following year's requirement. It also adds a provision that a licensee issued an initial license on or after July 1 does not have to satisfy the continuing education requirement for that year. Finally, it changes the standard for waiver of the continuing education requirement. The present waiver of continuing education requirements for 25 year licensees shall only apply to licensees who, before January 1, 1998, are licensed, begin a course of study in a mortuary science college or trainee program, or make an application for a license.

Section 9 amends G.S. 90-210.25 by adding a new subsection (a1) allowing the issuance of "inactive licenses." Holders of inactive licenses are limited to only voting in elections for members of the State Board of Mortuary Science. The new subsection also establishes the criteria for reactivation of a license.

Section 10 amends G.S. 90-210.25(b)(3) to allow the Board to grant special permits to nonresidents for purposes of teaching continuing education programs and for the purpose of doing work in connection with disasters.

Section 11 amends G.S. 90-210.25(d) to add limited liability companies to the list of business entities that may operate funeral establishments and clarifies that permits may be revoked or suspended for violations by various persons in charge of the operation..

Section 12 amends G.S. 90-210.25 by adding a new subsection (d1) that requires embalming facilities to register with the Board of Mortuary Science. This conform to the changes made in sections 2, 3, and 4 of the bill.

Section 13 of the bill amends G.S. 90-210.25(e). The amendments allow the board to enforce the Federal Trade Commission Funeral Rule (conforming to Section 3 of the bill), and change the provisions concerning who has authority to direct disposal of a body to conform with new, specific provisions found in Section 34 of the bill.

Section 14 of the bill amends G.S. 90-210.27A by deleting subsection (d) which presently provides that a convicted felon may not be in the funeral business. Subsection (e) is amended to recognize the existence of limited liability companies.

Section 15 of the bill is a technical correction to G..S. 90-210.28, which deals with fees. No fees are changed in this amendment.

Section 16 of the bill makes various changes in the definitions applicable to cremations. Certain definitions are eliminated because the term does not appear anywhere in the cremation article. The definition of "human remains" is amended to include a human fetus. References to the order of authorizing agency to authorize cremation are eliminated because this is now dealt with in another statute created in section 34 of the bill.

Section 17 of the bill amends G.S. 90-210.43 which deals with licensing and inspection of cremation establishments. A crematory license year is established. License renewal procedures and late fees are established. The amendment to subsection (e) acknowledges that the remains of terminated pregnancies may be disposed of by approved hospital type incineration. The amendments grant the Board authority to accept a monetary penalty as a compromise in an enforcement action. Fees for reinspection of crematories not meeting proper standards are authorized.

Section 18 amends G.S. 90-210.44 to authorize the Board to establish requirements for cremation reports.

Section 19 amends G.S. 90-210.45 to require that a body be enclosed in a container when cremated. This does not require an actual casket. The description of a crematory holding facility that was eliminated in the amendments contained in section 16, is moved to this statutory section.

Section 20 amends G.S. 90-210.46(a) to specifically authorize a crematory operator to store cremated remains as directed by the authorizing agent.

Section 21 amends 90-210.47(b) to clarify that a crematory operator must have a signed cremation authorization form before cremating a body.

Section 22 amends 90-210.48(a) to add late fees for late payment of cremation fees and for late filing of cremation reports. The fees authorized are the maximum amounts.

Section 23 amends 90-210.60(3) to recognize existence of limited liability companies in the definition of an insurance company.

Section 24 amends G.S. 90-210.63(a)(2) to provide that when the purchaser or beneficiary of a preneed contract changes funeral homes, the first funeral home may keep its 10% retention

except where the first funeral home is divested of its preneed contracts as provided in section 28 of the bill.

Section 25 of the bill amends G.S. 90-210.64(a) to require a funeral home to mail proof of its performance of a preneed contract to the Board within 10 day after receiving payment.

Section 26 amends G.S. 90-210.66(b) to eliminate the referenced to a specific preneed funeral contract fee since the fee is established elsewhere (see section 27 of the bill).

Section 27 of the bill amends G.S. 90-210.67 which deals with licenses to sell preneed funeral contracts. Limited liability companies are recognized as a licensable entity. A preneed license year is established as well as renewal procedures and late fees. Copies of preneed contracts are required to be filed with the Board. Other fees and late fees are established.

Section 28 of the bill amends G.S. 90-210.68. The amendments establish reinspection fees for preneed licensees, require a preneed funeral establishment to divest itself of all unperformed preneed contracts and transfer the funds if its license lapses or is terminated, and make the substitute licensee responsible to the purchaser for the money it receives from the assigning preneed licensee.

Section 29 clarifies that disciplinary action is in accordance with the provisions of Chapter 150B (Administrative Procedure Act), allows for monetary offers in compromise of violation proceedings, and specifically authorizes the Board to enforce the Federal Trade Commission Funeral Rule within its preneed regulatory authority.

Section 30 amends G.S. 90-210.69(e) to eliminate the requirement that the Board use administrative law judges for administrative hearings involving funeral trust funds.

Section 31 amends G.S. 90-210.70(c). This is a conforming amendment recognizing the existence of limited liability companies.

Section 32 of the bill amends G.S. 90-210.70(d) to eliminate the requirement that the Board report misdemeanor violations of this section (dealing with fraud and embezzlement) to the district attorney. Felony violations must be reported.

Section 33 adds a new section, G.S. 90-210.73, to the Funeral Trust Fund article. It provides that the names and addresses of purchasers and beneficiaries of preneed funeral contracts filed with the Board are not public records.

Section 34 of the bill amends Article 16 of Chapter 130A by adding a new Part 7 dealing with the disposition of bodies and body parts. The new Article allows a person 18 years of age or older to authorize disposition of their body. Where there is no written authorization, an order of priority is established to indicate who may authorize disposal of the body. The list showing the order of priority for authorization is found on page 23, lines 23 through 32 of the bill. The provision specifically provides that it does not affect authorizations for anatomical gift nor does it affect the statutes relating to autopsies.

Section 35 provides that the Board adopt temporary rules to implement the provisions of this act. Section 36 provides that the act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 485
Proposed Committee Substitute H485-PCS1225

Short Title: Funeral Establishments/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS STATUTES RELATING TO THE PRACTICE OF FUNERAL SERVICE, CREMATIONS, AND FUNERAL AND BURIAL TRUST FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-210.20(e1) reads as rewritten:

"(e1) 'Funeral chapel' means a chapel or other facility separate from the funeral establishment premises for the reposing of dead human bodies, visitation or funeral ceremony, which is owned, operated, or maintained by a funeral ~~establishment,~~ establishment or other licensee under this Article, and which does not use the word 'funeral' in its name, on a sign, in a directory, in advertising or in any other manner; in which or on the premises of which there is not displayed or offered for sale any caskets or other funeral merchandise; in which or on the premises of which there is not located any funeral business office or a preparation room; in which or on the premises of which no funeral sales, financing, or arrangements are made; and which no owner, operator, employee, or agent thereof represents the chapel to be a funeral establishment."

Section 2. G.S. 90-210.23(d) reads as rewritten:

"(d) Every person licensed by the Board and every resident trainee shall furnish all information required by the Board reasonably relevant to the practice of the profession or business for which ~~he~~ the person is a licensee or resident ~~trainee, and every~~ trainee. Every funeral service establishment and its records and every place of business where the practice of funeral service or embalming is carried on and its

records ~~thereof~~ shall be subject to inspection by the Board during normal hours of operation and periods shortly before or after normal hours of operation and shall furnish all information required by the Board reasonably relevant to the business therein conducted. Every licensee, resident ~~trainee~~ trainee, embalming facility, and funeral service establishment shall provide the Board with ~~his or its~~ a current post-office address which shall be placed on the appropriate register and all notices required by law or by any rule or regulation of the Board to be mailed to any licensee, resident ~~trainee~~ trainee, embalming facility, or funeral service establishment shall be validly given when mailed to the address so provided.

The Board is empowered to hold hearings in accordance with the provisions of this Article and of Chapter 150B to subpoena witnesses and to administer oaths to or receive the affirmation of witnesses before the Board."

Section 3. G.S. 90-210.23(e) reads as rewritten:

"(e) The Board is empowered to regulate and inspect, according to law, funeral service ~~establishments,~~ establishments and embalming facilities, their ~~operation~~ operation, and the licenses under which they are operated, and to enforce as provided by law the rules, ~~regulations~~ regulations, and requirements of the Division of Health Services and of the city, ~~town~~ town, or county ~~wherein any such~~ in which the funeral service establishment or embalming facility is maintained and operated. Any funeral establishment or embalming facility ~~which,~~ that, upon inspection, is found not to meet all of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain that the deficiency or other violation has been corrected. The Board is also empowered to enforce compliance with the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time."

Section 4. G.S. 90-210.24(b)(1) reads as rewritten:

"(1) Enter the office, establishment or place of business of any funeral service licensee, funeral director or embalmer in North Carolina, and any office, establishment or place in North Carolina where the practice of funeral service or embalming is carried on, or where that practice is advertised as being carried on, or where a funeral is being ~~conducted,~~ conducted or a body is being embalmed, to inspect the records, office, ~~or establishment,~~ establishment, or facility, or to inspect the practice being carried on or license or registration of any licensee and any resident trainee operating therein;".

Section 5. G.S. 90-210.25(a)(1) reads as rewritten:

"(1) To be licensed for the practice of funeral directing under this Article, a person must:

a. Be at least 18 years of ~~age,~~ age.

b. Be of good moral ~~character,~~ character.

c. Have completed a minimum of 32 semester hours or 48 quarter hours of instruction in a course of study including the subjects set out in ~~items~~ item e.1. ~~and 2.~~ of this

subsection in a mortuary science college approved by the Board, or be a graduate of a mortuary science college approved by the Board.

d. Have completed 12 months of resident traineeship as funeral director, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this ~~subsection, and~~ subsection.

e. Have passed an oral or written funeral director examination on the following subjects:

1. ~~Basic health sciences, including microbiology, hygiene, and public health,~~ Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.

~~2. Funeral service administration, including accounting, psychology, funeral principles and directing, and~~

3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies."

Section 6. G.S. 90-210.25(a)(2) reads as rewritten:

"(2) To be licensed for the practice of embalming under this Article, a person must:

a. Be at least 18 years of ~~age,~~ age.

b. Be of good moral ~~character,~~ character.

c. Be a graduate of a mortuary science college approved by the ~~Board,~~ Board.

d. Have completed 12 months of resident traineeship as an embalmer pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this ~~subsection, and~~ subsection.

e. Have passed an oral or written embalmer examination on the following subjects:

1. ~~Basic health sciences, including anatomy, chemistry, microbiology, pathology and forensic pathology,~~ Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.

~~2. Funeral service sciences, including embalming and restorative art, and~~

3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies."

Section 7. G.S. 90-210.25(a)(3) reads as rewritten:

"(3) To be licensed for the practice of funeral service under this Article, a person must:

a. Be at least 18 years of ~~age,~~ age.

b. Be of good moral ~~character,~~ character.

c. Be a graduate of a mortuary science college approved by the ~~Board,~~ Board.

d. Have completed 12 months of resident traineeship as a funeral service licensee, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under item c. of this ~~subsection, and~~ subsection.

e. Have passed an oral or written funeral service examination on the following subjects:

1. ~~Basic health sciences, including anatomy, chemistry, microbiology, pathology, forensic pathology hygiene and public health,~~ Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.

2. ~~Funeral service sciences, including embalming and restorative art,~~ Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.

~~3. Funeral service administration, including accounting, psychology, funeral principles and directing, and~~

4. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies."

Section 8. G.S. 90-210.25(a)(5) reads as rewritten:

"(5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own.

All licenses shall be signed by the president and secretary of the Board and the seal of the Board affixed thereto. All licenses shall be issued, renewed or duplicated for a period not exceeding one year upon payment of the renewal fee, and all licenses, renewals or duplicates thereof shall expire and terminate the thirty-first day of December following the date of their issue unless sooner revoked and canceled; provided, that the date of expiration may be changed by unanimous consent of the Board and upon 90 days' written notice of such change to all persons licensed for the practice of funeral directing, embalming and funeral service in this State.

The holder of any license issued by the Board who shall fail to renew the same on or before January 31 of the calendar year for

which the license is to be renewed shall have forfeited and surrendered the license as of that date. No license forfeited or surrendered pursuant to the preceding sentence shall be reinstated by the Board unless it is shown to the Board that the applicant has, throughout the period of forfeiture, engaged full time in another state of the United States or the District of Columbia in the practice to which his North Carolina license applies and has completed for each such year continuing education substantially equivalent in the opinion of the Board to that required of North Carolina licensees; or has completed in North Carolina a total number of hours of accredited continuing education computed by multiplying five times the number of years of forfeiture; or has passed the North Carolina examination for the forfeited license. No additional resident traineeship shall be required. The applicant shall be required to pay all delinquent annual renewal fees and a reinstatement fee. The Board may waive the provisions of this section for an applicant for a forfeiture which occurred during his service in the armed forces of the United States provided he applies within six months following severance therefrom.

All licensees now or hereafter licensed in North Carolina shall take courses of study in subjects relating to the practice of the profession for which they are licensed, to the end that new techniques, scientific and clinical advances, the achievements of research and the benefits of learning and reviewing skills will be utilized and applied to assure proper service to the public.

As a prerequisite to the annual renewal of a license, the licensee must complete, during the year immediately preceding renewal, at least five hours of continuing education courses, approved by the Board prior to ~~enrollment; except that for renewals for calendar year 1980 the required length of study shall be a total of 15 hours in the three years immediately preceding January 1, 1980.~~ enrollment. A licensee who completes more than five hours in a year may carry over a maximum of five hours as a credit to the following year's requirement. A licensee who is issued an initial license on or after July 1 does not have to satisfy the continuing education requirement for that year.

The Board shall not renew a license unless fulfillment of the continuing education requirement has been certified to it on a form provided by the Board, but the Board may waive this requirement for renewal in cases of certified illness or undue hardship or where the licensee lives outside of North Carolina and does not practice in North Carolina, and the Board shall waive the requirement for all licensees who have been licensed in North Carolina for a continuous period of 25 years or more, and for all

licensees who are, at the time of renewal, members of the General Assembly. The waiver for 25-year licensees shall apply only to those licensees who, before January 1, 1998, are licensed, begin a course of study in a mortuary science college or a trainee program, or make an application for a license.

The Board shall cause to be established and offered to the licensees, each calendar year, at least five hours of continuing education courses in subjects encompassing the license categories of embalming, funeral directing and funeral service. The Board may charge licensees attending these courses a reasonable registration fee in order to meet the expenses thereof and may also meet those expenses from other funds received under the provisions of this Article.

Any person who having been previously licensed by the Board as a funeral director or embalmer prior to July 1, 1975, shall not be required to satisfy the requirements herein for licensure as a funeral service licensee, but shall be entitled to have such license renewed upon making proper application therefor and upon payment of the renewal fee provided by the provisions of this Article. Persons previously licensed by the Board as a funeral director may engage in funeral directing, and persons previously licensed by the Board as an embalmer may engage in embalming. Any person having been previously licensed by the Board as both a funeral director and an embalmer may upon application therefor receive a license as a funeral service licensee."

Section 9. G.S. 90-210.25 is amended by adding a new subsection to read:

"(a1) Inactive Licenses. -- Any person holding a license issued by the Board for funeral directing, for embalming, or for the practice of funeral service may apply for an inactive license in the same category as the active license held. The inactive license is renewable annually. Continuing education is not required for the renewal of an inactive license. The only activity that a holder of an inactive license may engage in is to vote pursuant to G.S. 90-210.18(c)(2). The holder of an inactive license may apply for an active license in the same category, and the Board shall issue an active license if the applicant has completed in North Carolina a total number of hours of accredited continuing education equal to five times the number of years the applicant held the inactive license. No application fee is required for the active license. The holder of an inactive license who returns to active status shall surrender the inactive license to the Board."

Section 10. G.S. 90-210.25(b)(3) reads as rewritten:

"(3) The Board may issue special permits, to be known as courtesy cards, permitting nonresident funeral directors, embalmers and funeral service licensees to remove bodies from and to arrange and direct funerals and embalm bodies in this State, but these

privileges shall not include the right to establish a place of business in or engage generally in the business of funeral directing and embalming in this State. ~~Provided,~~ Except for special permits issued by the Board for teaching continuing education programs and for work in connection with disasters, no special permits may be issued to nonresident funeral directors, embalmers, and funeral service licensees from states that do not issue similar courtesy cards to persons licensed in North Carolina pursuant to this Article."

Section 11. G.S. 90-210.25(d) reads as rewritten:

"(d) Establishment Permit. --

(1) No person, firm or corporation shall conduct, maintain, manage or operate a funeral establishment unless a permit for that establishment has been issued by the Board and is conspicuously displayed in the establishment. Each funeral establishment at a specific location shall be deemed to be a separate entity and shall require a separate permit and compliance with the requirements of this Article.

(2) A permit shall be issued when:

a. It is shown that the funeral establishment has in charge a person, known as a manager, licensed for the practice of funeral directing or funeral service, who shall not be permitted to manage more than one funeral ~~establishment,~~ establishment.

b. The Board receives a list of the names of all part-time and full-time licensees employed by the ~~establishment,~~ establishment.

c. It is shown that the funeral establishment satisfies the requirements of ~~G.S. 90-210.27A, and~~ G.S. 90-210.27A.

d. The Board receives payment of the permit fee.

(3) Applications for funeral establishment permits shall be made on forms provided by the Board and filed with the Board by the owner, a ~~partner~~ partner, a member of the limited liability company, or an officer of the corporation by January 1 of each year, and shall be accompanied by the application fee or renewal fee, as the case may be. All permits shall expire on December 31 of each year.

A penalty for late renewal, in addition to the regular renewal fee, shall be charged for renewal of registration coming after the first day of February.

(4) The Board may suspend or revoke a permit when an owner, ~~partner~~ partner, manager, member, operator, or officer of the funeral establishment violates any provision of this Article or any regulations of the Board, or when any agent or employee of the funeral establishment, with the consent of any person, firm or

corporation operating the funeral establishment, violates any of those provisions, rules or regulations.

(5) Funeral establishment permits are not transferable. A new application for a permit shall be made to the Board within 30 days of a change of ownership of a funeral establishment."

Section 12. G.S. 90-210.25 is amended by adding a new subsection to read:

"(d1) Embalming Outside Establishment. -- An embalmer who engages in embalming in a facility other than a funeral establishment or in the residence of the deceased person shall, no later than January 1 of each year, register the facility with the Board on forms provided by the Board."

Section 13. G.S. 90-210.25(e) reads as rewritten:

"(e) Revocation; Suspension; Compromise; Disclosure. --

(1) Whenever the Board finds that an applicant for a license or a person to whom a license has been issued by the Board is guilty of any of the following acts or omissions and the Board also finds that the person has thereby become unfit to practice, the Board may suspend or revoke the license or refuse to issue or renew the license, in accordance with the procedures set out in Chapter 150B:

a. Conviction of a felony or a crime involving fraud or moral ~~turpitude;~~ turpitude.

b. Fraud or misrepresentation in obtaining or renewing a license or in the practice of funeral ~~service;~~ service.

c. False or misleading advertising as the holder of a ~~license;~~ license.

d. Solicitation of dead human bodies by the licensee, his agents, assistants, or employees; but this paragraph shall not be construed to prohibit general advertising by the ~~licensee;~~ licensee.

e. Employment directly or indirectly of any resident trainee agent, assistant or other person, on a part-time or full-time basis, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular ~~licensee;~~ licensee.

f. The direct or indirect giving of certificates of credit or the payment or offer of payment of a commission by the licensee, his agents, assistants or employees for the purpose of securing ~~business;~~ business.

g. Gross immorality, including being under the influence of alcohol or drugs while practicing funeral ~~service;~~ service.

h. Aiding or abetting an unlicensed person to perform services under this Article, including the use of a picture or name in connection with advertisements or other written material

published or caused to be published by the ~~licensee;~~ licensee.

i. Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed ~~of;~~ of.

j. Violating or cooperating with others to violate any of the provisions of this ~~Article or of~~ Article, the rules and regulations of the ~~Board;~~ Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

k. Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human ~~bodies;~~ bodies.

l. Refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to the custody ~~thereof;~~ thereof.

m. Knowingly making any false statement on a certificate of ~~death;~~ death.

n. Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

In any case in which the Board is entitled to suspend, revoke or refuse to renew a license, the Board may accept from the licensee an offer in compromise to pay a penalty of not more than one thousand dollars ($1,000). The Board may either accept a compromise or revoke or refuse to renew a license, but not both.

(2) Where the Board finds that a licensee is guilty of one or more of the acts or omissions listed in subsection (e)(1) of this section but it is determined by the Board that the licensee has not thereby become unfit to practice, the Board may place the licensee on a term of probation in accordance with the procedures set out in Chapter 150B.

No person licensed under this Article shall remove or cause to be embalmed a dead human body when he has information indicating crime or violence of any sort in connection with the cause of death, nor shall a dead human body be cremated, until permission of the State or county medical examiner has first been obtained. However, nothing in this Article shall be construed to alter the duties and authority now vested in the office of the coroner.

No funeral service establishment shall accept a dead human body from any public officer (excluding the State or county medical examiner or his agent), or employee or from the official of any institution, hospital or nursing home, or from a physician or any person having a professional relationship with a decedent, without having first made due inquiry as to the desires of the ~~next of kin and of the persons who may be chargeable with the funeral expenses of such decedent.~~ persons who have the legal

authority to direct the disposition of the decedent's body. If any ~~such kin be~~ persons are found, ~~his or her~~ their authority and directions shall govern the disposal of the remains of ~~such~~ the decedent. Any funeral service establishment receiving ~~such~~ the remains in violation ~~hereof~~ of this subsection shall make no charge for any service in connection with ~~such~~ the remains prior to delivery of ~~same~~ the remains as stipulated by ~~such kin;~~ the persons having legal authority to direct the disposition of the body. ~~provided, however, this~~ This section shall not prevent any funeral service establishment from charging and being reimbursed for services rendered in connection with the removal of the remains of any deceased person in case of accidental or violent death, and rendering necessary professional services required until the ~~next of kin or the persons chargeable with the expenses~~ persons having legal authority to direct the disposition of the body have been notified.

When and where a licensee presents a selection of funeral merchandise to the public to be used in connection with the service to be provided by the licensee or an establishment as licensed under this Article, a card or brochure shall be directly associated with each item of merchandise setting forth the price of the service using said merchandise and listing the services and other merchandise included in the price, if any. When there are separate prices for the merchandise and services, such cards or brochures shall indicate the price of the merchandise and of the items separately priced.

At the time funeral arrangements are made and prior to the time of rendering the service and providing the merchandise, a funeral director or funeral service licensee shall give or cause to be given to the person or persons making such arrangements a written statement duly signed by a licensee of said funeral establishment showing the price of the service as selected and what services are included therein, the price of each of the supplemental items of services or merchandise requested, and the amounts involved for each of the items for which the funeral establishment will advance moneys as an accommodation to the person making arrangements, insofar as any of the above items can be specified at that time. The statement shall have printed, typed or stamped on the face thereof: 'This statement of disclosure is provided pursuant to the requirements of North Carolina G.S. 90-210.25(e).'"

Section 14. G.S. 90-210.27A reads as rewritten:

"**§ 90-210.27A. Funeral establishments.**

(a) Every funeral establishment shall contain a preparation room which is strictly private, of suitable size for the embalming of dead bodies. Each preparation room shall:

(1) Contain one standard type operating ~~table;~~ table.
(2) Contain facilities for adequate ~~drainage;~~ drainage.
(3) Contain a sanitary waste ~~receptacle;~~ receptacle.
(4) Contain an instrument ~~sterilizer;~~ sterilizer.
(5) Have wall-to-wall floor covering of tile, concrete, or other material which can be easily ~~cleaned;~~ cleaned.
(6) Be kept in sanitary condition and subject to inspection by the Board or its agents at all ~~times;~~ times.

(7) Have a placard or sign on the door indicating that the preparation room is ~~private; and~~ private.

(8) Have a proper ventilation or purification system to maintain a nonhazardous level of airborne contamination.

(b) No one is allowed in the preparation room while a dead human body is being prepared except licensees, resident trainees, public officials in the discharge of their duties, members of the medical profession, officials of the funeral home, next of kin, or other legally authorized persons.

(c) Every funeral establishment shall contain a reposing room for dead human bodies, of suitable size to accommodate a casket and visitors.

~~(d) No person who has been convicted of a felony shall:~~

~~(1) Own a funeral establishment if it is owned by a sole proprietorship;~~

~~(2) Be a partner in a funeral establishment if it is owned by a partnership;~~

~~(3) Be an officer, member of the board of directors or owner of twenty-five percent (25%) or more of the stock if it is owned by a corporation.~~

(e) If a funeral establishment is solely owned by a natural person, that person must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a partnership, at least one partner must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a corporation, the president, vice-president, or the chairman of the board of directors must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a limited liability company, at least one member must be licensed by the Board as a funeral director or a funeral service licensee. The licensee required by this subsection must be actively ~~engaged, on a day-to-day basis,~~ engaged in the operation of the funeral establishment.

(f) If a funeral establishment uses the name of a living person in the name under which it does business, that person must be licensed by the Board as a funeral director or a funeral service licensee.

(g) No funeral establishment or other licensee under this Article shall own, operate, or maintain a funeral chapel without first having registered the name, location, and ownership thereof with the Board."

Section 15. G.S. 90-210.28 reads as rewritten:

"**§ 90-210.28. Fees.**

The Board may set and collect fees, not to exceed the following amounts:

Establishment permit	
Application	$250.00
Annual renewal	175.00
Late renewal penalty	100.00
~~Establishment reinspection~~ Reinspection fee	100.00
Courtesy card	
Application	75.00
Annual renewal	50.00

Out-of-state licensee	
Application	200.00
Embalmer, funeral director, funeral service	
Application--North Carolina-Resident	150.00
-Non-Resident	200.00
Annual Renewal-embalmer or funeral director	50.00
-funeral service	100.00
Reinstatement fee	50.00
Resident trainee permit	
Application	50.00
Annual renewal	35.00
Late renewal penalty	25.00
Duplicate license certificate	25.00
Chapel registration	
Application	150.00
Annual renewal	100.00

The Board shall provide, without charge, one copy of the current statutes and regulations relating to Mortuary Science to every person applying for and paying the appropriate fees for licensing pursuant to this Article. The Board may charge all others requesting copies of the current statutes and regulations, and the licensees or applicants requesting additional copies, a fee equal to the costs of production and distribution of the requested documents."

Section 16. G.S. 90-210.41 reads as rewritten:

"**§ 90-210.41. Definitions.**

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

(1) 'Authorizing agent' means a person legally entitled to ~~order~~ order, or carry out the legal order for, the cremation of human remains. ~~An authorizing agent shall be, in order of priority, a spouse, an adult child, a parent, any adult sibling, guardian or close relation of the deceased.~~ In the case of indigents or any other individuals whose final disposition is the responsibility of the State, a public official charged with arranging the final disposition of the deceased, if legally authorized, may serve as the authorizing agent. In the case of individuals whose death occurred in a nursing home or other private institution, and in which the institution is charged with making arrangements for the final disposition of the deceased, a representative of the institution, if legally authorized, may serve as the authorizing agent.

(2) 'Board' means the North Carolina State Board of Mortuary Science.

~~(3) 'Casket' means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal or other rigid material and ornamented and lined with fabric.~~

(4) 'Closed container' means any container in which cremated remains can be placed and closed in a manner so as to prevent leakage or spillage of cremated remains or the entrance of foreign material.

(5) 'Cremated remains' means all human remains recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions.

(6) 'Cremation' means the technical process, using heat, that reduces human remains to bone fragments.

(7) 'Cremation chamber' means the enclosed space within which the cremation process takes place. Cremation chambers covered by this Article shall be used exclusively for the cremation of human remains.

(8) 'Cremation container' means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet all of the standards established by the rules adopted by the Board.

(9) 'Crematory' means the building or portion of a building that houses the cremation chamber and that may house the holding facility, business office or other part of the crematory business. A crematory must comply with any applicable public health laws and rules and must contain the equipment and meet all of the standards established by the rules adopted by the Board.

(10) 'Crematory authority' means the North Carolina Crematory Authority.

(11) 'Crematory operator' means the legal entity which is licensed by the Board to operate a crematory and perform cremations.

~~(12) 'Holding facility' means an area within or adjacent to the crematory, designated for the retention of human remains prior to cremation. A holding facility must comply with any applicable public health laws and rules and must meet all of the standards established by the rules adopted by the Board.~~

(13) 'Human remains' means the body of a deceased person, including a human fetus, regardless of the length of gestation, or part of a body ~~or limb~~ that has been removed from a living or deceased person.

(14) 'Niche' means a compartment or cubicle for the memorialization or permanent placement of an urn containing cremated remains.

~~(15) 'Scattering area' means a designated area for the scattering of cremated remains.~~

~~(16) 'Temporary container' means a temporary receptacle for cremated remains, usually made of cardboard, plastic film or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.~~

~~(17) 'Urn' means a receptacle designed to permanently encase the cremated remains.~~"

Section 17. G.S. 90-210.43 reads as rewritten:

"**§ 90-210.43. Licensing and inspection.**

(a) Any person doing business in this State, or any cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity may erect, maintain and conduct a crematory in this State and may provide the necessary appliances and facilities for the cremation of human remains, provided that such person has secured a license as a crematory operator in accordance with the provisions of this Article.

(b) A crematory may be constructed on or adjacent to any cemetery, on or adjacent to any funeral establishment that is zoned commercial or industrial, or at any other location consistent with local zoning regulations.

(c) Application for a license as a crematory operator shall be made on forms furnished and prescribed by the Board. The Board shall examine the premises and structure to be used as a crematory and shall issue a renewable license to the crematory operator if the applicant meets all the requirements and standards of the Board and the requirements of this Article. ~~In the event of a change of ownership of a crematory, at least 30 days prior to the change the new owners shall provide the Board with the name and address of the new owners.~~

(d) Every application for licensure shall identify the individual who is responsible for overseeing the management and operation of the crematory. The crematory operator shall keep the Board informed at all times of the name and address of the manager.

(d1) All licenses shall expire on the last day of December of each year. A license may be renewed without paying a late fee on or before the first day of February immediately following expiration. After that date, a license may be renewed by paying a late fee as provided in G.S. 90-210.48 in addition to the annual renewal fee. Licenses that remain expired six months or more require a new application for renewal. Licenses are not transferable. A new application for a license shall be made to the Board within 30 days following a change of ownership of more than fifty percent (50%) of the business.

(e) No person, cemetery, funeral establishment, corporation, partnership, joint venture, voluntary organization or any other entity shall cremate any human remains, except in a crematory licensed for this express purpose and under the limitations provided in this ~~Article.~~ Article, or unless otherwise permitted by statute.

(f) Whenever the Board finds that an owner, ~~partner~~ partner, manager, member, or officer of a crematory operator or an applicant to become a crematory operator, or that any agent or employee of a crematory operator or an applicant to become a crematory operator, with the direct or implied permission of such owner, ~~partner~~

partner, manager, member, or officer, has violated any provision of this Article, or is guilty of any of the following acts, and when the Board also finds that the crematory operator or applicant has thereby become unfit to practice, the Board may suspend, revoke, or refuse to issue or renew the license, in accordance with the procedures of Chapter 150B:

(1) Conviction of a felony or a crime involving fraud or moral ~~turpitude;~~ turpitude.

(2) Fraud or misrepresentation in obtaining or renewing a license or in the practice of ~~cremation;~~ cremation.

(3) False or misleading ~~advertising;~~ advertising.

(4) Gross immorality, including being under the influence of alcohol or drugs while performing cremation ~~services;~~ services.

(5) Using profane, indecent or obscene language in the presence of a dead human body, and within the immediate hearing of the family or relatives of a deceased, whose body has not yet been cremated or otherwise disposed ~~of;~~ of.

(6) Violating or cooperating with others to violate any of the provisions of this Article or of the rules of the ~~Board;~~ Board.

(7) Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human ~~bodies;~~ bodies.

(8) Refusing to surrender promptly the custody of a dead human body or cremated remains upon the express order of the person lawfully entitled to the custody thereof, except as provided in ~~G.S. 90-210.47(e);~~ G.S. 90-210.47(e).

(9) Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than one thousand dollars ($1,000).

(g) The Board and Crematory Authority may hold hearings in accordance with the provisions of this Article and Chapter 150B. Any such hearing shall be conducted jointly by the Board and the Crematory Authority. The Board and the Crematory Authority shall jointly constitute an 'agency' under Article 3A of Chapter 150B of the General Statutes with respect to proceedings initiated pursuant to this Article. The Board is empowered to regulate and inspect crematories and crematory operators and to enforce as provided by law the provisions of this Article and the rules adopted hereunder. Any crematory that, upon inspection, is found not to meet any of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain whether the deficiency or other violation has been corrected.

In addition to the powers enumerated in Chapter 150B of the General Statutes, the Board shall have the power to administer oaths and issue subpoenas requiring the

attendance of persons and the production of papers and records before the Board in any hearing, investigation or proceeding conducted by it or conducted jointly with the Crematory Authority. Members of the Board's staff or the sheriff or other appropriate official of any county of this State shall serve all notices, subpoenas and other papers given to them by the President of the Board for service in the same manner as process issued by any court of record. Any person who neglects or refuses to obey a subpoena issued by the Board shall be guilty of a Class 1 misdemeanor."

Section 18. G.S. 90-210.44 reads as rewritten:

"**§ 90-210.44. Authorization and record keeping.**

The Board shall establish requirements for record ~~keeping and~~ keeping, authorizations, and cremation reports. ~~it~~ It shall be a violation of this Article for any crematory operator to fail to comply with the requirements."

Section 19. G.S. 90-210.45 reads as rewritten:

"**§ 90-210.45. Cremation procedures.**

(a) No human body shall be cremated before the crematory operator receives a death certificate signed by the attending physician or an authorization for cremation signed by a medical examiner.

(b) Human remains shall not be cremated within 24 hours after the time of death, unless such death was a result of an infectious, contagious or communicable and dangerous disease as listed by the Commission of Health Services pursuant to G.S. 130A-134, and unless such time requirement is waived in writing by the medical examiner, county health director, or attending physician where the death occurred. In the event such death comes under the jurisdiction of the medical examiner, the human remains shall not be received by the crematory operator until authorization to cremate has been received in writing from the medical examiner of the county in which the death occurred. In the event the crematory operator is authorized to perform funerals as well as cremation, this restriction on the receipt of human remains shall not be applicable.

(c) No unauthorized person shall be permitted in the crematory area while any human remains are in the crematory area awaiting cremation, being cremated, or being removed from the cremation chamber. Relatives of the deceased, the authorizing agent, medical examiners and law enforcement officers in the execution of their duties shall be authorized to have access to the holding facility and crematory facility.

(c1) Human remains shall be cremated only while enclosed in a cremation container.

(d) The simultaneous cremation of the human remains of more than one person within the same cremation chamber is forbidden.

(d1) Every crematory shall have a holding facility, within or adjacent to the crematory, designated for the retention of human remains prior to cremation. The holding facility must comply with any applicable public health laws and rules and must meet all of the standards established pursuant to rules adopted by the Board.

(e) Crematory operators shall comply with standards established by the Board for the reduction and pulverization of human remains by the cremation process."

Section 20. G.S. 90-210.46(a) reads as rewritten:

"(a) The authorizing agent shall provide the person with whom cremation arrangements are made with a signed statement specifying the ultimate disposition of the cremated remains, if known. ~~A copy of this statement shall be retained by the crematory operator.~~ The crematory operator may store or retain cremated remains as directed by the authorizing agent. Records of retention and disposition of cremated remains shall be kept by the crematory operator pursuant to G.S. 90-210.44."

Section 21. G.S. 90-210.47(b) reads as rewritten:

"(b) A crematory operator shall have authority to cremate human remains only upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability of a crematory operator that cremates human remains pursuant to such authorization, or that releases or disposes of the cremated remains pursuant to such authorization."

Section 22. G.S. 90-210.48(a) reads as rewritten:

"**§ 90-210.48. Fees.**

(a) The Board may set and collect fees not to exceed the following amounts from licensed crematory operators and applicants:

(1)	Licensee application fee.	$400.00
(2)	Annual renewal fee.	150.00
(3)	Late renewal penalty.	75.00
(4)	Re-inspection fee.	100.00
(5)	Per cremation fee.	10.00
(6)	Late fee, per cremation.	10.00
(7)	Late fee, cremation report.	75.00 per month."

Section 23. G.S. 90-210.60(3) reads as rewritten:

"(3) 'Insurance company' means any corporation, limited liability company, association, partnership, society, order, individual or aggregation of individuals engaging in or proposing or attempting to engage as principals in any kind of insurance business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations;".

Section 24. G.S. 90-210.63(a)(2) reads as rewritten:

"(2) The original contracting preneed licensee shall immediately pay all ~~such~~ funds received to the successor funeral establishment ~~so designated;~~ designated. ~~provided, however, regardless~~ Regardless of whether the substitution is made before or after the death of the preneed funeral contract beneficiary, the original contracting preneed licensee shall not be required to give credit for the amount retained pursuant to G.S. 90-210.61(a)(2), except when there was a substitution under G.S. 90-210.68(d1) and (e). ~~and provided further, if~~ Except when there was a substitution under G.S. 90-210.68(d1) and (e), if the original contracting preneed licensee did not retain any portion of payments made ~~to it~~ as is permitted by G.S. 90-210.61(a)(2) then ~~such~~ the preneed licensee

may retain up to ten percent (10%) of ~~said~~ the funds received from the financial institution. Upon making payments pursuant to this subsection, the financial institution and the original contracting preneed licensee shall be relieved from all further contractual liability thereon."

Section 25. G.S. 90-210.64(a) reads as rewritten:

"(a) After the death of a preneed funeral contract beneficiary and full performance of the preneed funeral contract by the preneed licensee, the preneed licensee shall promptly complete a certificate of performance or similar claim form and present it to the financial institution that holds funds in trust under G.S. 90-210.61(a)(1) or to the insurance company that issued a preneed insurance policy pursuant to G.S. 90-210.61(a)(3). Upon receipt of the certificate of performance or similar claim form, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. Within 10 days after receiving payment, the preneed licensee shall mail a copy of the certificate of performance or other claim form to the Board."

Section 26. G.S. 90-210.66(b) reads as rewritten:

"(b) From the fee ~~of fifteen dollars ($15.00)~~ for each preneed funeral contract as required by G.S. 90-210.67(d), the Board shall deposit two dollars ($2.00) into the Fund. The Board may suspend the deposits into the Fund at any time and for any period for which the Board determines that a sufficient amount is available to meet likely disbursements and to maintain an adequate reserve."

Section 27. G.S. 90-210.67 reads as rewritten:

"**§ 90-210.67. Application for license.**

(a) No person may offer or sell preneed funeral contracts or offer to make or make any funded funeral prearrangements without first securing a license from the Board. There shall be two types of licenses: a preneed funeral establishment license and a preneed sales license. Only funeral establishments holding a valid establishment permit pursuant to G.S. 90-210.25(d) shall be eligible for a preneed funeral establishment license. Employees and agents of such entities, upon meeting the qualifications to engage in preneed funeral planning as established by the Board, shall be eligible for a preneed sales license. The Board shall establish the preneed funeral planning activities that are permitted under a preneed sales license. The Board shall adopt rules establishing such qualifications and activities no later than 12 months following the ratification of this act. Preneed sales licensees may sell preneed funeral contracts, prearrangement insurance policies, and make funded funeral prearrangements only on behalf of one preneed funeral establishment licensee; provided, however, they may sell preneed funeral contracts, prearrangement insurance policies, and make funeral prearrangements for any number of licensed preneed funeral establishments that are wholly owned by or affiliated with, through common ownership or contract, the same entity; provided further, in the event they engage in selling prearrangement insurance policies, they shall meet the licensing requirements of the Commissioner of Insurance. Every preneed funeral contract shall

be signed by a person licensed as a funeral director or funeral service licensee pursuant to Article 13A of Chapter 90 of the General Statutes.

Application for a license shall be in writing, signed by the applicant and duly verified on forms furnished by the Board. Each application shall contain at least the following: the full names and addresses (both residence and place of business) of the applicant, and every partner, member, officer and director thereof if the applicant is a partnership, limited liability company, association, or corporation and any other information as the Board shall deem necessary. A preneed funeral establishment license shall be valid only at the address stated in the application or at a new address approved by the Board.

(b) An application for a preneed funeral establishment license shall be accompanied by a nonrefundable application fee of not more than one hundred fifty dollars ($150.00). The Board shall set the amounts of the application fees and renewal fees by rule, but the fees shall not exceed one hundred fifty dollars ($150.00). If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the application fee, the Board shall issue a renewable preneed funeral establishment license unless it determines that the applicant has violated any provision of G.S. 90-210.69(c) or has made false statements or representations in the application, or is insolvent, or has conducted or is about to conduct, its business in a fraudulent manner, or is not duly authorized to transact business in this State. The license shall expire on December 31 and ~~Each~~ each preneed funeral establishment licensee shall pay annually to the Board on or before ~~June 30 of each year~~ that date a license renewal fee of not more than one hundred fifty dollars ($150.00). On or before the first day of February immediately following expiration, a license may be renewed without paying a late fee. After that date, a license may be renewed by paying a late fee of not more than one hundred dollars ($100.00) in addition to the annual renewal fee.

(c) An application for a preneed sales license shall be accompanied by a nonrefundable application fee of not more than fifty dollars ($50.00). The Board shall set the amounts of the application fees and renewal fees by rule, but the fees shall not exceed fifty dollars ($50.00). If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the application fee, the Board shall issue a renewable preneed sales license provided the applicant has met the qualifications to engage in preneed funeral planning as established by the Board unless it determines that the applicant has violated any provision of G.S. 90-210.69(c). The license shall expire on December 31 and ~~Each~~ each preneed sales licensee shall pay annually to the Board on or before ~~June 30 of each year,~~ that date a license renewal fee of not more than fifty dollars ($50.00). On or before the first day of February, a license may be renewed without paying a late fee. After that date, a license may be renewed by paying a late fee of not more than twenty-five dollars ($25.00) in addition to the annual renewal fee.

(d) Any person selling a preneed funeral contract, whether funded by a trust deposit or a prearrangement insurance policy, shall remit to the Board, within 10 days of the sale, a fee ~~of fifteen dollars ($15.00)~~ not to exceed twenty dollars ($20.00) for each ~~sale.~~ sale and a copy of each contract. The person shall pay a late fee of not more than twenty-five dollars ($25.00) for each late filing and payment. The ~~fee~~ fees shall not be remitted in cash.

(d1) The Board may also set and collect a fee of not more than twenty-five dollars ($25.00) for the late filing of a certificate of performance and a fee of not more than one hundred and fifty dollars ($150.00) for the late filing of an annual report.

(e) The fees collected under this Article, except for monies used pursuant to G.S. 90-210.66, shall be used for the expenses of the Board in carrying out the provisions of this Article. Any funds collected under this Article and remaining with the Board after all expenses under this Article for the current fiscal year have been fully provided for shall be paid over to the General Fund of the State of North Carolina. Provided, however, the Board shall have the right to maintain an amount, the cumulative total of which shall not exceed twenty percent (20%) of gross receipts under this Article for the previous fiscal year of its operations, as a maximum contingency or emergency fund.

(f) Any entity licensed by the Commissioner of Banks under Article 13B of Chapter 90 of the General Statutes before July 9, 1992 shall be entitled to have its license renewed notwithstanding that it is not a funeral establishment, provided it otherwise satisfies the requirements of this Article."

Section 28. G.S. 90-210.68 reads as rewritten:

"**§ 90-210.68. Licensee's books and records; notice of transfers, assignments and terminations.**

(a) Every preneed licensee shall keep for examination by the Board accurate accounts, books, and records in this State of all preneed funeral contract and prearrangement insurance policy transactions, copies of all agreements, insurance policies, instruments of assignment, the dates and amounts of payments made and accepted thereon, the names and addresses of the contracting parties, the persons for whose benefit funds are accepted, and the names of the financial institutions holding preneed funeral trust funds and insurance companies issuing prearrangement insurance policies. The Board, its inspectors appointed pursuant to G.S. 90-210.24 and its examiners, which the Board may appoint to assist in the enforcement of this Article, may during normal hours of operation and periods shortly before or after normal hours of operation, investigate the books, records, and accounts of any licensee under this Article with respect to trust funds, preneed funeral contracts, and prearrangement insurance policies. Any preneed licensee who, upon inspection, fails to meet the requirements of this subsection or who fails to keep an appointment for an inspection shall pay a reinspection fee to the Board in an amount not to exceed one hundred dollars ($100.00). The Board may require the attendance of and examine under oath all persons whose testimony it may require. Every preneed licensee shall submit a written report to the Board, at least annually, in a manner and

with such content as established by the Board, of its preneed funeral contract sales and performance of such contracts. The Board may also require other reports.

(b) A preneed licensee may transfer preneed funds held by it as trustee from the financial institution which is a party to a preneed funeral contract to a substitute financial institution that is not a party to the contract. Within 10 days after the transfer, the preneed licensee shall notify the Board, in writing, of the name and address of the transferee financial institution. Before the transfer may be made, the transferee financial institution shall agree to make disclosures required under the preneed funeral contract to the Board or its inspectors or examiners. If the contract is revocable, the licensee shall notify the contracting party of the intended transfer.

(c) If any preneed licensee transfers or assigns its assets or stock to a successor funeral establishment or terminates its business as a funeral establishment, the preneed licensee and assignee shall notify the Board at least 15 days prior to the effective date of the transfer, assignment or termination: provided, however, the successor funeral establishment must be a preneed licensee or shall be required to apply for and be granted such license by the Board before accepting any preneed funeral contracts, whether funded by trust deposits or preneed insurance policies. Provided further, a successor funeral establishment shall be liable to the preneed funeral contract purchasers for the amount of contract payments retained by the assigning or transferring funeral home pursuant to G.S. 90-210.61(a)(2).

(d) Financial institutions that accept preneed funeral trust funds and insurance companies that issue prearrangement insurance policies shall, upon request by the Board or its inspectors or examiners, disclose any information regarding preneed funeral trust accounts held or prearrangement insurance policies issued by it for a preneed licensee.

(d1) When a preneed funeral establishment license lapses or is terminated for any reason, the preneed licensee shall immediately divest of all the unperformed preneed funeral contracts and shall transfer them and any amounts retained under G.S. 90-210.61(a)(2) to another preneed funeral establishment licensee pursuant to the procedures of subsection (e) of this section.

(e) In the event that any preneed licensee is unable or unwilling or is for any reason relieved of its responsibility to perform as trustee or to perform any preneed funeral contract, the Board, with the written consent of the purchaser of the preneed funeral contract, or after the purchaser's death or incapacity, the preneed funeral contract beneficiary ~~may~~ shall order the contract and any amounts retained pursuant to G.S. 90-210.61(a)(2) to be assigned to a substitute preneed licensee provided that the substitute licensee agrees to accept such assignment.

(f) The substitute preneed licensee under subsections (d1) and (e) of this section shall be liable to the preneed funeral contract purchasers for the amount of contract payments that had been retained by, and that the substitute preneed licensee has received from, the assigning preneed licensee."

Section 29. G.S. 90-210.69(c) reads as rewritten:

"(c) In accordance with the provisions of Chapter 150B of the General Statutes, ~~If~~ if the Board finds that a licensee, an applicant for a license or an applicant for license

renewal is guilty of one or more of the following, the Board may refuse to issue or renew a license or may suspend or revoke a license or place the holder thereof on probation upon conditions set by the Board, with revocation upon failure to comply with the conditions:

(1) Offering to engage or engaging in activities for which a license is required under this Article but without having obtained such a ~~license;~~ license.

(2) Aiding or abetting an unlicensed person, firm, partnership, association, corporation or other entity to offer to engage or engage in such ~~activities;~~ activities.

(3) A crime involving fraud or moral turpitude by conviction ~~thereof;~~ thereof.

(4) Fraud or misrepresentation in obtaining or receiving a license or in preneed funeral ~~planning;~~ planning.

(5) False or misleading ~~advertising; or~~ advertising.

(6) Violating or cooperating with others to violate any provision of this ~~Article or~~ Article, the rules and regulations of the Board, ~~pursuant thereto.~~ or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.

In any case in which the Board is authorized to take any of the actions permitted under this subsection, the Board may instead accept an offer in compromise of the charges whereby the accused shall pay to the Board a penalty of not more than one thousand dollars ($1,000)."

Section 30. G.S. 90-210.69(e) reads as rewritten:

"(e) ~~All hearings under this Article shall be conducted pursuant to G.S. 150B-40(e).~~ Judicial review shall be pursuant to Article 4 of Chapter 150B of the General Statutes."

Section 31. G.S. 90-210.70(c) reads as rewritten:

"(c) If a corporation or limited liability company embezzles or fraudulently or knowingly and willfully misapplies or converts preneed funeral funds as provided in subsection (a) hereof or otherwise violates any provision of this Article, the officers, directors, members, agents, or employees responsible for committing the offense shall be fined or imprisoned as herein provided."

Section 32. G.S. 90-210.70(d) reads as rewritten:

"(d) The Board shall have the power to investigate violations of this section and shall deliver all evidence of violations of subsection (a) of this section to the district attorney in the county where the offense occurred. The Board shall, with the fees collected under this Article, employ legal counsel and other staff to monitor preneed trusts, investigate complaints, audit preneed trusts, and be responsible for delivering evidences to the district attorney when there is evidence ~~of criminal violation.~~ that a felony has been committed by a licensee. The record of complaints, auditing, and enforcement shall be presented in an annual report from the Board to the General Assembly."

Section 33. Article 13D of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-210.73. Not public record.**

The names and addresses of the purchasers and beneficiaries of preneed funeral contracts filed with the Board shall not be subject to Chapter 132 of the General Statutes."

Section 34. Article 16 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 7. Disposition of Body or Body Parts.

"**§ 130A-422. Authority to dispose of body or body parts.**

(a) An individual at least 18 years of age may authorize the disposition of the individual's own dead body in a written will, pursuant to a health care power of attorney to the extent provided in Article 3 of Chapter 32A of the General Statutes, pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes, or in a written statement signed by the individual and witnessed by two persons who are at least 18 years old.

(b) If a decedent has left no written authorization for the disposal of the decedent's body as permitted under subsection (a) of this section, the following competent persons in the order listed may authorize the type, method, place, and disposition of the decedent's body:

(1) The surviving spouse.
(2) A majority of the surviving children.
(3) The surviving parents.
(4) A majority of the surviving siblings.
(5) A majority of the persons in the classes of the next degrees of kinship, in descending order, who, under State law, would inherit the decedent's estate if the decedent died intestate.
(6) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.

This subsection does not grant to any person the right to cancel a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or to prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63.

(c) An individual at least 18 years of age may, in a writing signed by the individual, authorize the disposition of one or more of the individual's body parts that has been or will be removed. If the individual does not authorize the disposition, a person listed in subsection (b) of this section may authorize the disposition as if the individual was deceased.

(d) This section does not apply to the disposition of dead human bodies as anatomical gifts under Part 3 of Article 16 of Chapter 130A of the General Statutes or the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General Statutes."

Section 35. The Board shall adopt temporary rules to implement the provisions of this act.

Section 36. This act is effective when it becomes law.

April 14

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I** .

☐ Committee Substitute for
H.B. 560 A BILL TO BE ENTITLED AN ACT DIRECTING THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP AN EDUCATIONAL PROGRAM FOR PARENTS WHO ARE PARTIES TO A CUSTODY OR VISITATION ACTION.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

X With a favorable report as to committee substitute bill, unfavorable as to original bill , and recommendation that the committee substitute bill be re-referred to the Committee on **APPROPRIATIONS**.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H April 14 1

HOUSE BILL 560*

Short Title: Divorce Education. (Public)

Sponsors: Representatives Alexander; Adams, Baddour, Beall, Black, Church, Cole, Crawford, Cunningham, Earle, Easterling, Fox, Gamble, Goodwin, Hackney, H. Hunter, Hurley, Jarrell, Jeffus, Luebke, Michaux, Miller, Mosley, Nye, Oldham, Ramsey, Wainwright, Wilkins, G. Wilson, and Yongue.

Referred to: Education, if favorable, Judiciary II.

March 20, 1997

A BILL TO BE ENTITLED

AN ACT DIRECTING THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP AN EDUCATIONAL PROGRAM FOR PARENTS WHO ARE PARTIES TO A CUSTODY OR VISITATION ACTION.

The General Assembly of North Carolina enacts:

Section 1. (a) The Administrative Office of the Courts shall develop a program to educate and sensitize separated or divorcing couples with children about the needs of their children during and after the separation and divorce process. Program development shall include the following:

(1) An educational course that parties to a custody or visitation action may attend voluntarily or shall attend if ordered by the court to do so. The course should be designed to inform attendees of the impact of their separation, custody, or visitation action on:

a. The children,

b. The parents' relationship with one another,

c. The family's relationship, and

d. The couples' financial responsibilities for the children;

The course should provide information to attendees on resources available in the community to help them address these issues;

(2) An administrative plan for the implementation of the program in at least five judicial districts selected by the Administrative Office of the Courts; the administrative plan shall include:
a. Provisions to ensure the program will be financially self-sustaining in each district,
b. Estimates of reasonable fees that attendees would be charged, and a method for waiving such fees in cases of severe financial hardship,
c. Methods for evaluating the courses to ensure effectiveness, and for certifying attendance,
d. How the program will be implemented at the local level, and
e. Other administrative matters identified by the Administrative Office of the Courts as necessary for effective and efficient program implementation;
(3) Identification of course providers with whom the Administrative Office of the Courts would contract to make courses available at reasonable times and for reasonable fees, and to ensure that courses will be available with sufficient regularity to meet the needs of the judicial district in which the program is offered; and
(4) Other matters considered by the Administrative Office of the Courts to be important program components.

The Administrative Office of the Courts shall ensure that the program is operational in at least five judicial districts no later than January 1, 1998.

(b) The Administrative Office of the Courts shall ensure involvement and input into the development of the program by persons who have experience in assisting families through and after the divorcing process.

(c) The court shall order participation in this educational course if it finds that significant parental conflict has adversely affected the children and that the children's best interests would be served by the party or parties' participation in the course.

Section 2. The Administrative Office of the Courts shall report to the General Assembly not later than May 1, 1998, on the program developed pursuant to Section 1 of this act. The report shall include the following:
(1) Progress made on the implementation of the targeted pilot districts and recommendations for the expansion of the program to other districts;
(2) The amount of State funds that will be necessary for the Administrative Office of the Courts to supervise and oversee program operation;
(3) Legislation that may be needed to facilitate program implementation and operation; and
(4) Other recommendations the Administrative Office of the Courts considers appropriate.

Section 3. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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April 10, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **House Bill 560; Divorce Education**

House Bill 560 directs the Administrative Office of the Courts to develop a program for separated or divorcing couples with children, focused on the needs of the children during and after separation and divorce.

Parties would attend voluntarily or if ordered by the court. The course would inform the parties of the impact of the separation, custody, or visitation action on the children, on the relationship of the parents with each other, on the family's relationship, and on the couple's financial responsibility for the children. Information about community resources will be provided.

The Administrative Office of the Courts is required to implement the program in at least five judicial districts not later than January 1, 1998. The program would be financially self sustaining, being financed by fees paid by the attendees. Fees would be waived in cases of severe financial hardship.

The act provides that the court shall order participation in the program if it finds that significant parental conflict has adversely affected the children or that participation would serve the children's best interests.

The Administrative Office of the Courts must report on the program to the General Assembly not later than May 1, 1998. The report must advise of progress made in implementation of the program, the amount of State funds necessary for the AOC to supervise and oversee the program, legislation that may be needed to facilitate the program, and any other recommendations of the AOC.

The act is effective when it becomes law.

H560-SMRL-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 560

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H560-ARL-002

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

Representative

moves to amend the bill on page 2, line 2, by deleting the word "five" and substituting the word "four"; and

on page 2, line 24, by deleting the word "five" and substituting the word "four"; and

on page 2, line 33, by deleting "May 1, 1998," and substituting "March 1, 1999,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 560

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H560-ARL-001 Page 1 of 1

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

Representative

moves to amend the bill on page 1, line 11,
by rewriting that line to read:
"may attend voluntarily or if ordered by the court."; and

on page 1, line 12, by deleting the word "so."; and

on page 1, line 17, by deleting the word "couples'" and substituting the word "couple's".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 560*
Proposed Committee Substitute H560-PCSA295

Short Title: Divorce Education. (Public)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT DIRECTING THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP AN EDUCATIONAL PROGRAM FOR PARENTS WHO ARE PARTIES TO A CUSTODY OR VISITATION ACTION.

The General Assembly of North Carolina enacts:

Section 1. (a) The Administrative Office of the Courts shall develop a program to educate and sensitize separated or divorcing couples with children about the needs of their children during and after the separation and divorce process. Program development shall include the following:

(1) An educational course that parties to a custody or visitation action may attend voluntarily or if ordered by the court. The course should be designed to inform attendees of the impact of their separation, custody, or visitation action on:
   a. The children,
   b. The parents' relationship with one another,
   c. The family's relationship, and
   d. The couple's financial responsibilities for the children;

   The course should provide information to attendees on resources available in the community to help them address these issues;

(2) An administrative plan for the implementation of the program in at least four judicial districts selected by the Administrative Office of the Courts; the administrative plan shall include:

a. Provisions to ensure the program will be financially self-sustaining in each district,
b. Estimates of reasonable fees that attendees would be charged, and a method for waiving such fees in cases of severe financial hardship,
c. Methods for evaluating the courses to ensure effectiveness, and for certifying attendance,
d. How the program will be implemented at the local level, and
e. Other administrative matters identified by the Administrative Office of the Courts as necessary for effective and efficient program implementation;

(3) Identification of course providers with whom the Administrative Office of the Courts would contract to make courses available at reasonable times and for reasonable fees, and to ensure that courses will be available with sufficient regularity to meet the needs of the judicial district in which the program is offered; and

(4) Other matters considered by the Administrative Office of the Courts to be important program components.

The Administrative Office of the Courts shall ensure that the program is operational in at least four judicial districts no later than January 1, 1998.

(b) The Administrative Office of the Courts shall ensure involvement and input into the development of the program by persons who have experience in assisting families through and after the divorcing process.

(c) The court shall order participation in this educational course if it finds that significant parental conflict has adversely affected the children and that the children's best interests would be served by the party or parties' participation in the course.

Section 2. The Administrative Office of the Courts shall report to the General Assembly not later than March 1, 1999, on the program developed pursuant to Section 1 of this act. The report shall include the following:

(1) Progress made on the implementation of the targeted pilot districts and recommendations for the expansion of the program to other districts;

(2) The amount of State funds that will be necessary for the Administrative Office of the Courts to supervise and oversee program operation;

(3) Legislation that may be needed to facilitate program implementation and operation; and

(4) Other recommendations the Administrative Office of the Courts considers appropriate.

Section 3. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 560

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H560-ARL-002 Page 1 of 1

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

Representative

moves to amend the bill on page 2, line 2, by deleting the word "five" and substituting the word "four"; and

on page 2, line 24, by deleting the word "five" and substituting the word "four"; and

on page 2, line 33, by deleting "May 1, 1998," and substituting "March 1, 1999,".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 560*
Proposed Committee Substitute H560-PCSA295

Short Title: Divorce Education. (Public)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT DIRECTING THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP AN EDUCATIONAL PROGRAM FOR PARENTS WHO ARE PARTIES TO A CUSTODY OR VISITATION ACTION.

The General Assembly of North Carolina enacts:

Section 1. (a) The Administrative Office of the Courts shall develop a program to educate and sensitize separated or divorcing couples with children about the needs of their children during and after the separation and divorce process. Program development shall include the following:

(1) An educational course that parties to a custody or visitation action may attend voluntarily or if ordered by the court. The course should be designed to inform attendees of the impact of their separation, custody, or visitation action on:
   a. The children,
   b. The parents' relationship with one another,
   c. The family's relationship, and
   d. The couple's financial responsibilities for the children;

   The course should provide information to attendees on resources available in the community to help them address these issues;

(2) An administrative plan for the implementation of the program in at least four judicial districts selected by the Administrative Office of the Courts; the administrative plan shall include:

a. Provisions to ensure the program will be financially self-sustaining in each district,
b. Estimates of reasonable fees that attendees would be charged, and a method for waiving such fees in cases of severe financial hardship,
c. Methods for evaluating the courses to ensure effectiveness, and for certifying attendance,
d. How the program will be implemented at the local level, and
e. Other administrative matters identified by the Administrative Office of the Courts as necessary for effective and efficient program implementation;

(3) Identification of course providers with whom the Administrative Office of the Courts would contract to make courses available at reasonable times and for reasonable fees, and to ensure that courses will be available with sufficient regularity to meet the needs of the judicial district in which the program is offered; and

(4) Other matters considered by the Administrative Office of the Courts to be important program components.

The Administrative Office of the Courts shall ensure that the program is operational in at least four judicial districts no later than January 1, 1998.

(b) The Administrative Office of the Courts shall ensure involvement and input into the development of the program by persons who have experience in assisting families through and after the divorcing process.

(c) The court shall order participation in this educational course if it finds that significant parental conflict has adversely affected the children and that the children's best interests would be served by the party or parties' participation in the course.

Section 2. The Administrative Office of the Courts shall report to the General Assembly not later than March 1, 1999, on the program developed pursuant to Section 1 of this act. The report shall include the following:

(1) Progress made on the implementation of the targeted pilot districts and recommendations for the expansion of the program to other districts;

(2) The amount of State funds that will be necessary for the Administrative Office of the Courts to supervise and oversee program operation;

(3) Legislation that may be needed to facilitate program implementation and operation; and

(4) Other recommendations the Administrative Office of the Courts considers appropriate.

Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 138
Second Edition Engrossed 3/5/97

Short Title: D.M.V. Enforcement Authority. (Public)

Sponsors: Representatives Justus; Brawley, Brown, Buchanan, Cansler, Clary, Culp, Fox, Hiatt, Kiser, Mitchell, Russell, Thompson, Watson, and G. Wilson.

Referred to: Transportation, if favorable, Judiciary I.

February 13, 1997

A BILL TO BE ENTITLED

AN ACT GRANTING ENFORCEMENT OFFICERS OF THE DIVISION OF MOTOR VEHICLES THE AUTHORITY TO ASSIST IN THE ENFORCEMENT OF LAWS WHEN A CRIME HAS BEEN COMMITTED IN THEIR PRESENCE OR WHEN A STATE OR LOCAL LAW ENFORCEMENT AGENCY HAS REQUESTED THEIR ASSISTANCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-49 reads as rewritten:

"**§ 20-49. Police authority of Division.**

(a) The Commissioner and such officers and inspectors of the Division as he shall designate and all members of the Highway Patrol shall have the power:

(1) Of peace officers for the purpose of enforcing the provisions of this Article and of any other law regulating the operation of vehicles or the use of the highways.

(2) To make arrests upon view and without warrant for any violation committed in their presence of any of the provisions of this Article or other laws regulating the operation of vehicles or the use of the highways.

(3) At all time to direct all traffic in conformance with law, and in the event of a fire or other emergency or to expedite traffic or to

insure safety, to direct traffic as conditions may require, notwithstanding the provisions of law.

(4) When on duty, upon reasonable belief that any vehicle is being operated in violation of any provision of this Article or of any other law regulating the operation of vehicles to require the driver thereof to stop and exhibit his driver's license and the registration card issued for the vehicle, and submit to an inspection of such vehicle, the registration plates and registration card thereon or to an inspection and test of the equipment of such vehicle.

(5) To inspect any vehicle of a type required to be registered hereunder in any public garage or repair shop or in any place where such vehicles are held for sale or wrecking, for the purpose of locating stolen vehicles and investigating the title and registration thereof.

(6) To serve all warrants relating to the enforcement of the laws regulating the operation of vehicles or the use of the highways.

(7) To investigate traffic accidents and secure testimony of witnesses or of persons involved.

(8) To investigate reported thefts of motor vehicles, trailers and semitrailers and make arrest for thefts thereof.

(9) For the purpose of determining compliance with the provisions of this Chapter, to inspect all files and records of the persons hereinafter designated and required to be kept under the provisions of this Chapter or of the registrations of the Division:

a. Persons dealing in or selling and buying new, used or junked motor vehicles and motor vehicle parts; and

b. Persons operating garages or other places where motor vehicles are repaired, dismantled, or stored.

(b) In addition to the enforcement authority granted in subsection (a) of this section, the officers and inspectors of the Division have the authority to enforce criminal laws under the following circumstances:

(1) When the officer or inspector has probable cause to believe that a person has committed a criminal offense in the officer's or inspector's presence and at the time of the violation the officer or inspector is engaged in the enforcement of laws otherwise within the officer's or inspector's jurisdiction; or

(2) When the officer or inspector is asked to provide temporary assistance by the head of a State or local law enforcement agency or that person's designee and the request is within the scope of that agency's subject matter jurisdiction.

While acting pursuant to this subsection, an officer or inspector shall have the same powers invested in law enforcement officers by statute or common law. When acting pursuant to subdivision (2) of this subsection, an officer or inspector shall not be considered an officer, employee, or agent for the State or local law enforcement

agency or designee asking for temporary assistance. Nothing in this subsection shall be construed to expand the authority of officers and inspectors to initiate or conduct independent investigations into violations of criminal laws outside the scope of the subject matter jurisdiction of the operation of vehicles and the use of the highways. The primary mission of the officers and inspectors of the Division shall be enforcement of the laws regulating the operation of vehicles and the use of the highways."

Section 2. This act becomes effective October 1, 1997.

North Carolina General Assembly
Legislative Services Office

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March 26, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **House Bill 138 - D.M.V. Enforcement Authority (2d Edition)**

House Bill 138 amends G.S. 20-49 which deals with the Police authority of the Division of Motor Vehicles. This bill would grant additional law enforcement authority to DMV officers under certain circumstances.

Under current law, the Commissioner has the authority to designate officers and inspectors who are empowered to perform certain enforcement duties including acting as a peace officer to enforce laws regulating motor vehicles and the use of the highways, making arrests for violations committed in their presence of such laws, directing traffic, conducting stops to examine driver's license and registration upon reasonable belief of a violation, inspecting vehicles for the purpose of investigating the location of stolen vehicles, investigating traffic accidents and reporting thefts of motor vehicles and making arrests for such thefts, and inspecting files and records of persons dealing in selling or buying motor vehicles and persons operating garages for the purpose of determining compliance with the law.

This bill would authorize DMV officers to enforce criminal law when the officer has probable cause to believe a crime has been committed in his presence while the officer was engaged in the enforcement of laws otherwise within the officer's jurisdiction, and when the officer is asked to provide temporary assistance by the head of a State or local law enforcement agency and the request is within the agency's subject matter jurisdiction.

The bill also invests officers with the same powers as law enforcement officers when acting pursuant to this section. It also makes it clear that DMV officers are not authorized to initiate or conduct independent investigations into violations of criminal law outside their jurisdiction. Finally, the bill states that the primary mission of the DMV officers is the enforcement of laws regulating the operation of motor vehicles and the use of the highways.

This act becomes effective October 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 138

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H138-ALL-001

Page 1 of __

Date_____,1997

Comm. Sub. [ ]
Amends Title [YES]
Second Edition

Representative Justus

moves to amend the bill on page 1, line 6,
by inserting between the the word "ASSISTANCE" and the period the words "AND EXPANDING THE ENFORCEMENT AUTHORITY OF MOTOR CARRIER SAFETY REGULATION TO INCLUDE THE HIGHWAY PATROL";

and on page 3, lines 7-8,
by inserting between those the lines the following:

"Section 2. G.S. 20-383 reads as rewritten:
"§ 20-383. ~~Inspectors and officers given enforcement~~ Enforcement authority.
~~Only designated~~ Designated inspectors and officers of the Division and members of the Highway Patrol shall have the authority to enforce the provisions of this Article and provisions of Chapter 62 applicable to motor transportation, and they are empowered to make complaint for the issue of appropriate warrants, informations, presentments or other lawful process for the enforcement and prosecution of violations of the transportation laws against all offenders, whether they be regulated motor carriers or not, and to appear in court or before the North Carolina Utilities Commission and offer evidence at the trial pursuant to such processes.'"

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 138

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H138-ALL-001

1 and by renumbering the subsequent section accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

North Carolina House of Representatives
JUDICIARY I COMMITTEE

Roll Call

4/10/01

- Alexander
- Arnold
- Blue
- Braswell
- Capps
- Clary
- Crawford
- (Daughtry)
- Ellis
- Esposito
- Fitch
- Gray
- Hall
- Hardaway
- Hardy
- Holmes
- Hunter
- Hurley
- Jeffus
- Justus
- Micheux
- Miller
- Morgan
- Sherrill
- Thompson
- Wood
- Howard

North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

Thursday, April 10, 1997
10:00 a.m.
1327 Legislative Building

N. Leo Daughtry
Edwin M. Hardy
Co-Chairmen

Members Present

Martha Alexander	Gene Arnold
Daniel Blue	J. Russell Capps
Debbie Clary	J. Sam Ellis
Lyons Gray	Bobby Ray Hall
Thomas C. Hardaway	Julia Howard
Robert C. Hunter	John W. Hurley
Margaret M. Jeffus	Larry T. Justus
H. M. Michaux, Jr.	Wilma Sherill
Gregg Thompson	Steve Wood

The House Committee on JUDICIARY I met at 10:00 a.m. on Thursday, April 10, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry presiding.

Committee counsels Steven Rose and Karen Cochrane-Brown were present to assist the committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

Chairman Daughtry introduced House Pages Jamie Southerland and Becky Blackman of Johnston County who were present to assist the committee.

The Chair brought before the Committee House Bill 485, on FUNERAL ESTABLISHMENTS/AB., and introduced the bill's sponsor, Rep. Dockham, for the purpose of explaining his proposal.

Committee Counsel Steven Rose prepared a memorandum on H.B. 485, which is attached an made a part of these minutes.

On a motion made by Rep. Capps, the Committee approved, for the purpose of discussion, a Proposed Committee Substitute to H.B. 485, a copy of which is attached and made a part of the minutes.

Rep. Dockham introduced H.B. 485 as making "various amendments to Chapter 90 of the General Statutes that effect the regulation and practice of funeral service, cremations and funeral and burial trust funds. It also amends Article 16, Chapter 138 with regard to disposition of bodies."

With the chairman's permission, Rep. Dockham asked Committee Counsel Rose to introduce various technical amendments addressed by the Proposed Committee Substitute.

Also present to assist the Committee were Jim Swaringen and Bill Hoake of the Board of Mortuary Science, Bill Hoake and Larry Steigel, executive director of the North Carolina Funeral Directors Association.

(Rep. Hardaway, pursuant to rule 24.1, was excuse from voting on the measure)

On a motion by Rep. Hurley, the Committee reported favorably the Proposed Committee Substitute to H.B. 485, unfavorable as to the original bill, with the recommendation the Proposed Committee Substitute be re-referred to the Committee on FINANCE.

Rep. Alexander was recognized to introduced for deliberation House Bill 560, DIVORCE EDUCATION.

Committee Counsel Steven Rose prepared a memorandum on H.B. 560, which is attached an made a part of these minutes.

Rep. Ellis moved to amend H.B. 560 as detailed in a document numbered "H560-ARL-002," which is attached and made a part of these minutes, and also as stated in a document numbered "H560-ARL-001," also attached and made a part of these minutes. There was no objection, and the bill was set forth before the Committee as amended.

Rep. Alexander, explaining the bill as being similar to a measure passed through the N.C. House in a previous session "directs the Administrative Office of the Courts to develop a program for separated or divorcing couples with children, focusing on the needs of children." Rep. Alexander confirmed that the proposal envisioned a "pilot program," and that a pending Fiscal Impact Note" was not yet prepared, though it had been requested.

Rep. Capps moved the bill be amended on page 2, line 28, removing the word "shall" to "may." The amendment was not adopted.

Chairman Hardy asked if any statements spoken during the course of mandated or voluntary attendance in "divorce education classes," as set

forth in the measure, could be used in a court proceeding. Counselor Rose's opinion was "Yes." "Whoever teaches this course can be called into court to testify in a custody trial, is that correct?" Chairman Hardy asked. Again, Counselor Rose's opinion was that this was true.

On a motion by Rep. Ellis, the amended bill was rolled into a Proposed Committee Substitute and given a favorable report, unfavorable as to the original bill, with the recommendation that the Proposed Committee Substitute be re-referred to the Committee on APPROPRIATIONS.

Rep. Justus was recognized to explain House Bill 138, D.M.V. ENFORCEMENT AUTHORITY. Rep. Ellis moved to accept a Proposed Committee Substitute to H.B. 138, for the purpose of discussion.

Committee Counsel Karen Cochrane-Brown prepared a MEMO on H.B. 138 which was distributed, a copy of which is attached and made a part of these minutes.

H.B. 138, according to Rep. Justus emanated from the Justice and Public Safety and Crime Control Study Commission and had already received a favorable report from the TRANSPORTATION Committee before being re-referred, as directed, to JUDICIARY I. Those on the Study Commission were, according to Rep. Justus, were Reps. Holmes, Creech, Esposito, Justus, Kizer and Thompson from the HOUSE *of* REPRESENTATIVES and Senators Odom, Hartsell, Parnell, Ballance, Purdue and Plyler.

The question given considerable time by the commission was, according to Rep. Justus: Should D.M.V. be given more authority. The determination of the commission was that sworn D.M.V. officers be given arrest powers, i.e. "Full arrest authority within their jurisdiction."

Rep. Justus moved to amend the bill in accordance with the document numbered "H138-ALL-001," a copy of which is attached and made a part of these minutes.

Rep. Ellis asked whether it might be more prudent to merge the D.M.V. and the Highway Patrol. Jerry Arwood of the D.M.V. addressed the amendment, saying the amendment was a procedural matter given the D.M.V. authority to arrest subjects apprehended within their jurisdictional authority without waiting for Highway Patrol officers to perform searches normally carried out within that agency's jurisdictional authority. The role and scope of the two agencies, Arwood said, were distinct and separate.

The Committee Adjourned at 10:55 a.m.

VISITOR REGISTRATION SHEET

JUDICIARY I 4/10/97 10AM

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	John Rustin	NCFPL
2.	Brenda Summers	NC Equity
3.	Chris McAdoo	NC DOT
4.	Jerry Amwood	NC DMV
5.	Joe Stewart	CCPS
6.	Penny Blair	BMS
7.	Corine Culbreth	NC Board - Mortuary
8.	Donna Harpenter	NC Bd Mortuary Science
9.	Jim Knapp	NC Bd Mortuary Sci.
10.	Tony Stephens	NC Funeral Dir. Assoc.
11.	Jan Hood	Adm. Office of the Courts
22.	Pete Powell	ADC
23.	ARTHUR MALLORY	~~PM~~ PHILIP MORRIS
24.	Adam Pulley	NCCBI
25.	PERRI MORGAN	NFIB
26.	Jack Hall	
27.	Linda Cromer	NCATL
28.	Dick Taylor	NCATL
29.	James Andrews	NC AFL-CIO
30.	Bill McBride	NCOA
31.		

* Jim Swaringen
Bd of Mort. Science

---

* Bill Holk
Bd of Mort. Sci. > Att

---

* Larry Stegall
Ex. Dir. of NCFDA

North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

2 tapes

Tuesday, April 15, 1997
10:00 a.m.
1327 Legislative Building

N. Leo Daughtry
Edwin M. Hardy
Co-Chairmen

Members Present

Martha Alexander	Gene Arnold
Daniel Blue	Jerry Braswell
J. Russell Capps	Debbie Clary
J. Sam Ellis	Theresa Esposito
Lyons Gray	Bobby Ray Hall
Thomas C. Hardaway	George M. Holmes
Robert C. Hunter	John W. Hurley
Margaret M. Jeffus	Larry T. Justus
H. M. Michaux, Jr.	George W. Miller, Jr.
Richard T. Morgan	Wilma Sherill
Gregg Thompson	

The House Committee on JUDICIARY I met at 10:00 a.m. on Tuesday, April 15, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry presiding.

Committee counsels Steven Rose and Karen Cochrane-Brown were present to assist the committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

Chairman Daughtry introduced House Pages April Hewitt of Columbus County and Kurt Hartman, Jr. of Johnston County, who were present to assist the committee.

Chairman Daughtry announced it was his intention to resume discussion on House Bill 138, and then to begin deliberation on House Bill 539 COLLATERAL SOURCE, by first recognizing speakers in support of that measure and then speakers in opposition. It was the Chair's opinion there would be no vote on H.B. 539 during this meeting owing to the large number wishing to be heard on the measure.

The Chair recognized Rep. Justus to RESUME discussion and consideration of House Bill 138, D.M.V. ENFORCEMENT AUTHORITY.

Rep. Daughtry recognized Committee Counsel Karen Cochrane-Brown to explain the amendment offered by Rep. Justus during the course of the meeting Thursday, April 10, to H.B. 138, a copy of which (numbered "H138-ALL-001") is attached and made a part of these minutes.

A division having being called on approval of Rep. Justus' amendment, the chair declared that the amendment had been agreed to.

Rep. Arnold sent forth an amendment, a copy of which, numbered "H138-ARO-001," is attached and made a part of these minutes.

Rep. Arnold was recognized to explain his amendment

Rep. Daughtry, "in view of the issues involved," appointed a Subcommittee on H.B. 138, and designated Reps. Thompson, Justus, Hurley, Arnold and Sherrill as members of that subcommittee.

Chairman Daughtry recognized Rep. Neely, Chairman of JUDICIARY II, to explain House Bill 539, COLLATERAL SOURCE.

Committee Counsel Karen Cochrane-Brown prepared a Memorandum on H.B. 538, which was distributed and a copy of which is attached and made a part of these minutes.

Rep. Neely explained his bill, saying he thought it a fair bill, and that, as he understood it, the law provided for the victims of negligence to "made whole."

The Chairman recognized, to speak in opposition to the bill, Bill Graham, former North Carolina Banking Commissioner, and Sam Currin, chairman

of the North Carolina Republican Party, deferred to Herman Gaskins, an attorney from Beaufort County, who also spoke against the measure.

The Committee Adjourned at 10:30 a.m.

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS

4/15

North Carolina House of Representatives
JUDICIARY I COMMITTEE

Roll Call

- Alexander
- Arnold
- Blue
- Braswell
- Capps
- Clary
- Crawford
- (Daughtry)
- Ellis
- Esposito
- Fitch
- Gray
- Hall
- Hardaway
- Hardy
- Holmes
- Hunter
- Hurley
- Jeffus
- Justus
- Micheux
- Miller
- Morgan
- Sherrill
- Thompson

HOUSE COMMITTEE ON JUDICIARY I

Tuesday, April 15, 1997
Room 1327 LB
10:00 a.m.

OPENING REMARKS:
Representative N. Leo Daughtry, Chairman
Judiciary I Committee

BILLS TO BE CONSIDERED:

H.B. 138 DMV ENFORCEMENT AUTHORITY
Sponsor: Representative Justus

H.B. 539 COLLATERAL SOURCE EVIDENCE
Sponsor: Representative Neely

H.B. 615 PUBLIC DEFENDER/DISTRICT 16B
Sponsor: Representative Bonner

and at 1 p.m.

H.B. 741 COURT IMPROVEMENT ACT/CONSTITUTION
Sponsor: Representative Neely

H.B. 742 COURT IMPROVEMENT ACT
Sponsor: Representative Baddour

ADJOURNMENT

North Carolina General Assembly
Legislative Services Office

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March 26, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **House Bill 138 - D.M.V. Enforcement Authority (2d Edition)**

House Bill 138 amends G.S. 20-49 which deals with the Police authority of the Division of Motor Vehicles. This bill would grant additional law enforcement authority to DMV officers under certain circumstances.

Under current law, the Commissioner has the authority to designate officers and inspectors who are empowered to perform certain enforcement duties including acting as a peace officer to enforce laws regulating motor vehicles and the use of the highways, making arrests for violations committed in their presence of such laws, directing traffic, conducting stops to examine driver's license and registration upon reasonable belief of a violation, inspecting vehicles for the purpose of investigating the location of stolen vehicles, investigating traffic accidents and reporting thefts of motor vehicles and making arrests for such thefts, and inspecting files and records of persons dealing in selling or buying motor vehicles and persons operating garages for the purpose of determining compliance with the law.

This bill would authorize DMV officers to enforce criminal law when the officer has probable cause to believe a crime has been committed in his presence while the officer was engaged in the enforcement of laws otherwise within the officer's jurisdiction, and when the officer is asked to provide temporary assistance by the head of a State or local law enforcement agency and the request is within the agency's subject matter jurisdiction.

The bill also invests officers with the same powers as law enforcement officers when acting pursuant to this section. It also makes it clear that DMV officers are not authorized to initiate or conduct independent investigations into violations of criminal law outside their jurisdiction. Finally, the bill states that the primary mission of the DMV officers is the enforcement of laws regulating the operation of motor vehicles and the use of the highways.

This act becomes effective October 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 138
Second Edition Engrossed 3/5/97

Short Title: D.M.V. Enforcement Authority. (Public)

Sponsors: Representatives Justus; Brawley, Brown, Buchanan, Cansler, Clary, Culp, Fox, Hiatt, Kiser, Mitchell, Russell, Thompson, Watson, and G. Wilson.

Referred to: Transportation, if favorable, Judiciary I.

February 13, 1997

A BILL TO BE ENTITLED

AN ACT GRANTING ENFORCEMENT OFFICERS OF THE DIVISION OF MOTOR VEHICLES THE AUTHORITY TO ASSIST IN THE ENFORCEMENT OF LAWS WHEN A CRIME HAS BEEN COMMITTED IN THEIR PRESENCE OR WHEN A STATE OR LOCAL LAW ENFORCEMENT AGENCY HAS REQUESTED THEIR ASSISTANCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-49 reads as rewritten:

"**§ 20-49. Police authority of Division.**

(a) The Commissioner and such officers and inspectors of the Division as he shall designate and all members of the Highway Patrol shall have the power:

(1) Of peace officers for the purpose of enforcing the provisions of this Article and of any other law regulating the operation of vehicles or the use of the highways.

(2) To make arrests upon view and without warrant for any violation committed in their presence of any of the provisions of this Article or other laws regulating the operation of vehicles or the use of the highways.

(3) At all time to direct all traffic in conformance with law, and in the event of a fire or other emergency or to expedite traffic or to

insure safety, to direct traffic as conditions may require, notwithstanding the provisions of law.

(4) When on duty, upon reasonable belief that any vehicle is being operated in violation of any provision of this Article or of any other law regulating the operation of vehicles to require the driver thereof to stop and exhibit his driver's license and the registration card issued for the vehicle, and submit to an inspection of such vehicle, the registration plates and registration card thereon or to an inspection and test of the equipment of such vehicle.

(5) To inspect any vehicle of a type required to be registered hereunder in any public garage or repair shop or in any place where such vehicles are held for sale or wrecking, for the purpose of locating stolen vehicles and investigating the title and registration thereof.

(6) To serve all warrants relating to the enforcement of the laws regulating the operation of vehicles or the use of the highways.

(7) To investigate traffic accidents and secure testimony of witnesses or of persons involved.

(8) To investigate reported thefts of motor vehicles, trailers and semitrailers and make arrest for thefts thereof.

(9) For the purpose of determining compliance with the provisions of this Chapter, to inspect all files and records of the persons hereinafter designated and required to be kept under the provisions of this Chapter or of the registrations of the Division:

a. Persons dealing in or selling and buying new, used or junked motor vehicles and motor vehicle parts; and

b. Persons operating garages or other places where motor vehicles are repaired, dismantled, or stored.

(b) In addition to the enforcement authority granted in subsection (a) of this section, the officers and inspectors of the Division have the authority to enforce criminal laws under the following circumstances:

(1) When the officer or inspector has probable cause to believe that a person has committed a criminal offense in the officer's or inspector's presence and at the time of the violation the officer or inspector is engaged in the enforcement of laws otherwise within the officer's or inspector's jurisdiction; or

(2) When the officer or inspector is asked to provide temporary assistance by the head of a State or local law enforcement agency or that person's designee and the request is within the scope of that agency's subject matter jurisdiction.

While acting pursuant to this subsection, an officer or inspector shall have the same powers invested in law enforcement officers by statute or common law. When acting pursuant to subdivision (2) of this subsection, an officer or inspector shall not be considered an officer, employee, or agent for the State or local law enforcement

agency or designee asking for temporary assistance. Nothing in this subsection shall be construed to expand the authority of officers and inspectors to initiate or conduct independent investigations into violations of criminal laws outside the scope of the subject matter jurisdiction of the operation of vehicles and the use of the highways. The primary mission of the officers and inspectors of the Division shall be enforcement of the laws regulating the operation of vehicles and the use of the highways."

Section 2. This act becomes effective October 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 138

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H138-ARO-001

Date_____,1997

Comm. Sub. []
Amends Title []
Second Edition

Representative Arnold

moves to amend the bill on page 1, line 6, by rewriting the line to read:

"REQUESTED THEIR ASSISTANCE AND TO DIRECT THE SECRETARY OF THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY, IN CONSULTATION WITH THE COMMISSIONER OF MOTOR VEHICLES, TO DEVELOP A PLAN TO TRANSFER THE LAW ENFORCEMENT PERSONNEL AND DUTIES OF THE DIVISION OF MOTOR VEHICLES TO THE STATE HIGHWAY PATROL WITHIN 24 MONTHS." and

on page 3, lines 7-8, by inserting the following new section between the lines:

"Section 1.1. The General Assembly finds that the law enforcement functions performed by the Division of Motor Vehicles, including enforcement authority under the Motor Carrier Safety Regulation, should be phased out and transferred to the State Highway Patrol. Officers and inspectors currently serving under the Commissioner of Motor Vehicles must meet the training standards and qualifications required by the State Highway Patrol, provided that the commanding officer in consultation with the Secretary of the Department of Crime Control and Public Safety shall determine whether special exemptions from the training requirements should be granted to those officers and inspectors who are performing other than law enforcement duties. The Secretary of Crime Control and Public Safety, in conjunction with the Commissioner of Motor Vehicles shall report to the Joint Legislative Commission on Governmental Operations, no later than August 1, 1997, with a plan

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 138

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H138-ARO-001 Page 2 of __

to implement the transfer of personnel and duties contained in this section within 24 months."

SIGNED Gene Arnold
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 539

Short Title: Collateral Source Evidence. (Public)

Sponsors: Representatives Neely; Berry, Cansler, Dockham, Esposito, Gray, Hardy, Hill, Kiser, McComas, McMahan, Miner, Mitchell, Morgan, Morris, Russell, Watson, and C. Wilson.

Referred to: Judiciary II.

March 19, 1997

A BILL TO BE ENTITLED

AN ACT TO PREVENT DOUBLE RECOVERIES IN PROPERTY DAMAGE, PERSONAL INJURY, AND WRONGFUL DEATH ACTIONS BY ALLOWING EVIDENCE OF OTHER SOURCES OF RECOVERY.

The General Assembly of North Carolina enacts:

Section 1. Article 4 of Chapter 8C of the General Statutes is amended by adding a new section to read:

"**Rule 413. Collateral source of evidence.**

(a) For the purposes of this Rule, the term 'collateral source payments' means payments related to the injury, disability, or death in question made to the plaintiff, or on plaintiff's behalf by or pursuant to:

(1) A federal, state, or local income disability or workers' compensation act; or other public program providing medical expenses, disability payments, or similar benefits;

(2) Health, accident, sickness, or automobile accident insurance or liability insurance that provides health benefits or income disability coverage; except that 'collateral source payments' shall not include life insurance benefits available to the plaintiff, whether purchased by the plaintiff or provided by others, payments made pursuant to the Social Security Act, or pension payments;

(3) A contract or agreement of a group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services; or

(4) A contractual or voluntary wage continuation plan provided by employers or any system intended to provide substitute wages during a period of disability.

(b) In a property damage, personal injury, or wrongful death action, the court shall allow into evidence proof of:

(1) Collateral source payments;

(2) The amount of money which the party against whom the evidence of collateral source payment is offered is required to repay as a result of the collateral source payments received; and

(3) The amount of recovery which the party against whom the evidence of collateral source payments is offered is required to pay toward the expenses related to the party's property damage, injury or death claim after the collateral source payments were made."

Section 2. This act is effective when it becomes law and applies to causes of action arising on or after that date.

North Carolina General Assembly
Legislative Services Office

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April 7, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel

RE: **House Bill 539 - Collateral Source Evidence.**

House Bill 539 amends the North Carolina Evidence Code to allow evidence of other sources of recovery to be introduced in property damage, personal injury and wrongful death actions. Under common law, the collateral source rule prohibits defendants from introducing evidence that the plaintiff has received or will receive payment from another source such as insurance or workers' compensation, for losses which have been claimed as damages.

This bill defines the term 'collateral source payments' to include payments related to the injury, disability, or death in question , made to the plaintiff or on the plaintiff's behalf from: (1) government income disability or workers' compensation acts or other similar public programs; (2) health, accident, sickness, or automobile accident insurance or liability insurance , but **not** life insurance benefits, whether purchased by the plaintiff or not, or Social Security or pension payments; (3) contracts to pay for or reimburse medical costs; and (4) wage continuation plans.

The bill also provides that the court shall allow into evidence proof of: (1) collateral source payments; (2) the amount the plaintiff is required to repay as a result of the collateral source payments received; and (3) the amount of recovery the plaintiff is required to pay toward the expenses related to the damage, injury or death claim after the collateral source payments were made.

The act is effective when it becomes law and applies to causes of action arising on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

JUDICIARY I April 15, 1997 10am

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	John McMillan	Manning, Fulton & Skinner PA.
2.	Mike Simmons	DMV
3.	Jerry Traversa	DMV
4.	Keith Sappie	NCDOT
5.	Art Hall	NC Academy of Trial Lawyers - VP
6.	Theresa Kostrzewa	Sanford Holshouser
7.	Marshall Hurley	atty
8.	Bobby J. Lewis	atty
9.	Leslie Bevacqua	NCCBI
10.	Phil Kirk (P.O.R)	NCCBI
11.	Nancy Bradley	NCCBI
22.	C. Douglas Maynard Jr	Wells Jenkins Lucas & Jenkins PLLC WS NC
23.	Jill Miller	NCATL
24.	L. Everhart	NC Citizen Action
25.	Chris Fitzsimon	Common Sense Foundation
26.	Mary Ann Talley	N.C. Academy of Trial Lawyers
27.	Charles Cromer	NCATL
28.	ART DONALDSON	Atty
29.	Ed Pond	NCCBI
30.	N.S.A.	Lawyer
31.	Herman Hoskins	Atty.

32.	Michelle Cook	Weyerhaeuser
33.	Pete Morgan	NFIB
34.	Lyman Cooper	CSX. Corp.
35.	Steve Keene	North Carolina Medical Society
36.	Dave Morrison	~~Leuders & Assoc~~
37.	Andy Ellen	NC Farm Bureau
38.		NCFDA
39.		NCHBA
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HOUSE COMMITTEE ON JUDICIARY I

Thursday, April 17, 1997
Room 1327 LB
8:00 a.m.

OPENING REMARKS:
Representative N. Leo Daughtry, Chairman
Judiciary I Committee

BILLS TO BE CONSIDERED:

H.B. 615 PUBLIC DEFENDER/DISTRICT 16B
Sponsor: Representative Bonner

H.B. 646 REVISE UCC/CROP LIENS
Sponsor: Representative Daughtry

H.B. 790 NO RACE OR GENDER ON CHECKS
Sponsor: Representative Michaux

H.B. 869 SPEED TO ELUDE ARREST
Sponsor: Representative Davis

H.B. 873 AGE OF UNDISCIPLINED JUVENILES
Sponsor: Representative Hunter

H.B. 904 LIFE PRISON/REPEAT CHILD MOLESTER
Sponsor: Representative Mosley

ADJOURNMENT UNTIL 10:00 a.m.

At 10:00 a.m. in Room 1327, *The Committee will resume consideration of*
H.B. 539 COLLATERAL SOURCE EVIDENCE *and is scheduled to consider*
S. 106 SALE OF PROPERTY FOR UNPAID TAXES *also, the Subcommittee on*
H.B. 538 TRUTHFUL EMPLOYMENT REFERENCES *may be prepared to report.*

The Select Committee on Court Improvement will meet 20 minutes after session and will continue consideration of: **H.B. 741 COURT IMPROVEMENT ACT/CONSTITUTION & H.B. 742 COURT IMPROVEMENT ACT**

Rep. Clary moved to make a technical amendment to H.B. 904, a copy of the written details of which numbered "H904-ARO-001," a copy of which is attached and made a part of these minutes. There was no objection.

Rep. Thompson asked whether a FISCAL NOTE had been prepared. Rep. Mosely was pleased to report that FISCAL NOTE was in preparation and that preliminary research indicated no fiscal impact at this time.

Rep. Blue moved to give the measure a favorable report. There was no objection.

(Without objection, the technical amendment to House Bill 904 was rolled into a "Proposed Committee Substitute" to House Bill 904, which was subsequently reported to the House favorably, unfavorable to the original bill.)

Rep. Michaux was recognized to explain House Bill 790 NO RACE OR GENDER ON CHECKS.

Counsel Karen Cochrane-Brown prepared a MEMORANDUM on H.B. 790, which was distributed, a copy of which is attached and made a part of these minutes.

Rep. Michaux moved to make a technical amendment to H.B. 904, a copy of the written details of which numbered "H790-ARO-001," a copy of which is attached and made a part of these minutes. There was no objection. There was no ojection.

Fran Preston, of the North Carolina Retail Merchants Association, indicated their organization's support of the measure.

Rep. Fitch moved the technical amendment be rolled into a Proposed Committee Substitute to H.B. 790, and reported favorably to the House, unfavorable to the original bill. There was no objection.

Without objection, at the request of Rep. Thompson, the committee recognized Rep. Thompson for the purpose of explaining House Bill 704, SHERIFFS' REGHISTRATION PLATES, which was not yet on the calendar.

Without objection, the committee gave H.B. 704 a favorable report.

The Committee Adjourned at 8:40 a.m. until 10:00 a.m.

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 646

Short Title: Revise UCC/Crop Liens. (Public)

Sponsors: Representative Daughtry.

Referred to: Judiciary I.

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO REVISE THE UNIFORM COMMERCIAL CODE TO ESTABLISH A PRODUCTION MONEY SECURITY INTEREST IN CROPS THAT HAS PRIORITY OVER OTHER SECURITY INTERESTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-9-312 reads as rewritten:

"**§ 25-9-312. Priorities among conflicting security interests in the same collateral.**

(1) The rules of priority stated in other sections of this part and in the following sections shall govern when applicable: G.S. 25-4-208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; G.S. 25-9-103 on security interests related to other jurisdictions; G.S. 25-9-114 on consignments.

(2) (a) A perfected security interest in crops for new value given to enable the debtor to purchase agricultural supplies to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over ~~an earlier~~ any perfected security interest in those crops, ~~to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise,~~ even though the person giving new value had knowledge of the earlier security interest. Priority of security interests in crops for new value given to enable the debtor to purchase agricultural supplies not more

than three months before the crops became growing crops is governed by subdivision (5) of this section.

(b) Within five days of perfecting a security interest in crops for new value given to enable the debtor to purchase agricultural supplies, the holder of the security interest shall notify in writing by certified mail, addressee only, the holder of the conflicting security interest that the person giving the notice has or expects to acquire a security interest in the crops of the debtor. The notice shall identify the debtor, describe the type of crops, state the year or years in which the crops will be grown, and describe the land where the crops are growing or to be grown.

(c) Creating or perfecting a security interest in crops for new value given to enable the debtor to purchase agricultural supplies shall not operate under any circumstances as a default on, an accelerating event under, or otherwise as a breach of any note or other instrument or agreement of any kind or nature to pay debt, any loan or credit agreement, or any security arrangement of any kind or nature where the collateral is real or personal property.

(d) As used in this subdivision, 'agricultural supplies' includes agricultural seeds as defined in G.S. 106-277.2, soil additives as defined in G.S. 106-50.31, fertilizer materials as defined in G.S. 106-657, liming materials as defined in G.S. 106-92.3, pesticides as defined in G.S. 106-65.24, and herbicides as defined in G.S. 143-460.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

(a) ~~the~~ The purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) ~~the~~ The purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the 21-day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of G.S. 25-9-304); and

(c) ~~the~~ The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) ~~the~~ The notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 20 days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under G.S. 25-8-321 on securities, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made."

Section 2. This act becomes effective October 1, 1997, and applies to security interests perfected on or after that date, but shall not affect any contract entered into or security interest or lien perfected prior to that date.

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April 17, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **House Bill 646; Revise Uniform Commercial Code Crop Liens**

House Bill 646 amends G.S. 25-9-312 of the Uniform Commercial Code as adopted in North Carolina.

As presently written, subdivision (2) of G.S. 25-9-312 provides that a perfected security interest in crops for new value given to enable the debtor to produce crops during a production season takes precedence over an earlier security interest provided that (i) the new security interest is given not more than three months before the crops become growing crops, and (ii) the earlier security interest secures obligations due more than six months before the crops become growing crops. The amendments would provide that a new security interest for the purpose of allowing the debtor to purchase agricultural supplies to produce crops will take precedence over any perfected security interest in those crops. The amendments require that within five days of perfecting the new security interest in crops the holder must notify in writing the holder of any conflicting security interest. The notice must identify the debtor, describe the types of crops, state the year or years in which the crops will be growing, and describe the land where the crops are growing or to be grown. The amendments specifically provide that creating or perfecting a new security interest in crops to allow the purchase of agricultural supplies shall not operate as a default or an act of acceleration pursuant to any existing instrument. Agricultural supplies includes seeds, soil additives, fertilizer, lime, pesticides, and herbicides.

The act becomes effective October 1, 1997 and applies to security interests perfected on or after that date, but shall not affect any contract entered into or security interest or lien perfected prior to that date. In other words, preexisting security interests and contracts will not be affected by the amendments.

H646-SMRL-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 646

Short Title: Revise UCC/Crop Liens. (Public)

Sponsors: Representative Daughtry.

Referred to: Judiciary I.

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO REVISE THE UNIFORM COMMERCIAL CODE TO ESTABLISH A PRODUCTION MONEY SECURITY INTEREST IN CROPS THAT HAS PRIORITY OVER OTHER SECURITY INTERESTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-9-312 reads as rewritten:

"**§ 25-9-312. Priorities among conflicting security interests in the same collateral.**

(1) The rules of priority stated in other sections of this part and in the following sections shall govern when applicable: G.S. 25-4-208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; G.S. 25-9-103 on security interests related to other jurisdictions; G.S. 25-9-114 on consignments.

(2) (a) A perfected security interest in crops for new value given to enable the debtor to purchase agricultural supplies to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over ~~an earlier~~ any perfected security interest in those crops, ~~to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise,~~ even though the person giving new value had knowledge of the earlier security interest. Priority of security interests in crops for new value given to enable the debtor to purchase agricultural supplies not more

than three months before the crops became growing crops is governed by subdivision (5) of this section.

(b) Within five days of perfecting a security interest in crops for new value given to enable the debtor to purchase agricultural supplies, the holder of the security interest shall notify in writing by certified mail, addressee only, the holder of the conflicting security interest that the person giving the notice has or expects to acquire a security interest in the crops of the debtor. The notice shall identify the debtor, describe the type of crops, state the year or years in which the crops will be grown, and describe the land where the crops are growing or to be grown.

(c) Creating or perfecting a security interest in crops for new value given to enable the debtor to purchase agricultural supplies shall not operate under any circumstances as a default on, an accelerating event under, or otherwise as a breach of any note or other instrument or agreement of any kind or nature to pay debt, any loan or credit agreement, or any security arrangement of any kind or nature where the collateral is real or personal property.

(d) As used in this subdivision, 'agricultural supplies' includes agricultural seeds as defined in G.S. 106-277.2, soil additives as defined in G.S. 106-50.31, fertilizer materials as defined in G.S. 106-657, liming materials as defined in G.S. 106-92.3, pesticides as defined in G.S. 106-65.24, and herbicides as defined in G.S. 143-460.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

(a) ~~the~~ The purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) ~~the~~ The purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the 21-day period where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of G.S. 25-9-304); and

(c) ~~the~~ The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) ~~the~~ The notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 20 days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under G.S. 25-8-321 on securities, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made."

Section 2. This act becomes effective October 1, 1997, and applies to security interests perfected on or after that date, but shall not affect any contract entered into or security interest or lien perfected prior to that date.

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April 16, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **House Bill 869 - Speed to Elude Arrest.**

House Bill 869 amends G.S. 20-141(j) to increase the penalty for speeding to elude arrest and to create a presumption that a person is eluding arrest if the person continues the speeding for a distance of a quarter of a mile or more.

Under the current law, a person who drives a vehicle on a street or highway at least 15 miles over the speed limit and over 55 miles per hour, **or** drives in excess of 80 miles per hour, while fleeing from or attempting to elude apprehension by a law enforcement officer who has authority to enforce the motor vehicle laws, is guilty of a Class 1 misdemeanor, punishable by a discretionary fine and 1 to 45 days community service.

This bill would increase the penalty to a Class H felony and require a minimum punishment of a fine of at least $500. Assuming a prior record level 1, the minimum presumptive sentence for a Class H felony is 5 - 6 months community, intermediate or active punishment. Furthermore, a person convicted of this offense will have their driver's license revoked for one year.

In addition, this bill would provide that it is prima facie evidence that a person is fleeing or attempting to elude arrest if the person exceeds the speed limit as provided in this subsection for a distance of a quarter mile or more. Under present law, whether a person is fleeing or attempting to elude arrest is a question of fact to be proved by the State. This bill would shift the burden of proof to the defendant if the State showed that the defendant continued to speed for a distance of a quarter of a mile or more.

This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 869

Short Title: Speed to Elude Arrest. (Public)

Sponsors: Representatives Davis; Aldridge, Arnold, Baker, Barbee, Beall, Berry, Bonner, Bowie, Brawley, Brown, Buchanan, Cansler, Capps, Carpenter, Creech, Culp, Daughtry, Decker, Dedmon, Eddins, Fox, Gardner, Goodwin, Grady, Gulley, Hall, Hardy, Howard, Ives, Justus, Kinney, Kiser, McMahan, Miner, Moore, Morris, Preston, Rayfield, Reynolds, Russell, Sexton, Starnes, Tallent, Tolson, Wainwright, Warwick, Watson, Wilkins, C. Wilson, and G. Wilson.

Referred to: Judiciary I.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR SPEEDING TO ELUDE ARREST AND TO PROVIDE THAT THERE IS A PRESUMPTION THAT A PERSON IS ELUDING ARREST IF THE PERSON CONTINUES THE SPEEDING VIOLATION FOR A DISTANCE THAT IS A QUARTER OF A MILE OR MORE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-141(j) reads as rewritten:

"(j) A person who does one of the following while fleeing or attempting to elude arrest or apprehension by a law enforcement officer with authority to enforce the motor vehicle laws is guilty of a Class ~~1 misdemeanor.~~ H felony, and at a minimum shall be punished by a fine of at least five hundred dollars ($500.00):

(1) Drives a vehicle on a street or highway in excess of 55 miles per hour and more than 15 miles per hour over the legal limit.

(2) Drives a vehicle in excess of 80 miles per hour.

It shall be prima facie evidence that a person is fleeing or attempting to elude arrest or apprehension by a law enforcement officer with authority to enforce the motor vehicle laws if the person violates subdivision (1) or (2) of this subsection for a distance that is a quarter of a mile or more."

Section 2. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

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April 14, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **House Bill 615; Method of appointing Public Defender in District 16B**

House Bill 615 amends G.S. 7A-466(a) to change the method by which the Public Defender for Defender District 16B is appointed. Under present law, the Public Defender for District 16B is appointed from a list of not less than three names nominated by the attorneys in that defender district. The person making the appointment from the list is the Resident Superior Court Judge of Superior Court District 16B other than the Senior Resident Superior Court Judge.

The amendment would change the appointing officer to the Senior Resident Superior Court Judge of Superior Court District 16B.

The act is effective when it becomes law.

H615-SMRL-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§ 7A-466. Term of defender; selection; removal.

(a) Except as provided in subsection (b) of this section, the term of office of each public defender is for four years, beginning on the date specified in subsection (b) or (c) of this section, and quadrennially thereafter.

(b) The public defender for each of the judicial districts listed below, as constituted on December 31, 1988, who is in office on that date, shall become the public defender for the defender district listed opposite that judicial district. The term of each such defender shall end on the date indicated and a new term shall begin on the following day.

Judicial District as of 12/31/88	*Defender District*	*Term Ends*
12	12	December 31, 1989
15B	15B	May 31, 1991
18	18	June 30, 1991
26	26	June 30, 1991
27A	27A	June 30, 1991
28	28	June 30, 1989.

(c) The terms of the public defenders for Defender Districts 3A, 3B, and 16A shall begin on January 1, 1989. The term of the public defender for Defender District 16B shall begin upon the appointment of the initial public defender for that district. The term of the public defender for Defender District 14 shall begin on July 1, 1990.

(d) Except in Defender District 16B, for each new term beginning on or after January 1, 1989, and to fill any vacancy, the public defender for a defender district shall be appointed from a list of not less than two and not more than three names nominated by written ballot of the attorneys resident in the defender district who are licensed to practice law in North Carolina. The balloting shall be conducted pursuant to regulations promulgated by the Administrative Office of the Courts. The appointment shall be made by the senior resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-44.1 which includes the county or counties of the defender district for which the public defender is being appointed.

(e) In Defender District 16B, for each new term beginning on or after January 1, 1989, and to fill any vacancy, the public defender for a defender district shall be appointed from a list of not less than three names nominated by written ballot of the attorneys resident in the defender district who are licensed to practice law in North Carolina. The balloting shall be conducted pursuant to regulations promulgated by the Administrative Office of the Courts. The appointment shall be made by the resident superior court judge of Superior Court District 16B other than the senior resident superior court judge.

(f) A public defender or assistant public defender may be suspended or removed from office, and reinstated, for the same causes and under the same procedures as are applicable to removal of a district attorney.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 615

Short Title: Public Defender/District 16B. (Public)

Sponsors: Representatives Bonner; Yongue and Sutton.

Referred to: Judiciary I.

March 26, 1997

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE METHOD OF APPOINTING THE PUBLIC DEFENDER IN DISTRICT 16B.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-466(e) reads as rewritten:

"(e) In Defender District 16B, for each new term beginning on or after January 1, 1989, and to fill any vacancy, the public defender for a defender district shall be appointed from a list of not less than three names nominated by written ballot of the attorneys resident in the defender district who are licensed to practice law in North Carolina. The balloting shall be conducted pursuant to regulations promulgated by the Administrative Office of the Courts. The appointment shall be made by the senior resident superior court judge of Superior Court District ~~16B other than the senior resident superior court judge.~~ 16B."

Section 2. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 904

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H904-ARO-001

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

1 moves to amend the bill on page 1, line 8,
2 by deleting the number "14"
3 and substituting "15A".
4

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 790
Proposed Committee Substitute H790-PCS4102

Short Title: No Race or Gender on Checks. (Public)

Sponsors:

Referred to:

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CHECK TAKER OR ACCEPTOR SHALL NOT WRITE OR PRINT THE RACE OR GENDER ON THE CHECK OR DRAFT OF A CHECK PASSER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-107.1(b) reads as rewritten:

"(b) In prosecutions under G.S. 14-107 the prima facie evidence provisions of subsections (d) and (e) apply if all the conditions of subdivisions (1) through (7) below are met. The prima facie evidence provisions of subsection (e) apply if only conditions (5) through (7) are met. The conditions are:

(1) The check or draft is delivered to a check taker.

(2) The name and mailing address of the check passer are written or printed on the check or ~~draft.~~ draft, and the check taker or acceptor has not written or printed the race or gender of the check passer on the check or draft.

(3) The check taker identifies the check passer at the time of accepting the check by means of a North Carolina driver's license, a special identification card issued pursuant to G.S. 20-37.7, or other reliable serially numbered identification card containing a photograph and mailing address of the person in question.

(4) The license or identification card number of the check passer appears on the check or draft.

(5) After dishonor of the check or draft by the bank or depository, the acceptor sends the check passer a letter by certified mail, to the address recorded on the check, identifying the check or draft, setting forth the circumstances of dishonor, and requesting rectification of any bank error or other error in connection with the transaction within 10 days.

An acceptor may advise the check passer in a letter that legal action may be taken against him if payment is not made within the prescribed time period. Such letter, however, shall be in a form which does not violate applicable provisions of Article 2 of Chapter 75.

(6) The acceptor files the affidavit described in subdivision (7) with a judicial official, as defined in G.S. 15A-101(5), before issuance of the first process or pleading in the prosecution under G.S. 14-107. The affidavit must be kept in the case file (attached to the criminal pleading in the case).

(7) The affidavit of the acceptor, sworn to before a person authorized to administer oaths, must:

a. State the facts surrounding acceptance of the check or draft. If the conditions set forth in subdivisions (1) through (5) have been met, the specific facts demonstrating observance of those conditions must be stated.

b. Indicate that at least 15 days have elapsed since the mailing of the letter required under subdivision (5) and that the check passer has failed to rectify any error that may have occurred with respect to the dishonored check or draft.

c. Have attached a copy of the letter sent to the check passer pursuant to subdivision (5).

d. Have attached the receipt, or a copy of it, from the United States Postal Service certifying the mailing of the letter described in subdivision (5).

e. Have attached the check or draft or a copy thereof, including any stamp, marking or attachment indicating the reason for dishonor."

Section 2. This act becomes effective October 1, 1997, and applies to checks or drafts made or drawn on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 790

Short Title: No Race or Gender on Checks. (Public)

Sponsors: Representative Michaux.

Referred to: Judiciary I.

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CHECK TAKER OR ACCEPTOR SHALL NOT WRITE OR PRINT THE RACE OR GENDER ON THE CHECK OR DRAFT OF A CHECK PASSER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-107.1(b) reads as rewritten:

"(b) In prosecutions under G.S. 14-107 the prima facie evidence provisions of subsections (d) and (e) apply if all the conditions of subdivisions (1) through (7) below are met. The prima facie evidence provisions of subsection (e) apply if only conditions (5) through (7) are met. The conditions are:

(1) The check or draft is delivered to a check taker.

(2) The name and mailing address of the check passer are written or printed on the check or draft. However, a check taker or acceptor shall not write or print the race or gender of the check passer on the check or draft.

(3) The check taker identifies the check passer at the time of accepting the check by means of a North Carolina driver's license, a special identification card issued pursuant to G.S. 20-37.7, or other reliable serially numbered identification card containing a photograph and mailing address of the person in question.

(4) The license or identification card number of the check passer appears on the check or draft.

(5) After dishonor of the check or draft by the bank or depository, the acceptor sends the check passer a letter by certified mail, to the

address recorded on the check, identifying the check or draft, setting forth the circumstances of dishonor, and requesting rectification of any bank error or other error in connection with the transaction within 10 days.

An acceptor may advise the check passer in a letter that legal action may be taken against him if payment is not made within the prescribed time period. Such letter, however, shall be in a form which does not violate applicable provisions of Article 2 of Chapter 75.

(6) The acceptor files the affidavit described in subdivision (7) with a judicial official, as defined in G.S. 15A-101(5), before issuance of the first process or pleading in the prosecution under G.S. 14-107. The affidavit must be kept in the case file (attached to the criminal pleading in the case).

(7) The affidavit of the acceptor, sworn to before a person authorized to administer oaths, must:

a. State the facts surrounding acceptance of the check or draft. If the conditions set forth in subdivisions (1) through (5) have been met, the specific facts demonstrating observance of those conditions must be stated.

b. Indicate that at least 15 days have elapsed since the mailing of the letter required under subdivision (5) and that the check passer has failed to rectify any error that may have occurred with respect to the dishonored check or draft.

c. Have attached a copy of the letter sent to the check passer pursuant to subdivision (5).

d. Have attached the receipt, or a copy of it, from the United States Postal Service certifying the mailing of the letter described in subdivision (5).

e. Have attached the check or draft or a copy thereof, including any stamp, marking or attachment indicating the reason for dishonor."

Section 2. This act becomes effective October 1, 1997, and applies to acts committed on or after that date.

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April 16, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **House Bill 790 - No Race or Gender on Checks.**

House Bill 790 amends G.S. 14-107.1(b) which sets out the conditions that must be met for a prima facie case in prosecutions of worthless check cases. Under G.S. 14-107, it is unlawful for any person to "draw make, utter or issue and deliver to another" a check or draft when the person knows at the time that the maker or drawer has insufficient funds on deposit in or credit with the bank with which to pay the check or draft. If the amount of the check is more than $2,000, the person is guilty of a Class I felony. If the amount of the check is $2,000 or less, the person is guilty of a misdemeanor.

Proof of having met certain conditions, set forth in G.S. 14-107.1 is prima facie evidence that the person charged was in fact the identified check passer. The conditions include that the check is delivered to the check taker; that the name and mailing address of the passer are written or printed on the check, that the taker identified the passer by a driver's license or other photographic identification; that the acceptor notifies the passer by certified mail that the check has been dishonored and allows 10 days for the passer to correct any bank error; and that the acceptor has filed an affidavit in accordance with the section setting forth the pertinent facts.

This bill would add a limitation to this provision in cases in which the check taker in a face-to-face transaction, has written or printed the race or gender of the check passer on the check. In such cases, the check taker would lose the benefit of making a prima facie case by proving that the other conditions had been met.

This act would become effective on October 1, 1997, and applies to acts committed on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 790

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H790-ARO-001 Page 1 of __

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

Representative Michaux

moves to amend the bill on page 1, lines 13-14, by rewriting the lines to read;

"printed on the check or ~~draft.~~ draft, and the check taker or acceptor has not written or printed the race or gender of the check passer on" and;

on page 2, lines 33-34, by rewriting the lines to read:

"Section 2. This act becomes effective October 1, 1997, and applies to checks or drafts made or drawn on or after that date.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

April 17

H D

HOUSE BILL 904
Proposed Committee Substitute H904-PCS8209

Short Title: Life Imprison./Repeat Child Molester. (Public)

Sponsors:

Referred to:

April 9, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE SHALL BE IMPOSED FOR A SECOND OR SUBSEQUENT CONVICTION OF A CLASS B1 FELONY IF THERE ARE NO MITIGATING CIRCUMSTANCES AND THE VICTIM IS THIRTEEN YEARS OF AGE OR YOUNGER.

The General Assembly of North Carolina enacts:

Section 1. Article 81B of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1340.16B. Life imprisonment without parole for a second or subsequent conviction of a Class B1 felony.**

(a) Notwithstanding the sentencing dispositions in G.S. 15A-1340.17, a person convicted of a Class B1 felony shall be sentenced to life imprisonment without parole if:

(1) The offense was committed against a victim who was 13 years of age or younger at the time of the offense;

(2) The person has one or more prior convictions of a Class B1 felony; and

(3) The court finds that there are no mitigating factors in accordance with G.S. 15A-1340.16(e).

(b) If the sentencing court finds that there are mitigating circumstances, then the court shall sentence the person in accordance with G.S. 15A-1340.17.

(c) A prior conviction of a Class B1 felony shall be proved in accordance with G.S. 15A-1340.14."

Section 2. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Office
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
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Terrence D. Sulliv
Research Division
Suite 545, LOB
300 N. Salisbury S
Raleigh, NC 2760
(919) 733-2578

April 16, 1997

April 30

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel

RE: **House Bill 904 - Life Imprison./Repeat Child Molester.**

House Bill 904 amends the Structured Sentencing Act by adding a new section entitled ***Life imprisonment without parole for a second or subsequent conviction of a Class B1 felony.*** The bill provides that a person convicted of a Class B1 felony shall be sentenced to life imprisonment without parole if; (1) the victim was 13 years old or younger when the offense was committed, (2) the person has one or more convictions of a Class B1 felony, and (3) the court finds there are no mitigating factors.

Under present law, conviction of a Class B1 felony carries a presumptive sentencing range of from 192-240 months at prior record level I to 384-480 months at prior record level VI. In addition, the aggravated sentence for a Class B1 felony at prior record levels V and VI is already life imprisonment without parole.

First degree rape and first degree statutory rape are Class B1 felonies, as well as several other forcible sexual offenses. This bill would provide that if the victim is 13 or younger, which is an element of some of these crimes, and the defendant has at least one other conviction of a Class B1 felony and there are no mitigating factors, the sentence would be increased to life imprisonment without parole.

This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 904

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H904-ARO-001

Page 1 of __

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

1 moves to amend the bill on page 1, line 8,
2 by deleting the number "14"
3 and substituting "15A".
4

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

April 17

North Carolina General Assembly
Legislative Services Office

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April 14, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **House Bill 615; Method of appointing Public Defender in District 16B**

House Bill 615 amends G.S. 7A-466(a) to change the method by which the Public Defender for Defender District 16B is appointed. Under present law, the Public Defender for District 16B is appointed from a list of not less than three names nominated by the attorneys in that defender district. The person making the appointment from the list is the Resident Superior Court Judge of Superior Court District 16B other than the Senior Resident Superior Court Judge.

The amendment would change the appointing officer to the Senior Resident Superior Court Judge of Superior Court District 16B.

The act is effective when it becomes law.

H615-SMRL-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§ 7A-466. Term of defender; selection; removal.

(a) Except as provided in subsection (b) of this section, the term of office of each public defender is for four years, beginning on the date specified in subsection (b) or (c) of this section, and quadrennially thereafter.

(b) The public defender for each of the judicial districts listed below, as constituted on December 31, 1988, who is in office on that date, shall become the public defender for the defender district listed opposite that judicial district. The term of each such defender shall end on the date indicated and a new term shall begin on the following day.

Judicial District as of 12/31/88	*Defender District*	*Term Ends*
12	12	December 31, 1989
15B	15B	May 31, 1991
18	18	June 30, 1991
26	26	June 30, 1991
27A	27A	June 30, 1991
28	28	June 30, 1989.

(c) The terms of the public defenders for Defender Districts 3A, 3B, and 16A shall begin on January 1, 1989. The term of the public defender for Defender District 16B shall begin upon the appointment of the initial public defender for that district. The term of the public defender for Defender District 14 shall begin on July 1, 1990.

(d) Except in Defender District 16B, for each new term beginning on or after January 1, 1989, and to fill any vacancy, the public defender for a defender district shall be appointed from a list of not less than two and not more than three names nominated by written ballot of the attorneys resident in the defender district who are licensed to practice law in North Carolina. The balloting shall be conducted pursuant to regulations promulgated by the Administrative Office of the Courts. The appointment shall be made by the senior resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-44.1 which includes the county or counties of the defender district for which the public defender is being appointed.

(e) In Defender District 16B, for each new term beginning on or after January 1, 1989, and to fill any vacancy, the public defender for a defender district shall be appointed from a list of not less than three names nominated by written ballot of the attorneys resident in the defender district who are licensed to practice law in North Carolina. The balloting shall be conducted pursuant to regulations promulgated by the Administrative Office of the Courts. The appointment shall be made by the resident superior court judge of Superior Court District 16B other than the senior resident superior court judge.

(f) A public defender or assistant public defender may be suspended or removed from office, and reinstated, for the same causes and under the same procedures as are applicable to removal of a district attorney.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 704

Short Title: Sheriff's Registration Plates. (Public)

Sponsors: Representatives Thompson; Baddour, Bowie, Brawley, Buchanan, Clary, Crawford, Davis, Hiatt, Hill, Howard, Hurley, Ives, Justus, Kiser, McCombs, McCrary, Mercer, Mitchell, Nichols, Owens, Russell, Sexton, Sherrill, Starnes, and Tolson.

Referred to: Transportation, if favorable, Judiciary I.

March 31, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE SPECIAL REGISTRATION PLATES FOR SHERIFFS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. -- The Division shall issue the following types of special registration plates:

(1) Administrative Officer of the Courts. -- Issuable to the Director of the Administrative Office of the Courts. The plate shall bear the phrase 'J-20'.

(2) Amateur Radio Operator. -- Issuable to an amateur radio operator who holds an unexpired and unrevoked amateur radio license issued by the Federal Communications Commission and who asserts to the Division that a portable transceiver is carried in the vehicle. The plate shall bear the phrase 'Amateur Radio'. The plate shall bear the operator's official amateur radio call letters, or call letters with numerical or letter suffixes so that an owner of more than one vehicle may have the call letters on each.

(2a) American Legion. -- Issuable to a member of the American Legion. The plate shall bear the words 'American Legion' and the emblem of the American Legion. The Division may not issue the plate

authorized by this subdivision unless it receives at least 300 applications for the plate.

(3) Civil Air Patrol Member. -- Issuable to an active member of the North Carolina Wing of the Civil Air Patrol. The plate shall bear the phrase 'Civil Air Patrol'. A plate issued to an officer member shall begin with the number '201' and the number shall reflect the seniority of the member; a plate issued to an enlisted member, a senior member, or a cadet member shall begin with the number '501'.

(3a) Civic Club. -- Issuable to a member of a nationally recognized civic organization whose member clubs in the State are exempt from State corporate income tax under G.S. 105-130.11(a)(5). Examples of these clubs include Jaycees, Kiwanis, Optimist, Rotary, Ruritan, and Shrine. The plate shall bear a word or phrase identifying the civic club and the emblem of the civic club. The Division may not issue a civic club plate authorized by this subdivision unless it receives at least 300 applications for that civic club plate.

(4) Class D Citizen's Radio Station Operator. -- Issuable to a Class D citizen's radio station operator. For an operator who has been issued Class D citizen's radio station call letters by the Federal Communications Commission, the plate shall bear the operator's official Class D citizen's radio station call letters. For an operator who has not been issued Class D citizen's radio station call letters by the Federal Communications Commission, the plate shall bear the phrase 'Citizen's Band Radio'.

(5) Clerk of Superior Court. -- Issuable to a current or retired clerk of superior court. A plate issued to a current clerk shall bear the phrase 'Clerk Superior Court' and the letter 'C' followed by a number that indicates the county the clerk serves. A plate issued to a retired clerk shall bear the phrase 'Clerk Superior Court, Retired', the letter 'C' followed by a number that indicates the county the clerk served, and the letter 'X' indicating the clerk's retired status.

(6) Coast Guard Auxiliary Member. -- Issuable to an active member of the United States Coast Guard Auxiliary. The plate shall bear the phrase 'Coast Guard Auxiliary'.

(6a) Collegiate Insignia Plate. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a public or private college or university.

(7) County Commissioner. -- Issuable to a county commissioner of a county in this State. The plate shall bear the words 'County Commissioner' followed first by a number representing the

commissioner's county and then by a letter or number that distinguishes plates issued to county commissioners of the same county. The number of a county shall be the order of the county in an alphabetical list of counties that assigns number one to the first county in the list and a letter or number to distinguish different cars owned by the county commissioners in that county. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(8) Disabled Veteran. -- Issuable to a veteran of the armed forces of the United States who suffered a 100% service-connected disability.

(9) District Attorney. -- Issuable to a North Carolina or United States District Attorney. The plate issuable to a North Carolina district attorney shall bear the letters 'DA' followed by a number that represents the prosecutorial district the district attorney serves. The plate for a United States attorney shall bear the phrase 'U.S. Attorney' followed by a number that represents the district the attorney serves, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District.

(10) Fire Department or Rescue Squad Member. -- Issuable to an active regular member or volunteer member of a fire department, rescue squad, or both a fire department and rescue squad. The plate shall bear the words 'Firefighter', 'Rescue Squad', or 'Firefighter-Rescue Squad'.

(10a) Future Farmers of America. -- Issuable to a member or a supporter of the National Future Farmers of America Organization. The plate shall bear the emblem of the organization and the letters 'FFA'. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(11) Historic Vehicle Owner. -- Issuable for a motor vehicle that is at least 35 years old measured from the date of manufacture. The plate for an historic vehicle shall bear the word 'Antique' unless the vehicle is a model year 1943 or older. The plate for a vehicle that is a model year 1943 or older shall bear the word 'Antique' or the words 'Horseless Carriage', at the option of the vehicle owner.

(11a) Historical Attraction Plate. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a publicly owned or nonprofit historical attraction located in North Carolina.

(12) Honorary Plate. -- Issuable to a member of the Honorary Consular Corps, who has been certified by the U. S. State Department, the plate shall bear the words 'Honorary Consular Corps' and a distinguishing number based on the order of issuance.

(13) Judge or Justice. -- Issuable to a sitting or retired judge or justice in accordance with G.S. 20-79.6.

(13a) Legion of Valor. -- Issuable to a recipient of one of the following military decorations: the Congressional Medal of Honor, the Distinguished Service Cross, the Navy Cross, or the Air Force Cross. The plate shall bear the emblem and name of the recipient's decoration.

(14) Legislator. -- Issuable to a member of the North Carolina General Assembly. The plate shall bear 'The Great Seal of the State of North Carolina' and, as appropriate, the word 'Senate' or 'House' followed by the Senator's or Representative's assigned seat number.

(15) Marshal. -- Issuable to a United States Marshal. The plate shall bear the phrase 'U.S. Marshal' followed by a number that represents the district the Marshal serves, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District.

(16) Military Reservist. -- Issuable to a member of a reserve component of the armed forces of the United States. The plate shall bear the name and insignia of the appropriate reserve component. Plates shall be numbered sequentially for members of a component with the numbers 1 through 5000 reserved for officers, without regard to rank.

(16a) Military Retiree. -- Issuable to an individual who has retired from the armed forces of the United States. The plate shall bear the word 'Retired' and the name and insignia of the branch of service from which the individual retired. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(17) National Guard Member. -- Issuable to an active or a retired member of the North Carolina National Guard. The plate shall bear the phrase 'National Guard'. A plate issued to an active member shall bear a number that reflects the seniority of the member; a plate issued to a commissioned officer shall begin with the number '1'; a plate issued to a noncommissioned officer with a rank of E7, E8, or E9 shall begin with the number '1601'; a plate issued to an enlisted member with a rank of E6 or below shall begin with the number '3001'. The plate issued to a retired or separated member shall indicate the member's retired status.

(17a) Olympic Games. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or insignia representing the Olympic Games.

(18) Partially Disabled Veteran. -- Issuable to a veteran of the armed forces of the United States who suffered a service connected disability of less than 100%.

(19) Pearl Harbor Survivor. -- Issuable to a veteran of the armed forces of the United States who was present at and survived the attack on Pearl Harbor on December 7, 1941. The plate will bear the phrase 'Pearl Harbor Survivor' and the insignia of the Pearl Harbor Survivors' Association.

(20) Personalized. -- Issuable to the registered owner of a motor vehicle. The plate will bear the letters or letters and numbers requested by the owner. The Division may refuse to issue a plate with a letter combination that is offensive to good taste and decency. The Division may not issue a plate that duplicates another plate.

(21) Prisoner of War. -- Issuable to the following:

a. A member or veteran member of the armed forces of the United States who has been captured and held prisoner by forces hostile to the United States while serving in the armed forces.

b. The surviving spouse of a person who had a prisoner of war plate at the time of death so long as the surviving spouse continues to renew the plate and does not remarry.

(21a) Professional Sports Fan. -- Issuable to the registered owner of a motor vehicle. The plate shall bear the logo of a professional sports team located in North Carolina. The Division shall receive 300 or more applications for a professional sports fan plate before a plate may be issued. The Division shall not develop a professional sports fan plate unless the professional sports team licenses, without charge, the State to use the official team logo on the plate.

(22) Purple Heart Recipient. -- Issuable to a recipient of the Purple Heart award. The plate shall bear the phrase 'Purple Heart Veteran, Combat Wounded' and the letters 'PH'.

(22a) Register of Deeds. -- Issuable to a register of deeds. The plate shall bear the words 'Register of Deeds' and the letter 'R' followed by a number representing the county of the register of deeds. The number of a county shall be the order of the county in an alphabetical list of counties that assigns number one to the first county in the list.

(22a1) Sheriff. -- Issuable to a current sheriff or a retired sheriff who served as sheriff for 10 or more years. A plate issued to a current sheriff shall bear the phrase 'Sheriff' and the letter 'S' followed by a number that indicates the county the sheriff serves. A plate issued to a retired sheriff who served for 10 or more years shall bear the phrase 'Sheriff, Retired' and the letters 'SX' followed by the number that indicates the county the sheriff served.

(22b) Special Olympics. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the North Carolina Special Olympics.

(22c) Square Dance Clubs. -- Issuable to a member of a recognized square dance organization exempt from corporate income tax under G.S. 105-130.11(a)(5). The plate shall bear a word or phrase identifying the club and the emblem of the club. The Division shall not issue a dance club plate authorized by this subdivision unless it receives at least 300 applications for that dance club plate.

(23) State Government Official. -- Issuable to elected and appointed members of State government in accordance with G.S. 20-79.5.

(23a) State Attraction. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a publicly owned or nonprofit State attraction located in North Carolina.

(24) Street Rod Owner. -- Issuable to the registered owner of a modernized private passenger motor vehicle manufactured prior to the year 1949 or designed to resemble a vehicle manufactured prior to the year 1949. The plate shall bear the phrase 'Street Rod'. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(25) Transportation Personnel. -- Issuable to various members of the Divisions of the Department of Transportation. The plate shall bear the letters 'DOT' followed by a number from 1 to 85, as designated by the Governor.

(26) U.S. Representative. -- Issuable to a United States Representative for North Carolina. The plate shall bear the phrase 'U.S. House' and shall be issued on the basis of Congressional district numbers.

(27) U.S. Senator. -- Issuable to a United States Senator for North Carolina. The plates shall bear the phrase 'U.S. Senate' and shall be issued on the basis of seniority represented by the numbers 1 and 2.

(28) Veterans of Foreign Wars. -- Issuable to a member or a supporter of the Veterans of Foreign Wars. The plate shall bear the words 'Veterans of Foreign Wars' or 'VFW' and the emblem of the VFW. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(29) Wildlife Resources. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a picture representing a native wildlife species occurring in North Carolina."

Section 2. This act becomes effective December 1, 1997.

VISITOR REGISTRATION SHEET

JUDICIARY I — 4/17/97
Name of Committee — Date

8AM

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Officer: BARRY L. NIX	Concord Police Dept. 30 Market St.
Officer: Warren V. Turnipseed	Concord Police Dept. 30 Market St. Concord NC
LT. DOUG SCOTT	CARY POLICE DEPT. P.O. BOX 8005 CARY, NC 27512-8005
Rep. Donald A. Bonner	House
Rep. Jane Mosley	House 63
DON McCorquodale	NCRMA
FRAN PRESTON	NCRMA
David Ferrell	Hofer, McNamara, Caldwell, McElroy & Wilson PA.
Deborah Ross	ACLU
Nancy Bradley	NCCPS
X X X X X X X X X X X X X	
JUDICIARY I	10AM 4-17-97

VISITOR REGISTRATION SHEET

Judiciary I — 4/17 — 10am
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Theresa Kosty	Sanford Holshouser
Marshall Hurley	atty.
Rich Liddle	NCSOR
Harold Webb	Johnson et al.
John McMillan	Manning, Fulton & Skinner PA
Susan Valaun	Watauga Co.
Leslie Berger	NCCBE
Aimee Pullen	NCCBI
Charles Cromer	NCATL
ART DONALDSON	AHy
Mary Ann Talley	AHy.
Bobby Sawyer	Lobbyist
DAWN ELY	DHR - DMA
Lucius PULLEN	ATTORNEY
Laura Hartsell	NCIC
BILL SCOGGIN	NCBA

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
A. Everhart	NC Citizen Admin
M Okun	PHCL
Jan Lynch	D.A. 11th Dist.
Michelle Cook	Weyerhaeuser
Lucia C. Dell	NC Med Society
Stan Wilkins	UNC-TV
Don McCorquodale	NCRMA
Evelyn Hawthorne	NCMA
Butch Gunnells	NC SDA
Tom Kotis	NC CrB-DPAs
T Powell	AOC

North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

3 tapes

Thursday, April 17, 1997
10:00 a.m.
1327 Legislative Building

N. Leo Daughtry
Edwin M. Hardy
Co-Chairmen

Members Present

Gene Arnold	**Daniel Blue**
Jerry Braswell	**J. Russell Capps**
Debbie Clary	**J. Sam Ellis**
Theresa Esposito	**Milton Fitch**
Bobby Ray Hall	**Thomas Hardaway**
George Holmes	**Robert Hunter**
John W. Hurley	**Margaret Jeffus**
H. M. Michaux, Jr.	**George Miller**
Richard Morgan	**Wilma Sherrill**
Gregg Thompson	

The House Committee on JUDICIARY I met at 10:00 a.m. on Thursday, April 17, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry presiding.

Committee counsels Steven Rose and Karen Cochrane-Brown were present to assist the committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

The Chairman announced the Subcommittee on House Bill 538, TRUTHFUL EMPLOYMENT REFERENCES, had reached an agreement and was prepared to present a Proposed Committee Substitute.

Committee Counsel Karen Cochrane-Brown prepared a MEMORANDUM on H.B. 538, a copy of which is attached and made a part of these minutes.

Rep. Fitch moved the Proposed Committee Substitute to H.B. 538 be accepted by the Committee for the purposes of discussion. There was no objection.

Rep. Neely was recognized to explain the Proposed Committee Substitute to H.B. 538

Rep. Hunter moved to amend the Proposed Committee Substitute to H.B. 538 on page 2, line 28, by deleting the words "*knows to be false*" and substituting the words "*knows, or reasonably should have known to be false.*" The amendment was agreed to.

Rep. Hunter offered an amendment, the written original of which, numbered "H538-ARL-017," is attached and made a part of these minutes. The amendment failed.

On a motion by Rep. Ellis, the Committee agreed to roll the amendments agreed to into a second Proposed Committee Substitute to H.B. 538, and to report to the House favorably to the Proposed Committee Substitute, unfavorable to the original bill. There was no objection.

The Committee resumed discussion on House Bill 539, COLLATERAL SOURCE EVIDENCE.

The Chairman recognized Sam Currin, chairman of the North Carolina Republican Party, to speak against the measure.

Rep. Neely was available to answer questions on the bill from members of the Committee.

Charles Daw, Henry Brandis Professor of the North Carolina School of Law, spoke regarding certain questions raised by Rep. Miller.

Skip Stam, Register of Deeds for Wake County, was recognized to speak on the measure.

The Committee Adjourned at 10:55 a.m.

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

North Carolina House of Representatives
JUDICIARY I COMMITTEE

Roll Call

Alexander
Arnold
Blue
Braswell
Capps
Clary
Crawford
(Daughtry)
Ellis
Esposito
Fitch
Gray
Hall
Hardaway
Hardy
Holmes
Hunter
Hurley
Jeffus
Justus
Micheux
Miller
Morgan
Sherrill
Thompson

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 538
Proposed Committee Substitute H538-PCS7265

Short Title: Truthful Employment References. (Public)

Sponsors:

Referred to:

March 19, 1997

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE THE PROVIDING OF TRUTHFUL EMPLOYMENT REFERENCES IN ORDER TO PROMOTE SAFER WORKPLACES.

Whereas, the General Assembly finds that there currently exists a reluctance on the part of North Carolina employers to provide potential employers with information about former employees as well as a reluctance on the part of North Carolina employers to provide references for present or former employees seeking employment elsewhere; and

Whereas, the General Assembly finds that it is in the interest of employees, employers, and the public that truthful employment information regarding past employees be shared with potential employers of those persons; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 95 of the General Statutes is amended by adding the following new section to read:

"**§ 95-28.4. Employer immunity from civil liability for employment references.**

(a) Immunity. -- An employer is absolutely immune from civil liability for providing or responding to a request for the following information about an employee to a prospective employer:

(1) Confirmation of employment.

(2) Dates of employment.

(3) Pay levels and wage history.

(4) Job description(s) and duties.

(5) Record of absences from work.

(6) Whether or not the employee is eligible for rehire for future openings.

(7) Whether the employee was voluntarily or involuntarily separated from employment.

(8) The reason(s) for separation, which are reflected on a business record prepared on or about the time of the separation.

(9) Threats of violence, harassing acts, or threatening behavior related to the workplace or directed at another worker.

(b) Opinion Information. -- An employer is absolutely immune from civil liability for providing the following subjective or opinion information about an employee to a prospective employer requesting that information:

(1) Job performance.

(2) Reason for separation.

(3) Suitability for employment.

(c) False Information. -- Notwithstanding subsections (a) and (b) of this section, an employer is not immune from civil liability for the intentional disclosure of information regarding an employee that the employer knew or reasonably should have known to be false.

(d) Effect. -- Except as expressly provided herein, this section does not create new legal rights against an employer or additional employer obligations, nor does it limit any existing immunities under statutory or common law.

(e) Definitions. --

(1) 'Employee' means an employee as defined in G.S. 95-25.2(4) and includes a former employee.

(2) 'Employer' means an employer as defined in G.S. 95-25.2(5) and includes a former employer. 'Employer' also includes a job placement service.

(3) 'Job performance' means duties, effort, skills, knowledge, abilities, reasons for separation, threats, violence or harassing act, rehire eligibility, awards, disciplinary actions, performance review and ratings, demotions, promotions, wage rates, drug test results, and suitability for positions currently sought.

(4) 'Job placement service' means a private personnel agency or any other employment placement service, including, but not limited, to services listed in G.S. 95-47.1(16)a. through f.

(5) 'Prospective employee' means a person who has expressed to an employer, its agents, or job placement service an interest in employment, placement, or reassignment.

(6) 'Prospective employer' means the recipient of a prospective employee's interest in employment, placement, or reassignment.

(f) Misrepresentation. -- A person or entity that knowingly misrepresents its status as a prospective employer of an employee is liable for damages suffered due to the misrepresentation."

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 538

Short Title: Truthful Employment References. (Public)

Sponsors: Representatives Neely; Baddour, Berry, Brawley, Cansler, Daughtry, Dockham, Esposito, Gray, Gulley, Hill, Kiser, McComas, McMahan, Miner, Morgan, Morris, Redwine, Russell, Smith, Warner, Watson, and C. Wilson.

Referred to: Judiciary II.

March 19, 1997

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE THE PROVIDING OF TRUTHFUL EMPLOYMENT REFERENCES IN ORDER TO PROMOTE SAFER WORKPLACES.

Whereas, the General Assembly finds that there currently exists a reluctance on the part of North Carolina employers to provide potential employers with information about former employees as well as a reluctance on the part of North Carolina employers to provide references for present or former employees seeking employment elsewhere; and

Whereas, the General Assembly finds that it is in the interest of employees, employers, and the public that truthful employment information regarding past employees be shared with potential employers of those persons; Now, therefore,

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(3) Pay levels and wage history.

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(5) Record of absences from work.
(6) Whether or not the employee is eligible for rehire for future openings.
(7) Whether the employee was voluntarily or involuntarily separated from employment.
(8) The reason(s) for separation, which are reflected on a business record prepared on or about the time of the separation.
(9) Threats of violence, harassing acts or threatening behavior related to the workplace or directed at another worker.

(b) Opinion Information. -- An employer is absolutely immune from civil liability for providing the following subjective or opinion information about an employee to a prospective employer requesting that information:
(1) Job performance.
(2) Reason for separation.
(3) Suitability for employment.

(c) False Information. -- Notwithstanding subsections (a) and (b) of this section, an employer is not immune from civil liability for the intentional disclosure of false information regarding an employee.

(d) Effect. -- Except as expressly provided herein, this section does not create new legal rights against an employer or additional employer obligations, nor does it limit any existing immunities under statutory or common law.

(e) Prospective Employer Immunity. -- A prospective employer who reasonably relies upon information provided by another employer pursuant to subsection (b) of this section has qualified immunity from civil liability for causes of action related to the hiring of the employee, including a cause of action for negligent hiring. A prospective employer's reliance on this information without further investigation or inquiry is reasonable unless additional investigation or inquiry is specifically required by State or federal statute.

(f) Definitions. --
(1) 'Employee' means an individual currently or formerly employed by an employer.
(2) 'Employer' means a person currently or formerly acting directly or indirectly in the interest of an employer in relation to an employee.
(3) 'Job performance' means duties, effort, skills, knowledge, abilities, reasons for separation, threats, violence or harassing act, rehire eligibility, awards, disciplinary actions, performance review and ratings, demotions, promotions, wage rates, drug test results, and suitability for positions currently sought.
(4) 'Prospective employee' means a person who has expressed to an employer, its agents, or job placement service an interest in employment, placement, or reassignment.
(5) 'Prospective employer' means the recipient of a prospective employee's interest in employment, placement, or reassignment.

(g) Misrepresentation. -- A person or entity that knowingly misrepresents its status as a prospective employer of an employee is liable for damages actually suffered due to the misrepresentation."

Section 2. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

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Terrence D. Sullivan, Director
Research Division
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300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

April 17, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **House Bill 538 - Truthful Employment References.**
Proposed Committee Substitute.

The sub-committee assigned to review House Bill 538 proposes the following changes embodied in a committee substitute:

First, the subcommittee recommends deletion of subsection (e) which grants immunity to prospective employers who reasonable rely on information provided by another employer. Under the original bill, the prospective employer's reliance would have been reasonable without further investigation or inquiry unless State or federal law requires such further inquiry. The deletion of this provision means that a prospective employer has no immunity for use of the information received by another employer.

The second change affects subsection (g) relating to misrepresentation by a person who purports to be a prospective employer. Under the original bill, such person is liable for damages **actually** suffered by the employee due to the misrepresentation. The proposed committee substitute deletes the word "actually" from the sentence and makes the person liable for any damages suffered as a result of the misrepresentation.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 538
Proposed Committee Substitute
H538-CSRL-002

THIS IS A DRAFT

Short Title: Truthful Employment References. (Public)

Sponsors:

Referred to: Judiciary II.

March 19, 1997

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE THE PROVIDING OF TRUTHFUL EMPLOYMENT REFERENCES IN ORDER TO PROMOTE SAFER WORKPLACES.

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The General Assembly of North Carolina enacts:

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"**§ 95-28.4. Employer immunity from civil liability for employment references.**

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following information about an employee to a prospective employer:

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(1) Job performance.
(2) Reason for separation.
(3) Suitability for employment.

(c) False Information. -- Notwithstanding subsections (a) and (b) of this section, an employer is not immune from civil liability for the intentional disclosure of information regarding an employee that the employer knows to be false.

(d) Effect. -- Except as expressly provided herein, this section does not create new legal rights against an employer or additional employer obligations, nor does it limit any existing immunities under statutory or common law.

(e) Definitions. --

(1) 'Employee' means an employee as defined in G.S. 95-25.2(4) and includes a former employee.
(2) 'Employer' means an employer as defined in G.S. 95-25.2(5) and includes a former employer. 'Employer" also includes a job placement service.
(3) 'Job performance' means duties, effort, skills, knowledge, abilities, reasons for separation, threats, violence or harassing act, rehire eligibility, awards, disciplinary actions, performance review and ratings, demotions,

promotions, wage rates, drug test results, and suitability for positions currently sought.

(4) 'Job placement service' means a private personnel agency or any other employment placement service, including but not limited to services listed in G.S. 95-47.1(16)a. through f.

(5) 'Prospective employee' means a person who has expressed to an employer, its agents, or job placement service an interest in employment, placement, or reassignment.

(6) 'Prospective employer' means the recipient of a prospective employee's interest in employment, placement, or reassignment.

(f) Misrepresentation. -- A person or entity that knowingly misrepresents its status as a prospective employer of an employee is liable for damages suffered due to the misrepresentation."

Section 2. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 538

AMENDMENT NO._____
(to be filled in by Principal Clerk)

H538-ARL-017

Date_____,1997

Comm. Sub. [YES]
Amends Title []
Second Edition (H538-CSRL-002)

Representative

moves to amend the bill on page 2, after line 32, by inserting the following new language:

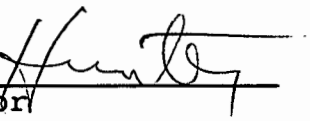
"(e) An employer who provides information about an employee pursuant to subsections (a) or (b) of this section must notify the employee in writing of the following:

(1) That ~~the~~ information has been provided.

(2) To whom the information has been provided.

The notification required under this subsection must be delivered or mailed to the employee within three working days of the day it was provided to a prospective employer. An employer who does not comply with this subsection shall not be entitled to the immunity in subsection (a) or (b) unless the employee has previously executed a written waiver of the right to receive this information."; and

by designating subsection (e) and (f) as subsections (f) and (g).

SIGNED 
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA ACADEMY OF TRIAL LAWYERS, INC.
GIVING PEOPLE A FIGHTING CHANCE

CHARLES L. CROMER
Legislative Counsel

April 7, 1997

To: Rep. Edwin M. Hardy, Chair
Rep. Gene Arnold
Rep. Bobby Ray Hall
Rep. Bob Hunter
Subcommittee on HB 538, Truth Employment References

From: Charles L. Cromer

Dear Subcommittee Members:

First, I need to say that the North Carolina Academy of Trial Lawyers supports the efforts of employers to be able to give and receive complete, concise and honest information about potential employees from former employers. We also support granting qualified protection to those employers who provide such information.

However, we do not support the "absolute" immunity set forth in HB 538. This particular bill is an over-kill. Nor do we support the immunities granted to potential employers for negligent hiring as set out in section (e) of that bill.

Senator Ham Horton has introduced a bill in the Senate (SB 264) that covers the issue completely without going overboard and we would ask that you use it as a guide for your deliberations. I have attached a copy of SB 264 for your information.

Thank you for your consideration and please keep me advised of meetings of the subcommittee.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 264

Short Title: Liability for Job References. (Public)

Sponsors: Senators Horton; Albertson, Blust, Carpenter, Carrington, Clark, Cochrane, Dalton, Forrester, Garwood, Hoyle, Jenkins, Kerr, Ledbetter, Martin of Pitt, McDaniel, Odom, Rand, Rucho, Soles, Weinstein, and Wellons.

Referred to: Judiciary.

February 27, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE LIMITED LIABILITY TO EMPLOYERS WHO DISCLOSE INFORMATION ABOUT AN EMPLOYEE WHEN THE EMPLOYER IS PROVIDING A REFERENCE.

Additional Information Available on: Bill Status

Section 1. Article 43B of Chapter 1 of the General Statutes is amended by adding a new section to read:

"***§ 1-539.12. Immunity from civil liability for employers disclosing information.***

(a) An employer who discloses information about a current or former employee's job performance to a prospective employer of the current or former employee upon request of the prospective employer or upon request of the current or former employee is presumed to be acting in good faith and is not liable in civil damages for the disclosure or any consequences of the disclosure. The presumption of good faith may be rebutted upon a showing of, by a preponderance of the evidence, both of the following:

(1) The information disclosed by the current or former employer was false.

(2) The employer providing the information had knowledge of its falsity or acted with malice or reckless disregard for the truth.

(b) The provisions of this section apply to any employee, agent, or other representative of the current or former employer who is authorized to provide and who provides information in accordance with the provisions of this section.

(c) This section does not affect any privileges or immunities from civil liability established by another section of the General

Statutes or available at common law."

Section 2. This act is effective when it becomes law and applies only to causes of action arising on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

April 28

SESSION 1997

H D

HOUSE BILL 869
Proposed Committee Substitute H869-PCS6238

Short Title: Speed to Elude Arrest. (Public)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY AND MODIFY THE OFFENSE OF SPEEDING TO ELUDE ARREST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-141(j) reads as rewritten:

"(j) A person who does one of the following while fleeing or attempting to elude arrest or apprehension by a law enforcement officer with authority to enforce the motor vehicle laws is guilty of a Class ~~1 misdemeanor.~~ H felony, and at a minimum shall be punished by a fine of at least five hundred dollars ($500.00):

(1) ~~Drives~~ Continues to drive a vehicle on a street or highway in excess of 55 miles per hour and more than 15 miles per hour over the legal ~~limit.~~ limit after a law enforcement officer makes a reasonable attempt to engage the person's attention, by siren and flashing lights.

(2) Drives a vehicle in excess of 80 miles per hour.

It shall be prima facie evidence that a person is fleeing or attempting to elude arrest or apprehension by a law enforcement officer with authority to enforce the motor vehicle laws if the person violates subdivision (1) or (2) of this subsection."

Section 2. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

April 28

H D

HOUSE BILL 869
Proposed Committee Substitute
H869-CSRO-001

Short Title: Speed to Elude Arrest. (Public)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

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(1) ~~Drives~~ Continues to drive a vehicle on a street or highway in excess of 55 miles per hour and more than 15 miles per hour over the legal ~~limit.~~ limit after a law enforcement officer makes a reasonable attempt to engage the person's attention.

(2) Drives a vehicle in excess of 80 miles per hour.

It shall be prima facie evidence that a person is fleeing or attempting to elude arrest or apprehension by a law enforcement officer with authority to enforce the motor vehicle laws if the person violates subdivision (1) or (2) of this subsection for a distance that is a quarter of a mile or more."

Section 2. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

3 Tapes

Thursday, April 17, 1997
8:00 a.m.
1327 Legislative Building

N. Leo Daughtry
Edwin M. Hardy
Co-Chairmen

The House Committee on JUDICIARY I met at 8:00 a.m. on Thursday, April 17, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry presiding.

Committee counsels Steven Rose and Karen Cochrane-Brown were present to assist the committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

The Chairman recognized Rep. Thompson to recognize Rep. Daughtry for the purpose of explaining House Bill 646.

Committee Counsel Steven Rose prepared a MEMORANDUM on H.B. 646 REVICE UNIFORM COMMERCIAL CODE CROP LIENS, which was distributed and a copy of which is attached and made a part of these minutes.

Rep. Fitch moved the committee give H.B. 646 a favorable report. There was no objection.

Chairman Daughtry recognized Rep. Don Davis for the purpose of explaining H.B. 869 SPPED TO ELUDE ARREST.

Committee Counsel Karen Cochrane-Brown prepared a MEMORANDUM on H.B. 869, which was distributed.

Rep. Blue asked counsel if there were any other vehicular offenses classified as a felony. Counsel Cochrane-Brown indicated she was not aware of any.

Rep. Miller asked counsel if under the other provisions under criminal law in which a *prima face* case is created. Counsel Cochrane-Brown indicated she was not aware of any.

Rep. Michaux asked counsel how the situations addressed under H.B. 869 fit an arresting officer's discretion to charge or not to charge in other situations

already addressed by the General Statutes. Committee Counsel Cochrane-Brown said the elements of this crime had to do with speeding in excess of 15 miles per hour over the speed limit while speeding to elude arrest, and, presumably, if all those elements weren't met, charges made would still be within the latitude of the arresting officers.

Rep. Davis introduced Lt. Doug Scott of the Cary Police Department, representing Capt. Hunter, also of the Cary Police Dept. and chairman of the legislative committee of the North Carolina Law Enforcement Association. Lt. Scott spoke in favor of the measure.

Rep. Holmes asked committee counsel if there was a legal definition of "eluding arrest." Counsel Cochrane-Brown indicated there was no such definition she was aware of.

Rep. Arnold asked if Rep. David would approve of an amendment allowing the use of some convention, such as safety blinkers and slowing down, as a way for a driver to signal acknowledgment of pursuit.

Rep. Davis indicated he was not willing to make such a change, and that the bill was "clear cut." Lt. Scott indicated the bill addressed the eluding of arrest and that reduction of speed and signaling acknowledgment was not eluding arrest.

Rep. Ellis asked whether the bill's sponsor would accept an amendment to define "a point of engagement," in an officer's stopping of a vehicle.

Rep. Daughtry appointed a subcommittee to address concerns about H.B. 869, to report the following Tuesday. The Chairman appointed to the subcommittee Rep. Hall (Chairman), Rep. Hunter, Ellis and Clary.

Rep. Bonner was recognized for the purpose of explaining House Bill 615, METHOD OF APPOINTING PUBLIC DEFENDER IN DISTRICT 16B.

Counsel Steven Rose prepared a MEMORANDUM on H.B. 615, which was distributed and a copy of which is attached and made a part of these minutes.

Rep. Blue moved to give H.B. 615 a favorable report. There was no objection.

Rep. Mosely was recognized for the purpose of explaining House Bill 904 LIFE PRISON/REPEAT CHILD MOLESTER.

Counsel Karen Cochrane-Brown prepared a MEMORANDUM on H.B. 904, which was distributed, a copy of which is attached and made a part of these minutes.

North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

3 tapes

Tuesday, April 22, 1997
7:30 a.m.
1327 Legislative Building

N. Leo Daughtry
Edwin M. Hardy
Co-Chairmen

Members Present

Martha Alexander	Gene G. Arnold
Daniel T. Blue, Jr.	Jerry Braswell
J. Russell Capps	J. Sam Ellis
Milton F. Fitch, Jr.	Bobby Ray Hall
George M. Holmes	Robert C. Hunter
Margaret M. Jeffus	Larry T, Justus
Wilma M. Sherrill	Gregg Thompson

The House Committee on JUDICIARY I met at 7:30 a.m. on Tuesday, April 22, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry presiding.

Committee counsels Steven Rose and Karen Cochrane-Brown were present to assist the committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

The Chairman recognized Rep. Dickson to explain House Bill 739, MV DEALERS/MANUFACTURERS LIC. LAW. Rep. Dickson distributed a *Summary of Modifications to Motor Vehicle Franchise Laws*, a copy of which is attached and made a part of these minutes.

Rep. Capps moved to amend the bill on page 2, line 32, and on page 21, lines 3-5, in accordance with the document numbered "H739-ARO-002," the original of which is attached and made a part of these minutes.

Without objection, Rep. Thompson moved to place the bill, as amended, before the Committee for the purposes of discussion.

To speak in favor of the bill, the Chairman recognized Robert J. Glaser, CAE, executive vice president of the North Carolina Automobile Dealers Association.

Mr. Glaser prepared a document entitled Motor Vehicle Franchise Bill, House Bill 739, a copy of which is attached and made a part of these minutes.

To speak in opposition to the bill, the Chairman recognized Ed Powell, an attorney from Winston-Salem, former member of the House, former Motor Vehicle Commissioner. Mr. Powell spoke on behalf of the American Automobile Manufacturers Association.

To speak in opposition to the bill, the Chairman recognized Bob Couci, representing the Ford Motor Company, Atlanta Division.

The Committee Adjourned at 8:25 a.m

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS

HOUSE COMMITTEE ON JUDICIARY I

Tuesday, April 22, 1997
Room 1327 LB
8:00 a.m.

OPENING REMARKS:
Representative N. Leo Daughtry, Chairman
Judiciary I Committee

BILLS TO BE CONSIDERED: ***At 7:30 a.m.***

H.B. 539 COLLATERAL SOURCE EVIDENCE
Sponsor: Representative Neely

H.B. 739 MV DEALERS/MANUFACTURERS LIC. LAW
Sponsor: Representative Dickson

H.B. 268 DIVIDE DISTRICT 22
Sponsor: Representative Brawley

H.B. 315 STATE HIRES MOST QUALIFIED
Sponsor: Representative Russell

And at 10:00 a.m.

H.B. 433 CONCEALED HANDGUN EXEMPTION
Sponsor: Representative Gulley

H.B. 470 MEDICAL INVESTIGATORS
Sponsor: Representative Tallent

H.B. 507 MANITORY JAIL FOR SOME D.W.I.
Sponsor: Representative Hunter

H.B. 513 REGULATE PERSONAL WATERCRAFT
Sponsor: Representative Preston

H.B. 580 NONRESIDENT HANDGUN PERMIT
Sponsor: Representative Thompson

H.B. 939 DRUG TAX FOR CrimeStopper
Sponsor: Representative Hurley

The Select Committee on Court Improvement will meet at 1p.m. to continue consideration of:
H.B. 741 COURT IMPROVEMENT ACT/CONSTITUTION
& H.B. 742 COURT IMPROVEMENT ACT

@ 1:00pm

North Carolina House of Representatives
JUDICIARY I COMMITTEE

Roll Call

Alexander
Arnold
Blue
Braswell
Capps
Clary
Crawford
(Daughtry)
Ellis
Esposito
Fitch
Gray
Hall
Hardaway
Hardy
Holmes
Hunter
Hurley
Jeffus
Justus
Micheux
Miller
Morgan
Sherrill
Thompson

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 739*

Short Title: MV Dealers/Manufacturers Lic. Law. (Public)

Sponsors: Representatives Dickson; Alexander, Allred, Arnold, Baddour, Barbee, Beall, Berry, Black, Bowie, Brawley, Brown, Buchanan, Cansler, Capps, Carpenter, Church, Clary, Crawford, Creech, Culp, Culpepper, Daughtry, Davis, Decker, Dedmon, Dockham, Easterling, Eddins, Esposito, Fox, Gardner, Goodwin, Grady, Gray, Gulley, Hall, Hardy, Hensley, Hiatt, Hill, Holmes, Howard, R. Hunter, Hurley, Ives, Jarrell, Justus, Kiser, McComas, McCombs, McCrary, McMahan, Mercer, Miner, Mitchell, Moore, Morris, Mosley, Neely, Nesbitt, Nichols, Nye, Owens, Preston, Ramsey, Redwine, Reynolds, Rogers, Russell, Saunders, Sexton, Sherrill, Smith, Starnes, Tallent, Thompson, Tolson, Warwick, Watson, Weatherly, Wilkins, C. Wilson, G. Wilson, and Yongue.

Referred to: Judiciary I.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN AND CLARIFY THE DEALERS AND MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-297.1. Certification of compliance of franchise agreements.**

Any franchise, as defined in G.S. 20-286(8a), offered to a motor vehicle dealer in this State shall provide that all terms and conditions in the agreement inconsistent with any of the laws or rules of this State are of no force and effect. On or before January 1, 1998, every manufacturer, factory branch, distributor, or distributor branch licensed by the Commissioner under this Article which uses an identical or substantially similar form franchise for its dealers or distributors in this State, shall file with the Commissioner a copy of the franchise and all supplements along with a certification in writing that none of the terms and provisions of the franchise or

supplements are inconsistent with, prohibited by, or contrary to the provisions of this Article. Any applicant for licensing by the Commissioner as a manufacturer, factory branch, distributor, or distributor branch licensed under this Article, which would use an identical or substantially similar form franchise, as defined in G.S. 20-286(8a), for its dealers or distributors in this State, shall, as a condition for the issuance of a license, file with the Commissioner a copy of the franchise and all supplements along with a certification in writing that none of the terms and provisions of the franchise or supplements are inconsistent with, prohibited by, or contrary to the provisions of this Article. Not later than 60 days prior to the date a revision, modification, or addition to a franchise is offered generally to a licensee's franchisees in this State, the licensee shall notify the Commissioner of the proposed revision, modification, or addition to the franchise on file with the Commissioner and include with the notification:

(1) A copy of the franchise which incorporates all of the proposed revisions, modifications, and additions;

(2) A separate statement which identifies and provides a detailed description of all substantive revisions, modifications, and additions proposed and the reasons for the changes; and

(3) A certification in writing that none of the revisions, modifications, or additions proposed are inconsistent with, prohibited by, or contrary to the provisions of this Article.

It shall be unlawful for a franchise or any addendum or supplement thereto to be offered to a motor vehicle dealer in this State after January 1, 1998, until an applicant or licensee has complied with all of the requirements of this section. The Commissioner is to investigate and prevent violations of this section, including inconsistencies of any manufacturer's franchise with the provisions of this Article."

Section 2. G.S. 20-301 reads as rewritten:

"**§ 20-301. Powers of Commissioner.**

(a) The Commissioner shall promote the interests of the retail buyer of motor vehicles.

(b) The Commissioner shall ~~have power to~~ investigate any complaint brought by any person alleging a violation of this Article and to prevent unfair methods of competition and unfair or deceptive acts or practices and other violations of this Article. Any franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer holds a currently valid franchise has violated or is currently violating any provision of this Article may file a petition before the Commissioner setting forth the factual and legal basis for such violations. The Commissioner shall promptly forward a copy of the petition to the named manufacturer, factory branch, distributor, or distributor branch, requesting a reply to the petition within 30 days. Allowing for sufficient time for the parties to conduct discovery, the Commissioner or his designee shall then hold an evidentiary hearing and render findings of fact and conclusions of law based on the evidence presented. At any such evidentiary hearing, the manufacturer, factory branch, distributor, or distributor branch shall have the burden of proving its

compliance with the provisions of this Article. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

(c) The Commissioner shall have the power in hearings arising under this Article ~~to~~ to:

(1) Enter scheduling orders and limit the time and scope of discovery;

(2) To determine the date, time, and place where ~~they shall be~~ hearings are to be held;

(3) ~~to~~ To subpoena witnesses;

(4) ~~to~~ To take depositions of witnesses; and

(5) ~~to~~ To administer oaths.

(d) The Commissioner may, whenever he shall believe from evidence submitted to him that any person has been or is violating any provision of this Article, in addition to any other ~~remedy~~ remedy, bring an action in the name of the State against ~~such~~ that person and any other persons concerned or in any way participating in, or about to participate in practices or acts so in violation, to enjoin ~~such~~ any persons ~~and such other persons~~ from continuing the ~~same.~~ violations.

(e) ~~The Commissioner shall limit the time for discovery in any contested administrative hearing conducted pursuant to Article 12 to a time not to exceed 60 days. The Commissioner may extend the time for discovery beyond 60 days either upon the consent of all parties to the proceeding or upon application of one or more parties to the proceeding for good cause shown.~~ The Commissioner may issue rules and regulations to implement the provisions of this section and to establish procedures related to administrative proceedings commenced under this section."

Section 3. G.S. 20-305 reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

(1) To require, coerce, or attempt to coerce any dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities, which shall not have been ordered by such dealer;

(2) To require, coerce, or attempt to coerce any dealer to enter into any agreement with such manufacturer, factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to such dealer, by threatening to cancel any franchise existing between such manufacturer, factory branch, distributor, distributor branch, or representative thereof, and such dealer;

(3) Unfairly without due regard to the equities of the dealer, and without just provocation, to cancel the franchise of such dealer;

(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, or relocation of the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed transfer, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor the transfer, sale, assignment, relocation, or change is unreasonable under the circumstances. No franchise may be transferred, sold, assigned, relocated, or the executive management or principal operators changed, unless the franchisor has been given at least 30 days' prior written notice as to the identity, financial ability, and qualifications of the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed relocation. The franchisor shall send the dealership notice of objection, by registered or certified mail, return receipt requested, to the proposed transfer, sale, assignment, relocation, or change within 30 days after receipt of notice from the dealer, as provided in this section. Failure by the franchisor to send notice of objection within 30 days shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. The manufacturer or distributor has the burden of proving that the proposed transfer, sale, assignment, relocation, or change is unreasonable under the circumstances.

(5) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new

motor vehicle dealer until the Commissioner has held a hearing, nor thereafter, if the Commissioner has determined that there is good cause for not permitting the addition or relocation of such new motor vehicle dealer.

a. This section does not apply:

1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle; or
2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;
3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership;
4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market area.

b. In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:

1. The permanency of the investment of both the existing and proposed additional new motor vehicle dealers;
2. Growth or decline in population, density of population, and new car registrations in the relevant market area;
3. Effect on the consuming public in the relevant market area;
4. Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
5. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the same line make in the

market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;

6. Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer in the relevant market area would increase competition in a manner such as to be in the long-term public interest; and

7. The effect on the relocating dealer of a denial of its relocation into the relevant market area.

c. The Commissioner ~~must~~ shall try to conduct the hearing and render his final determination ~~as expeditiously as possible, but in any event no later than~~ if possible, within 180 days after a protest is filed. ~~Unless waived by the parties, failure to do so shall be deemed the equivalent of a determination that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealer, unless such delay is caused by acts of the manufacturer, or the relocating or additional dealer.~~

d. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

e. In a hearing involving a proposed additional dealership, the manufacturer or distributor has the burden of proof under this section. In a proceeding involving the relocation of an existing dealership, the dealer seeking to relocate has the burden of proof under this section.

f. If the Commissioner determines, following a hearing, that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealership, the dealer seeking the proposed additional or relocated motor vehicle dealership must, within two years, obtain a license from the Commissioner for the sale of vehicles at the relevant site, and actually commence operations at the site selling new motor vehicles of all line makes, as permitted by the Commissioner. Failure to obtain a permit and commence sales within two years shall constitute waiver by the dealer of the dealer's right to the additional or relocated dealership, requiring renotification, a new hearing, and a new determination as provided in this section.

g. For purposes of this subdivision, the addition, creation, or operation of a 'satellite' or other facility, not physically part of or contiguous to an existing licensed new motor vehicle dealer, whether or not owned or operated by a person or other entity holding a franchise as defined by G.S. 20-286(8a), at which warranty service work authorized or reimbursed by a manufacturer is performed or at which new motor vehicles are offered for sale to the public, shall be considered an additional new motor vehicle dealer requiring a showing of good cause, prior notification to existing new motor vehicle dealers of the same line-make of vehicle within the relevant market area by the manufacturer and the opportunity for a hearing before the Commissioner as provided in this subdivision.

(6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements of subparagraph c. and the Commissioner has determined, if requested in writing by the dealer within the time period specified in G.S. 20-305(6)c1II, III or IV, as applicable, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed, and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner ~~must~~ shall try to conduct the hearing and render a final determination ~~no later than~~ within 180 days after a petition has been ~~filed; provided, however, that the Commissioner may extend such period of time upon application of a party and for good cause shown, or upon the consent of all parties to the proceeding.~~ filed. If the termination, cancellation or nonrenewal is pursuant to G.S. 20-305(6)c1III then the Commissioner shall give the proceeding priority consideration and shall try to render his final determination no later than 90 days after the petition has been filed. Any parties to a hearing by the Commissioner under this section shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

a. Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:

1. There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship provided that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of such failure;

2. If the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; and

I. The notification stated that notice was provided of failure of performance pursuant to this section;

II. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with the criteria; and

III. The new motor vehicle dealer failed to demonstrate substantial progress towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.

b. The manufacturer shall have the burden of proof under this section.

c. Notification of Termination, Cancellation and Nonrenewal. --

1. Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:

I. In the manner described in G.S. 20-305(6)c2 below; and

II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or

III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:

A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;

C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;

D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.

IV. Not less than 180 days prior to the effective date of such termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.

2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:

I. A statement of intention to terminate, cancel or not to renew the franchise;

II. A statement of the reasons for the termination, cancellation or nonrenewal; and

III. The date on which the termination, cancellation or nonrenewal takes effect.

3. Notification provided in G.S. 20-305(6)c1II of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the

180 days designated in G.S. 20-305(6)a2II provided the notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.

d. Payments. --

1. Upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, pursuant to this section, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:

I. New motor vehicle inventory that has been acquired from the manufacturer within 18 months, at a price not to exceed the original manufacturer's price to the dealer, and which has not been altered or damaged, and which has not been driven more than 200 miles, and for which no certificate of title has been issued;

II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer, at a price not to exceed the original manufacturer's price to the dealer, provided such supplies and parts are currently offered for sale by the manufacturer or distributor in its current parts catalogs and are in salable condition;

III. Equipment and furnishings that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources; and

IV. Special tools that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise.

2. Fair and reasonable compensation for the above shall be paid by the manufacturer within 90 days of the effective date of termination, cancellation or nonrenewal, provided the new motor vehicle dealer has clear title to the inventory and has conveyed title and possession to the manufacturer.

e. Dealership Facilities Assistance upon Termination, Cancellation or Nonrenewal. --

In the event of the termination, cancellation or nonrenewal by the manufacturer or distributor under this section, except termination, cancellation or nonrenewal for insolvency, license revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner:

1. Subject to paragraph 3, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or such longer term as is provided in the franchise agreement between the dealer and manufacturer; or
2. Subject to paragraph 3, if the new motor vehicle dealer owns the dealership facilities, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for one year.
3. Provided nothing in this paragraph e. shall relieve a lessee or owner, as the case may be, from the obligation to mitigate damages under the lease, nor prevent a manufacturer from occupying and using the dealership facilities while paying rent under subsections 1 and 2, nor prevent a manufacturer from obligations by negotiating a lease termination, a sublease or a new lease. Any amounts recovered by the lessee or owner resulting from mitigation of damages shall be deducted from the amount due from the manufacturer.

f. The provisions of paragraphs d. and e. above shall not be applicable when the termination, nonrenewal or cancellation of the franchise agreement is the result of the voluntary act of the dealer.

(7) Notwithstanding the terms of any contract or agreement, to prevent or refuse to honor the succession to a dealership, including the franchise, by a motor vehicle dealer's designated successor as provided for under this subsection.

a. Any owner of a new motor vehicle dealership may appoint by will, or any other written instrument, a designated family member successor to succeed in the ownership interest of the said owner in the new motor vehicle dealership,

including the franchise, upon the death or incapacity of the owner.

b. Any objections by a manufacturer or distributor to an owner's appointment of a designated successor shall be asserted in accordance with the following procedure:

1. Within 30 days after receiving written notice of the identity of the owner's designated successor and general information as to the financial ability and qualifications of the designated successor, the franchisor shall send the owner and designated successor notice of objection, by registered or certified mail, return receipt requested, to the appointment of the designated successor. The notice of objection shall state in detail all facts which constitute the basis for the contention on the part of the manufacturer or distributor that good cause, as defined in this sub-subdivision below, exists for rejection of the designated ~~family member~~ successor. Failure by the franchisor to send notice of objection within 30 days and otherwise as provided in this sub-subdivision shall constitute waiver by the franchisor of any right to object to the appointment of the designated successor.

2. Any time within 30 days of receipt of the manufacturer's notice of objection the owner or the designated successor may file a request in writing with the Commissioner that the Commissioner hold an evidentiary hearing and determine whether good cause exists for rejection of the designated successor. When such a request is filed, the Commissioner shall promptly inform the affected manufacturer or distributor that a timely request has been filed.

3. The Commissioner shall endeavor to hold the evidentiary hearing required under this sub-subdivision and render a determination within 180 days after receipt of the written request from the owner or designated successor. In determining whether good cause exists for rejection of the owner's appointed designated successor, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the franchisor's existing and reasonable standards and, considering the volume of sales and service of the new motor vehicle

dealer, uniformly applied minimum business experience standards in the market area.

4. Any parties to a hearing by the Commissioner concerning whether good cause exists for the rejection of the dealer's designated successor shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

5. Nothing in this sub-subdivision shall preclude a manufacturer or distributor from, upon its receipt of written notice from a dealer of identity of the dealer's designated successor, requiring that the designated successor promptly provide personal and financial data that is reasonably necessary to determine the financial ability and qualifications of the designated successor; provided, however, that such a request for additional information shall not delay any of the time periods or constraints contained herein.

6. In the event death or incapacity of the owner occurs prior to the time a manufacturer or distributor receives notice of the owner's appointment of a designated successor or before the Commissioner has rendered a determination as provided above, the existing franchise shall remain in effect and the designated successor shall be deemed to have succeeded to all of the owner's rights and obligations in the dealership and under the franchise until a determination is made by the Commissioner or the rights of the parties have otherwise become fixed in accordance with this sub-subdivision.

c. Except as otherwise provided in sub-subdivision d. of this subdivision, any designated successor of a deceased or incapacitated owner of a new motor vehicle dealership appointed by such owner in substantial compliance with this section shall, by operation of law, succeed at the time of such death or incapacity to all of the ownership rights and obligations of the owner in the new motor vehicle dealership and under the existing franchise.

d. Within 60 days after the death or incapacity of the owner, a designated successor appointed in substantial compliance with this section shall give the affected manufacturer or distributor written notice of his or her succession to the ownership of the new motor vehicle dealership; provided, however, that the failure of the designated successor to give

the manufacturer or distributor written notice as provided above within 60 days of the owner's death or incapacity shall not result in the waiver or termination of the designated successor's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated successor may give the notice required hereunder, provided the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity. Within 30 days of receipt of the notice by the manufacturer or distributor from the designated successor provided in this paragraph, the manufacturer or distributor may request that the designated successor complete the application forms generally utilized by the manufacturer or distributor to review the designated successor's qualifications to establish a successor dealership. Within 30 days of receipt of the completed forms, the manufacturer or distributor shall send a letter by certified or registered mail, return receipt requested, advising the designated successor of facts and circumstances which have changed since the manufacturer's or distributor's original approval of the designated successor, and which have caused the manufacturer or distributor to object to the designated successor. Upon receipt of such notice, the designated successor may either designate an alternative successor or may file a request for evidentiary hearing in accordance with the procedures provided in sub-subdivisions b. 2.-5. of this subdivision. In any such hearing, the manufacturer or distributor shall be limited to facts and circumstances which did not exist at the time the designated successor was originally approved or evidence which was originally requested to be produced by the designated successor at the time of the original request and was either not produced or the material which was produced was incorrect.

e. The designated successor shall agree to be bound by all terms and conditions of the franchise in effect between the manufacturer or distributor and the owner at the time of the owner's death or incapacity, if so requested in writing by the

manufacturer or distributor subsequent to the owner's death or incapacity.

f. This section does not preclude an owner of a new motor vehicle dealership from designating any person as his successor by written instrument filed with the manufacturer or distributor, and, in the event there is an inconsistency between the successor named in such written instrument and the designated successor otherwise appointed by the owner consistent with the provisions of this section, and that written instrument has not been revoked by the owner of the new motor vehicle dealership in writing to the manufacturer or distributor, then the written instrument filed with the manufacturer or distributor shall govern as to the appointment of the successor.

(8) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by the manufacturer or distributor.

(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to participate monetarily in an advertising campaign or contest, or to purchase unnecessary or unreasonable quantities of any promotional materials, training materials, training programs, showroom or other display decorations or materials at the expense of the new motor vehicle dealer, provided that nothing in this subsection shall preclude a manufacturer or distributor from including an unitemized uniform charge in the base price of the new motor vehicle charged to the dealer where such charge is attributable to advertising costs incurred or to be incurred by the manufacturer or distributor in the ordinary courses of its business.

(10) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change the capital structure of the new motor vehicle dealer or the means by or through which the new motor vehicle dealer finances the operation of the dealership provided that the new motor vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria; and also provided that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor, provided that said consent shall not be unreasonably withheld.

(11) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to refrain from participation in the management of, investment in, or the acquisition of any other line of new motor

vehicle or related products; Provided, however, that this subsection does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and the new motor vehicle dealer remains in compliance with any reasonable capital standards and facilities requirements of the manufacturer. The reasonable facilities requirements shall not include any requirement that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

(12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change location of the dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles so as to justify such an expansion, in light of the current market and economic conditions.

(13) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this law or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the State or the United States of America, or to the Commissioner, if such referral would be binding upon the new motor vehicle dealer.

(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's relevant market area, and within a reasonable time, after receipt of an order from a dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts or accessories to new vehicles as are covered by such franchise, and such vehicles, parts or accessories as are publicly advertised as being available or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who has placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within a reasonable time, without cause. This subsection is not

violated, however, if such failure is caused by acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative.

(15) To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the State.

(16) To award money, goods, services, or any other benefit to any new motor vehicle dealership employee, either directly or indirectly, unless such benefit is promptly accounted for, and transmitted to, or approved by, the new motor vehicle dealer.

(17) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered and which the manufacturer or distributor has accepted for immediate delivery for private retail consumers prior to the new motor vehicle dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each such order provided that the vehicle is in fact delivered to that customer. Price differences applicable to new model or series shall not be considered a price increase or price decrease. Price changes caused by either: (i) the addition to a new motor vehicle of required or optional equipment; or (ii) revaluation of the United States dollar, in the case of foreign-make vehicles or components; or (iii) an increase in transportation charges due to increased rates imposed by carriers; or (iv) new tariffs or duties imposed by the United States of America or any other governmental authority, shall not be subject to the provisions of this subsection.

(18) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business transferred in accordance with G.S. 20-305(4) ~~above~~ above, or to prevent, through right of first refusal or otherwise, a dealer from transferring the franchised business to the persons or other entities that the dealer shall designate in accordance with G.S. 20-305(4).

(19) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the State or any political subdivision thereof without making the same offer available upon request to all other new motor vehicle dealers in the same line make within the State.

(20) To release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or new motor vehicle dealer, any confidential business, financial, or personal information which may be from time to time provided by the new motor vehicle dealer to the manufacturer, without the express written consent of the new motor vehicle dealer.

(21) To deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose.

(22) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursements or authority granted its new motor vehicle dealers to make warranty adjustments with retail customers.

(23) To engage in any predatory practice against or unfairly compete with a new motor vehicle dealer located in this State.

(24) To terminate any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise.

(25) To require, coerce, or attempt to coerce a new motor vehicle dealer in this State to either establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

(26) To resort to or to use any false or misleading advertisement in the conducting of its business as a manufacturer or distributor in this State.

(27) To knowingly make, either directly or through any agent or employee, any material statement which is false or misleading and which induces any new motor vehicle dealer to enter into any agreement or franchise or to take any action which is materially prejudicial to that new motor vehicle dealer or his business.

(28) To require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any new motor vehicle as a precondition to purchasing, ordering, or receiving any other new motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line of new motor vehicles which are covered by the franchise agreement.

(29) To require, coerce, or attempt to coerce any new motor vehicle dealer to sell, transfer, or otherwise issue stock or other ownership interest in the dealership corporation to a general manager or any other person involved in the management of the dealership other than the dealer principal or dealer operator named in the franchise.

(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles on any basis which includes consideration of any or all of the following factors:

a. The dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise;

b. The dealer's relocation, remodeling, repair, or renovation of existing dealership facilities;

c. The dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer; or

d. Achievement by the new motor vehicle dealer of one or more levels of customer satisfaction in sales or service specified by the manufacturer.

Such unlawful price variation shall include not only differentiation by a manufacturer in the base price of new motor vehicles, but a manufacturer's use of rebates, credits, or other consideration which has the effect of causing variance in the price of new motor vehicles offered its franchised dealers located in this State.

It shall further be unlawful for a manufacturer to fail to offer its entire line of new motor vehicles to all of its franchised dealers in this State at the lowest prices that vehicles similarly equipped are offered to its franchised dealers in other states, after application of any rebates, credits, or other consideration which may be awardable to dealers in other states on the bases prohibited in this subdivision.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or incentives; provided, however, that the awarding or amount of any rebates or incentives shall not be based on any unlawful bases.

(31) Notwithstanding the terms of any contract, franchise, agreement, release, or waiver, to require that in any civil or administrative proceeding in which a new motor vehicle dealer asserts any claims, rights, or defenses arising under this Article or under the franchise, that the dealer or any nonprevailing party compensate the manufacturer or prevailing party for any court costs, attorneys' fees, or other expenses incurred in the litigation.

(32) To require that any of its franchised new motor vehicle dealers located in this State pay any extra fee, purchase advertising displays or other materials, or remodel, renovate, or recondition the dealers' existing facilities in order to receive any model or series of vehicles manufactured or distributed by the manufacturer for which the dealers have a valid franchise. It shall further be unlawful for any manufacturer to fail to offer any model or series

of new motor vehicles to its franchised dealers located in this State which are offered to its franchised dealers in other states which do not prohibit the practices made unlawful by this subdivision. Notwithstanding the foregoing, nothing contained in this subdivision shall be deemed to prohibit or prevent, a manufacturer from requiring, that its franchised dealers located in this State purchase special tools or equipment, stock reasonable quantities of certain parts, or participate in training programs which are reasonably necessary for those dealers to sell or service any model or series of vehicles."

Section 4. G.S. 20-305.1(b) reads as rewritten:

"(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of its warranty obligations with respect to a motor vehicle, to fail to compensate its motor vehicle dealers licensed in this State for warranty parts other than parts used to repair the living facilities of recreational vehicles, at the prevailing retail rate according to the factors in subsection (a) of this section, or, in service in accordance with the schedule of compensation provided the dealer pursuant to subsection (a) above, and to fail to indemnify and hold harmless its franchised dealers licensed in this State against any judgment for damages or settlements agreed to by the manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or recision or revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer. Any audit for warranty parts or service compensation shall only be for the 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation shall only be for the ~~24-month~~ 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Provided, however, these limitations shall not be effective in the case of fraudulent claims.

Section 5. G.S. 20-305.1(b1) reads as rewritten:

"(b1) All claims made by motor vehicle dealers pursuant to this section for compensation for delivery, preparation, warranty and recall work including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after receipt of claim from the dealer. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. Any claim not specifically disapproved in writing within 30 days after receipt shall be considered approved and payment is due immediately. No claim which has been approved and paid may be

charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the claim ~~in accordance with the written requirements of the manufacturer or distributor in effect at the time the claim arose~~. A dealer's failure to comply with the specific requirements of the manufacturer or distributor for documentation or processing of the claim shall not constitute grounds for the denial of the claim or reduction of the amount to be reimbursed to the dealer as long as reasonably sufficient documentation or other evidence has been presented to substantiate the claim."

Section 6. G.S. 20-305.1(c) reads as rewritten:

"(c) In the event there is a dispute between the manufacturer, factory branch, distributor, or distributor branch, and the dealer with respect to any matter referred to in subsections ~~(a) and (b) above and subsection (d) below,~~ (a), (b), or (d) of this section either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing on the subject and the decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Chapter 150B of the General Statutes; provided, however, that nothing contained herein shall give the Commissioner any authority as to the content of any manufacturer's or distributor's warranty. Upon the filing of a petition before the Commissioner under this subsection, any chargeback to or any payment required of a dealer by a manufacturer relating to warranty parts or service compensation, or to sales incentives, service incentives, rebates, or other forms of incentive compensation, shall be stayed during the pendency of the determination by the Commissioner."

Section 7. This act becomes effective October 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 739

AMENDMENT NO. 1
(to be filled in by Principal Clerk)

H739-ARO-002

Page 1 of __

Date _____,1997

Comm. Sub. [ ]
Amends Title [ ]

moves to amend the bill on page 2, line 32, by deleting the word "to"; and

on page 21, lines 3-5, by rewriting the lines to read:

"the defective condition, or the dealer failed to reasonably substantiate the ~~claim in accordance with the written requirements of the manufacturer or distributor in effect at the time the claim arose.~~ claim. A dealer's failure to comply with the specific"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

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April 22, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee.

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **House Bill 739 - MV Dealers/Manufacturers Lic. Law.**

House Bill 739 makes several changes to the motor vehicle dealer and manufacturers licensing law.

Section 1 requires franchise agreements and forms to be consistent with State laws and requires the manufacturer or distributor to certify that it in fact is in compliance with our laws and rules. Revisions to the franchise and the reasons for those revisions must be filed with the Commissioner of Motor Vehicles within 60 days.

Section 2 requires the Commissioner to investigate any complaint alleging a violation of the franchise laws and provides the mechanism by which a dealer can file a complaint against the manufacturer or distributor and have a hearing on the complaint.

Section 3 gives the Commissioner flexibility in the time he has to render a decision in a hearing that is held to determine whether a new dealer can enter an existing dealer's market area. Current law requires a decision within 180 days of the time the existing dealer filed the protest. The bill provides that the Commissioner must attempt to render a decision within 180 days. In addition, a provision is added to subject satellite dealerships (where either new cars are sold or manufacturer's warranty work is performed) to the same market entry requirements as new dealerships. A 180-day decision period for cancellation of a motor vehicle franchise is also changed to require that the Commissioner attempt to render a decision within 180 days. The manufacturer or distributor is also prohibited, through a right of first refusal or otherwise, from preventing the dealer from transferring the franchise to the dealer's designee.

The bill also prohibits the manufacturer or distributor from (a) requiring the dealer to issue ownership interests in the dealership to a general manager or other persons involved in the dealership, (b) varying the price charged dealers in this State for new motor vehicles

because of the dealer's purchase of equipment or other merchandise, the dealer's relocating or remodeling of existing facilities, (c) the dealer's participation in training sponsored by the manufacturer, or (d) the dealer's achievement of specified levels of customer satisfaction. The manufacturer or distributor must offer the entire line of new vehicles to its North Carolina dealers at the lowest prices they are offered to its dealers in other states. In addition, the manufacturer or distributor cannot require the dealer to compensate the manufacturer or distributor for legal fees incurred when a dealer asserts its rights under the motor vehicle franchise law, nor can it require the dealer to pay an additional fee, purchase ad displays, or remodel its facilities to receive any model or series of vehicles.

The bill also provides for a stay of certain payments or charges by the dealer to the manufacturer while administrative proceedings involving manufacturer or distributor warranties are pending.

This act would become effective October 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 739

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H739-ARO-001 Page 1 of __

Date 4/22 ,1997

Comm. Sub. [ ]
Amends Title [ ]

sub. committee

Representative Ellis

moves to amend the bill on page 21, line 24-25, by inserting a new section between the lines:

"Section 6.1. G.S. 20-286(10) reads as rewritten:
(10) Motor vehicle. -- Any motor propelled vehicle, trailer or semitrailer, required to be registered under the laws of this ~~State.~~ State, or any personal watercraft as defined in G.S. 75A-13.2 or all terrain vehicle.
a. "New motor vehicle" means a motor vehicle which has never been the subject of a sale other than between new motor vehicle dealers, or between manufacturer and dealer of the same franchise.
b. "Used motor vehicle" means a motor vehicle other than described in paragraph (10)a above.'"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

House Bill 739

Summary of Modifications to Motor Vehicle Franchise Laws

Summary: Following 1995 amendments to the motor vehicle franchise laws, it was demonstrated that there are several areas of the current statute that should be clarified with modifications and corrections. These additions and modifications have the effect of continuing to insure that the relationship between the 700 franchised car and truck dealers and the manufacturers and distributors of the vehicles the dealers sell, is equitable.

Proposed Changes: The solution consists of modifications in the following areas:

- Right of First Refusal -- Adds language explicitly stating that a dealer is entitled to sell his or her dealership to another qualifying dealer without the intervention of the manufacturer. (G.S. 20-305(18))
- Franchised "Remote" Sales and Service Locations -- Explicitly states that these "remote" operations are to be treated the same as an additional dealership. (G.S. 20-305(5))
- Time Limitation on Franchise - Related Hearings -- Eliminates the absolute and unreasonable requirement to complete these complex legal hearings within 180 days. (G.S. 20-305(5))
- Manufacturer Intrusion in Dealer Operations -- Explicitly defines vehicle price variation and prohibits this practice based on participation in training programs, purchase of new facilities or other equipment, and the obtainment of certain levels of customer satisfaction. (G.S. 20-305(30))
- Manufacturer Warranty Obligations -- Provides that if reasonable proof exists that a warranty claim has been completed, an unintentional omission or failure to comply with specific requirements shall not constitute grounds for non-payment. (G.S. 20-305.1(b1))
- Advance Filing of Proposed Franchise Agreements -- Provides that prior to the adoption of a new franchise agreement, the proposed agreement must be filed with the Commissioner of Motor Vehicles and declared to be consistent with North Carolina Law. (G.S. 20-297.1)
- Ownership Requirement -- Provides that a manufacturer may not require or coerce a dealer into giving an ownership interest to the dealership's general manager. (G.S.20-305(29))
- Prohibits "Loser Pays" Awards -- Provides that in litigation involving franchise law, each party to the claim is responsible for their own legal expenses. (G.S. 20-305(31))
- Reduction of Sales Incentive Audit Period -- Prohibits manufacturers from auditing sales incentive payments made to dealers older than 12 months from the date of payment. This time span is consistent with the time required for warranty claims paid by manufacturers.(G.S. 20-305.1(a))
- Franchise within a Franchise -- Prohibits a manufacturer from requiring a dealer to pay additional costs to receive a new model of an existing line, or series, of vehicles. (G.S.20-305(32))
- Powers of Commissioner -- Provides guidelines for the Commissioner of DMV to hear franchise related complaints in addition to the unfair / deceptive practice hearings already in the statute. (G.S.20-301)

Motor Vehicle Franchise Bill

House Bill 739

Introduced on March 31, 1997
Referred to Judiciary 1

Prepared exclusively for
Rep. Sandy Hardy
Legislative Office Building

Franchised New Car and Truck Dealers
Industry Analysis
1985-1995

Prepared for members of
House Judiciary I Committee
in their review of HB 739

April 21, 1997

Prepared by Robert J. Glaser, CAE
Executive Vice-President
North Carolina Auto Dealers Association

Summary

Cost Shifting According to the National Automobile Dealer Association's 1996 Industry Analysis, the gross margin that franchised new car and truck dealers earn on the sale of new vehicles has continually declined for the past 10 years (See Table 1). From a high in 1985 of 9.08%, the gross margin has declined approximately 28.85 % to the 1996 figure of 6.46%.

This 28.85 % decline in gross margin is due, in part, to the shifting of operational costs to the dealers from the manufacturer. In essence, costs that were once incurred by the manufacturer are increasingly being shifted to the local dealer. This shift, in effect, *decreases* the local dealer's gross margin while *increasing* the manufacturers' profits.

Accordingly, the Earnings Per Share (EPS) of ALL DOMESTIC MANUFACTURERS has significantly risen over the past 5 years. Data taken from the various annual reports (See Tables 2-4) reflects the following changes in Earnings Per Share, between 1991 and 1996:

		1991 EPS	1996 EPS	$$$ Change
General Motors	$	-8.85	5.71	+ 14.56
Ford	$	-2.40	3.58	+ 5.98
Chrysler	$	-1.37	5.03	+ 6.40

The above increase in profits, again, is due to the tremendous shifting of operational costs from the out-of state manufacturers to the local dealers.

Similarly, the attached press clipping from the April 17th Raleigh *News and Observer* further demonstrates that manufacturer profitability is on the rise again in 1997.

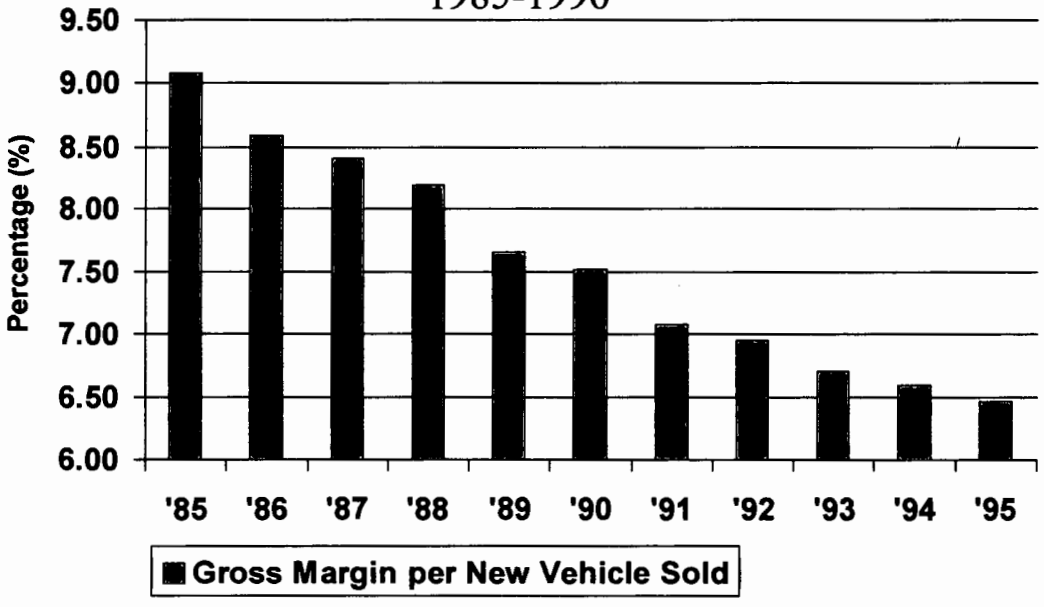
HB 739 - Proposed Changes to the Motor Vehicle Franchise Laws - is designed to reduce or lessen the cost shifting that is taking place between manufacturers and dealers.

TABLE 1.

Franchised Car and Truck Dealers

Gross Margin per New Vehicle Sold

1985-1996

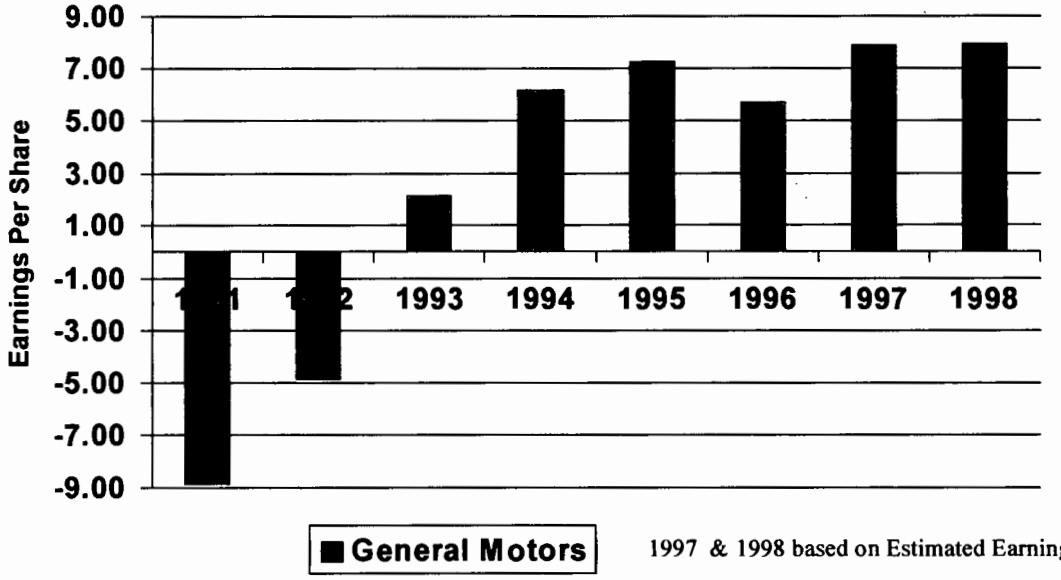


Per NADA 1996 Industry Analysis, Pg. 36

TABLE 2.

General Motors' Profitability 1991-1998

Per Annual Report

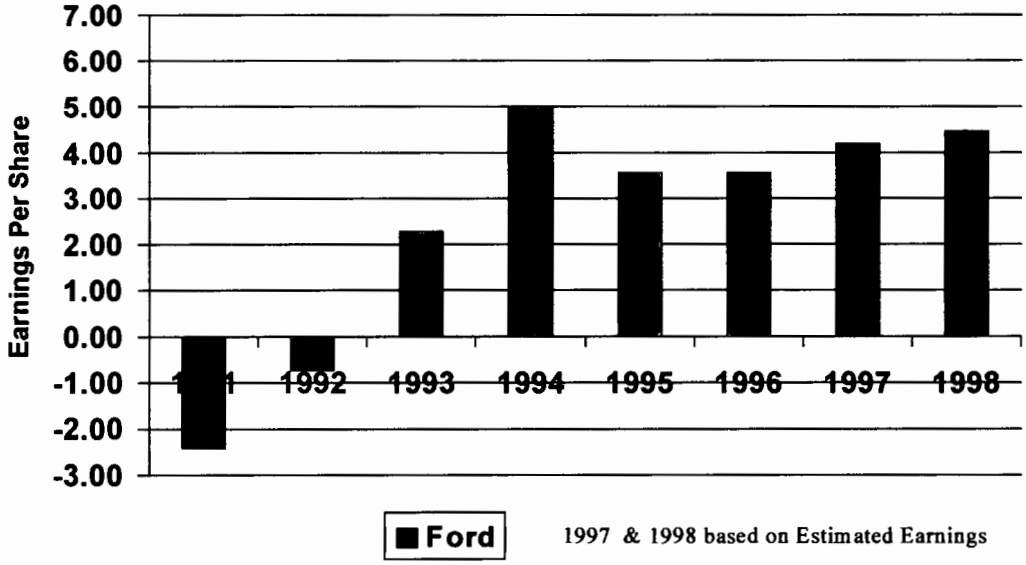


1997 & 1998 based on Estimated Earnings

TABLE 3.

Ford's Profitability 1991-1998

Per Annual Report

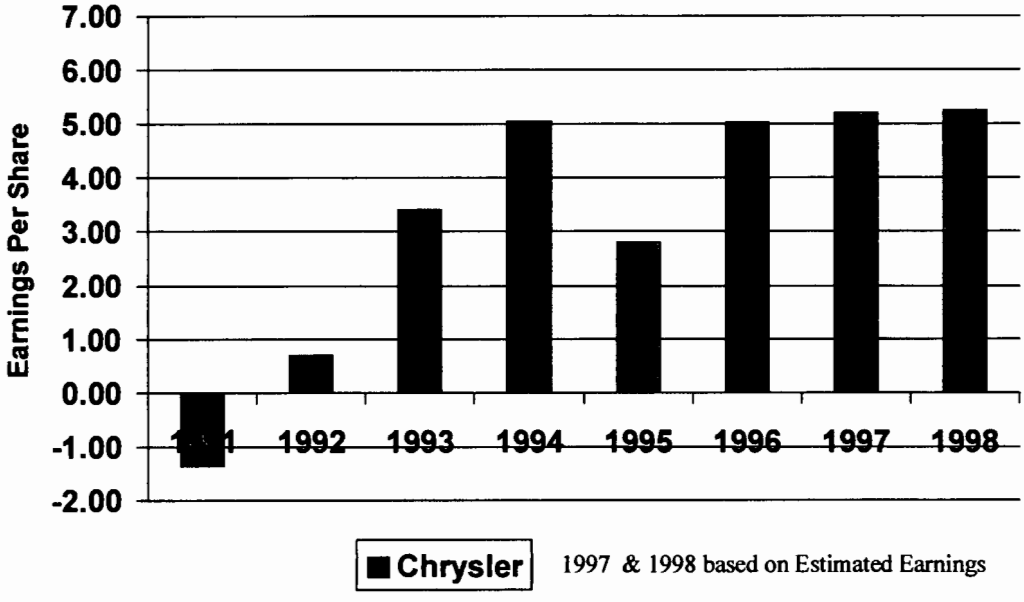


1997 & 1998 based on Estimated Earnings

TABLE 4.

Chrysler's Profitability 1991-1998

Per Annual Report



1997 & 1998 based on Estimated Earnings

SECTION C

THE NEWS & OBSERVER
THURSDAY, APRIL 17, 1997

BUSINESS

Ford profit more than doubles

DEARBORN, Mich. — Despite tougher competition, Ford Motor Co. more than doubled its first-quarter profit to $1.5 billion, largely because of aggressive cost-cutting.

On Wednesday, Ford reported that its strongest earnings gains were in the United States, even though sales of its cars and light-duty trucks were down slightly in the January-March period.

"This was a very positive surprise, considering that the operating environment has gotten more hostile," said Scott Merlis, an independent industry analyst.

The No. 2 automaker's first-quarter profit of $1.5 billion, or $1.22 per share, compared with $653 million, or 54 cents a share, a year ago. Revenue was up just 3 percent at $36.2 billion from $35.2 billion.

Motor Vehicle Franchise Bill
House Bill 739

●● Table of Contents ●●

Industry analysis.....	Inside cover
One page summary of the bill.....	Section 1.
Details of the bill.....	Section 2.
Opposition to the bill.....	Section 3.
Copy of the filed bill.....	Section 4.
How the bill was developed.....	Section 5.

VISITOR REGISTRATION SHEET

JUDICIARY I — 4-22-97 — 7:30 am
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Megan Mysenhelter	Poyner & Spruill
Richard J. Vinegar	Johnson, Marsh, Hearn & Vinegar, PLLC NCCAUA
ROBERT GLASER	NC AUTO DEALERS ASSN.
Thomas J Hamelson	Hamelson & Lacy
SAM JOHNSON	ATTY
HAROLD H. WEBB	Johnson Gamble Etc
Charles Vernon	NCATL
Edward Powell	AAMA
Marie Annis	MAS of Asso.
Curt Williams	Iris office
Cindy Sands	WCSR
Tom Andrews	AOC
Daniel Arnold	SEANC
Pat Bradford	SEANC
Larry Beverly	JMF

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Chris Pierce	North Carolina Motorcycle Dealers Assn.
[signature]	CCPS

North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

Tuesday, April 22, 1997
10:00 a.m.
1327 Legislative Building

N. Leo Daughtry
Edwin M. Hardy
Co-Chairmen

Members Present

Martha Alexander	Gene G. Arnold
Daniel T. Blue, Jr.	Jerry Braswell
J. Russell Capps	Debbie Clary
J. Sam Ellis	Theresa Esposito
Milton F. Fitch, Jr.	Bobby Ray Hall
Thomas C. Hardaway	Robert C. Hunter
John W. Hurley	Margaret M. Jeffus
Larry T. Justus	H.M. Michaux, Jr.
Richard T. Morgan	Wilma M. Sherrill
Gregg Thompson	

The House Committee on JUDICIARY I met at 10:00 a.m. on Tuesday, April 22, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry presiding.

Committee counsels Steven Rose and Karen Cochrane-Brown were present to assist the committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

At the request of the sponsor and the Chairman, House Bill 538, COLLATERAL SOURCE EVIDENCE, was referred to a subcommittee with Reps. Gray, Miller and Morgan as members.

The Chairman also appointed a Subcommittee on House Bill 739, MV DEALERS/MANUFACTURERS LIC. LAW; Rep. Thompson was designated chairman, with Reps. Blues, Hunter, Hall and Sherrill as members were asked to report April 23.

Rep. Russell was recognized for the purpose of explaining House Bill 315, STATE HIRES MOST QUALIFIED, and on a motion by Rep. Hall, the

Committee accepted, for the purpose of discussion, a Proposed Committee Substitute to H.B. 315.

Counsel Cochrane-Brown prepared a MEMORANDUM on H.B. 315, a copy of which is attached and made a part of these minutes.

On a motion by Rep. Hurley, the Committee voted to give the Proposed Committee Substitute to H.B. 315 a favorable report, unfavorable to the original bill.

Rep. Preston was recognized for the purpose of resuming discussion of House Bill 513, REGULATING PERSONAL WATERCRAFT. Rep. Preston presented two technical amendments.

Webb Fuller, city manager of the City of Nags Head, was recognized to explain certain provisions of the bill. Rep. Fitch made a motion that the bill be re-referred to the Committee on Rules. There was no second.

The Chairman designated Rep. Ellis, Sherrill and Clary, as chairman, of a subcommittee on H.B. 315.

The Committee Adjourned at 10:55 a.m

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL RAUPE
Committee Clerk

ATTACHMENTS

GENERAL ASSEMBLY OF NORTH CAROLINA

April 24

SESSION 1997

H 1

HOUSE BILL 470

Short Title: Medical Investigators/AB. (Public)

Sponsors: Representative Tallent.

Referred to: Judiciary I.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE APPOINTMENT OF COUNTY MEDICAL INVESTIGATORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-382 reads as rewritten:

"**§ 130A-382. County medical ~~examiners;~~** examiners and medical investigators; **appointment; term of ~~office; vacancies.~~** office.

(a) One or more county medical examiners or medical investigators for each county shall be appointed by the Chief Medical Examiner for a three-year term. ~~County medical examiners shall be appointed from a list of physicians licensed to practice medicine in this State submitted by the medical society of the county in which the appointment is to be made. If no names are submitted by the society, the Chief Medical Examiner shall appoint one or more medical examiners from physicians in the county licensed to practice medicine in this State. In the event no licensed physician in a county accepts an appointment, the Chief Medical Examiner may appoint one or more physicians licensed to practice medicine in this State from other counties or the local registrar, deputy registrar, subregistrar or coroner. In the event a medical examiner is unable to serve in a particular case or for a temporary period of time, the Chief Medical Examiner shall designate a physician licensed to practice medicine in this State, the local registrar, deputy registrar, subregistrar or coroner.~~

(b) A medical examiner or medical investigator may serve more than one county.

(c) The Chief Medical Examiner may take jurisdiction in any case or appoint another medical examiner or medical investigator to do so.

(d) A medical examiner shall be a physician licensed to practice medicine in this State.

(e) A medical investigator shall:

(1) Be licensed to practice nursing in this State, or

(2) Be a physician's assistant registered under the rules of the North Carolina Board of Medical Examiners, or

(3) Successfully complete a training program in death investigation approved by the Chief Medical Examiner.

A county medical investigator appointed pursuant to this Article shall have the same powers and duties as a county medical examiner appointed under this Article."

Section 2. G.S. 130A-394 is repealed.

Section 3. Chapter 152 of the General Statutes is repealed.

Section 4. This act is effective when it becomes law except in those counties with a coroner serving on that date, in which case the act shall become effective upon the sooner of the leaving of office or the expiration of the current term of the coroner.

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April 22, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel

RE: **House Bill 470 - Medical Investigators/AB.**

House Bill 470 amends G.S. 130A-382 to authorize the Chief Medical Examiner to appoint county medical investigators as well as medical examiners and deletes the provisions relating to the procedure to be used in making such appointments..

The bill establishes the qualifications necessary for a non-physician county medical investigator to perform the functions of a county medical examiner. A medical investigator must:

1. Be licensed to practice nursing, or
2. Be a registered physician's assistant, or
3. Have successfully completed a training program in death investigation approved by the Chief Medical Examiner.

The bill also provides that the medical investigator shall have the same powers and duties as the county medical examiner.

Section 2 of the bill repeals G.S. 130A-394 relating to inquests held by coroners.

Section 3 repeals Chapter 152 which deals with Coroners. Prior to 1967, there was an elected office of coroner in each county, with authority and jurisdiction similar to the medical examiner. Currently, only the following counties have coroners - Ashe, Harnett, Hoke, Hyde, Iredell, Johnston, Wilkes and Yadkin. The others were abolished by local laws. This bill would allow coroners currently serving to continue until they leave office or their current term expires.

The act would become effective when it becomes law, except with regard to coroners currently in office.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

April 29

HOUSE BILL 939

Short Title: Drug Tax For CrimeStopper. (Public)

Sponsors: Representatives Hurley; Aldridge, Beall, Culpepper, Dedmon, Easterling, Fox, Gamble, Grady, Gulley, Hall, Hightower, Jeffus, Luebke, McAllister, Mercer, Morris, Mosley, Oldham, Rogers, Saunders, Smith, Sutton, Tolson, Warner, and Womble.

Referred to: Judiciary I, if favorable, Finance.

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO EARMARK TEN PERCENT OF THE DRUG TAX PROCEEDS FOR REWARDS PAID FOR TIPS REGARDING CRIMES PURSUANT TO LOCAL CRIMESTOPPERS PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G. S. 105-113.113 reads as rewritten:

"**§ 105-113.113. Use of tax proceeds.**

(a) Special Account. -- The Secretary shall credit the proceeds of the tax levied by this Article to a special nonreverting account, to be called the State Controlled Substances Tax Account, until the tax proceeds are unencumbered. The Secretary shall remit the unencumbered tax proceeds as provided in this section on a quarterly or more frequent basis. Tax proceeds are unencumbered when either of the following occurs:

(1) The tax has been fully paid and the taxpayer has no current right under G.S. 105-267 to seek a refund.

(2) The taxpayer has been notified of the final assessment of the tax under G.S. 105-241.1 and has neither fully paid nor timely contested the tax under G.S. 105-241.1 through G.S. 105-241.4 or G.S. 105-267.

(b) ~~Distribution.~~ Law Enforcement. -- The Secretary shall remit seventy-five percent (75%) of the part of the unencumbered tax proceeds that was collected by

assessment to the State or local law enforcement agency that conducted the investigation of a dealer that led to the assessment. If more than one State or local law enforcement agency conducted the investigation, the Secretary shall determine the equitable share for each agency based on the contribution each agency made to the investigation. The Secretary shall credit the remaining unencumbered tax proceeds to the General Fund.

(c) CrimeStoppers Rewards. -- The Secretary shall distribute two-fifths of the remaining unencumbered tax proceeds among the counties of the State on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Planning Officer. A county may use funds distributed to it under this subsection only to pay rewards to individuals for information provided to assist investigation of crimes pursuant to a local program of Crime Stoppers, Inc., or CrimeStoppers, Inc.

(d) General Fund. -- The Secretary shall credit the remaining unencumbered tax proceeds to the General Fund.

(e) Refunds. -- The refund of a tax that has already been distributed shall be drawn initially from the State Controlled Substances Tax Account. The amount of refunded taxes that had been distributed ~~to a law enforcement agency under this section and any interest~~ shall be subtracted from succeeding distributions from the Account to ~~that law enforcement agency. The amount of refunded taxes that had been credited to the General Fund under this section and any interest shall be subtracted from succeeding credits to the General Fund from the Account.~~ the agency, county, or fund to which the refunded taxes had been distributed."

Section 2. This act becomes effective July 1, 1997, and applies to taxes collected on or after that date.

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April 22, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **House Bill 939; Drug tax for CrimeStopper Program**

House Bill 939 amends G..S. 105-113.113, dealing with the proceeds from the controlled substance tax.

Present law provides that 75% of the controlled substance tax is given to the State or local law enforcement agency that conducted the investigation of a dealer that led to the assessment. The amendment would provide that an additional 10% of the tax would be distributed among all of the counties of the State on a per capita basis to be used to pay rewards to individuals for information provided to assist criminal investigations pursuant to a local CrimeStoppers program. As before, the balance goes to the General Fund.

The act becomes effective July 1, 1997, and applies to taxes collected on or after that date.

H939-SMRL-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Joel Raupe (Rep. Hardy)

From: Dot Anderson (Rep. Hurley)
Sent: Monday, April 21, 1997 4:03 PM
To: Joel Raupe (Rep. Hardy)
Subject: RE: HB 939 - JI 10:00 am TU 4/22 1327

Understood...

Rep. Hurley has a bill in State Gov't at 7:30a.m. Tuesday, so he may be late getting to the J-I meeting at 7:30; however, he will be there at 10:00a.m. to present HB 939.

From: Joel Raupe (Rep. Hardy)
Sent: Thursday, April 17, 1997 6:25 PM
To: Dot Anderson (Rep. Hurley)
Subject: HB 939 - JI 10:00 am TU 4/22 1327

<<File: Sponsor notification - Hurley.doc>>

Proposed Committee Substitute For
H.B. 939

CHAP. _____

A BILL TO BE ENTITLED

AN ACT TO EARMARK TEN PERCENT OF THE DRUG TAX PROCEEDS FOR REWARDS PAID FOR TIPS REGARDING CRIMES PURSUANT TO LOCAL CRIMESTOPPERS PROGRAMS AND TO REQUIRE REFUNDS OF THE DRUG TAX WHERE THE PERSON IS NOT CONVICTED OF THE DRUG-RELATED CRIME.

Introduced by Representative(s) Hurley

Principal Clerk's Use Only

The Committee on Judiciary I ..... having considered ..... jority being present, having considered ..... bill, recommend that it do ..... pass.

Reps. Daughtry and Hardy
For the Committee

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 939
Proposed Committee Substitute H939-PCS1329

Short Title: Drug Tax For CrimeStopper. (Public)

Sponsors:

Referred to:

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO EARMARK TEN PERCENT OF THE DRUG TAX PROCEEDS FOR REWARDS PAID FOR TIPS REGARDING CRIMES PURSUANT TO LOCAL CRIMESTOPPERS PROGRAMS AND TO REQUIRE REFUNDS OF THE DRUG TAX WHERE THE PERSON IS NOT CONVICTED OF THE DRUG-RELATED CRIME.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-113.113 reads as rewritten:

"**§ 105-113.113. Use of tax proceeds.**

(a) Special Account. -- The Secretary shall credit the proceeds of the tax levied by this Article to a special nonreverting account, to be called the State Controlled Substances Tax Account, until the tax proceeds are unencumbered. The Secretary shall remit the unencumbered tax proceeds as provided in this section on a quarterly or more frequent basis. Tax proceeds are unencumbered when either of the following occurs:

(1) The tax has been fully paid and the taxpayer has no current right under G.S. 105-267 to seek a refund.

(2) The taxpayer has been notified of the final assessment of the tax under G.S. 105-241.1 and has neither fully paid nor timely contested the tax under G.S. 105-241.1 through G.S. 105-241.4 or G.S. 105-267.

(b) ~~Distribution.~~ Law Enforcement. -- The Secretary shall remit seventy-five percent (75%) of the part of the unencumbered tax proceeds that was collected by

assessment to the State or local law enforcement agency that conducted the investigation of a dealer that led to the assessment. If more than one State or local law enforcement agency conducted the investigation, the Secretary shall determine the equitable share for each agency based on the contribution each agency made to the investigation. The Secretary shall credit the remaining unencumbered tax proceeds to the General Fund.

(c) CrimeStoppers Rewards. -- The Secretary shall distribute two-fifths of the remaining unencumbered tax proceeds among the counties of the State on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Planning Officer. A county may use funds distributed to it under this subsection only to pay rewards to individuals for information provided to assist investigation of crimes pursuant to a local program of Crime Stoppers, Inc., or CrimeStoppers, Inc.

(d) General Fund. -- The Secretary shall credit the remaining unencumbered tax proceeds to the General Fund.

(e) Refunds. -- The refund of a tax that has already been distributed shall be drawn initially from the State Controlled Substances Tax Account. The amount of refunded taxes that had been distributed ~~to a law enforcement agency under this section and any interest~~ shall be subtracted from succeeding distributions from the Account to ~~that law enforcement agency. The amount of refunded taxes that had been credited to the General Fund under this section and any interest shall be subtracted from succeeding credits to the General Fund from the Account.~~ the agency, county, or fund to which the refunded taxes had been distributed."

Section 1.1. G.S. 105-113.111 reads as rewritten:

§ 105-113.111. Assessments.

(a) Notwithstanding any other provision of law, an assessment against a dealer who possesses a controlled substance to which a stamp has not been affixed as required by this Article shall be made as provided in this section. The Secretary shall assess a tax, applicable penalties, and interest based on personal knowledge or information available to the Secretary. The Secretary shall notify the dealer in writing of the amount of the tax, penalty, and interest due, and demand its immediate payment. The notice and demand shall be either mailed to the dealer at the dealer's last known address or served on the dealer in person. If the dealer does not pay the tax, penalty, and interest immediately upon receipt of the notice and demand, the Secretary shall collect the tax, penalty, and interest pursuant to the procedure set forth in G.S. 105-241.1(g) for jeopardy assessments or the procedure set forth in G.S. 105-242, including causing execution to be issued immediately against the personal property of the dealer, unless the dealer files with the Secretary a bond in the amount of the asserted liability for the tax, penalty, and interest. The Secretary shall use all means available to collect the tax, penalty, and interest from any property in which the dealer has a legal, equitable, or beneficial interest. The dealer may seek review of the assessment as provided in Article 9 of this Chapter.

(b) When an assessment is levied against a person who has been charged with a crime, an element of which includes possession of a controlled substance, and one of

the following occurs: (i) the person is found not guilty, or (ii) the charge is dismissed, the assessment shall be released, all property seized or its value shall be returned, and any tax collected shall be refunded."

Section 2. This act becomes effective July 1, 1997, and applies to taxes collected and assessments levied on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

April 28

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on JUDICIARY I .

X Committee Substitute for
H.B. 513 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY SAFETY REGULATIONS AND EDUCATION RELATED TO THE OPERATION OF MOTORIZED PLEASURE VESSELS AND PERSONAL WATERCRAFT.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

X With a favorable report as to committee substitute bill, **X which changes the title,** unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

april 28

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 513

Short Title: Regulate Personal Watercraft. (Public)

Sponsors: Representatives Preston, Culpepper (Cosponsors); Hurley, Redwine, Smith, Tolson, and Wright.

Referred to: Judiciary I.

March 13, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ADDITIONAL REGULATION OF PERSONAL WATERCRAFT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75A-13.2 reads as rewritten:

"**§ 75A-13.2. Personal watercraft.**

(a) No person shall operate a personal watercraft on the waters of this State at any time between ~~the hours from one hour after~~ sunset ~~to one hour before~~ and sunrise. For purposes of this section, 'personal watercraft' means a small vessel which uses an outboard motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vehicle.

(a1) No person under 16 years of age shall operate a personal watercraft on the waters of this State, nor shall a person knowingly allow a person under the age of 16 to operate a personal watercraft.

(b) No person shall operate a personal watercraft ~~unless~~ on the waters of this State unless:

(1) The operator has satisfactorily completed a course of instruction in the safe operation of the watercraft lasting at least one hour in duration, as approved by the Wildlife Resources Commission;

(2) ~~each~~ Each person riding on or being towed behind such vessel is wearing a Type I, II, III, or V personal flotation device approved by the United States Coast ~~Guard.~~ Guard;

(3) The number of passengers is at or below the maximum number of passengers for which the watercraft was designed by the manufacturer; and

(4) In the case of a personal watercraft with a lanyard-type engine cut-off switch, the lanyard is securely attached to the person of the operator.

(c) A personal watercraft must at all times be operated in a reasonable and prudent manner. ~~Manuevers~~ Maneuvers that endanger life, limb, or property, including:

(1) Unreasonably or unnecessarily weaving through congested vessel traffic;

(2) Jumping the wake of another vessel unreasonably or unnecessarily close to such other vessel or when visibility around such other vessel is obstructed; and

(3) Intentionally approaching another vessel in order to swerve at the last possible moment to avoid collision

shall constitute reckless operation of a vessel as provided in G.S. 75A-10.

(c1) The provisions of G.S. 75A-10(b1) regarding operation of a vessel while intoxicated apply to the operation of personal watercraft as defined in this section.

(d) The provisions of this section do not apply to a performer engaged in a professional exhibition or a person or persons engaged in an activity authorized under G.S. 75A-14."

Section 2. This act becomes effective December 1, 1997.

I

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H513-PCSRL-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 513
THIS IS A DRAFT 24-APR-97 08:44:03
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: LRC Study Watercraft Safety. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY SAFETY REGULATIONS AND EDUCATION RELATED TO THE OPERATION OF MOTORIZED PLEASURE VESSELS AND PERSONAL WATERCRAFT.

The General Assembly of North Carolina enacts:

Section 1. (a) The Legislative Research Commission is authorized to study issues related to the safe operation of motorized pleasure vessels and personal watercraft.

(b) The study may address all issues related to the safe operation of motorized pleasure vessels and personal watercraft including safety regulation, instruction for operators of motorized pleasure vessels and personal watercraft, age limitations for the operation of motorized pleasure vessels and personal watercraft, and any other issues related to the protection and safety of the operators of motorized pleasure vessels and personal watercraft and the general public.

Section 2. The Legislative Research Commission shall report its findings and recommendations to the 1999 General Assembly and may make an interim report to the 1997 General Assembly, 1998 Regular Session.

Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 538
Proposed Committee Substitute H538-PCS7265

Short Title: Truthful Employment References. (Public)

Sponsors:

Referred to:

March 19, 1997

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE THE PROVIDING OF TRUTHFUL EMPLOYMENT REFERENCES IN ORDER TO PROMOTE SAFER WORKPLACES.

Whereas, the General Assembly finds that there currently exists a reluctance on the part of North Carolina employers to provide potential employers with information about former employees as well as a reluctance on the part of North Carolina employers to provide references for present or former employees seeking employment elsewhere; and

Whereas, the General Assembly finds that it is in the interest of employees, employers, and the public that truthful employment information regarding past employees be shared with potential employers of those persons; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 95 of the General Statutes is amended by adding the following new section to read:

"**§ 95-28.4. Employer immunity from civil liability for employment references.**

(a) Immunity. -- An employer is absolutely immune from civil liability for providing or responding to a request for the following information about an employee to a prospective employer:

(1) Confirmation of employment.

(2) Dates of employment.

(3) Pay levels and wage history.

(4) Job description(s) and duties.

(5) Record of absences from work.

(6) Whether or not the employee is eligible for rehire for future openings.

(7) Whether the employee was voluntarily or involuntarily separated from employment.

(8) The reason(s) for separation, which are reflected on a business record prepared on or about the time of the separation.

(9) Threats of violence, harassing acts, or threatening behavior related to the workplace or directed at another worker.

(b) Opinion Information. -- An employer is absolutely immune from civil liability for providing the following subjective or opinion information about an employee to a prospective employer requesting that information:

(1) Job performance.

(2) Reason for separation.

(3) Suitability for employment.

(c) False Information. -- Notwithstanding subsections (a) and (b) of this section, an employer is not immune from civil liability for the intentional disclosure of information regarding an employee that the employer knew or reasonably should have known to be false.

(d) Effect. -- Except as expressly provided herein, this section does not create new legal rights against an employer or additional employer obligations, nor does it limit any existing immunities under statutory or common law.

(e) Definitions. --

(1) 'Employee' means an employee as defined in G.S. 95-25.2(4) and includes a former employee.

(2) 'Employer' means an employer as defined in G.S. 95-25.2(5) and includes a former employer. 'Employer' also includes a job placement service.

(3) 'Job performance' means duties, effort, skills, knowledge, abilities, reasons for separation, threats, violence or harassing act, rehire eligibility, awards, disciplinary actions, performance review and ratings, demotions, promotions, wage rates, drug test results, and suitability for positions currently sought.

(4) 'Job placement service' means a private personnel agency or any other employment placement service, including, but not limited, to services listed in G.S. 95-47.1(16)a. through f.

(5) 'Prospective employee' means a person who has expressed to an employer, its agents, or job placement service an interest in employment, placement, or reassignment.

(6) 'Prospective employer' means the recipient of a prospective employee's interest in employment, placement, or reassignment.

(f) Misrepresentation. -- A person or entity that knowingly misrepresents its status as a prospective employer of an employee is liable for damages suffered due to the misrepresentation."

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 739*

Short Title: MV Dealers/Manufacturers Lic. Law. (Public)

Sponsors: Representatives Dickson; Alexander, Allred, Arnold, Baddour, Barbee, Beall, Berry, Black, Bowie, Brawley, Brown, Buchanan, Cansler, Capps, Carpenter, Church, Clary, Crawford, Creech, Culp, Culpepper, Daughtry, Davis, Decker, Dedmon, Dockham, Easterling, Eddins, Esposito, Fox, Gardner, Goodwin, Grady, Gray, Gulley, Hall, Hardy, Hensley, Hiatt, Hill, Holmes, Howard, R. Hunter, Hurley, Ives, Jarrell, Justus, Kiser, McComas, McCombs, McCrary, McMahan, Mercer, Miner, Mitchell, Moore, Morris, Mosley, Neely, Nesbitt, Nichols, Nye, Owens, Preston, Ramsey, Redwine, Reynolds, Rogers, Russell, Saunders, Sexton, Sherrill, Smith, Starnes, Tallent, Thompson, Tolson, Warwick, Watson, Weatherly, Wilkins, C. Wilson, G. Wilson, and Yongue.

Referred to: Judiciary I.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN AND CLARIFY THE DEALERS AND MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-297.1. Certification of compliance of franchise agreements.**

Any franchise, as defined in G.S. 20-286(8a), offered to a motor vehicle dealer in this State shall provide that all terms and conditions in the agreement inconsistent with any of the laws or rules of this State are of no force and effect. On or before January 1, 1998, every manufacturer, factory branch, distributor, or distributor branch licensed by the Commissioner under this Article which uses an identical or substantially similar form franchise for its dealers or distributors in this State, shall file with the Commissioner a copy of the franchise and all supplements along with a certification in writing that none of the terms and provisions of the franchise or

supplements are inconsistent with, prohibited by, or contrary to the provisions of this Article. Any applicant for licensing by the Commissioner as a manufacturer, factory branch, distributor, or distributor branch licensed under this Article, which would use an identical or substantially similar form franchise, as defined in G.S. 20-286(8a), for its dealers or distributors in this State, shall, as a condition for the issuance of a license, file with the Commissioner a copy of the franchise and all supplements along with a certification in writing that none of the terms and provisions of the franchise or supplements are inconsistent with, prohibited by, or contrary to the provisions of this Article. Not later than 60 days prior to the date a revision, modification, or addition to a franchise is offered generally to a licensee's franchisees in this State, the licensee shall notify the Commissioner of the proposed revision, modification, or addition to the franchise on file with the Commissioner and include with the notification:

(1) A copy of the franchise which incorporates all of the proposed revisions, modifications, and additions;

(2) A separate statement which identifies and provides a detailed description of all substantive revisions, modifications, and additions proposed and the reasons for the changes; and

(3) A certification in writing that none of the revisions, modifications, or additions proposed are inconsistent with, prohibited by, or contrary to the provisions of this Article.

It shall be unlawful for a franchise or any addendum or supplement thereto to be offered to a motor vehicle dealer in this State after January 1, 1998, until an applicant or licensee has complied with all of the requirements of this section. The Commissioner is to investigate and prevent violations of this section, including inconsistencies of any manufacturer's franchise with the provisions of this Article."

Section 2. G.S. 20-301 reads as rewritten:

"**§ 20-301. Powers of Commissioner.**

(a) The Commissioner shall promote the interests of the retail buyer of motor vehicles.

(b) The Commissioner shall ~~have power to~~ investigate any complaint brought by any person alleging a violation of this Article and to prevent unfair methods of competition and unfair or deceptive acts or practices and other violations of this Article. Any franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer holds a currently valid franchise has violated or is currently violating any provision of this Article may file a petition before the Commissioner setting forth the factual and legal basis for such violations. The Commissioner shall promptly forward a copy of the petition to the named manufacturer, factory branch, distributor, or distributor branch, requesting a reply to the petition within 30 days. Allowing for sufficient time for the parties to conduct discovery, the Commissioner or his designee shall then hold an evidentiary hearing and render findings of fact and conclusions of law based on the evidence presented. At any such evidentiary hearing, the manufacturer, factory branch, distributor, or distributor branch shall have the burden of proving its

compliance with the provisions of this Article. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

(c) The Commissioner shall have the power in hearings arising under this Article ~~to~~ to:

(1) Enter scheduling orders and limit the time and scope of discovery;

(2) To determine the date, time, and place where ~~they shall be~~ hearings are to be held;

(3) ~~to~~ To subpoena witnesses;

(4) ~~to~~ To take depositions of witnesses; and

(5) ~~to~~ To administer oaths.

(d) The Commissioner may, whenever he shall believe from evidence submitted to him that any person has been or is violating any provision of this Article, in addition to any other ~~remedy~~ remedy, bring an action in the name of the State against ~~such~~ that person and any other persons concerned or in any way participating in, or about to participate in practices or acts so in violation, to enjoin ~~such~~ any persons ~~and such other persons~~ from continuing the ~~same.~~ violations.

(e) ~~The Commissioner shall limit the time for discovery in any contested administrative hearing conducted pursuant to Article 12 to a time not to exceed 60 days. The Commissioner may extend the time for discovery beyond 60 days either upon the consent of all parties to the proceeding or upon application of one or more parties to the proceeding for good cause shown.~~ The Commissioner may issue rules and regulations to implement the provisions of this section and to establish procedures related to administrative proceedings commenced under this section."

Section 3. G.S. 20-305 reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

(1) To require, coerce, or attempt to coerce any dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities, which shall not have been ordered by such dealer;

(2) To require, coerce, or attempt to coerce any dealer to enter into any agreement with such manufacturer, factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to such dealer, by threatening to cancel any franchise existing between such manufacturer, factory branch, distributor, distributor branch, or representative thereof, and such dealer;

(3) Unfairly without due regard to the equities of the dealer, and without just provocation, to cancel the franchise of such dealer;

(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, or relocation of the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed transfer, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor the transfer, sale, assignment, relocation, or change is unreasonable under the circumstances. No franchise may be transferred, sold, assigned, relocated, or the executive management or principal operators changed, unless the franchisor has been given at least 30 days' prior written notice as to the identity, financial ability, and qualifications of the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed relocation. The franchisor shall send the dealership notice of objection, by registered or certified mail, return receipt requested, to the proposed transfer, sale, assignment, relocation, or change within 30 days after receipt of notice from the dealer, as provided in this section. Failure by the franchisor to send notice of objection within 30 days shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. The manufacturer or distributor has the burden of proving that the proposed transfer, sale, assignment, relocation, or change is unreasonable under the circumstances.

(5) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new

motor vehicle dealer until the Commissioner has held a hearing, nor thereafter, if the Commissioner has determined that there is good cause for not permitting the addition or relocation of such new motor vehicle dealer.

a. This section does not apply:
   1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle; or
   2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;
   3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership;
   4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market area.

b. In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:
   1. The permanency of the investment of both the existing and proposed additional new motor vehicle dealers;
   2. Growth or decline in population, density of population, and new car registrations in the relevant market area;
   3. Effect on the consuming public in the relevant market area;
   4. Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
   5. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the same line make in the

market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;

6. Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer in the relevant market area would increase competition in a manner such as to be in the long-term public interest; and

7. The effect on the relocating dealer of a denial of its relocation into the relevant market area.

c. The Commissioner ~~must~~ shall try to conduct the hearing and render his final determination ~~as expeditiously as possible, but in any event no later than~~ if possible, within 180 days after a protest is filed. ~~Unless waived by the parties, failure to do so shall be deemed the equivalent of a determination that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealer, unless such delay is caused by acts of the manufacturer, or the relocating or additional dealer.~~

d. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

e. In a hearing involving a proposed additional dealership, the manufacturer or distributor has the burden of proof under this section. In a proceeding involving the relocation of an existing dealership, the dealer seeking to relocate has the burden of proof under this section.

f. If the Commissioner determines, following a hearing, that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealership, the dealer seeking the proposed additional or relocated motor vehicle dealership must, within two years, obtain a license from the Commissioner for the sale of vehicles at the relevant site, and actually commence operations at the site selling new motor vehicles of all line makes, as permitted by the Commissioner. Failure to obtain a permit and commence sales within two years shall constitute waiver by the dealer of the dealer's right to the additional or relocated dealership, requiring renotification, a new hearing, and a new determination as provided in this section.

g. For purposes of this subdivision, the addition, creation, or operation of a 'satellite' or other facility, not physically part of or contiguous to an existing licensed new motor vehicle dealer, whether or not owned or operated by a person or other entity holding a franchise as defined by G.S. 20-286(8a), at which warranty service work authorized or reimbursed by a manufacturer is performed or at which new motor vehicles are offered for sale to the public, shall be considered an additional new motor vehicle dealer requiring a showing of good cause, prior notification to existing new motor vehicle dealers of the same line-make of vehicle within the relevant market area by the manufacturer and the opportunity for a hearing before the Commissioner as provided in this subdivision.

(6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements of subparagraph c. and the Commissioner has determined, if requested in writing by the dealer within the time period specified in G.S. 20-305(6)c1II, III or IV, as applicable, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed, and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner ~~must~~ shall try to conduct the hearing and render a final determination ~~no later than~~ within 180 days after a petition has been ~~filed; provided, however, that the Commissioner may extend such period of time upon application of a party and for good cause shown, or upon the consent of all parties to the proceeding.~~ filed. If the termination, cancellation or nonrenewal is pursuant to G.S. 20-305(6)c1III then the Commissioner shall give the proceeding priority consideration and shall try to render his final determination no later than 90 days after the petition has been filed. Any parties to a hearing by the Commissioner under this section shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

a. Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:

1. There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship provided that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of such failure;

2. If the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; and

I. The notification stated that notice was provided of failure of performance pursuant to this section;

II. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with the criteria; and

III. The new motor vehicle dealer failed to demonstrate substantial progress towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.

b. The manufacturer shall have the burden of proof under this section.

c. Notification of Termination, Cancellation and Nonrenewal. --

1. Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:

I. In the manner described in G.S. 20-305(6)c2 below; and

II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or

III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:

A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;

C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;

D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.

IV. Not less than 180 days prior to the effective date of such termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.

2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:

I. A statement of intention to terminate, cancel or not to renew the franchise;

II. A statement of the reasons for the termination, cancellation or nonrenewal; and

III. The date on which the termination, cancellation or nonrenewal takes effect.

3. Notification provided in G.S. 20-305(6)c1II of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the

180 days designated in G.S. 20-305(6)a2II provided the notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.

d. Payments. --

1. Upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, pursuant to this section, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:

I. New motor vehicle inventory that has been acquired from the manufacturer within 18 months, at a price not to exceed the original manufacturer's price to the dealer, and which has not been altered or damaged, and which has not been driven more than 200 miles, and for which no certificate of title has been issued;

II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer, at a price not to exceed the original manufacturer's price to the dealer, provided such supplies and parts are currently offered for sale by the manufacturer or distributor in its current parts catalogs and are in salable condition;

III. Equipment and furnishings that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources; and

IV. Special tools that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise.

2. Fair and reasonable compensation for the above shall be paid by the manufacturer within 90 days of the effective date of termination, cancellation or nonrenewal, provided the new motor vehicle dealer has clear title to the inventory and has conveyed title and possession to the manufacturer.

e. Dealership Facilities Assistance upon Termination, Cancellation or Nonrenewal. --

In the event of the termination, cancellation or nonrenewal by the manufacturer or distributor under this section, except termination, cancellation or nonrenewal for insolvency, license revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner:

1. Subject to paragraph 3, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or such longer term as is provided in the franchise agreement between the dealer and manufacturer; or
2. Subject to paragraph 3, if the new motor vehicle dealer owns the dealership facilities, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for one year.
3. Provided nothing in this paragraph e. shall relieve a lessee or owner, as the case may be, from the obligation to mitigate damages under the lease, nor prevent a manufacturer from occupying and using the dealership facilities while paying rent under subsections 1 and 2, nor prevent a manufacturer from obligations by negotiating a lease termination, a sublease or a new lease. Any amounts recovered by the lessee or owner resulting from mitigation of damages shall be deducted from the amount due from the manufacturer.

f. The provisions of paragraphs d. and e. above shall not be applicable when the termination, nonrenewal or cancellation of the franchise agreement is the result of the voluntary act of the dealer.

(7) Notwithstanding the terms of any contract or agreement, to prevent or refuse to honor the succession to a dealership, including the franchise, by a motor vehicle dealer's designated successor as provided for under this subsection.

a. Any owner of a new motor vehicle dealership may appoint by will, or any other written instrument, a designated family member successor to succeed in the ownership interest of the said owner in the new motor vehicle dealership,

including the franchise, upon the death or incapacity of the owner.

b. Any objections by a manufacturer or distributor to an owner's appointment of a designated successor shall be asserted in accordance with the following procedure:

1. Within 30 days after receiving written notice of the identity of the owner's designated successor and general information as to the financial ability and qualifications of the designated successor, the franchisor shall send the owner and designated successor notice of objection, by registered or certified mail, return receipt requested, to the appointment of the designated successor. The notice of objection shall state in detail all facts which constitute the basis for the contention on the part of the manufacturer or distributor that good cause, as defined in this sub-subdivision below, exists for rejection of the designated ~~family member~~ successor. Failure by the franchisor to send notice of objection within 30 days and otherwise as provided in this sub-subdivision shall constitute waiver by the franchisor of any right to object to the appointment of the designated successor.

2. Any time within 30 days of receipt of the manufacturer's notice of objection the owner or the designated successor may file a request in writing with the Commissioner that the Commissioner hold an evidentiary hearing and determine whether good cause exists for rejection of the designated successor. When such a request is filed, the Commissioner shall promptly inform the affected manufacturer or distributor that a timely request has been filed.

3. The Commissioner shall endeavor to hold the evidentiary hearing required under this sub-subdivision and render a determination within 180 days after receipt of the written request from the owner or designated successor. In determining whether good cause exists for rejection of the owner's appointed designated successor, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the franchisor's existing and reasonable standards and, considering the volume of sales and service of the new motor vehicle

dealer, uniformly applied minimum business experience standards in the market area.

4. Any parties to a hearing by the Commissioner concerning whether good cause exists for the rejection of the dealer's designated successor shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

5. Nothing in this sub-subdivision shall preclude a manufacturer or distributor from, upon its receipt of written notice from a dealer of identity of the dealer's designated successor, requiring that the designated successor promptly provide personal and financial data that is reasonably necessary to determine the financial ability and qualifications of the designated successor; provided, however, that such a request for additional information shall not delay any of the time periods or constraints contained herein.

6. In the event death or incapacity of the owner occurs prior to the time a manufacturer or distributor receives notice of the owner's appointment of a designated successor or before the Commissioner has rendered a determination as provided above, the existing franchise shall remain in effect and the designated successor shall be deemed to have succeeded to all of the owner's rights and obligations in the dealership and under the franchise until a determination is made by the Commissioner or the rights of the parties have otherwise become fixed in accordance with this sub-subdivision.

c. Except as otherwise provided in sub-subdivision d. of this subdivision, any designated successor of a deceased or incapacitated owner of a new motor vehicle dealership appointed by such owner in substantial compliance with this section shall, by operation of law, succeed at the time of such death or incapacity to all of the ownership rights and obligations of the owner in the new motor vehicle dealership and under the existing franchise.

d. Within 60 days after the death or incapacity of the owner, a designated successor appointed in substantial compliance with this section shall give the affected manufacturer or distributor written notice of his or her succession to the ownership of the new motor vehicle dealership; provided, however, that the failure of the designated successor to give

the manufacturer or distributor written notice as provided above within 60 days of the owner's death or incapacity shall not result in the waiver or termination of the designated successor's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated successor may give the notice required hereunder, provided the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity. Within 30 days of receipt of the notice by the manufacturer or distributor from the designated successor provided in this paragraph, the manufacturer or distributor may request that the designated successor complete the application forms generally utilized by the manufacturer or distributor to review the designated successor's qualifications to establish a successor dealership. Within 30 days of receipt of the completed forms, the manufacturer or distributor shall send a letter by certified or registered mail, return receipt requested, advising the designated successor of facts and circumstances which have changed since the manufacturer's or distributor's original approval of the designated successor, and which have caused the manufacturer or distributor to object to the designated successor. Upon receipt of such notice, the designated successor may either designate an alternative successor or may file a request for evidentiary hearing in accordance with the procedures provided in sub-subdivisions b. 2.-5. of this subdivision. In any such hearing, the manufacturer or distributor shall be limited to facts and circumstances which did not exist at the time the designated successor was originally approved or evidence which was originally requested to be produced by the designated successor at the time of the original request and was either not produced or the material which was produced was incorrect.

e. The designated successor shall agree to be bound by all terms and conditions of the franchise in effect between the manufacturer or distributor and the owner at the time of the owner's death or incapacity, if so requested in writing by the

manufacturer or distributor subsequent to the owner's death or incapacity.

f. This section does not preclude an owner of a new motor vehicle dealership from designating any person as his successor by written instrument filed with the manufacturer or distributor, and, in the event there is an inconsistency between the successor named in such written instrument and the designated successor otherwise appointed by the owner consistent with the provisions of this section, and that written instrument has not been revoked by the owner of the new motor vehicle dealership in writing to the manufacturer or distributor, then the written instrument filed with the manufacturer or distributor shall govern as to the appointment of the successor.

(8) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by the manufacturer or distributor.

(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to participate monetarily in an advertising campaign or contest, or to purchase unnecessary or unreasonable quantities of any promotional materials, training materials, training programs, showroom or other display decorations or materials at the expense of the new motor vehicle dealer, provided that nothing in this subsection shall preclude a manufacturer or distributor from including an unitemized uniform charge in the base price of the new motor vehicle charged to the dealer where such charge is attributable to advertising costs incurred or to be incurred by the manufacturer or distributor in the ordinary courses of its business.

(10) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change the capital structure of the new motor vehicle dealer or the means by or through which the new motor vehicle dealer finances the operation of the dealership provided that the new motor vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria; and also provided that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor, provided that said consent shall not be unreasonably withheld.

(11) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to refrain from participation in the management of, investment in, or the acquisition of any other line of new motor

vehicle or related products; Provided, however, that this subsection does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and the new motor vehicle dealer remains in compliance with any reasonable capital standards and facilities requirements of the manufacturer. The reasonable facilities requirements shall not include any requirement that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

(12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change location of the dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles so as to justify such an expansion, in light of the current market and economic conditions.

(13) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this law or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the State or the United States of America, or to the Commissioner, if such referral would be binding upon the new motor vehicle dealer.

(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's relevant market area, and within a reasonable time, after receipt of an order from a dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts or accessories to new vehicles as are covered by such franchise, and such vehicles, parts or accessories as are publicly advertised as being available or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who has placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within a reasonable time, without cause. This subsection is not

violated, however, if such failure is caused by acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative.

(15) To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the State.

(16) To award money, goods, services, or any other benefit to any new motor vehicle dealership employee, either directly or indirectly, unless such benefit is promptly accounted for, and transmitted to, or approved by, the new motor vehicle dealer.

(17) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered and which the manufacturer or distributor has accepted for immediate delivery for private retail consumers prior to the new motor vehicle dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each such order provided that the vehicle is in fact delivered to that customer. Price differences applicable to new model or series shall not be considered a price increase or price decrease. Price changes caused by either: (i) the addition to a new motor vehicle of required or optional equipment; or (ii) revaluation of the United States dollar, in the case of foreign-make vehicles or components; or (iii) an increase in transportation charges due to increased rates imposed by carriers; or (iv) new tariffs or duties imposed by the United States of America or any other governmental authority, shall not be subject to the provisions of this subsection.

(18) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business transferred in accordance with G.S. 20-305(4) ~~above~~ above, or to prevent, through right of first refusal or otherwise, a dealer from transferring the franchised business to the persons or other entities that the dealer shall designate in accordance with G.S. 20-305(4).

(19) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the State or any political subdivision thereof without making the same offer available upon request to all other new motor vehicle dealers in the same line make within the State.

(20) To release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or new motor vehicle dealer, any confidential business, financial, or personal information which may be from time to time provided by the new motor vehicle dealer to the manufacturer, without the express written consent of the new motor vehicle dealer.

(21) To deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose.

(22) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursements or authority granted its new motor vehicle dealers to make warranty adjustments with retail customers.

(23) To engage in any predatory practice against or unfairly compete with a new motor vehicle dealer located in this State.

(24) To terminate any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise.

(25) To require, coerce, or attempt to coerce a new motor vehicle dealer in this State to either establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

(26) To resort to or to use any false or misleading advertisement in the conducting of its business as a manufacturer or distributor in this State.

(27) To knowingly make, either directly or through any agent or employee, any material statement which is false or misleading and which induces any new motor vehicle dealer to enter into any agreement or franchise or to take any action which is materially prejudicial to that new motor vehicle dealer or his business.

(28) To require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any new motor vehicle as a precondition to purchasing, ordering, or receiving any other new motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line of new motor vehicles which are covered by the franchise agreement.

(29) To require, coerce, or attempt to coerce any new motor vehicle dealer to sell, transfer, or otherwise issue stock or other ownership interest in the dealership corporation to a general manager or any other person involved in the management of the dealership other than the dealer principal or dealer operator named in the franchise.

(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles on any basis which includes consideration of any or all of the following factors:

a. The dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise;

b. The dealer's relocation, remodeling, repair, or renovation of existing dealership facilities;

c. The dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer; or

d. Achievement by the new motor vehicle dealer of one or more levels of customer satisfaction in sales or service specified by the manufacturer.

Such unlawful price variation shall include not only differentiation by a manufacturer in the base price of new motor vehicles, but a manufacturer's use of rebates, credits, or other consideration which has the effect of causing variance in the price of new motor vehicles offered its franchised dealers located in this State.

It shall further be unlawful for a manufacturer to fail to offer its entire line of new motor vehicles to all of its franchised dealers in this State at the lowest prices that vehicles similarly equipped are offered to its franchised dealers in other states, after application of any rebates, credits, or other consideration which may be awardable to dealers in other states on the bases prohibited in this subdivision.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or incentives; provided, however, that the awarding or amount of any rebates or incentives shall not be based on any unlawful bases.

(31) Notwithstanding the terms of any contract, franchise, agreement, release, or waiver, to require that in any civil or administrative proceeding in which a new motor vehicle dealer asserts any claims, rights, or defenses arising under this Article or under the franchise, that the dealer or any nonprevailing party compensate the manufacturer or prevailing party for any court costs, attorneys' fees, or other expenses incurred in the litigation.

(32) To require that any of its franchised new motor vehicle dealers located in this State pay any extra fee, purchase advertising displays or other materials, or remodel, renovate, or recondition the dealers' existing facilities in order to receive any model or series of vehicles manufactured or distributed by the manufacturer for which the dealers have a valid franchise. It shall further be unlawful for any manufacturer to fail to offer any model or series

of new motor vehicles to its franchised dealers located in this State which are offered to its franchised dealers in other states which do not prohibit the practices made unlawful by this subdivision. Notwithstanding the foregoing, nothing contained in this subdivision shall be deemed to prohibit or prevent, a manufacturer from requiring, that its franchised dealers located in this State purchase special tools or equipment, stock reasonable quantities of certain parts, or participate in training programs which are reasonably necessary for those dealers to sell or service any model or series of vehicles."

Section 4. G.S. 20-305.1(b) reads as rewritten:

"(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of its warranty obligations with respect to a motor vehicle, to fail to compensate its motor vehicle dealers licensed in this State for warranty parts other than parts used to repair the living facilities of recreational vehicles, at the prevailing retail rate according to the factors in subsection (a) of this section, or, in service in accordance with the schedule of compensation provided the dealer pursuant to subsection (a) above, and to fail to indemnify and hold harmless its franchised dealers licensed in this State against any judgment for damages or settlements agreed to by the manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or recision or revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer. Any audit for warranty parts or service compensation shall only be for the 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation shall only be for the ~~24-month~~ 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Provided, however, these limitations shall not be effective in the case of fraudulent claims.

Section 5. G.S. 20-305.1(b1) reads as rewritten:

"(b1) All claims made by motor vehicle dealers pursuant to this section for compensation for delivery, preparation, warranty and recall work including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after receipt of claim from the dealer. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. Any claim not specifically disapproved in writing within 30 days after receipt shall be considered approved and payment is due immediately. No claim which has been approved and paid may be

charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the claim ~~in accordance with the written requirements of the manufacturer or distributor in effect at the time the claim arose~~. A dealer's failure to comply with the specific requirements of the manufacturer or distributor for documentation or processing of the claim shall not constitute grounds for the denial of the claim or reduction of the amount to be reimbursed to the dealer as long as reasonably sufficient documentation or other evidence has been presented to substantiate the claim."

Section 6. G.S. 20-305.1(c) reads as rewritten:

"(c) In the event there is a dispute between the manufacturer, factory branch, distributor, or distributor branch, and the dealer with respect to any matter referred to in subsections ~~(a) and (b) above and subsection (d) below,~~ (a), (b), or (d) of this section either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing on the subject and the decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Chapter 150B of the General Statutes; provided, however, that nothing contained herein shall give the Commissioner any authority as to the content of any manufacturer's or distributor's warranty. Upon the filing of a petition before the Commissioner under this subsection, any chargeback to or any payment required of a dealer by a manufacturer relating to warranty parts or service compensation, or to sales incentives, service incentives, rebates, or other forms of incentive compensation, shall be stayed during the pendency of the determination by the Commissioner."

Section 7. This act becomes effective October 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 315

Short Title: State Hires Most Qualified. (Public)

Sponsors: Representatives Russell; Aldridge, Allred, Arnold, Baddour, Bowie, Brawley, Brown, Buchanan, Capps, Carpenter, Church, Davis, Grady, Gulley, Hiatt, Hill, Mitchell, Morris, Nichols, Rayfield, Sexton, Starnes, Thompson, and C. Wilson.

Referred to: State Government, if favorable, Judiciary I.

February 25, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE STATE PERSONNEL ACT TO PROVIDE FOR THE OPEN, FAIR, AND NONPOLITICAL SELECTION OF THE MOST QUALIFIED PERSONS FOR STATE GOVERNMENT EMPLOYMENT BY LIMITING POLITICAL HIRINGS, TO PROVIDE FOR BROADER PROTECTIONS FOR STATE EMPLOYEES REPORTING MISMANAGMENT AND IMPROPER GOVERNMENT ACTIVITIES, AND TO PROVIDE FOR THE REPORTING OF CERTAIN HIRINGS AND OTHER MATTERS TO THE JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 126 of the General Statutes is amended by adding a new section to read:

"**§ 126-14.2. Political hirings limited; open and fair competition; rules.**

(a) It is the policy of this State that State departments, agencies, and institutions select the most qualified persons for State government employment based upon job-related qualifications of applicants for employment and not based upon political affiliation, except that certain policy-making positions in State government employment may be filled on bases including political affiliation where the General Assembly has expressly authorized such hirings.

(b) The personnel policies and procedures of the executive, legislative, and judicial branches shall be updated to implement nonpolitical hirings in accordance with subsection (a) of this section.

(c) The State Personnel Commission shall adopt rules to:

(1) Encourage open and fair competition for positions in State government employment.

(2) Broaden the advertisement of job openings in State government employment and lengthen the period for submitting applications for State government employment.

(3) Assure that State departments, agencies, and institutions follow similar selection processes when hiring State employees.

(4) Assure that State supervisory personnel receive adequate training to carry out the State's policy of hiring the most qualified persons.

(5) Require that State supervisory personnel responsible for hiring State employees must execute for each initial hire or promotion a certification indicating that the hiring decision was made in accordance with State personnel policies and was not made on the basis of patronage."

Section 2. G.S. 126-34.1 reads as rewritten:

"**§ 126-34.1. Grounds for contested case under the State Personnel Act defined.**

(a) A State employee or former State employee may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes only as to the following personnel actions or issues:

(1) Dismissal, demotion, or suspension without pay based upon an alleged violation of G.S. 126-35, if the employee is a career State employee.

(2) An alleged unlawful State employment practice constituting discrimination, as proscribed by G.S. 126-36, including:

a. Denial of promotion, transfer, or training, on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by Chapter 168A of the General Statutes.

b. Demotion, reduction in force, or termination of an employee in retaliation for the employee's opposition to alleged discrimination on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by Chapter 168A of the General Statutes.

(3) Retaliation against an employee, as proscribed by G.S 126-17, for protesting an alleged violation of G.S. 126-16.

(4) Denial of the veteran's preference granted in accordance with Article 13 of this Chapter in initial State employment or in connection with a reduction in force, for an eligible veteran as defined by G.S. 126-81.

(5) Denial of promotion for failure to post or failure to give priority consideration for promotion or reemployment, to a career State employee as required by G.S. 126-7.1 and G.S. 126-36.2.

(6) Denial of an employee's request for removal of allegedly inaccurate or misleading information from the employee's personnel file as provided by G.S. 126-25.

(7) Any retaliatory personnel action that violates G.S. 126-85.

(b) An applicant for initial State employment may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes based upon:

(1) Alleged denial of employment in violation of G.S. 126-16.

(2) Denial of the applicant's request for removal of allegedly inaccurate or misleading information from the employee's personnel file as provided by G.S. 126-25.

(3) Denial of equal opportunity for employment and compensation on account of the employee's age, sex, race, color, national origin, religion, creed, or handicapping condition as defined by Chapter 168A of the General Statutes. This subsection with respect to equal opportunity as to age shall be limited to persons who are at least 40 years of age.

(4) Denial of the veteran's preference in initial State employment provided by Article 13 of this Chapter, for an eligible veteran as defined by G.S. 126-81.

(5) Denial of employment based upon political affiliation, except when the applicant's political affiliation was the basis for denial of employment in an exempt policy-making position.

(c) In the case of a dispute as to whether a State employee's position is properly exempted from the State Personnel Act under G.S. 126-5, the employee may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes.

(d) A State employee or applicant for State employment may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes based upon a false accusation regarding, or disciplinary action relating to, the employee's alleged violation of G.S. 126-14 or G.S. 126-14.1.

(e) Any issue for which appeal to the State Personnel Commission through the filing of a contested case under Article 3 of Chapter 150B of the General Statutes has not been specifically authorized by this section shall not be grounds for a contested case under Chapter 126."

Section 3. G.S. 126-84 reads as rewritten:

"**§ 126-84. Statement of policy.**

(a) It is the policy of this State that State employees shall be encouraged to report verbally or in writing to their supervisor, department head, or other appropriate authority, evidence of activity by a State agency or State employee constituting:

(1) A violation of State or federal law, rule or regulation;

(2) Fraud;
(3) Misappropriation of State Resources; ~~or~~
(4) Substantial and specific danger to the public health and ~~safety.~~ safety; or
(5) Mismanagement, a gross waste of monies, or an abuse of authority.

(b) Further, it is the policy of this State that State employees be free of intimidation or harassment when reporting to public bodies about matters of public concern, including offering testimony to or testifying before appropriate legislative panels."

Section 4. G.S. 126-85 reads as rewritten:

"**§ 126-85. Protection from retaliation.**

(a) No head of any State department, agency or institution or other State employee exercising supervisory authority shall discharge, threaten or otherwise discriminate against a State employee regarding the State employee's compensation, terms, conditions, location, or privileges of employment because the State employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in G.S. 126-84, unless the State employee knows or has reason to believe that the report is inaccurate.

(a1) No State employee shall retaliate against another State employee because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in G.S. 126-84.

(b) No head of any State department, agency or institution or other State employee exercising supervisory authority shall discharge, threaten or otherwise discriminate against a State employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the State employee has refused to carry out a directive which in fact constitutes a violation of State or federal law, rule or regulation or poses a substantial and specific danger to the public health and safety.

(b1) No State employee shall retaliate against another State employee because the employee has refused to carry out a directive which may constitute a violation of State or federal law, rule or regulation, or poses a substantial and specific danger to the public health and safety.

(c) The protections of this Article shall include State employees who report any activity described in G.S. 126-84 to the State Auditor as authorized by G.S. 147-64.6(c)(16)."

Section 5. Beginning July 1, 1997, and quarterly thereafter, the head of each State agency, department, or institution employing State employees subject to the State Personnel Act shall report to the Joint Legislative Commission on Governmental Operations on the following:

(1) The costs associated with the defense or settlement of administrative grievances and lawsuits filed by current or former State employees and applicants for State employment, including the costs of settlements, attorneys' fees, litigation expenses, damages, or awards incurred by the respective State agencies,

departments, and institutions. The report shall include an explanation of the fiscal impact of these costs upon the operations of the State agency, department, or institution.

(2) The use of position qualification equivalencies in the hiring of State employees where an applicant for State employment or a candidate for a promotion satisfies specific educational or experience qualifications for a position by use of an equivalency relating to those specific qualifications. The report shall include an explanation of the bases for each use of an equivalency resulting in the hiring of an applicant for State employment or the promotion of a State employee.

Section 6. This act is effective when it becomes law.

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April 21, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel

RE: **House Bill 315 - State Hires Most Qualified.**
(Proposed Committee Substitute)

House Bill 315 amends several provisions of Chapter 126 relating to the State Personnel System, to limit political hiring, strengthen the protections for employees who report mismanagement and improper activities, and require agencies to report to the Joint Legislative Commission on Governmental Operations. The proposed committee substitute makes several technical changes and some substantive changes to the original bill.

Section 1 of the bill adds a new section to Article 5 (*Political Activities of Employees*) of Chapter 126, which sets forth a State policy that State agencies, departments, and institutions select the most qualified candidates for employment, without regard to political affiliation, except when authorized by the General Assembly. This new section also directs the three branches of government to update their personnel policies and procedures to implement nonpolitical hirings. Finally, the new section directs the State Personnel Commission to adopt rules to regulate certain enumerated aspects of the employment process as it applies to employees within the jurisdiction of the State Personnel Commission. The proposed committee substitute adds language to this section clarifying that this provision is not intended to adversely affect the rights of veterans or employees who have been terminated because of a reduction in force.

Section 2 of the proposed committee substitute is a conforming amendment which provided that employees that are otherwise exempt from the provisions of Article 5 of Chapter 126 will nevertheless be subject to the policy and requirements set forth in G.S. 126-14.2(a) and (b).

Section 3 of the bill amends G.S. 126-34.1 to allow State employees or former employees to file a contested case with the Office of Administrative Hearings for any unlawful retaliatory personnel action. In addition, the denial of employment based upon political affiliation is added as a ground upon which an applicant may file a contested case.

Section 4 of the committee substitute amends G.S. 126-84 by adding **gross** governmental mismanagement, gross waste of monies, and **gross** abuse of authority to the list of items that State employees are encouraged to report. The committee substitute adds the requirement that only reports of gross mismanagement and abuse of authority are to be encouraged. A new subsection (b) further states the policy of the State that State employees be free of harassment or intimidation when reporting matters of public concern or testifying before legislative panels and public bodies.

Section 5 expands the retaliation protection to state that no State employee shall retaliate against another State employee because that employee either reports inappropriate activity or refuses to carry out a directive which would violate law or endanger public health and safety.

Section 6 of the proposed committee substitute directs the head of each State agency, department, or institution employing employees subject to the State Personnel Act to report to the Office of State Personnel on a quarterly basis, beginning July 1, 1997, on the following:

- The costs of defense or settlement of grievance and lawsuits filed by current or former employees or applicants .
- The use of position equivalencies in hiring and promotion decisions rather that the specific educational or experience requirements for the position, and an explanation of the bases for the use of such equivalencies.

Beginning May 1, 1998, and annually thereafter, the State Personnel Commission is directed to report to the Joint Legislative Commission on Governmental Operations on the costs associated with the defense or settlement of lawsuits and on the use of position qualification equivalencies.

This act becomes effective when it becomes law.

Section-by-Section Analysis

Short Title: State Hires Most Qualified

As stated in the long title, this bill amends the State Personnel Act to provide for the open, fair, and nonpolitical selection of the most qualified persons for State Government employment by limiting political hirings and providing broader protections for employees reporting mismanagement and improper activities; and, the bill requires that State departments and agencies report to the General Assembly on settlements of personnel grievances and on the use of equivalencies in hiring.

Section 1 of the bill creates a new statute, G.S. 126-14.2 , to establish a statutory State policy of hiring the most qualified persons for employment in State government positions. Under 126-14.2, employee selection decisions are to be based upon job-related qualifications and are not to be based upon political affiliation, except as to certain exempt positions as authorized by the General Assembly. Each branch of government shall implement the nonpolitcal hiring policy as provided by the statute. The section mandates that the State Personnel Commission adopt rules and policies designed to carryout the nonpolitcal hiring policy for employees subject to the State Personnel Act.

Section 2 of the bill amends G.S. 126-34.1, the grounds for contested cases under the State Personnel Act, by adding as grounds for a contested case retaliatory personnel action as defined by amended G.S. 126-85. (Later in the bill, G.S. 126-85 is amended to add provisions relating to whistleblower protections.) The changes in the section are applicable to current and former State employees and to applicants for initial State employment.

Section 3 of the bill add amends G.S. 126-84 to include "mismanagement, a gross waste of monies, or an abuse of authority" as activities which State employees are encouraged to report to appropriate authorities. State employees are to be free from intimidation or harassment when reporting on those and other listed activities.

Section 4 of the bill amends G.S. 126-85 to set out a prohibition on any State employee from retaliating or harassing another State employee who makes reports under amended G.S. 136-84.

Section 5 of the bill requires that, beginning 1/1/97 and quarterly thereafter, State departments and agencies are to report to the General Assembly on costs associated with the defense or settlement of claims relating to State employee grievances and on the use of qualification equivalencies in the hiring or promotion of State employees.

Section 6 makes the act effective when it becomes law.

State Employees
Association
of North Carolina

January 28, 1997

The Honorable Carolyn B. Russell
North Carolina House of Representatives
Room 2207, Legislative Building
Raleigh, NC 27601

Dear Representative Russell:

Welcome back to the start of a new legislative session. The officers, staff and members of the State Employees Association look forward to another two years of working in partnership with you to make the lives of state employees and the citizens of North Carolina better.

Recently you contacted my office by phone indicating your interest in following through with previously introduced legislation prohibiting political patronage in State personnel actions. As you know, this has been an objective of the Association for many years. During the 1996 Annual SEANC Convention, the members voted to retain that objective for work during the upcoming legislative session. The current objective reads as follows:

> *Adopt legislation that will make it illegal for an elected official, department, division or section head to hire, fire, promote, demote, or transfer a non-exempt employee based on political affiliation or non-political affiliation or authorize anyone under supervision to hire, fire, promote, demote, or transfer any non-exempt employee based on political affiliation or non-political affiliation.*

Current language contained in North Carolina General Statutes §126-36 grants State Employees the right to appeal all actions listed above to the State Personnel Commission. The statute does not, however, cite any sanctions to offenders.

We appreciate your continued interest in SEANC issues and look forward to working with you towards a better patronage policy for all of State Government. Please contact the SEANC office if we can by of any assistance as you move forward.

With kindest personal regards,

Troy K. Green
Executive Director

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NORTH CAROLINA GENERAL ASSEMBLY GOVERNMENT PERFORMANCE AUDIT COMMITTEE

PERFORMANCE AUDIT OF PERSONNEL SYSTEMS

Final Report
December 1992

- Ineffective management of the performance management system

Overall, the respondents negatively perceived personnel-related issues.

In addition, the morale among State managers and workers is poor. During this government performance audit, the personnel and organization/staffing team interviewed various levels of managers throughout the executive, judicial, and legislative branches of government. A common frustration among managers interviewed is that the limitations and inflexibility of the personnel system do not allow management the ability to manage effectively. In addition, most executive branch managers interviewed believed that they were not given the necessary tools to manage effectively.

Recommendations

- The State of North Carolina should continue to conduct the employee opinion survey on an annual basis.

- The State should continue to communicate the information received from this survey to the employees. This communication process should be aimed at increasing awareness and understanding to gain greater commitment to the State's goals and objectives. If communicated in a timely manner, the communication of this information also should improve job performance, enhance job satisfaction, and increase motivation. Developing effective employee communications and involvement procedures can generate many benefits. These are illustrated by Exhibit 3-10.

- The employee opinion survey should differentiate between managers and staff and should include all three branches of government. The employee opinion survey should be conducted and administered by the Office of State Personnel.

- To begin an appropriate year-to-year benchmarking process, the State needs to establish appropriate baseline survey questions to ensure useful, "apples to apples" comparisons in the years to come.

✳ *Finding 5 - The culture and policies of the State's personnel program do not discourage patronage considerations in hiring decisions*

In the Phase I personnel performance audit, there were broad-based concerns expressed and anecdotes cited concerning the influence of patronage particularly on initial hiring decisions in State government. These concerns not only pertained to selection decisions for higher grade and salary positions, but also included lower grade positions in State government. It was often noted that even a low grade State position may be among the highest paying and most secure jobs in many parts of the State. Consequently the competition for such positions is high and, according to many persons interviewed, support of influential State officials has historically been an asset to applicants in securing such positions. The results

of GPAC's State employee survey also showed that one of their greatest concerns dealt with the effects of patronage on hiring and related personnel decisions.

In-depth research and investigations of patronage and its effects were not performed in Phase I. However, there is considerable anecdotal information that indicates patronage influences have historically existed and currently exist in State personnel practices, particularly in initial hiring decisions. Such practices are inconsistent with the application of sound human resource management practices that are designed to hire, train, and retain the most highly qualified individuals for the State workforce and promote equal employment opportunity for all State citizens. Even the perception of patronage on hiring or promotion or dismissal decisions by State managers and agencies can result in morale and service delivery problems, the loss of credibility of managers and supervisors, exposure to lawsuits and grievances, and the hiring of less qualified applicants for State jobs.

Recommendation

To eliminate the reality and perception of patronage on State personnel practices in the future and to establish a human resource management culture that is consistent with and fully supportive of the recommendations in this report, the following recommendations should be adopted by the State for SPA and non-policy related EPA positions:

- The General Assembly should pass legislation specifying that it is State policy to hire candidates based on their qualifications and without regard to political affiliation.

  This legislation also should require OSP and all State agencies to update their personnel policies and procedures to implement this new policy and establish associated controls. Procedures should require that all applicant referrals, from within or outside State government, follow the same selection process. OSP should develop and implement procedures to monitor compliance with such policies and procedures. This legislation should also require the applicable agency supervisors and hiring managers to sign a certification indicating that a hiring decision was made in accordance with State and agency personnel policies and was not made on the basis of patronage.

- The heads of the three branches of State government should regularly reinforce the importance of complying with this policy to the agencies and employees under their control.

- State managers, supervisors, and personnel officials should be trained in applying the new procedures.

- To encourage open competition for available State positions, OSP should require agencies to broaden advertisements of State job openings and to lengthen the period for submitting applications.

THE NEWS & OBSERVER
TUESDAY, FEBRUARY 25, 1997

We lose when state sells jobs

Presidential candidates try to come up with inspiring slogans to get your support. They have to be short, memorable and true enough to fool enough voters.

Barry Goldwater: "In your heart, you know he's right (yeah, far right!)."

Richard Nixon: "I am not a crook."

George Bush: "Read my lips: No new taxes."

DENNIS ROGERS

Bill Clinton: "I feel your pain."

North Carolina's gubernatorial candidates have stayed away from sloganeering, and that is a good thing.

Because about the only even partly truthful slogan that would fit, regardless of party, would be, "Jobs for sale."

And the sad thing is, they see nothing wrong with it.

You want a good job in state government, say, director of the Alcohol Law Enforcement Division. Perhaps you should do what former Hyde County Sheriff Roland Dale did and raise or donate thousands of dollars to Gov. Jim Hunt's various campaigns.

Or if law enforcement is not your style, maybe the vast Division of Motor Vehicles is to your liking. Deliver enough votes and you could, like Col. A.L. Felton, get to totally screw up the vehicle emissions testing program.

If your dreams are bigger, and you have the political muscle or dollars to pull it off, you could get to foul up the entire Division of Motor Vehicles as Alexander Killens did when he went from being a Hunt hack to a Hunt appointee.

Were all of this taking place in some Third World country, we could all go "tsk, tsk" and send in the Peace Corps to teach the natives how we do it back here in the land of round doorknobs.

But the problem we have in North Carolina is that nobody sees anything wrong with it. High-paying jobs in state government have been used to pay off contributors and campaign workers for so long that we think it is the way things ought to be.

You ask a political operative why they so blatantly pass out jobs that you and I are paying for, and they look at you with amazement. One Hunt coat-holder put it to me this way: "How else is the governor going to get his own team in place?"

How? By hiring the most qualified professionals available, that's how. By hiring them without regard for political affiliation. By telling contributors that what they get for their money is good, clean, efficient government instead of a system that smacks of deals and payoffs.

North Carolinians deserve to be served by the most capable people we can find to work for the state. Many of the grunt-level workers who keep the wheels rolling while their political bosses are off enjoying the fruits of the victories are just that.

But the reputations of all state workers are blemished when fools take control of state agencies just because they put their money on the winning horse in the gubernatorial race.

You and I are the ultimate losers. It costs no more to hire good people who get jobs based on their skill, dedication and experience than it does some marginal case who has friends in high places.

The amazing thing is that state government is as efficient as it is. And the tragedy is that our leaders are so used to passing out the spoils of their political wars that they no longer can see how demeaning it is to them and to the people who can't get jobs without their patronage.

The Charlotte Observer

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EDITORIALS

The patronage problem

It's time for N.C. policymakers to clean up patronage

In theory there's nothing wrong with political patronage, and in a representative democracy lots to recommend it. Among the benefits: efficiency, ability to put knowledgeable people who understand the chief executive's goals in charge of key agencies, and rewarding a candidate's most competent supporters whose special expertise and talent would benefit the state. That's the theory, anyway.

Campbell

But the way North Carolina governors of both parties have practiced the arts of patronage threatens public confidence in their own government — and demands reform. What too often happens is that governors reward supporters who either don't understand the proper role of a public servant, or don't do the job they were appointed to accomplish.

Among them are some recent bureaucrats who have gotten a highly publicized boot from Gov. Jim Hunt, including former Alcoholic Beverage Control Board chair Marvin Speight and Commissioner of Motor Vehicles Alexander Killens. A recent independent audit of the Division of Motor Vehicles was so critical of the agency that it recommended the top three jobs be abolished and assigned to others in the Transportation Department.

Less visible than these high-level positions are the thousands of state jobs that are protected by the state personnel act. Ostensibly, these go to the best qualified applicants for such jobs as computer programmers, environmental inspectors, medical technicians and prison guards.

But hiring for these jobs also is subject to political pressures, a practice that ought to be stopped immediately. State Auditor Ralph Campbell, in a recent audit on youth prisons, went out of his way to point out that improper political pressure pervades state government.

Politicians, he said, have insinuated themselves in hiring and promotion decisions for years. They frequently submit names of applicants and then follow up with phone calls or letters to find out if the nominees were hired.

Of course, no one's forced to hire someone, or to promote the candidate. In many cases, politicians are only trying to help their constituents find work. But that kind of pressure disrupts the state personnel system. Sometimes the best candidates don't have politicians pushing them and just give up and find jobs elsewhere. Some supervisors told Mr. Campbell they felt it difficult to resist hiring a political nominee over an equally or even more qualified candidate.

That's indefensible. It deprives the public of the best employees, and it rewards political pull at the expense of competence. Mr. Campbell is right to recommend "that the executive and legislative branches ... work together to eliminate pressures from the hiring and promotion process in this and any other agencies."

Lawmakers should adopt legislation shielding state agencies from political pressure. That would free them, as Mr. Campbell put it "to hire and promote the most qualified candidate without having to consider political ramifications."

Government will never be free of politics, nor should it be. Our top leaders are elected and they appoint their top supervisors. That insures that the benefits of political activity remain part of state government — without tainting the rank-and-file state workers who are, after all, hired to work for the people, not the party.

- Goldsboro News-Argus Thursday, February 29, 1996

State hiring policy frustrates workers

By GARY D. ROBERTSON
Associated Press Writer

RALEIGH — State employees seeking promotions often are forced to remain in lower-level, lower-paying jobs because they can't overcome personal influence and prejudice, some workers charge.

Several state employees who appeared Wednesday before the House Select Committee on Personnel Review said morale was low in their offices because of unfair hiring decisions.

"The system rewards people for who they know and how well they benefit the system instead of how well they help the people they've chosen to serve," said James Parker, a state Department of Transportation employee.

The committee's hearing Wednesday was the last of three held to allow state workers to talk about working conditions, worker safety and personnel decisions.

Janice Walton, an employee at

See Hiring policy on 2A

Hiring policy

Continued from 1A

Appalachian State University's Center for Appalachian Studies, felt wronged because of two recent hirings.

In one case, she said, a purchasing position was filled by someone with no experience in the field.

"It's not what you know, but who you know and what can you do for me. The good ol' boys are making the decisions," said Walton, who has worked at ASU for 11 years. "The applicants with the least qualifications are getting the jobs."

Hilda Rouse, a nurse at Cherry Hospital, a state mental institution in Goldsboro, said she and other black nurses were victims of racial discrimination.

Rouse said nearly all nursing supervisors are white and that several qualified black candidates have not been hired. Hiring decisions are being made by doctors and nursing managers instead of by personnel directors, she complained.

Public hearings earlier this month in Goldsboro and Morganton brought similar complaints, said committee member Rep. Shawn Lemmond.

"We're hearing the same kind of problems," said Lemmond, R-Mecklenburg. "The personnel people are not part of the solution but they are part of the problems."

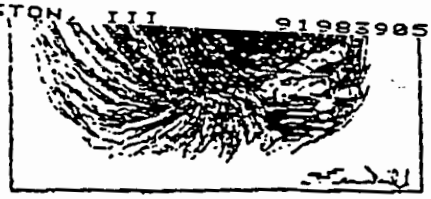
Walton said that, when employees do file formal complaints claiming they were wronged in a hiring, they receive little help from the state during the grievance process.

The House panel was formed last spring by Speaker Harold Brubaker after a former state employee complained that he was pressured to give money to Gov. Jim Hunt's campaign after he was hired. R.W. Wilkins, an agricultural adviser for Hunt, denied the allegations. His job was eliminated by the Legislature last year.

The committee hopes to present legislation to correct abuses in employee hiring and discipline in time for the short session scheduled in May, said co-chairwoman Rep. Carolyn Russell, R-Wayne.

Lawmakers thanked the employees for their willingness to speak publicly, but some workers seemed grateful for the chance to vent their frustrations.

"I will stand up for what's right," Walton said.



personally. This disease has created a massive void that will not soon be filled.

Mother was an avid reader for as long as I can remember. She started me out reading the center column of The Wall Street Journal in fifth grade. Then, on the way to school in the mornings, she would test me on what I had read. Although it turned me into perhaps the most precocious fifth grader in the class, it taught me the invaluable lesson that the world was a huge place teeming with knowledge that was mine for the absorbing.

Perhaps my father and I should have seen the warning signs five years ago, when her personality abruptly changed. She went from being the darling of any social situation to abrasive and difficult in many of her relationships. Her language changed dramatically. Those words that

for Alzheimer's and other degenerative diseases. The percentage of Americans over the age of 85 has doubled in the past two decades. Baby boomers will begin to hit 65 in about 15 years.

Four million Americans are afflicted with Alzheimer's. Over 100,000 people die from it every year. The estimated cost is more than $100 billion a year.

It appears that not only are we going to having to raise more resilient children to withstand the enormous amounts of grief, but also children who have the ability to create financial stability for their parents' futures as well as their own. Good parenting will, and should, become a higher priority than ever before.

My mother will neither know nor remember that today is Mother's Day. It may seem like an exercise in futility to celebrate the occasion, but I have to believe that somehow she knows that my unending and unconditional love for her goes beyond one calendar day.

Kay M. Ryon, former press secretary to U.S. Rep. Fred Heineman, is vice president of Pendulum Multimedia.

5/12 News & Observer

Going after the patronage

Fayetteville Observer-Times

Gov. Jim Hunt's root support has been so strong, he's occasionally been as high in popularity as any state leader could reasonably hope for. If anyone could have pruned the excesses out of the patronage system and still lived to tell about it, it was our "perennial governor." But apparently he didn't. Opponents looking for mud appear to have hit paydirt.

TAR HEEL EDITORS SPEAK

A House committee keeps on digging, keeps finding hints, and sometimes proof, of misuse of public time and money. The list:

The Department of Motor Vehicles, described as a "patronage dumping ground," does not have the safeguards needed for the $720 million a year collected in fees. It has no written goals to give employees clear direction, and patronage practices were found to interfere with the way the office is run, a draft audit says...

The state Highway Patrol has its troubles, too. Four troopers (three are Republicans and one a Democrat) say they left the force because of increasing political pressure from the Hunt administration, including one claiming he was pressured to make political contributions.... Legislators and troopers say patronage has always been a part of the patrol, though some claim it's gotten worse under Hunt's watch.

The biggest headlines concerned former Secretary of State Rufus Edmisten .... In all, a state audit found that $400,000 in expenditures were questionable. After resigning, Edmisten warned that he would not stand for being used as an issue during election year. But how can he not be?

... Joseph Howes of Lumberton said he quit working for the state parole and probation division when Hunt's former agriculture adviser, R.W. Wilkins, pressured him for a campaign contribution. No criminal charges were made against Wilkins, but the legislature eliminated Wilkins' job in the budget.

... House Speaker Harold Brubaker and the committee are to be commended for looking into patronage. But please, don't just point fingers, point out solutions. Otherwise, why should voters switch, if patronage abuses could continue no matter who is in charge?

THE ASSOCIATED PRESS

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Select Committee

Cherry officials deny 'rampant' favoritism

By DON McLOUD
News-Argus Staff Writer

Cherry Hospital officials say political favoritism in hiring and promotion is no worse there than anywhere else, despite a litany of accusations that were made by hospital employees Saturday at a hearing.

Personnel Director Shirley Edwards said Tuesday that she had she seen no specific incidents. She added, "I see things I don't understand," but she said she would "not make a blanket allegation."

On Saturday, some employees of the hospital alleged unfair hiring and promotion practices due to political favoritism. Their comments were made during a hearing in Goldsboro of the N.C. House Select Committee on Personnel Review, which is investigating allegations of political favoritism in hiring for state agencies.

Ms. Edwards said she has been a state employee for 30 years and worked at various agencies. When asked by a reporter for comment about employee accusations made at the hearing, Ms. Edwards said, "There's not any more here than anywhere else."

She said that she is not responsible for hiring for departments other than her own, but she is responsible for approving the new positions.

She said each department head makes hiring decisions for his department. The department heads then send a form to her for approval. If everything looks all right, the hire is approved. She said she questions requests that don't look right.

She said that employee complaints often come from those disappointed at their individual situations.

Hospital Director J. Fiel Montgomery said he did no know of any of the details of th accusations made Saturday. " don't know of any rampan favoritism," he said. He said non of the details had been presente to him. He declined further com ment.

Bertha Pate, the hospital'

See Cherry on 2A

Continued from 1A

laundry manager, said at Saturday's hearing, "I am a victim of political hiring." She said her boss had ordered her to hire someone who was not qualified. She said he told her to redo paperwork to make the hire possible. At first she said she refused, but later returned to sign the sheet "out of respect for my boss." She said such incidents caused low morale.

"It is worse than it has ever been," said Ms. Pate. She said she did not mind interviewing someone who was recommended, but "I do have a problem with somebody being pushed down my throat who is not qualified."

She said the directive for the hiring came from the personnel department. She also said she would give more specific information if subpoenaed.

Glenn Sasser, power plant supervisor at the hospital, said he, too, had seen political favoritism. He said that his previous supervisor was removed from the power plant because he could not get along with other employees. Sasser was then moved up to take over, but he did not receive a pay increase, although he said one was promised.

"He has no real job as far as I know," Sasser said of his former supervisor, yet he receives the same pay as when he was a supervisor. Sasser said the man's name was also on the organizational chart as the supervisor of the power plant. He would not reveal the name and specifics until subpoenaed, he said.

Sarah Lynch of the hospital's purchasing department said at the hearing that she had witnessed favoritism in hiring. She mentioned one incident that occurred in the maintenance department. The employee was permanently removed from the department and given clerical work instead, yet his salary remained the same. She said the employee was making over $30,000 for clerical work and was the highest paid employee in the department.

Ms. Lynch said she was also ordered to hire someone for a job who was not qualified. She said she had interviewed the candidate she thought was most qualified and went to lunch. When she returned, she was told to change the paperwork to hire another candidate. She said the direction for the hiring was politically motivated.

She also said she retained a lawyer four years ago because of problems she had experienced on the job. She said her chief had blocked her promotion to a higher pay grade. She said the promotion had received personnel approval, and her boss approved it only after she hired the lawyer. She said the promotion was denied because she is a woman.

She said she would give names and a more specific account if subpoenaed by the committee.

The N.C. House Select Committee on Personnel Review will hold its third and final public hearing today in Raleigh. State Rep. Carolyn Russell of Goldsboro, committee co-chairman, said the full committee will consider testimony presented at the three hearings next month. She said similar problems as alleged at Cherry Hospital were occurring statewide.

Employees who are retaliated against for speaking out were told at the hearing to contact the committee.

News & Record 1/29/97

At long last, Hunt discovers that patronage-plagued DMV doesn't work

Any car owner could have told the governor that the license agency has problems. But the victims of a rogue trucker can't testify.

NED CLINE

On a cold January day more than 30 years ago, in the waning days of his tenure, Gov. Robert Scott gazed across the street from his Capitol office at the Department of Transportation building. "That's where the power is," Scott said with frustration. "The engineers outlast governors and everybody else around here. They know it and they just do what they want to do."

Scott's successor, Gov. James Holshouser, shared that view. In his inaugural speech 25 years ago, Holshouser turned to the DOT building, shook his finger and vowed that he would fix that problem in his allotted four years.

A quarter century later, as Gov. Jim Hunt took his fourth oath as governor, he expressed shock and anger at the things he had just learned about boneheaded administrative practices in the Division of Motor Vehicles. Procedures at the DMV were sloppy, potentially costly to taxpayers and dangerous to motorists. Something had to be done immediately to fix the mess, Hunt decreed.

Some things never change.

It hasn't been just three governors who have beat their heads against the wall because of lingering problems in the politically infested Department of Transportation and its divisions, including the DMV. But governors who keep putting campaign contributors and political supporters in jobs have been part of the problem from the beginning.

Membership on the State Board of Transportation has always been a political plum. And legends abound about roads built in curious places. But it's in the DMV that the effects of patronage touch most people most often. It often has been a dumping ground for political cronies who had nothing much to recommend them for other positions. At DMV, they could just stay out of sight until the next election.

Hunt, who is beginning his 13th year in office, said the other day that he had no idea things were in such disarray at DMV. It shouldn't have been such a big surprise. If for no other reason, six months have passed since the last DMV director resigned under a cloud. The two top people who were left in charge have been feuding, seldom even speaking to each other except to disagree. Surely some hint of the breakdown at DMV trickled up to the governor's office.

The latest hassle is over haphazard enforcement of auto emission standards. The News & Observer of Raleigh has documented a series of inept enforcement procedures in an operation noted for arrogance and favoritism — perhaps a too-polite word for corruption. Saying he was "furious" with what he read, Hunt took less than a week to name as his new DMV commissioner a veteran troubleshooter, Janice Faulkner. According to the governor, she is under orders to bang heads and take names.

Let's hope the governor is serious this time around. Faulkner has a good track record, having moved last year from running the state revenue department to cleaning up the political cesspool in the office of Secretary of State. DMV may turn out to be her biggest challenge yet. You have to wonder, though, if she's the only competent manager left in Raleigh.

The problems with DMV are by no means limited to the Raleigh bureaucracy. The agency touches everyone in the state who owns a driver's license or a car, which means almost everyone over 16. In Greensboro, the auto registration offices have been a source of headaches for years. State officials have repeatedly promised to improve efficiency, and keep saying they're working on the problem. But waiting lines and busy phones are routine.

Lousy customer service, however pales next to issues of life and death. The point was driven home just a few days ago when a logging truck slammed into a van in Wilkes County and killed five people. The trailer had not undergone a safety inspection in at least five years, had faulty brakes and slick tires. The truck driver has been charged with five counts of manslaughter, and belatedly cited for bad brakes and tires, and failure to have a current inspection sticker.

Because it was registered in Virginia, the log truck wasn't subject to North Carolina's mandatory inspection. Moreover, inspection of interstate trucks comes under federal jurisdiction. But that doesn't let our DMV off the hook. Trucks and trailers operating on North Carolina highways are subject to DMV safety regulation, and it's up to the agency to find the violators. Anyone familiar with the mountain and foothill counties will attest that substandard logging trucks are not a new phenomenon.

DMV's management breakdowns in Raleigh are what caught the governor's eye. But the ramifications of that problem ripple out across the state. If the governor is serious about reforming this agency, he had better be ready to make changes from Murphy to Manteo.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 513

Short Title: Regulate Personal Watercraft. (Public)

Sponsors: Representatives Preston, Culpepper (Cosponsors); Hurley, Redwine, Smith, Tolson, and Wright.

Referred to: Judiciary I.

March 13, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR ADDITIONAL REGULATION OF PERSONAL WATERCRAFT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75A-13.2 reads as rewritten:

"**§ 75A-13.2. Personal watercraft.**

(a) No person shall operate a personal watercraft on the waters of this State at any time between ~~the hours from one hour after~~ sunset ~~to one hour before~~ and sunrise. For purposes of this section, 'personal watercraft' means a small vessel which uses an outboard motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vehicle.

(a1) No person under 16 years of age shall operate a personal watercraft on the waters of this State, nor shall a person knowingly allow a person under the age of 16 to operate a personal watercraft.

(b) No person shall operate a personal watercraft ~~unless~~ on the waters of this State unless:

(1) The operator has satisfactorily completed a course of instruction in the safe operation of the watercraft lasting at least one hour in duration, as approved by the Wildlife Resources Commission;

(2) ~~each~~ Each person riding on or being towed behind such vessel is wearing a Type I, II, III, or V personal flotation device approved by the United States Coast ~~Guard.~~ Guard;

(3) The number of passengers is at or below the maximum number of passengers for which the watercraft was designed by the manufacturer; and

(4) In the case of a personal watercraft with a lanyard-type engine cut-off switch, the lanyard is securely attached to the person of the operator.

(c) A personal watercraft must at all times be operated in a reasonable and prudent manner. ~~Manuevers~~ Maneuvers that endanger life, limb, or property, including:

(1) Unreasonably or unnecessarily weaving through congested vessel traffic;

(2) Jumping the wake of another vessel unreasonably or unnecessarily close to such other vessel or when visibility around such other vessel is obstructed; and

(3) Intentionally approaching another vessel in order to swerve at the last possible moment to avoid collision

shall constitute reckless operation of a vessel as provided in G.S. 75A-10.

(c1) The provisions of G.S. 75A-10(b1) regarding operation of a vessel while intoxicated apply to the operation of personal watercraft as defined in this section.

(d) The provisions of this section do not apply to a performer engaged in a professional exhibition or a person or persons engaged in an activity authorized under G.S. 75A-14."

Section 2. This act becomes effective December 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 315
Proposed Committee Substitute H315-PCS8182

Short Title: State Hires Most Qualified. (Public)

Sponsors:

Referred to:

February 25, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE STATE PERSONNEL ACT TO PROVIDE FOR THE OPEN, FAIR, AND NONPOLITICAL SELECTION OF THE MOST QUALIFIED PERSONS FOR STATE GOVERNMENT EMPLOYMENT BY LIMITING POLITICAL HIRINGS, TO PROVIDE FOR BROADER PROTECTIONS FOR STATE EMPLOYEES REPORTING GROSS MISMANAGEMENT AND IMPROPER GOVERNMENT ACTIVITIES, AND TO PROVIDE FOR THE REPORTING OF CERTAIN HIRINGS AND OTHER MATTERS TO THE JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 126 of the General Statutes is amended by adding a new section to read:

"**§ 126-14.2. Political hirings limited; open and fair competition; rules.**

(a) It is the policy of this State that State departments, agencies, and institutions select the most qualified persons for State government employment based upon job-related qualifications of applicants for employment in accordance with G.S. 126-7.1, Articles 6 and 13 of Chapter 126, and State personnel policies approved by the State Personnel Commission, and not based upon political affiliation, except that certain policy-making positions in State government employment may be filled on bases including political affiliation as provided by G.S. 126-5.

(b) The personnel policies and procedures of the executive, legislative, and judicial branches shall be updated to implement nonpolitical hirings in accordance with subsection (a) of this section.

(c) The State Personnel Commission shall adopt rules to:

(1) Encourage open and fair competition for positions in State government employment.

(2) Ensure the proper and thorough advertisement of job openings in State government employment and lengthen, as appropriate, the period for submitting applications for State government employment. Further, the State Personnel Commission may require that a closing date shall be posted for each job opening.

(3) Assure that State departments, agencies, and institutions follow similar selection processes when hiring State employees.

(4) Assure that State supervisory personnel receive adequate training to carry out the State's policy of hiring the most qualified persons."

Section 2. G.S. 126-5(c1) reads as rewritten:

"(c1) Except as to the provisions of G.S. 126-14.2(a) and (b) and Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) Constitutional officers of the State.

(2) Officers and employees of the Judicial Department.

(3) Officers and employees of the General Assembly.

(4) Members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis.

(5) Officials or employees whose salaries are fixed by the General Assembly, or by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State.

(6) Employees of the Office of the Governor that the Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.

(7) Employees of the Office of the Lieutenant Governor, that the Lieutenant Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.

(8) Instructional and research staff, physicians, and dentists of The University of North Carolina.

(9) Employees whose salaries are fixed under the authority vested in the Board of Governors of The University of North Carolina by the provisions of G.S. 116-11(4), 116-11(5), and 116-14.

(10) Repealed by Session Laws 1991, c. 84, s. 1.

(11) North Carolina School of Science and Mathematics' employees whose salaries are fixed in accordance with the provisions of G.S. 116-235(c)(1) and G.S. 116-235(c)(2).

(12) Employees of the North Carolina Low-Level Radioactive Waste Management Authority whose salaries are fixed pursuant to G.S. 104G-5(g)(1) and G.S. 104G-5(g)(2).
(13) Employees of the North Carolina Hazardous Waste Management Commission whose salaries are fixed pursuant to G.S. 130B-6(g)(1) and G.S. 130B-6(g)(2).
(14) Employees of the North Carolina State Ports Authority.
(15) Employees of the North Carolina Global TransPark Authority.
(16) The executive director and one associate director of the North Carolina Center for Nursing established under Article 9F of Chapter 90 of the General Statutes."

Section 3. G.S. 126-34.1 reads as rewritten:

"**§ 126-34.1. Grounds for contested case under the State Personnel Act defined.**

(a) A State employee or former State employee may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes only as to the following personnel actions or issues:

(1) Dismissal, demotion, or suspension without pay based upon an alleged violation of G.S. 126-35, if the employee is a career State employee.
(2) An alleged unlawful State employment practice constituting discrimination, as proscribed by G.S. 126-36, including:
  a. Denial of promotion, transfer, or training, on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by Chapter 168A of the General Statutes.
  b. Demotion, reduction in force, or termination of an employee in retaliation for the employee's opposition to alleged discrimination on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by Chapter 168A of the General Statutes.
(3) Retaliation against an employee, as proscribed by G.S 126-17, for protesting an alleged violation of G.S. 126-16.
(4) Denial of the veteran's preference granted in accordance with Article 13 of this Chapter in initial State employment or in connection with a reduction in force, for an eligible veteran as defined by G.S. 126-81.
(5) Denial of promotion for failure to post or failure to give priority consideration for promotion or reemployment, to a career State employee as required by G.S. 126-7.1 and G.S. 126-36.2.
(6) Denial of an employee's request for removal of allegedly inaccurate or misleading information from the employee's personnel file as provided by G.S. 126-25.
(7) Any retaliatory personnel action that violates G.S. 126-85.

(b) An applicant for initial State employment may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes based upon:

(1) Alleged denial of employment in violation of G.S. 126-16.

(2) Denial of the applicant's request for removal of allegedly inaccurate or misleading information from the ~~employee's~~ personnel file as provided by G.S. 126-25.

(3) Denial of equal opportunity for employment and compensation on account of the employee's age, sex, race, color, national origin, religion, creed, or handicapping condition as defined by Chapter 168A of the General Statutes. This subsection with respect to equal opportunity as to age shall be limited to persons who are at least 40 years of age.

(4) Denial of the veteran's preference in initial State employment provided by Article 13 of this Chapter, for an eligible veteran as defined by G.S. 126-81.

(5) Denial of employment based upon political affiliation, except as to an exempt policy-making position.

(c) In the case of a dispute as to whether a State employee's position is properly exempted from the State Personnel Act under G.S. 126-5, the employee may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes.

(d) A State employee or applicant for State employment may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes based upon a false accusation regarding, or disciplinary action relating to, the employee's alleged violation of G.S. 126-14 or G.S. 126-14.1.

(e) Any issue for which appeal to the State Personnel Commission through the filing of a contested case under Article 3 of Chapter 150B of the General Statutes has not been specifically authorized by this section shall not be grounds for a contested case under Chapter 126."

Section 4. G.S. 126-84 reads as rewritten:

"**§ 126-84. Statement of policy.**

(a) It is the policy of this State that State employees shall be encouraged to report verbally or in writing to their supervisor, department head, or other appropriate authority, evidence of activity by a State agency or State employee constituting:

(1) A violation of State or federal law, rule or regulation;

(2) Fraud;

(3) Misappropriation of State Resources; ~~or~~

(4) Substantial and specific danger to the public health and ~~safety.~~ safety; or

(5) Gross mismanagement, a gross waste of monies, or gross abuse of authority.

(b) Further, it is the policy of this State that State employees be free of intimidation or harassment when reporting to public bodies about matters of public

concern, including offering testimony to or testifying before appropriate legislative panels."

Section 5. G.S. 126-85 reads as rewritten:

"**§ 126-85. Protection from retaliation.**

(a) No head of any State department, agency or institution or other State employee exercising supervisory authority shall discharge, threaten or otherwise discriminate against a State employee regarding the State employee's compensation, terms, conditions, location, or privileges of employment because the State employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in G.S. 126-84, unless the State employee knows or has reason to believe that the report is inaccurate.

(a1) No State employee shall retaliate against another State employee because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in G.S. 126-84.

(b) No head of any State department, agency or institution or other State employee exercising supervisory authority shall discharge, threaten or otherwise discriminate against a State employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the State employee has refused to carry out a directive which in fact constitutes a violation of State or federal law, rule or regulation or poses a substantial and specific danger to the public health and safety.

(b1) No State employee shall retaliate against another State employee because the employee has refused to carry out a directive which may constitute a violation of State or federal law, rule or regulation, or poses a substantial and specific danger to the public health and safety.

(c) The protections of this Article shall include State employees who report any activity described in G.S. 126-84 to the State Auditor as authorized by G.S. 147-64.6(c)(16)."

Section 6. (a) Beginning July 1, 1997, and quarterly thereafter, the head of each State agency, department, or institution employing State employees subject to the State Personnel Act shall report to the Office of State Personnel on the following:

(1) The costs associated with the defense or settlement of administrative grievances and lawsuits filed by current or former State employees and applicants for State employment, including the costs of settlements, attorneys' fees, litigation expenses, damages, or awards incurred by the respective State agencies, departments, and institutions. The report shall include an explanation of the fiscal impact of these costs upon the operations of the State agency, department, or institution.

(2) The use of position qualification equivalencies in the hiring of State employees where an applicant for State employment or a candidate for a promotion satisfies specific educational or experience qualifications for a position by use of an equivalency relating to those specific qualifications. The report shall include an

explanation of the bases for each use of an equivalency resulting in the hiring of an applicant for State employment or the promotion of a State employee.

(b) Beginning May 1, 1998, and annually thereafter, the State Personnel Commission shall report to the Joint Legislative Commission on Governmental Operations on the costs associated with the defense or settlement of lawsuits and on the use of position qualification equivalencies, as compiled in accordance with subsection (a) of this section.

Section 7. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 315
Proposed Committee Substitute H315-CSLR-025
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: State Hires Most Qualified. (Public)

Sponsors:

Referred to: State Government, if favorable, Judiciary I.

February 25, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE STATE PERSONNEL ACT TO PROVIDE FOR THE OPEN, FAIR, AND NONPOLITICAL SELECTION OF THE MOST QUALIFIED PERSONS FOR STATE GOVERNMENT EMPLOYMENT BY LIMITING POLITICAL HIRINGS, TO PROVIDE FOR BROADER PROTECTIONS FOR STATE EMPLOYEES REPORTING GROSS MISMANAGMENT AND IMPROPER GOVERNMENT ACTIVITIES, AND TO PROVIDE FOR THE REPORTING OF CERTAIN HIRINGS AND OTHER MATTERS TO THE JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 126 of the General Statutes is amended by adding a new section to read:

"§ 126-14.2. Political hirings limited; open and fair competition; rules.

(a) It is the policy of this State that State departments, agencies, and institutions select the most qualified persons for State government employment based upon job-related qualifications of applicants for employment in accordance with G.S. 126-7.1, Articles 6 and 13 of this Chapter 126, and State personnel policies approved by the State Personnel Commission, and not based upon political affiliation, except that certain policy-

making positions in State government employment may be filled on bases including political affiliation as provided by G.S. 126-5.

(b) The personnel policies and procedures of the executive, legislative, and judicial branches shall be updated to implement nonpolitical hirings in accordance with subsection (a) of this section.

(c) The State Personnel Commission shall adopt rules to:

(1) Encourage open and fair competition for positions in State government employment.

(2) Ensure the proper and thorough advertisement of job openings in State government employment and lengthen, as appropriate, the period for submitting applications for State government employment. Further, the State Personnel Commission may require that a closing date shall be posted for each job opening.

(3) Assure that State departments, agencies, and institutions follow similar selection processes when hiring State employees.

(4) Assure that State supervisory personnel receive adequate training to carry out the State's policy of hiring the most qualified persons."

Section 2. G.S. 126-5(c1) reads as rewritten:

"(c1) Except as to the provisions of G.S. 126-14.2(a) and (b) and Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) Constitutional officers of the State.

(2) Officers and employees of the Judicial Department.

(3) Officers and employees of the General Assembly.

(4) Members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis.

(5) Officials or employees whose salaries are fixed by the General Assembly, or by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State.

(6) Employees of the Office of the Governor that the Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.

(7) Employees of the Office of the Lieutenant Governor, that the Lieutenant Governor, at any time, in his discretion, exempts from the application of the

provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.

(8) Instructional and research staff, physicians, and dentists of The University of North Carolina.

(9) Employees whose salaries are fixed under the authority vested in the Board of Governors of The University of North Carolina by the provisions of G.S. 116-11(4), 116-11(5), and 116-14.

(10) Repealed by Session Laws 1991, c. 84, s. 1.

(11) North Carolina School of Science and Mathematics' employees whose salaries are fixed in accordance with the provisions of G.S. 116-235(c)(1) and G.S. 116-235(c)(2).

(12) Employees of the North Carolina Low-Level Radioactive Waste Management Authority whose salaries are fixed pursuant to G.S. 104G-5(g)(1) and G.S. 104G-5(g)(2).

(13) Employees of the North Carolina Hazardous Waste Management Commission whose salaries are fixed pursuant to G.S. 130B-6(g)(1) and G.S. 130B-6(g)(2).

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(1) Dismissal, demotion, or suspension without pay based upon an alleged violation of G.S. 126-35, if the employee is a career State employee.

(2) An alleged unlawful State employment practice constituting discrimination, as proscribed by G.S. 126-36, including:

a. Denial of promotion, transfer, or training, on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by Chapter 168A of the General Statutes.

b. Demotion, reduction in force, or termination of an employee in retaliation for the employee's opposition to alleged discrimination on account of the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by Chapter 168A of the General Statutes.

(3) Retaliation against an employee, as proscribed by G.S 126-17, for protesting an alleged violation of G.S. 126-16.

(4) Denial of the veteran's preference granted in accordance with Article 13 of this Chapter in initial State employment or in connection with a reduction in force, for an eligible veteran as defined by G.S. 126-81.

(5) Denial of promotion for failure to post or failure to give priority consideration for promotion or reemployment, to a career State employee as required by G.S. 126-7.1 and G.S. 126-36.2.

(6) Denial of an employee's request for removal of allegedly inaccurate or misleading information from the employee's personnel file as provided by G.S. 126-25.

(7) Any retaliatory personnel action that violates G.S. 126-85.

(b) An applicant for initial State employment may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes based upon:

(1) Alleged denial of employment in violation of G.S. 126-16.

(2) Denial of the applicant's request for removal of allegedly inaccurate or misleading information from the ~~employee's~~ personnel file as provided by G.S. 126-25.

(3) Denial of equal opportunity for employment and compensation on account of the employee's age, sex, race, color, national origin, religion, creed, or

handicapping condition as defined by Chapter 168A of the General Statutes. This subsection with respect to equal opportunity as to age shall be limited to persons who are at least 40 years of age.

(4) Denial of the veteran's preference in initial State employment provided by Article 13 of this Chapter, for an eligible veteran as defined by G.S. 126-81.

(5) Denial of employment based upon political affiliation, except as to an exempt policy-making position.

(c) In the case of a dispute as to whether a State employee's position is properly exempted from the State Personnel Act under G.S. 126-5, the employee may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes.

(d) A State employee or applicant for State employment may file in the Office of Administrative Hearings a contested case under Article 3 of Chapter 150B of the General Statutes based upon a false accusation regarding, or disciplinary action relating to, the employee's alleged violation of G.S. 126-14 or G.S. 126-14.1.

(e) Any issue for which appeal to the State Personnel Commission through the filing of a contested case under Article 3 of Chapter 150B of the General Statutes has not been specifically authorized by this section shall not be grounds for a contested case under Chapter 126."

Section 4. G.S. 126-84 reads as rewritten:

"**§ 126-84. Statement of policy.**

(a) It is the policy of this State that State employees shall be encouraged to report verbally or in writing to their supervisor, department head, or other appropriate authority, evidence of activity by a State agency or State employee constituting:

(1) A violation of State or federal law, rule or regulation;

(2) Fraud;

(3) Misappropriation of State Resources; ~~or~~

(4) Substantial and specific danger to the public health and ~~safety.~~ safety; or

(5) Gross mismanagement, a gross waste of monies, or gross abuse of authority.

(b) Further, it is the policy of this State that State employees be free of intimidation or harassment when reporting to

public bodies about matters of public concern, including offering testimony to or testifying before appropriate legislative panels."

Section 5. G.S. 126-85 reads as rewritten:

"**§ 126-85. Protection from retaliation.**

(a) No head of any State department, agency or institution or other State employee exercising supervisory authority shall discharge, threaten or otherwise discriminate against a State employee regarding the State employee's compensation, terms, conditions, location, or privileges of employment because the State employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in G.S. 126-84, unless the State employee knows or has reason to believe that the report is inaccurate.

(a1) No State employee shall retaliate against another State employee because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, any activity described in G.S. 126-84.

(b) No head of any State department, agency or institution or other State employee exercising supervisory authority shall discharge, threaten or otherwise discriminate against a State employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the State employee has refused to carry out a directive which in fact constitutes a violation of State or federal law, rule or regulation or poses a substantial and specific danger to the public health and safety.

(b1) No State employee shall retaliate against another State employee because the employee has refused to carry out a directive which may constitute a violation of State or federal law, rule or regulation, or poses a substantial and specific danger to the public health and safety.

(c) The protections of this Article shall include State employees who report any activity described in G.S. 126-84 to the State Auditor as authorized by G.S. 147-64.6(c)(16)."

Section 6. (a) Beginning July 1, 1997, and quarterly thereafter, the head of each State agency, department, or institution employing State employees subject to the State Personnel Act shall report to the Office of State Personnel on the following:

(1) The costs associated with the defense or settlement of administrative grievances and lawsuits filed by current or former State employees and applicants for State employment, including the costs of

settlements, attorneys' fees, litigation expenses, damages, or awards incurred by the respective State agencies, departments, and institutions. The report shall include an explanation of the fiscal impact of these costs upon the operations of the State agency, department, or institution.

(2) The use of position qualification equivalencies in the hiring of State employees where an applicant for State employment or a candidate for a promotion satisfies specific educational or experience qualifications for a position by use of an equivalency relating to those specific qualifications. The report shall include an explanation of the bases for each use of an equivalency resulting in the hiring of an applicant for State employment or the promotion of a State employee.

(b) Beginning May 1, 1998, and annually thereafter, the State Personnel Commission shall report to the Joint Legislative Commission on Governmental Operations on the costs associated with the defense or settlement of lawsuits and on the use of position qualification equivalencies, as compiled in accordance with subsection (a) of this section.

Section 7. This act is effective when it becomes law.

State Employees
Association
of North Carolina

January 28, 1997

The Honorable Carolyn B. Russell
North Carolina House of Representatives
Room 2207, Legislative Building
Raleigh, NC 27601

Dear Representative Russell:

Welcome back to the start of a new legislative session. The officers, staff and members of the State Employees Association look forward to another two years of working in partnership with you to make the lives of state employees and the citizens of North Carolina better.

Recently you contacted my office by phone indicating your interest in following through with previously introduced legislation prohibiting political patronage in State personnel actions. As you know, this has been an objective of the Association for many years. During the 1996 Annual SEANC Convention, the members voted to retain that objective for work during the upcoming legislative session. The current objective reads as follows:

> *Adopt legislation that will make it illegal for an elected official, department, division or section head to hire, fire, promote, demote, or transfer a non-exempt employee based on political affiliation or non-political affiliation or authorize anyone under supervision to hire, fire, promote, demote, or transfer any non-exempt employee based on political affiliation or non-political affiliation.*

Current language contained in North Carolina General Statutes §126-36 grants State Employees the right to appeal all actions listed above to the State Personnel Commission. The statute does not, however, cite any sanctions to offenders.

We appreciate your continued interest in SEANC issues and look forward to working with you towards a better patronage policy for all of State Government. Please contact the SEANC office if we can by of any assistance as you move forward.

With kindest personal regards,

Troy K. Green
Executive Director

PO Drawer 27727
Raleigh, NC 27611

Tel (919)833-6436/1-800-222-2758

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NORTH CAROLINA GENERAL ASSEMBLY GOVERNMENT PERFORMANCE AUDIT COMMITTEE

PERFORMANCE AUDIT OF PERSONNEL SYSTEMS

Final Report
December 1992

DRAFT

- Ineffective management of the performance management system

Overall, the respondents negatively perceived personnel-related issues.

In addition, the morale among State managers and workers is poor. During this government performance audit, the personnel and organization/staffing team interviewed various levels of managers throughout the executive, judicial, and legislative branches of government. A common frustration among managers interviewed is that the limitations and inflexibility of the personnel system do not allow management the ability to manage effectively. In addition, most executive branch managers interviewed believed that they were not given the necessary tools to manage effectively.

Recommendations

- The State of North Carolina should continue to conduct the employee opinion survey on an annual basis.

- The State should continue to communicate the information received from this survey to the employees. This communication process should be aimed at increasing awareness and understanding to gain greater commitment to the State's goals and objectives. If communicated in a timely manner, the communication of this information also should improve job performance, enhance job satisfaction, and increase motivation. Developing effective employee communications and involvement procedures can generate many benefits. These are illustrated by Exhibit 3-10.

- The employee opinion survey should differentiate between managers and staff and should include all three branches of government. The employee opinion survey should be conducted and administered by the Office of State Personnel.

- To begin an appropriate year-to-year benchmarking process, the State needs to establish appropriate baseline survey questions to ensure useful, "apples to apples" comparisons in the years to come.

✳ *Finding 5 - The culture and policies of the State's personnel program do not discourage patronage considerations in hiring decisions*

In the Phase I personnel performance audit, there were broad-based concerns expressed and anecdotes cited concerning the influence of patronage particularly on initial hiring decisions in State government. These concerns not only pertained to selection decisions for higher grade and salary positions, but also included lower grade positions in State government. It was often noted that even a low grade State position may be among the highest paying and most secure jobs in many parts of the State. Consequently the competition for such positions is high and, according to many persons interviewed, support of influential State officials has historically been an asset to applicants in securing such positions. The results

of GPAC's State employee survey also showed that one of their greatest concerns dealt with the effects of patronage on hiring and related personnel decisions.

In-depth research and investigations of patronage and its effects were not performed in Phase I. However, there is considerable anecdotal information that indicates patronage influences have historically existed and currently exist in State personnel practices, particularly in initial hiring decisions. Such practices are inconsistent with the application of sound human resource management practices that are designed to hire, train, and retain the most highly qualified individuals for the State workforce and promote equal employment opportunity for all State citizens. Even the perception of patronage on hiring or promotion or dismissal decisions by State managers and agencies can result in morale and service delivery problems, the loss of credibility of managers and supervisors, exposure to lawsuits and grievances, and the hiring of less qualified applicants for State jobs.

Recommendation

To eliminate the reality and perception of patronage on State personnel practices in the future and to establish a human resource management culture that is consistent with and fully supportive of the recommendations in this report, the following recommendations should be adopted by the State for SPA and non-policy related EPA positions:

- The General Assembly should pass legislation specifying that it is State policy to hire candidates based on their qualifications and without regard to political affiliation.

  This legislation also should require OSP and all State agencies to update their personnel policies and procedures to implement this new policy and establish associated controls. Procedures should require that all applicant referrals, from within or outside State government, follow the same selection process. OSP should develop and implement procedures to monitor compliance with such policies and procedures. This legislation should also require the applicable agency supervisors and hiring managers to sign a certification indicating that a hiring decision was made in accordance with State and agency personnel policies and was not made on the basis of patronage.

- The heads of the three branches of State government should regularly reinforce the importance of complying with this policy to the agencies and employees under their control.

- State managers, supervisors, and personnel officials should be trained in applying the new procedures.

- To encourage open competition for available State positions, OSP should require agencies to broaden advertisements of State job openings and to lengthen the period for submitting applications.

VISITOR REGISTRATION SHEET

JUDICIARY I — 4-22-97 — 10 am
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Kim Smith	NCCU
Peg Dorer	NCCDA
Tammy Davis	Womble Carlyle Sandridge & Rice
Jim Fotiadis	Tanner Bailey & Assoc.
Gary Bailey	" " "
Jan Duncan	Womble Carlyle
Sandy Sands	"
Tom Andrews	AOC
Carl Goodall	OSP
Nellie Riley	OSP
Pat Bradford	SEANC
Troy Green	SEANC
Wendy Mills	SEANC
Dawn Lyons	SEANC
Lucia Lee	NCNS

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jane P. Gray	DOJ

HOUSE COMMITTEE ON JUDICIARY I

Wednesday, April 23, 1997 no tape
Room 1327 LB
1:00 p.m.

OPENING REMARKS:
Representative N. Leo Daughtry, Chairman

H.B. 268 DIVIDE DISTRICT 22
Sponsor: Representative Brawley

H.B. 433 CONCEALED HANDGUN EXEMPTION
Sponsor: Representative Gulley

H.B. 507 MANDITORY JAIL FOR SOME D.W.I.
Sponsor: Representative Hunter

H.B. 513 REGULATE PERSONAL WATERCRAFT
Sponsor: Representative Preston ***(Subcommittee Report)***

H.B. 580 NONRESIDENT HANDGUN PERMIT
Sponsor: Representative Thompson

H.B. 739 MV DEALERS/MANUFACTURERS LIC. LAW
Sponsor: Representative Dickson ***(Subcommittee Report)***

H.B. 939 DRUG TAX FOR CrimeStopper
Sponsor: Representative Hurley

JUDICIARY ONE *PASSED AWAITING REPORTING/PRINTING*

April 23-24 1997

H.B. 739 MV DEALERS/MANUFACTURERS LIC. LAW -- PCS
H.B. 507 MANDITORY JAIL FOR SOME D.W.I. – PCS (REPORTED 4/24)
H.B. 433 CONCEALED HANDGUN EXEMPTION - - PASSED FAV (REPORTED)
H.B. 873 AGE OF UNDISCIPLINED JUVENILES – PCS
H.B 939 DRUG TAX FOR CrimeStopper
H.B. 652 () PCS
H.B. 470 MEDICAL INVESTIGATORS (REPORTED)
H.B. 855 LEE COMMISSIONERS ELECTIONS (REPORTED)
H.B. 502 MOTORCYCLE LEARNERS PERMIT
H.B. 580 NONRESIDENT HANDGUN PERMIT
H.B. 499 (READY) – Not yet reported out of referring committee
H.B. 431 PCS
H.B. 1012 READY
H.B. 1071 READY
H.B. 1120 PCS
H.B. 1008 READY
H.B. 870 PCS
H.B. 869 PCS

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

April 24

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Daughtry and Hardy** for the Committee on JUDICIARY I .

☐ Committee Substitute for

H.B. 507 A BILL TO BE ENTITLED AN ACT TO REQUIRE MANDATORY ACTIVE JAIL SENTENCES FOR PERSONS CONVICTED OF DRIVING WHILE IMPAIRED WITH BLOOD ALCOHOL LEVELS OF MORE THAN FIFTEEN HUNDREDTHS PERCENT.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

X With a favorable report as to committee substitute bill, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

North Carolina General Assembly
Legislative Services Office

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(919) 733-7044

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16 W. Jones Street
Raleigh, NC 27603-5925
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Raleigh, NC 27603-5925
(919) 733-2578

April 22, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **House Bill 507; Mandatory jail for certain DWI offenses**

House Bill 507 adds requirements for minimum jail sentences for certain blood alcohol concentrations of person convicted of impaired driving. It also proposes minimum appearance bond requirements for persons charged with impaired driving offenses.

Section 1 of the bill amends G.S. 20-179 which provides the methods for sentencing persons convicted of impaired driving. New subsection (u) would provide that a person convicted of impaired driving with an alcohol concentration of more than 0.15 at any relevant time after driving would serve an active jail term, in addition to any other sentence imposed, based upon the level of alcohol concentration. A person with a concentration of 0.16 would be sentenced to two days in jail. For each additional alcohol concentration of 0.01 the person would serve two additional days in jail. If special probation is imposed, defendant must still serve imprisonment equal to the mandatory time imposed by this subsection. If the defendant is punished under Level 3, 4 or 5 of G.S. 20-179, the judge may order the person to perform 24 hours of community service in lieu of each day in jail mandated by this new subsection. Jail time is served in the county jail unless the person is sentenced to an active sentence in prison. In that event, the additional days may be served concurrently with the active sentence.

Section 2 amends G.S. 15A-534.2 which governs detention of impaired drivers. It adds a new subsection (e) to provide that a defendant charged with impaired driving, with impaired driving in a commercial vehicle, or with driving by a person less than 21 years old after having consumed any amount of alcohol or a controlled substance, where the evidence indicates an alcohol concentration in excess of 0.15, must post a secured appearance bond in an amount of not less than $500.

The act becomes effective January 1, 1998, and applies to offenses committed on or after that date. An incarceration note is required.

H507-SMRL-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 507

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H507-ARL-001

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

Representative R. Hunter

moves to amend the bill on page 1, line 21, by deleting "24" and substituting "eight".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

April 24

H 1

HOUSE BILL 507

Short Title: Mandatory Jail for Some D.W.I. (Public)

Sponsors: Representatives R. Hunter; Beall, Brown, Dedmon, Goodwin, Hardy, Hightower, Jeffus, Mosley, Starnes, and Yongue.

Referred to: Judiciary I.

March 12, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE MANDATORY ACTIVE JAIL SENTENCES FOR PERSONS CONVICTED OF DRIVING WHILE IMPAIRED WITH BLOOD ALCOHOL LEVELS OF MORE THAN FIFTEEN HUNDREDTHS PERCENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-179 is amended by adding a new subsection to read:

"(u) Notwithstanding any other provision of law and in addition to any other incarceration ordered under this section, a person convicted of impaired driving with an alcohol concentration of more than 0.15 at any relevant time after driving shall serve an active jail term based on that alcohol concentration at any relevant time after driving.

A person convicted of driving while impaired with an alcohol concentration of 0.16 at any relevant time after driving shall be sentenced to two days in jail. For each alcohol concentration of 0.01 in the person's blood above the alcohol concentration of 0.16 at any relevant time after driving, that person shall serve two additional days in jail.

The mandatory days in jail required by this subsection may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment equal to the mandatory days in jail required by this subsection.

For any defendant who is punished at Level Three, Level Four, or Level Five, the sentencing judge may order the person to perform 24 hours of community service in lieu of each day in jail mandated by this subsection.

The days to be served in jail mandated by this subsection shall be served in a county jail unless the defendant is sentenced to serve an active sentence in prison and then the days mandated by this subsection may be served concurrently with that active sentence."

Section 2. G.S. 15A-534.2 is amended by adding a new subsection to read:

"(e) A defendant charged with an impaired driving offense under G.S. 20-138.1, 20-138.2, or 20-138.3 with evidence of an alcohol concentration in excess of 0.15 shall post a secured appearance bond in accordance with G.S. 15A-534, in an amount not less than five hundred dollars ($500.00)."

Section 3. This act becomes effective January 1, 1998, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 739*
Proposed Committee Substitute H739-PCS2308

Short Title: MV Dealers/Manufacturers Lic. Law. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN AND CLARIFY THE DEALERS AND MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-297.1. Prefiling of franchise agreements and amendments.**

Any franchise, as defined in G.S. 20-286(8a), offered to a motor vehicle dealer in this State shall provide that all terms and conditions in the agreement inconsistent with any of the laws or rules of this State are of no force and effect. On or before January 1, 1998, every manufacturer, factory branch, distributor, or distributor branch licensed by the Commissioner under this Article which uses an identical or substantially similar form franchise for its dealers or distributors in this State shall file with the Commissioner a copy of the franchise and all supplements. Any applicant for licensing by the Commissioner as a manufacturer, factory branch, distributor, or distributor branch licensed under this Article, which would use an identical or substantially similar form franchise, as defined in G.S. 20-286(8a), for its dealers or distributors in this State, shall, as a condition for the issuance of a license, file with the Commissioner a copy of the franchise and all supplements thereto. Not later than 60 days prior to the date a revision, modification, or addition to a franchise is offered generally to a licensee's franchisees in this State, the licensee shall notify the Commissioner of the proposed revision, modification, or addition to the franchise on file with the Commissioner and include with the notification:

(1) A copy of the form franchise which incorporates all of the proposed revisions, modifications, and additions;

(2) A separate statement which identifies and provides a detailed description of all substantive revisions, modifications, and additions proposed.

It shall be unlawful for a franchise or any addendum or supplement thereto to be offered to a motor vehicle dealer in this State after January 1, 1998, until an applicant or licensee has complied with all of the requirements of this section. The Commissioner is authorized and directed to investigate and prevent violations of this section, including inconsistencies of any manufacturer's franchise with the provisions of this Article."

Section 2. G.S. 20-301 reads as rewritten:

"**§ 20-301. Powers of Commissioner.**

(a) The Commissioner shall promote the interests of the retail buyer of motor vehicles.

(b) The Commissioner shall have power to prevent unfair methods of competition and unfair or deceptive acts or ~~practices.~~ practices and other violations of this Article. Any franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer holds a currently valid franchise has violated or is currently violating any provision of this Article may file a petition before the Commissioner setting forth the factual and legal basis for such violations. The Commissioner shall promptly forward a copy of the petition to the named manufacturer, factory branch, distributor, or distributor branch requesting a reply to the petition within 30 days. Allowing for sufficient time for the parties to conduct discovery, the Commissioner or his designee shall then hold an evidentiary hearing and render findings of fact and conclusions of law based on the evidence presented. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

(c) The Commissioner shall have the power in hearings arising under this Article to enter scheduling orders and limit the time and scope of discovery; to determine the date, time, and place where ~~they shall be~~ hearings are to be held; to subpoena witnesses; to take depositions of witnesses; and to administer oaths.

(d) The Commissioner may, whenever he shall believe from evidence submitted to him that any person has been or is violating any provision of this Article, in addition to any other ~~remedy~~ remedy, bring an action in the name of the State against ~~such~~ that person and any other persons concerned or in any way participating in, or about to participate in practices or acts so in violation, to enjoin ~~such~~ any persons ~~and such other persons~~ from continuing the ~~same.~~ violations.

(e) ~~The Commissioner shall limit the time for discovery in any contested administrative hearing conducted pursuant to Article 12 to a time not to exceed 60 days. The Commissioner may extend the time for discovery beyond 60 days either upon the consent of all parties to the proceeding or upon application of one or more~~

~~parties to the proceeding for good cause shown.~~ The Commissioner may issue rules and regulations to implement the provisions of this section and to establish procedures related to administrative proceedings commenced under this section."

Section 3. G.S. 20-305 reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

(1) To require, coerce, or attempt to coerce any dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities, which shall not have been ordered by such dealer;

(2) To require, coerce, or attempt to coerce any dealer to enter into any agreement with such manufacturer, factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to such dealer, by threatening to cancel any franchise existing between such manufacturer, factory branch, distributor, distributor branch, or representative thereof, and such dealer;

(3) Unfairly without due regard to the equities of the dealer, and without just provocation, to cancel the franchise of such dealer;

(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, or relocation of the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed transfer, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor the transfer, sale, assignment, relocation, or change is unreasonable under the circumstances. No franchise may be transferred, sold, assigned, relocated, or the executive management or principal operators changed, unless the franchisor has been given at least 30 days' prior written notice as to the identity, financial ability, and qualifications of the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed relocation. The franchisor shall send the dealership notice of objection, by registered or certified mail, return receipt requested, to the proposed transfer, sale, assignment,

relocation, or change within 30 days after receipt of notice from the dealer, as provided in this section. Failure by the franchisor to send notice of objection within 30 days shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. The manufacturer or distributor has the burden of proving that the proposed transfer, sale, assignment, relocation, or change is unreasonable under the circumstances.

a. A manufacturer or distributor shall be permitted to exercise a right of first refusal to acquire the new vehicle dealer's assets or ownership in the event of a proposed change of all, or substantially all, ownership or transfer of all, or substantially all, dealership assets, if all of the following requirements are met:

1. To exercise its right of first refusal, the manufacturer or distributor must notify the dealer in writing within 30 days after receipt of notice from a dealer of a proposed transfer, sale, or assignment as set forth in sub-subdivision a. above.
2. The exercise of the right of first refusal will result in the dealer and dealer's owners receiving the same or greater consideration as they have contracted to receive in connection with the proposed change of all, or substantially all, ownership or transfer of all, or substantially all, dealership assets.
3. The proposed change of all, or substantially all, ownership or transfer of all, or substantially all, dealership assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one or more dealer owners to a designated successor, the spouse, child or grandchild, spouse of a child or grandchild, brother, sister or parent of the dealer owner, of one or more dealer owners or to a qualified manager or to a partnership or corporation controlled by such persons.
4. The manufacturer or distributor agrees to pay the reasonable expenses, including reasonable attorneys' fees which do not exceed the usual, customary and reasonable fees charged for similar work done for other clients, incurred by the existing dealer and the proposed new owner and transferee prior to the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed change of all, or

substantially all, ownership or transfer of all, or substantially all, dealership assets. Notwithstanding the foregoing, no payment of such expenses and attorneys' fees shall be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within 30 days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. Such an accounting may be requested by a manufacturer or distributor before exercising its right of first refusal.

(5) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new motor vehicle dealer until the Commissioner has held a hearing, nor thereafter, if the Commissioner has determined that there is good cause for not permitting the addition or relocation of such new motor vehicle dealer.

a. This section does not apply:

1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle; or
2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;
3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership;

4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market area.

b. In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:

1. The permanency of the investment of both the existing and proposed additional new motor vehicle dealers;
2. Growth or decline in population, density of population, and new car registrations in the relevant market area;
3. Effect on the consuming public in the relevant market area;
4. Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
5. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the same line make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;
6. Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer in the relevant market area would increase competition in a manner such as to be in the long-term public interest; and
7. The effect on the relocating dealer of a denial of its relocation into the relevant market area.

c. The Commissioner ~~must~~ shall try to conduct the hearing and render his final determination ~~as expeditiously as possible, but in any event no later than~~ if possible, within 180 days after a protest is filed. ~~Unless waived by the parties, failure to do so shall be deemed the equivalent of a determination that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealer,~~

~~unless such delay is caused by acts of the manufacturer, or the relocating or additional dealer.~~

d. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

e. In a hearing involving a proposed additional dealership, the manufacturer or distributor has the burden of proof under this section. In a proceeding involving the relocation of an existing dealership, the dealer seeking to relocate has the burden of proof under this section.

f. If the Commissioner determines, following a hearing, that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealership, the dealer seeking the proposed additional or relocated motor vehicle dealership must, within two years, obtain a license from the Commissioner for the sale of vehicles at the relevant site, and actually commence operations at the site selling new motor vehicles of all line makes, as permitted by the Commissioner. Failure to obtain a permit and commence sales within two years shall constitute waiver by the dealer of the dealer's right to the additional or relocated dealership, requiring renotification, a new hearing, and a new determination as provided in this section.

g. For purposes of this subdivision, the addition, creation, or operation of a 'satellite' or other facility, not physically part of or contiguous to an existing licensed new motor vehicle dealer, whether or not owned or operated by a person or other entity holding a franchise as defined by G.S. 20-286(8a), at which warranty service work authorized or reimbursed by a manufacturer is performed or at which new motor vehicles are offered for sale to the public, shall be considered an additional new motor vehicle dealer requiring a showing of good cause, prior notification to existing new motor vehicle dealers of the same line make of vehicle within the relevant market area by the manufacturer and the opportunity for a hearing before the Commissioner as provided in this subdivision.

(6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements of subparagraph c. and the Commissioner has

determined, if requested in writing by the dealer within the time period specified in G.S. 20-305(6)c1II, III or IV, as applicable, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed, and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner ~~must~~ shall try to conduct the hearing and render a final determination ~~no later than~~ within 180 days after a petition has been ~~filed; provided, however, that the Commissioner may extend such period of time upon application of a party and for good cause shown, or upon the consent of all parties to the proceeding.~~ filed. If the termination, cancellation or nonrenewal is pursuant to G.S. 20-305(6)c1III then the Commissioner shall give the proceeding priority consideration and shall try to render his final determination no later than 90 days after the petition has been filed. Any parties to a hearing by the Commissioner under this section shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

a. Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:

   1. There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship provided that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of such failure;
   2. If the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; and

I. The notification stated that notice was provided of failure of performance pursuant to this section;

II. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with the criteria; and

III. The new motor vehicle dealer failed to demonstrate substantial progress towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.

b. The manufacturer shall have the burden of proof under this section.

c. Notification of Termination, Cancellation and Nonrenewal. --

1. Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:

I. In the manner described in G.S. 20-305(6)c2 below; and

II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or

III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:

A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or

circumstances beyond the direct control of the new motor vehicle dealer;

C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;

D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.

IV. Not less than 180 days prior to the effective date of such termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.

2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:

I. A statement of intention to terminate, cancel or not to renew the franchise;

II. A statement of the reasons for the termination, cancellation or nonrenewal; and

III. The date on which the termination, cancellation or nonrenewal takes effect.

3. Notification provided in G.S. 20-305(6)c1II of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the 180 days designated in G.S. 20-305(6)a2II provided the notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.

d. Payments. --

1. Upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, pursuant to this section, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:

I. New motor vehicle inventory that has been acquired from the manufacturer within 18 months, at a price not to exceed the original manufacturer's price to the dealer, and which has not been altered or damaged, and which has not been driven more than 200 miles, and for which no certificate of title has been issued;

II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer, at a

price not to exceed the original manufacturer's price to the dealer, provided such supplies and parts are currently offered for sale by the manufacturer or distributor in its current parts catalogs and are in salable condition;

III. Equipment and furnishings that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources; and

IV. Special tools that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise.

2. Fair and reasonable compensation for the above shall be paid by the manufacturer within 90 days of the effective date of termination, cancellation or nonrenewal, provided the new motor vehicle dealer has clear title to the inventory and has conveyed title and possession to the manufacturer.

e. Dealership Facilities Assistance upon Termination, Cancellation or Nonrenewal. --

In the event of the termination, cancellation or nonrenewal by the manufacturer or distributor under this section, except termination, cancellation or nonrenewal for insolvency, license revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner:

1. Subject to paragraph 3, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or such longer term as is provided in the franchise agreement between the dealer and manufacturer; or

2. Subject to paragraph 3, if the new motor vehicle dealer owns the dealership facilities, the manufacturer shall pay the new motor vehicle dealer a sum

equivalent to the reasonable rental value of the dealership facilities for one year.

3. Provided nothing in this paragraph e. shall relieve a lessee or owner, as the case may be, from the obligation to mitigate damages under the lease, nor prevent a manufacturer from occupying and using the dealership facilities while paying rent under subsections 1 and 2, nor prevent a manufacturer from obligations by negotiating a lease termination, a sublease or a new lease. Any amounts recovered by the lessee or owner resulting from mitigation of damages shall be deducted from the amount due from the manufacturer.

f. The provisions of paragraphs d. and e. above shall not be applicable when the termination, nonrenewal or cancellation of the franchise agreement is the result of the voluntary act of the dealer.

(7) Notwithstanding the terms of any contract or agreement, to prevent or refuse to honor the succession to a dealership, including the franchise, by a motor vehicle dealer's designated successor as provided for under this subsection.

a. Any owner of a new motor vehicle dealership may appoint by will, or any other written instrument, a designated family member successor to succeed in the ownership interest of the said owner in the new motor vehicle dealership, including the franchise, upon the death or incapacity of the owner.

b. Any objections by a manufacturer or distributor to an owner's appointment of a designated successor shall be asserted in accordance with the following procedure:

1. Within 30 days after receiving written notice of the identity of the owner's designated successor and general information as to the financial ability and qualifications of the designated successor, the franchisor shall send the owner and designated successor notice of objection, by registered or certified mail, return receipt requested, to the appointment of the designated successor. The notice of objection shall state in detail all facts which constitute the basis for the contention on the part of the manufacturer or distributor that good cause, as defined in this sub-subdivision below, exists for rejection of the designated ~~family member~~ successor. Failure by the franchisor to send notice of objection

within 30 days and otherwise as provided in this sub-subdivision shall constitute waiver by the franchisor of any right to object to the appointment of the designated successor.

2. Any time within 30 days of receipt of the manufacturer's notice of objection the owner or the designated successor may file a request in writing with the Commissioner that the Commissioner hold an evidentiary hearing and determine whether good cause exists for rejection of the designated successor. When such a request is filed, the Commissioner shall promptly inform the affected manufacturer or distributor that a timely request has been filed.

3. The Commissioner shall endeavor to hold the evidentiary hearing required under this sub-subdivision and render a determination within 180 days after receipt of the written request from the owner or designated successor. In determining whether good cause exists for rejection of the owner's appointed designated successor, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the franchisor's existing and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area.

4. Any parties to a hearing by the Commissioner concerning whether good cause exists for the rejection of the dealer's designated successor shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

5. Nothing in this sub-subdivision shall preclude a manufacturer or distributor from, upon its receipt of written notice from a dealer of identity of the dealer's designated successor, requiring that the designated successor promptly provide personal and financial data that is reasonably necessary to determine the financial ability and qualifications of the designated successor; provided, however, that such a request for additional information shall not delay any of the time periods or constraints contained herein.

6. In the event death or incapacity of the owner occurs prior to the time a manufacturer or distributor receives notice of the owner's appointment of a designated successor or before the Commissioner has rendered a determination as provided above, the existing franchise shall remain in effect and the designated successor shall be deemed to have succeeded to all of the owner's rights and obligations in the dealership and under the franchise until a determination is made by the Commissioner or the rights of the parties have otherwise become fixed in accordance with this sub-subdivision.

c. Except as otherwise provided in sub-subdivision d. of this subdivision, any designated successor of a deceased or incapacitated owner of a new motor vehicle dealership appointed by such owner in substantial compliance with this section shall, by operation of law, succeed at the time of such death or incapacity to all of the ownership rights and obligations of the owner in the new motor vehicle dealership and under the existing franchise.

d. Within 60 days after the death or incapacity of the owner, a designated successor appointed in substantial compliance with this section shall give the affected manufacturer or distributor written notice of his or her succession to the ownership of the new motor vehicle dealership; provided, however, that the failure of the designated successor to give the manufacturer or distributor written notice as provided above within 60 days of the owner's death or incapacity shall not result in the waiver or termination of the designated successor's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated successor may give the notice required hereunder, provided the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity. Within 30 days of receipt of the notice by the manufacturer or distributor from the designated successor provided in this paragraph, the manufacturer or distributor may request that the designated

successor complete the application forms generally utilized by the manufacturer or distributor to review the designated successor's qualifications to establish a successor dealership. Within 30 days of receipt of the completed forms, the manufacturer or distributor shall send a letter by certified or registered mail, return receipt requested, advising the designated successor of facts and circumstances which have changed since the manufacturer's or distributor's original approval of the designated successor, and which have caused the manufacturer or distributor to object to the designated successor. Upon receipt of such notice, the designated successor may either designate an alternative successor or may file a request for evidentiary hearing in accordance with the procedures provided in sub-subdivisions b. 2.-5. of this subdivision. In any such hearing, the manufacturer or distributor shall be limited to facts and circumstances which did not exist at the time the designated successor was originally approved or evidence which was originally requested to be produced by the designated successor at the time of the original request and was either not produced or the material which was produced was incorrect.

e. The designated successor shall agree to be bound by all terms and conditions of the franchise in effect between the manufacturer or distributor and the owner at the time of the owner's death or incapacity, if so requested in writing by the manufacturer or distributor subsequent to the owner's death or incapacity.

f. This section does not preclude an owner of a new motor vehicle dealership from designating any person as his successor by written instrument filed with the manufacturer or distributor, and, in the event there is an inconsistency between the successor named in such written instrument and the designated successor otherwise appointed by the owner consistent with the provisions of this section, and that written instrument has not been revoked by the owner of the new motor vehicle dealership in writing to the manufacturer or distributor, then the written instrument filed with the manufacturer or distributor shall govern as to the appointment of the successor.

(8) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by the manufacturer or distributor.

(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to participate monetarily in an advertising campaign or contest, or to purchase unnecessary or unreasonable quantities of any promotional materials, training materials, training programs, showroom or other display decorations or materials at the expense of the new motor vehicle dealer, provided that nothing in this subsection shall preclude a manufacturer or distributor from including an unitemized uniform charge in the base price of the new motor vehicle charged to the dealer where such charge is attributable to advertising costs incurred or to be incurred by the manufacturer or distributor in the ordinary courses of its business.

(10) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change the capital structure of the new motor vehicle dealer or the means by or through which the new motor vehicle dealer finances the operation of the dealership provided that the new motor vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria; and also provided that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor, provided that said consent shall not be unreasonably withheld.

(11) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products; Provided, however, that this subsection does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and the new motor vehicle dealer remains in compliance with any reasonable capital standards and facilities requirements of the manufacturer. The reasonable facilities requirements shall not include any requirement that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

(12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change location of the dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles so as to justify such an expansion, in light of the current market and economic conditions.

(13) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this law or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the State or the United States of America, or to the Commissioner, if such referral would be binding upon the new motor vehicle dealer.

(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's relevant market area, and within a reasonable time, after receipt of an order from a dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts or accessories to new vehicles as are covered by such franchise, and such vehicles, parts or accessories as are publicly advertised as being available or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who has placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within a reasonable time, without cause. This subsection is not violated, however, if such failure is caused by acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative.

(15) To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the State.

(16) To award money, goods, services, or any other benefit to any new motor vehicle dealership employee, either directly or indirectly, unless such benefit is promptly accounted for, and transmitted to, or approved by, the new motor vehicle dealer.

(17) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered and which the manufacturer or distributor has accepted for immediate delivery for private retail consumers prior to the new motor vehicle dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each such order provided that the vehicle is in fact delivered to that customer. Price differences applicable to new model or series shall

not be considered a price increase or price decrease. Price changes caused by either: (i) the addition to a new motor vehicle of required or optional equipment; or (ii) revaluation of the United States dollar, in the case of foreign-make vehicles or components; or (iii) an increase in transportation charges due to increased rates imposed by carriers; or (iv) new tariffs or duties imposed by the United States of America or any other governmental authority, shall not be subject to the provisions of this subsection.

(18) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business transferred in accordance with G.S. 20-305(4) above.

(19) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the State or any political subdivision thereof without making the same offer available upon request to all other new motor vehicle dealers in the same line make within the State.

(20) To release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or new motor vehicle dealer, any confidential business, financial, or personal information which may be from time to time provided by the new motor vehicle dealer to the manufacturer, without the express written consent of the new motor vehicle dealer.

(21) To deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose.

(22) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursements or authority granted its new motor vehicle dealers to make warranty adjustments with retail customers.

(23) To engage in any predatory practice against or unfairly compete with a new motor vehicle dealer located in this State.

(24) To terminate any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise.

(25) To require, coerce, or attempt to coerce a new motor vehicle dealer in this State to either establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

(26) To resort to or to use any false or misleading advertisement in the conducting of its business as a manufacturer or distributor in this State.

(27) To knowingly make, either directly or through any agent or employee, any material statement which is false or misleading and which induces any new motor vehicle dealer to enter into any agreement or franchise or to take any action which is materially prejudicial to that new motor vehicle dealer or his business.

(28) To require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any new motor vehicle as a precondition to purchasing, ordering, or receiving any other new motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line of new motor vehicles which are covered by the franchise agreement.

(29) To require, coerce, or attempt to coerce any new motor vehicle dealer to sell, transfer, or otherwise issue stock or other ownership interest in the dealership corporation to a general manager or any other person involved in the management of the dealership other than the dealer principal or dealer operator named in the franchise.

(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on any of the following factors:

a. The dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise;

b. The dealer's relocation, remodeling, repair, or renovation of existing dealership facilities;

c. The dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer; or

d. Achievement by the new motor vehicle dealer of one or more levels of customer satisfaction in sales or service specified by the manufacturer.

Such unlawful price variation shall include not only differentiation by a manufacturer in the base price of new motor vehicles, but a manufacturer's use of rebates, credits, or other consideration which has the effect of causing variance in the price of new motor vehicles offered to its franchised dealers located in this State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or incentives; provided, however, that the awarding or amount of any rebates or incentives shall not be based on a violation of sub-subdivisions a., b., c., or d. of this subdivision.

(31) Notwithstanding the terms of any contract, franchise, agreement, release, or waiver, to require that in any civil or administrative proceeding in which a new motor vehicle dealer asserts any claims, rights, or defenses arising under this Article or under the franchise, that the dealer or any nonprevailing party compensate the manufacturer or prevailing party for any court costs, attorneys' fees, or other expenses incurred in the litigation.

(32) To require that any of its franchised new motor vehicle dealers located in this State pay any extra fee, purchase advertising displays or other materials, or remodel, renovate, or recondition the dealers' existing facilities in order to receive any model or series of vehicles manufactured or distributed by the manufacturer for which the dealers have a valid franchise. Notwithstanding the foregoing, nothing contained in this subdivision shall be deemed to prohibit or prevent a manufacturer from requiring that its franchised dealers located in this State purchase special tools or equipment, stock reasonable quantities of certain parts, or participate in training programs which are reasonably necessary for those dealers to sell or service any model or series of vehicles."

Section 4. G.S. 20-305.1 reads as rewritten:

"**§ 20-305.1. Automobile dealer warranty obligations.**

(a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch, shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's obligations for preparation, delivery and warranty service on its products, the schedule of compensation to be paid such dealers for parts, work, and service in connection with warranty service, and the time allowances for the performance of such work and service. In no event shall such schedule of compensation fail to include reasonable compensation for diagnostic work and associated administrative requirements as well as repair service and labor. Time allowances for the performance of warranty work and service shall be reasonable and adequate for the work to be performed. The compensation which must be paid under this section must be reasonable, provided, however, that under no circumstances may the reasonable compensation under this section be in an amount less than the dealer's current retail labor rate and the amount charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty work of like kind, provided such amount is competitive with other franchised dealers within the dealer's market.

(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of its warranty obligations with respect to a motor vehicle, to fail to compensate its motor vehicle dealers licensed in this State for warranty parts other than parts used to repair the living facilities of recreational vehicles, at the prevailing retail rate according to the factors in subsection (a) of this section, or, in service in accordance with the schedule of compensation provided the dealer pursuant to

subsection (a) above, and to fail to indemnify and hold harmless its franchised dealers licensed in this State against any judgment for damages or settlements agreed to by the manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or recision or revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer. Any audit for warranty parts or service compensation shall only be for the 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation shall only be for the ~~24-month~~ 18-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Provided, however, these limitations shall not be effective in the case of fraudulent claims.

(b1) All claims made by motor vehicle dealers pursuant to this section for compensation for delivery, preparation, warranty and recall work including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after receipt of claim from the dealer. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. Any claim not specifically disapproved in writing within 30 days after receipt shall be considered approved and payment is due immediately. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the ~~claim in accordance with the written requirements of the manufacturer or distributor in effect at the time the claim arose.~~ claim. A manufacturer or distributor shall not deny a claim or reduce the amount to be reimbursed to the dealer as long as the dealer has provided reasonably sufficient documentation that the dealer actually performed the work and that the work performed was diagnosed as reasonably necessary as determined in accordance with accepted standards in the industry.

(c) In the event there is a dispute between the manufacturer, factory branch, distributor, or distributor branch, and the dealer with respect to any matter referred to in subsections ~~(a) and (b) above and subsection (d) below,~~ (a), (b), or (d) of this section, either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing on the subject and the decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Chapter 150B of the General Statutes; provided, however, that nothing contained herein shall give the Commissioner any authority as to the content of any manufacturer's or distributor's warranty. Upon the filing of a petition before the Commissioner under this

subsection, any chargeback to or any payment required of a dealer by a manufacturer relating to warranty parts or service compensation, or to sales incentives, service incentives, rebates, or other forms of incentive compensation, shall be stayed during the pendency of the determination by the Commissioner.

(d) Transportation damages. --

(1) Notwithstanding the terms, provisions or conditions of any agreement or franchise, the manufacturer is liable for all damages to motor vehicles before delivery to a carrier or transporter.

(2) If a new motor vehicle dealer determines the method of transportation, the risk of loss passes to the dealer upon delivery of the vehicle to the carrier.

(3) In every other instance, the risk of loss remains with the manufacturer until such time as the new motor vehicle dealer or his designee accepts the vehicle from the carrier.

(4) Whenever a motor vehicle is damaged while in transit when the carrier or the means of transportation is designated by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to the dealer, the dealer must:

a. Notify the manufacturer or distributor of such damage within three working days or within such additional time as authorized by the franchise agreement of the occurrence of the delivery of the motor vehicle as defined in subsection (1) of this section; and

b. Must request from the manufacturer or distributor authorization to repair the damages sustained or to replace the parts or accessories damaged.

(5) In the event the manufacturer or distributor refuses or fails to authorize repair or replacement of any such damage within ten working days after receipt of notification of damage by the dealer, ownership of the motor vehicle shall revert to the manufacturer or distributor, and the dealer shall incur no obligation, financial or otherwise, for such damage to the motor vehicle.

(5a) No manufacturer shall fail to disclose in writing to a new motor vehicle dealer, at the time of delivery of a new motor vehicle, the nature and extent of any and all damage and post-manufacturing repairs made to such motor vehicle while in the possession or under the control of the manufacturer if the cost of such post-manufacturing repairs exceeds three percent (3%) of the manufacturer's suggested retail price. A manufacturer is not required to disclose to a new motor vehicle dealer that any glass, tires or bumper of a new motor vehicle was damaged at any time if the damaged item has been replaced with original or comparable equipment.

(6) Nothing in this subsection (d) shall relieve the dealer of the obligation to cooperate with the manufacturer as necessary in filing any transportation damage claim with the carrier.

(e) Damage/Repair Disclosure. -- Notwithstanding the provisions of subdivision (d)(4) of this section and in supplementation thereof, a new motor vehicle dealer shall disclose in writing to a purchaser of the new motor vehicle prior to entering into a sales contract any damage and repair to the new motor vehicle if the damage exceeds five percent (5%) of the manufacturer's suggested retail price as calculated at the rate of the dealer's authorized warranty rate for labor and parts.

(1) A new motor vehicle dealer is not required to disclose to a purchaser that any glass, tires or bumper of a new motor vehicle was damaged at any time if the damaged item has been replaced with original or comparable equipment.

(2) If disclosure is not required under this section, a purchaser may not revoke or rescind a sales contract due solely to the fact that the new motor vehicle was damaged and repaired prior to completion of the sale.

(3) For purposes of this section, 'manufacturer's suggested retail price' means the retail price of the new motor vehicle suggested by the manufacturer including the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer which is not included within the retail price suggested by the manufacturer for the new motor vehicle.

(f) The provisions of subsections (a), (b), (b1), (d) and (e) shall not apply to manufacturers and dealers of 'motorcycles' as defined in G.S. 20-4.01(27)."

Section 5. This act becomes effective October 1, 1997.

April 28

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 739*

Short Title: MV Dealers/Manufacturers Lic. Law. (Public)

Sponsors: Representatives Dickson; Alexander, Allred, Arnold, Baddour, Barbee, Beall, Berry, Black, Bowie, Brawley, Brown, Buchanan, Cansler, Capps, Carpenter, Church, Clary, Crawford, Creech, Culp, Culpepper, Daughtry, Davis, Decker, Dedmon, Dockham, Easterling, Eddins, Esposito, Fox, Gardner, Goodwin, Grady, Gray, Gulley, Hall, Hardy, Hensley, Hiatt, Hill, Holmes, Howard, R. Hunter, Hurley, Ives, Jarrell, Justus, Kiser, McComas, McCombs, McCrary, McMahan, Mercer, Miner, Mitchell, Moore, Morris, Mosley, Neely, Nesbitt, Nichols, Nye, Owens, Preston, Ramsey, Redwine, Reynolds, Rogers, Russell, Saunders, Sexton, Sherrill, Smith, Starnes, Tallent, Thompson, Tolson, Warwick, Watson, Weatherly, Wilkins, C. Wilson, G. Wilson, and Yongue.

Referred to: Judiciary I.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN AND CLARIFY THE DEALERS AND MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-297.1. Certification of compliance of franchise agreements.**

Any franchise, as defined in G.S. 20-286(8a), offered to a motor vehicle dealer in this State shall provide that all terms and conditions in the agreement inconsistent with any of the laws or rules of this State are of no force and effect. On or before January 1, 1998, every manufacturer, factory branch, distributor, or distributor branch licensed by the Commissioner under this Article which uses an identical or substantially similar form franchise for its dealers or distributors in this State, shall file with the Commissioner a copy of the franchise and all supplements along with a certification in writing that none of the terms and provisions of the franchise or

supplements are inconsistent with, prohibited by, or contrary to the provisions of this Article. Any applicant for licensing by the Commissioner as a manufacturer, factory branch, distributor, or distributor branch licensed under this Article, which would use an identical or substantially similar form franchise, as defined in G.S. 20-286(8a), for its dealers or distributors in this State, shall, as a condition for the issuance of a license, file with the Commissioner a copy of the franchise and all supplements along with a certification in writing that none of the terms and provisions of the franchise or supplements are inconsistent with, prohibited by, or contrary to the provisions of this Article. Not later than 60 days prior to the date a revision, modification, or addition to a franchise is offered generally to a licensee's franchisees in this State, the licensee shall notify the Commissioner of the proposed revision, modification, or addition to the franchise on file with the Commissioner and include with the notification:

(1) A copy of the franchise which incorporates all of the proposed revisions, modifications, and additions;

(2) A separate statement which identifies and provides a detailed description of all substantive revisions, modifications, and additions proposed and the reasons for the changes; and

(3) A certification in writing that none of the revisions, modifications, or additions proposed are inconsistent with, prohibited by, or contrary to the provisions of this Article.

It shall be unlawful for a franchise or any addendum or supplement thereto to be offered to a motor vehicle dealer in this State after January 1, 1998, until an applicant or licensee has complied with all of the requirements of this section. The Commissioner is to investigate and prevent violations of this section, including inconsistencies of any manufacturer's franchise with the provisions of this Article."

Section 2. G.S. 20-301 reads as rewritten:

"**§ 20-301. Powers of Commissioner.**

(a) The Commissioner shall promote the interests of the retail buyer of motor vehicles.

(b) The Commissioner shall ~~have power to~~ investigate any complaint brought by any person alleging a violation of this Article and to prevent unfair methods of competition and unfair or deceptive acts or practices and other violations of this Article. Any franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer holds a currently valid franchise has violated or is currently violating any provision of this Article may file a petition before the Commissioner setting forth the factual and legal basis for such violations. The Commissioner shall promptly forward a copy of the petition to the named manufacturer, factory branch, distributor, or distributor branch, requesting a reply to the petition within 30 days. Allowing for sufficient time for the parties to conduct discovery, the Commissioner or his designee shall then hold an evidentiary hearing and render findings of fact and conclusions of law based on the evidence presented. At any such evidentiary hearing, the manufacturer, factory branch, distributor, or distributor branch shall have the burden of proving its

compliance with the provisions of this Article. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

(c) The Commissioner shall have the power in hearings arising under this Article ~~to~~ to:

(1) Enter scheduling orders and limit the time and scope of discovery;

(2) To determine the date, time, and place where ~~they shall be~~ hearings are to be held;

(3) ~~to~~ To subpoena witnesses;

(4) ~~to~~ To take depositions of witnesses; and

(5) ~~to~~ To administer oaths.

(d) The Commissioner may, whenever he shall believe from evidence submitted to him that any person has been or is violating any provision of this Article, in addition to any other ~~remedy~~ remedy, bring an action in the name of the State against ~~such~~ that person and any other persons concerned or in any way participating in, or about to participate in practices or acts so in violation, to enjoin ~~such~~ any persons ~~and such other persons~~ from continuing the ~~same.~~ violations.

(e) ~~The Commissioner shall limit the time for discovery in any contested administrative hearing conducted pursuant to Article 12 to a time not to exceed 60 days. The Commissioner may extend the time for discovery beyond 60 days either upon the consent of all parties to the proceeding or upon application of one or more parties to the proceeding for good cause shown.~~ The Commissioner may issue rules and regulations to implement the provisions of this section and to establish procedures related to administrative proceedings commenced under this section."

Section 3. G.S. 20-305 reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

(1) To require, coerce, or attempt to coerce any dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities, which shall not have been ordered by such dealer;

(2) To require, coerce, or attempt to coerce any dealer to enter into any agreement with such manufacturer, factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to such dealer, by threatening to cancel any franchise existing between such manufacturer, factory branch, distributor, distributor branch, or representative thereof, and such dealer;

(3) Unfairly without due regard to the equities of the dealer, and without just provocation, to cancel the franchise of such dealer;

(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, or relocation of the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed transfer, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor the transfer, sale, assignment, relocation, or change is unreasonable under the circumstances. No franchise may be transferred, sold, assigned, relocated, or the executive management or principal operators changed, unless the franchisor has been given at least 30 days' prior written notice as to the identity, financial ability, and qualifications of the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed relocation. The franchisor shall send the dealership notice of objection, by registered or certified mail, return receipt requested, to the proposed transfer, sale, assignment, relocation, or change within 30 days after receipt of notice from the dealer, as provided in this section. Failure by the franchisor to send notice of objection within 30 days shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. The manufacturer or distributor has the burden of proving that the proposed transfer, sale, assignment, relocation, or change is unreasonable under the circumstances.

(5) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new

motor vehicle dealer until the Commissioner has held a hearing, nor thereafter, if the Commissioner has determined that there is good cause for not permitting the addition or relocation of such new motor vehicle dealer.

a. This section does not apply:

1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle; or
2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;
3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership;
4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market area.

b. In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:

1. The permanency of the investment of both the existing and proposed additional new motor vehicle dealers;
2. Growth or decline in population, density of population, and new car registrations in the relevant market area;
3. Effect on the consuming public in the relevant market area;
4. Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
5. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the same line make in the

market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;

6. Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer in the relevant market area would increase competition in a manner such as to be in the long-term public interest; and

7. The effect on the relocating dealer of a denial of its relocation into the relevant market area.

c. The Commissioner ~~must~~ shall try to conduct the hearing and render his final determination ~~as expeditiously as possible, but in any event no later than~~ if possible, within 180 days after a protest is filed. ~~Unless waived by the parties, failure to do so shall be deemed the equivalent of a determination that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealer, unless such delay is caused by acts of the manufacturer, or the relocating or additional dealer.~~

d. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

e. In a hearing involving a proposed additional dealership, the manufacturer or distributor has the burden of proof under this section. In a proceeding involving the relocation of an existing dealership, the dealer seeking to relocate has the burden of proof under this section.

f. If the Commissioner determines, following a hearing, that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealership, the dealer seeking the proposed additional or relocated motor vehicle dealership must, within two years, obtain a license from the Commissioner for the sale of vehicles at the relevant site, and actually commence operations at the site selling new motor vehicles of all line makes, as permitted by the Commissioner. Failure to obtain a permit and commence sales within two years shall constitute waiver by the dealer of the dealer's right to the additional or relocated dealership, requiring renotification, a new hearing, and a new determination as provided in this section.

g. For purposes of this subdivision, the addition, creation, or operation of a 'satellite' or other facility, not physically part of or contiguous to an existing licensed new motor vehicle dealer, whether or not owned or operated by a person or other entity holding a franchise as defined by G.S. 20-286(8a), at which warranty service work authorized or reimbursed by a manufacturer is performed or at which new motor vehicles are offered for sale to the public, shall be considered an additional new motor vehicle dealer requiring a showing of good cause, prior notification to existing new motor vehicle dealers of the same line-make of vehicle within the relevant market area by the manufacturer and the opportunity for a hearing before the Commissioner as provided in this subdivision.

(6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements of subparagraph c. and the Commissioner has determined, if requested in writing by the dealer within the time period specified in G.S. 20-305(6)c1II, III or IV, as applicable, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed, and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner ~~must~~ shall try to conduct the hearing and render a final determination ~~no later than~~ within 180 days after a petition has been ~~filed; provided, however, that the Commissioner may extend such period of time upon application of a party and for good cause shown, or upon the consent of all parties to the proceeding.~~ filed. If the termination, cancellation or nonrenewal is pursuant to G.S. 20-305(6)c1III then the Commissioner shall give the proceeding priority consideration and shall try to render his final determination no later than 90 days after the petition has been filed. Any parties to a hearing by the Commissioner under this section shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

a. Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:

1. There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship provided that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of such failure;
2. If the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; and
   I. The notification stated that notice was provided of failure of performance pursuant to this section;
   II. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with the criteria; and
   III. The new motor vehicle dealer failed to demonstrate substantial progress towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.

b. The manufacturer shall have the burden of proof under this section.

c. Notification of Termination, Cancellation and Nonrenewal. --

1. Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:

I. In the manner described in G.S. 20-305(6)c2 below; and

II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or

III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:

A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;

C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;

D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.

IV. Not less than 180 days prior to the effective date of such termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.

2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:

I. A statement of intention to terminate, cancel or not to renew the franchise;

II. A statement of the reasons for the termination, cancellation or nonrenewal; and

III. The date on which the termination, cancellation or nonrenewal takes effect.

3. Notification provided in G.S. 20-305(6)c1II of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the

180 days designated in G.S. 20-305(6)a2II provided the notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.

d. Payments. --

1. Upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, pursuant to this section, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:

I. New motor vehicle inventory that has been acquired from the manufacturer within 18 months, at a price not to exceed the original manufacturer's price to the dealer, and which has not been altered or damaged, and which has not been driven more than 200 miles, and for which no certificate of title has been issued;

II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer, at a price not to exceed the original manufacturer's price to the dealer, provided such supplies and parts are currently offered for sale by the manufacturer or distributor in its current parts catalogs and are in salable condition;

III. Equipment and furnishings that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources; and

IV. Special tools that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise.

2. Fair and reasonable compensation for the above shall be paid by the manufacturer within 90 days of the effective date of termination, cancellation or nonrenewal, provided the new motor vehicle dealer has clear title to the inventory and has conveyed title and possession to the manufacturer.

e. Dealership Facilities Assistance upon Termination, Cancellation or Nonrenewal. --

In the event of the termination, cancellation or nonrenewal by the manufacturer or distributor under this section, except termination, cancellation or nonrenewal for insolvency, license revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner:

1. Subject to paragraph 3, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or such longer term as is provided in the franchise agreement between the dealer and manufacturer; or
2. Subject to paragraph 3, if the new motor vehicle dealer owns the dealership facilities, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for one year.
3. Provided nothing in this paragraph e. shall relieve a lessee or owner, as the case may be, from the obligation to mitigate damages under the lease, nor prevent a manufacturer from occupying and using the dealership facilities while paying rent under subsections 1 and 2, nor prevent a manufacturer from obligations by negotiating a lease termination, a sublease or a new lease. Any amounts recovered by the lessee or owner resulting from mitigation of damages shall be deducted from the amount due from the manufacturer.

f. The provisions of paragraphs d. and e. above shall not be applicable when the termination, nonrenewal or cancellation of the franchise agreement is the result of the voluntary act of the dealer.

(7) Notwithstanding the terms of any contract or agreement, to prevent or refuse to honor the succession to a dealership, including the franchise, by a motor vehicle dealer's designated successor as provided for under this subsection.

a. Any owner of a new motor vehicle dealership may appoint by will, or any other written instrument, a designated family member successor to succeed in the ownership interest of the said owner in the new motor vehicle dealership,

including the franchise, upon the death or incapacity of the owner.

b. Any objections by a manufacturer or distributor to an owner's appointment of a designated successor shall be asserted in accordance with the following procedure:

1. Within 30 days after receiving written notice of the identity of the owner's designated successor and general information as to the financial ability and qualifications of the designated successor, the franchisor shall send the owner and designated successor notice of objection, by registered or certified mail, return receipt requested, to the appointment of the designated successor. The notice of objection shall state in detail all facts which constitute the basis for the contention on the part of the manufacturer or distributor that good cause, as defined in this sub-subdivision below, exists for rejection of the designated ~~family member~~ successor. Failure by the franchisor to send notice of objection within 30 days and otherwise as provided in this sub-subdivision shall constitute waiver by the franchisor of any right to object to the appointment of the designated successor.

2. Any time within 30 days of receipt of the manufacturer's notice of objection the owner or the designated successor may file a request in writing with the Commissioner that the Commissioner hold an evidentiary hearing and determine whether good cause exists for rejection of the designated successor. When such a request is filed, the Commissioner shall promptly inform the affected manufacturer or distributor that a timely request has been filed.

3. The Commissioner shall endeavor to hold the evidentiary hearing required under this sub-subdivision and render a determination within 180 days after receipt of the written request from the owner or designated successor. In determining whether good cause exists for rejection of the owner's appointed designated successor, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the franchisor's existing and reasonable standards and, considering the volume of sales and service of the new motor vehicle

dealer, uniformly applied minimum business experience standards in the market area.

4. Any parties to a hearing by the Commissioner concerning whether good cause exists for the rejection of the dealer's designated successor shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

5. Nothing in this sub-subdivision shall preclude a manufacturer or distributor from, upon its receipt of written notice from a dealer of identity of the dealer's designated successor, requiring that the designated successor promptly provide personal and financial data that is reasonably necessary to determine the financial ability and qualifications of the designated successor; provided, however, that such a request for additional information shall not delay any of the time periods or constraints contained herein.

6. In the event death or incapacity of the owner occurs prior to the time a manufacturer or distributor receives notice of the owner's appointment of a designated successor or before the Commissioner has rendered a determination as provided above, the existing franchise shall remain in effect and the designated successor shall be deemed to have succeeded to all of the owner's rights and obligations in the dealership and under the franchise until a determination is made by the Commissioner or the rights of the parties have otherwise become fixed in accordance with this sub-subdivision.

c. Except as otherwise provided in sub-subdivision d. of this subdivision, any designated successor of a deceased or incapacitated owner of a new motor vehicle dealership appointed by such owner in substantial compliance with this section shall, by operation of law, succeed at the time of such death or incapacity to all of the ownership rights and obligations of the owner in the new motor vehicle dealership and under the existing franchise.

d. Within 60 days after the death or incapacity of the owner, a designated successor appointed in substantial compliance with this section shall give the affected manufacturer or distributor written notice of his or her succession to the ownership of the new motor vehicle dealership; provided, however, that the failure of the designated successor to give

the manufacturer or distributor written notice as provided above within 60 days of the owner's death or incapacity shall not result in the waiver or termination of the designated successor's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated successor may give the notice required hereunder, provided the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity. Within 30 days of receipt of the notice by the manufacturer or distributor from the designated successor provided in this paragraph, the manufacturer or distributor may request that the designated successor complete the application forms generally utilized by the manufacturer or distributor to review the designated successor's qualifications to establish a successor dealership. Within 30 days of receipt of the completed forms, the manufacturer or distributor shall send a letter by certified or registered mail, return receipt requested, advising the designated successor of facts and circumstances which have changed since the manufacturer's or distributor's original approval of the designated successor, and which have caused the manufacturer or distributor to object to the designated successor. Upon receipt of such notice, the designated successor may either designate an alternative successor or may file a request for evidentiary hearing in accordance with the procedures provided in sub-subdivisions b. 2.-5. of this subdivision. In any such hearing, the manufacturer or distributor shall be limited to facts and circumstances which did not exist at the time the designated successor was originally approved or evidence which was originally requested to be produced by the designated successor at the time of the original request and was either not produced or the material which was produced was incorrect.

e. The designated successor shall agree to be bound by all terms and conditions of the franchise in effect between the manufacturer or distributor and the owner at the time of the owner's death or incapacity, if so requested in writing by the

manufacturer or distributor subsequent to the owner's death or incapacity.

f. This section does not preclude an owner of a new motor vehicle dealership from designating any person as his successor by written instrument filed with the manufacturer or distributor, and, in the event there is an inconsistency between the successor named in such written instrument and the designated successor otherwise appointed by the owner consistent with the provisions of this section, and that written instrument has not been revoked by the owner of the new motor vehicle dealership in writing to the manufacturer or distributor, then the written instrument filed with the manufacturer or distributor shall govern as to the appointment of the successor.

(8) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by the manufacturer or distributor.

(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to participate monetarily in an advertising campaign or contest, or to purchase unnecessary or unreasonable quantities of any promotional materials, training materials, training programs, showroom or other display decorations or materials at the expense of the new motor vehicle dealer, provided that nothing in this subsection shall preclude a manufacturer or distributor from including an unitemized uniform charge in the base price of the new motor vehicle charged to the dealer where such charge is attributable to advertising costs incurred or to be incurred by the manufacturer or distributor in the ordinary courses of its business.

(10) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change the capital structure of the new motor vehicle dealer or the means by or through which the new motor vehicle dealer finances the operation of the dealership provided that the new motor vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria; and also provided that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor, provided that said consent shall not be unreasonably withheld.

(11) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to refrain from participation in the management of, investment in, or the acquisition of any other line of new motor

vehicle or related products; Provided, however, that this subsection does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and the new motor vehicle dealer remains in compliance with any reasonable capital standards and facilities requirements of the manufacturer. The reasonable facilities requirements shall not include any requirement that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

(12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change location of the dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles so as to justify such an expansion, in light of the current market and economic conditions.

(13) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this law or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the State or the United States of America, or to the Commissioner, if such referral would be binding upon the new motor vehicle dealer.

(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's relevant market area, and within a reasonable time, after receipt of an order from a dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts or accessories to new vehicles as are covered by such franchise, and such vehicles, parts or accessories as are publicly advertised as being available or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who has placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within a reasonable time, without cause. This subsection is not

violated, however, if such failure is caused by acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative.

(15) To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the State.

(16) To award money, goods, services, or any other benefit to any new motor vehicle dealership employee, either directly or indirectly, unless such benefit is promptly accounted for, and transmitted to, or approved by, the new motor vehicle dealer.

(17) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered and which the manufacturer or distributor has accepted for immediate delivery for private retail consumers prior to the new motor vehicle dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each such order provided that the vehicle is in fact delivered to that customer. Price differences applicable to new model or series shall not be considered a price increase or price decrease. Price changes caused by either: (i) the addition to a new motor vehicle of required or optional equipment; or (ii) revaluation of the United States dollar, in the case of foreign-make vehicles or components; or (iii) an increase in transportation charges due to increased rates imposed by carriers; or (iv) new tariffs or duties imposed by the United States of America or any other governmental authority, shall not be subject to the provisions of this subsection.

(18) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business transferred in accordance with G.S. 20-305(4) ~~above~~ above, or to prevent, through right of first refusal or otherwise, a dealer from transferring the franchised business to the persons or other entities that the dealer shall designate in accordance with G.S. 20-305(4).

(19) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the State or any political subdivision thereof without making the same offer available upon request to all other new motor vehicle dealers in the same line make within the State.

(20) To release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or new motor vehicle dealer, any confidential business, financial, or personal information which may be from time to time provided by the new motor vehicle dealer to the manufacturer, without the express written consent of the new motor vehicle dealer.

(21) To deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose.

(22) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursements or authority granted its new motor vehicle dealers to make warranty adjustments with retail customers.

(23) To engage in any predatory practice against or unfairly compete with a new motor vehicle dealer located in this State.

(24) To terminate any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise.

(25) To require, coerce, or attempt to coerce a new motor vehicle dealer in this State to either establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

(26) To resort to or to use any false or misleading advertisement in the conducting of its business as a manufacturer or distributor in this State.

(27) To knowingly make, either directly or through any agent or employee, any material statement which is false or misleading and which induces any new motor vehicle dealer to enter into any agreement or franchise or to take any action which is materially prejudicial to that new motor vehicle dealer or his business.

(28) To require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any new motor vehicle as a precondition to purchasing, ordering, or receiving any other new motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line of new motor vehicles which are covered by the franchise agreement.

(29) To require, coerce, or attempt to coerce any new motor vehicle dealer to sell, transfer, or otherwise issue stock or other ownership interest in the dealership corporation to a general manager or any other person involved in the management of the dealership other than the dealer principal or dealer operator named in the franchise.

(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles on any basis which includes consideration of any or all of the following factors:

a. The dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise;

b. The dealer's relocation, remodeling, repair, or renovation of existing dealership facilities;

c. The dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer; or

d. Achievement by the new motor vehicle dealer of one or more levels of customer satisfaction in sales or service specified by the manufacturer.

Such unlawful price variation shall include not only differentiation by a manufacturer in the base price of new motor vehicles, but a manufacturer's use of rebates, credits, or other consideration which has the effect of causing variance in the price of new motor vehicles offered its franchised dealers located in this State.

It shall further be unlawful for a manufacturer to fail to offer its entire line of new motor vehicles to all of its franchised dealers in this State at the lowest prices that vehicles similarly equipped are offered to its franchised dealers in other states, after application of any rebates, credits, or other consideration which may be awardable to dealers in other states on the bases prohibited in this subdivision.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or incentives; provided, however, that the awarding or amount of any rebates or incentives shall not be based on any unlawful bases.

(31) Notwithstanding the terms of any contract, franchise, agreement, release, or waiver, to require that in any civil or administrative proceeding in which a new motor vehicle dealer asserts any claims, rights, or defenses arising under this Article or under the franchise, that the dealer or any nonprevailing party compensate the manufacturer or prevailing party for any court costs, attorneys' fees, or other expenses incurred in the litigation.

(32) To require that any of its franchised new motor vehicle dealers located in this State pay any extra fee, purchase advertising displays or other materials, or remodel, renovate, or recondition the dealers' existing facilities in order to receive any model or series of vehicles manufactured or distributed by the manufacturer for which the dealers have a valid franchise. It shall further be unlawful for any manufacturer to fail to offer any model or series

of new motor vehicles to its franchised dealers located in this State which are offered to its franchised dealers in other states which do not prohibit the practices made unlawful by this subdivision. Notwithstanding the foregoing, nothing contained in this subdivision shall be deemed to prohibit or prevent, a manufacturer from requiring, that its franchised dealers located in this State purchase special tools or equipment, stock reasonable quantities of certain parts, or participate in training programs which are reasonably necessary for those dealers to sell or service any model or series of vehicles."

Section 4. G.S. 20-305.1(b) reads as rewritten:

"(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of its warranty obligations with respect to a motor vehicle, to fail to compensate its motor vehicle dealers licensed in this State for warranty parts other than parts used to repair the living facilities of recreational vehicles, at the prevailing retail rate according to the factors in subsection (a) of this section, or, in service in accordance with the schedule of compensation provided the dealer pursuant to subsection (a) above, and to fail to indemnify and hold harmless its franchised dealers licensed in this State against any judgment for damages or settlements agreed to by the manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or recision or revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer. Any audit for warranty parts or service compensation shall only be for the 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation shall only be for the ~~24-month~~ 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Provided, however, these limitations shall not be effective in the case of fraudulent claims.

Section 5. G.S. 20-305.1(b1) reads as rewritten:

"(b1) All claims made by motor vehicle dealers pursuant to this section for compensation for delivery, preparation, warranty and recall work including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after receipt of claim from the dealer. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. Any claim not specifically disapproved in writing within 30 days after receipt shall be considered approved and payment is due immediately. No claim which has been approved and paid may be

charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the claim ~~in accordance with the written requirements of the manufacturer or distributor in effect at the time the claim arose~~. A dealer's failure to comply with the specific requirements of the manufacturer or distributor for documentation or processing of the claim shall not constitute grounds for the denial of the claim or reduction of the amount to be reimbursed to the dealer as long as reasonably sufficient documentation or other evidence has been presented to substantiate the claim."

Section 6. G.S. 20-305.1(c) reads as rewritten:

"(c) In the event there is a dispute between the manufacturer, factory branch, distributor, or distributor branch, and the dealer with respect to any matter referred to in subsections ~~(a) and (b) above and subsection (d) below,~~ (a), (b), or (d) of this section either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing on the subject and the decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Chapter 150B of the General Statutes; provided, however, that nothing contained herein shall give the Commissioner any authority as to the content of any manufacturer's or distributor's warranty. Upon the filing of a petition before the Commissioner under this subsection, any chargeback to or any payment required of a dealer by a manufacturer relating to warranty parts or service compensation, or to sales incentives, service incentives, rebates, or other forms of incentive compensation, shall be stayed during the pendency of the determination by the Commissioner."

Section 7. This act becomes effective October 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 739

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H739-ARO-001

Date 4/22 ,1997

Comm. Sub. []
Amends Title []

Representative Ellis

moves to amend the bill on page 21, line 24-25, by inserting a new section between the lines:

"Section 6.1. G.S. 20-286(10) reads as rewritten:
(10) Motor vehicle. -- Any motor propelled vehicle, trailer or semitrailer, required to be registered under the laws of this ~~State.~~ State, or any personal watercraft as defined in G.S. 75A-13.2 or all terrain vehicle.
a. "New motor vehicle" means a motor vehicle which has never been the subject of a sale other than between new motor vehicle dealers, or between manufacturer and dealer of the same franchise.
b. "Used motor vehicle" means a motor vehicle other than described in paragraph (10)a above.'"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 739*
Proposed Committee Substitute
H739-CSRO-001
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: MV Dealers/Manufacturers Lic. Law. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN AND CLARIFY THE DEALERS AND MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-297.1. Prefiling of franchise agreements and amendments.

Any franchise, as defined in G.S. 20-286(8a), offered to a motor vehicle dealer in this State shall provide that all terms and conditions in the agreement inconsistent with any of the laws or rules of this State are of no force and effect. On or before January 1, 1998, every manufacturer, factory branch, distributor, or distributor branch licensed by the Commissioner under this Article which uses an identical or substantially similar form franchise for its dealers or distributors in this State, shall file with the Commissioner a copy of the franchise and all supplements. Any applicant for licensing by the Commissioner as a manufacturer, factory branch, distributor, or distributor branch licensed under this Article, which would use an identical or substantially similar form franchise, as defined in G.S. 20-

286(8a), for its dealers or distributors in this State, shall, as a condition for the issuance of a license, file with the Commissioner a copy of the franchise and all supplements thereto. Not later than 60 days prior to the date a revision, modification, or addition to a franchise is offered generally to a licensee's franchisees in this State, the licensee shall notify the Commissioner of the proposed revision, modification, or addition to the franchise on file with the Commissioner and include with the notification:

(1) A copy of the form franchise which incorporates all of the proposed revisions, modifications, and additions;

(2) A separate statement which identifies and provides a detailed description of all substantive revisions, modifications, and additions proposed.

It shall be unlawful for a franchise or any addendum or supplement thereto to be offered to a motor vehicle dealer in this State after January 1, 1998, until an applicant or licensee has complied with all of the requirements of this section. The Commissioner is authorized and directed to investigate and prevent violations of this section, including inconsistencies of any manufacturer's franchise with the provisions of this Article."

Section 2. G.S. 20-301 reads as rewritten:

"**§ 20-301. Powers of Commissioner.**

(a) The Commissioner shall promote the interests of the retail buyer of motor vehicles.

(b) The Commissioner shall have power to prevent unfair methods of competition and unfair or deceptive acts or ~~practices.~~ practices and other violations of this Article. Any franchised new motor vehicle dealer who believes that a manufacturer, factory branch, distributor, or distributor branch with whom the dealer holds a currently valid franchise has violated or is currently violating any provision of this Article may file a petition before the Commissioner setting forth the factual and legal basis for such violations. The Commissioner shall promptly forward a copy of the petition to the named manufacturer, factory branch, distributor, or distributor branch, requesting a reply to the petition within 30 days. Allowing for sufficient time for the parties to conduct discovery, the Commissioner or his designee shall then hold an evidentiary hearing and render findings of fact and conclusions of law based on the evidence presented. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle

dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

(c) The Commissioner shall have the power in hearings arising under this Article to enter scheduling orders and limit the time and scope of discovery; to determine the date, time, and place where ~~they shall be~~ hearings are to be held; to subpoena witnesses; to take depositions of witnesses; and to administer oaths.

(d) The Commissioner may, whenever he shall believe from evidence submitted to him that any person has been or is violating any provision of this Article, in addition to any other ~~remedy~~ remedy, bring an action in the name of the State against ~~such~~ that person and any other persons concerned or in any way participating in, or about to participate in practices or acts so in violation, to enjoin ~~such~~ any persons ~~and such other persons~~ from continuing the ~~same.~~ violations.

(e) ~~The Commissioner shall limit the time for discovery in any contested administrative hearing conducted pursuant to Article 12 to a time not to exceed 60 days. The Commissioner may extend the time for discovery beyond 60 days either upon the consent of all parties to the proceeding or upon application of one or more parties to the proceeding for good cause shown.~~ The Commissioner may issue rules and regulations to implement the provisions of this section and to establish procedures related to administrative proceedings commenced under this section."

Section 3. G.S. 20-305 reads as rewritten:

"**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

(1) To require, coerce, or attempt to coerce any dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities, which shall not have been ordered by such dealer;

(2) To require, coerce, or attempt to coerce any dealer to enter into any agreement with such manufacturer, factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to such dealer, by threatening to cancel any

franchise existing between such manufacturer, factory branch, distributor, distributor branch, or representative thereof, and such dealer;

(3) Unfairly without due regard to the equities of the dealer, and without just provocation, to cancel the franchise of such dealer;

(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, or relocation of the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed transfer, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor the transfer, sale, assignment, relocation, or change is unreasonable under the circumstances. No franchise may be transferred, sold, assigned, relocated, or the executive management or principal operators changed, unless the franchisor has been given at least 30 days' prior written notice as to the identity, financial ability, and qualifications of the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed relocation. The franchisor shall send the dealership notice of objection, by registered or certified mail, return receipt requested, to the proposed transfer, sale, assignment, relocation, or change within 30 days after receipt of notice from the dealer, as provided in this section. Failure by the franchisor to send notice of objection within 30 days shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. The manufacturer or distributor has the burden of proving that the

proposed transfer, sale, assignment, relocation, or change is unreasonable under the circumstances.

a. A manufacturer or distributor shall be permitted to exercise a right of first refusal to acquire the new vehicle dealer's assets or ownership in the event of a proposed change of all, or substantially all, ownership or transfer of all, or substantially all, dealership assets, if all of the following requirements are met:

1. To exercise its right of first refusal, the manufacturer or distributor must notify the dealer in writing within 30 days after receipt of notice from a dealer of a proposed transfer, sale or assignment as set forth in sub-subdivision a. above.

2. The exercise of the right of first refusal will result in the dealer and dealer's owners receiving the same or greater consideration as they have contracted to receive in connection with the proposed change of all, or substantially all, ownership or transfer of all, or substantially all, dealership assets.

3. The proposed change of all, or substantially all, ownership or transfer of all, or substantially all, dealership assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one or more dealer owners to a designated successor, the spouse, child or grandchild, spouse of a child or grandchild, brother, sister or parent of the dealer owner, of one or more dealer owners or to a qualified manager or to a partnership or corporation controlled by such persons.

4. The manufacturer or distributor agrees to pay the reasonable expenses, including reasonable attorney fees which do not exceed the usual, customary and reasonable fees charged for similar work

done for other clients, incurred by the existing dealer and the proposed new owner and transferee prior to the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed change of all, or substantially all, ownership or transfer of all, or substantially all, dealership assets. Notwithstanding the foregoing, no payment of such expenses and atorney fees shall be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within 30 days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. Such an accounting may be requested by a manufacturer or distributor before exercising it right of first refusal.

(5) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new motor vehicle dealer until the Commissioner has held a hearing, nor thereafter, if the Commissioner has determined that there is good cause for not permitting the addition or relocation of such new motor vehicle dealer.

a. This section does not apply:
   1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle; or
   2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;
   3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership;
   4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market area.

b. In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:
   1. The permanency of the investment of both the existing and proposed additional new motor vehicle dealers;
   2. Growth or decline in population, density of population, and new car registrations in the relevant market area;
   3. Effect on the consuming public in the relevant market area;
   4. Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;

5. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the same line make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;
6. Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer in the relevant market area would increase competition in a manner such as to be in the long-term public interest; and
7. The effect on the relocating dealer of a denial of its relocation into the relevant market area.

c. The Commissioner ~~must~~ shall try to conduct the hearing and render his final determination ~~as expeditiously as possible, but in any event no later than~~ if possible, within 180 days after a protest is filed. ~~Unless waived by the parties, failure to do so shall be deemed the equivalent of a determination that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealer, unless such delay is caused by acts of the manufacturer, or the relocating or additional dealer.~~

d. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

e. In a hearing involving a proposed additional dealership, the manufacturer or distributor has the burden of proof under this section. In a proceeding involving the relocation of an existing dealership, the dealer seeking to

relocate has the burden of proof under this section.

f. If the Commissioner determines, following a hearing, that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealership, the dealer seeking the proposed additional or relocated motor vehicle dealership must, within two years, obtain a license from the Commissioner for the sale of vehicles at the relevant site, and actually commence operations at the site selling new motor vehicles of all line makes, as permitted by the Commissioner. Failure to obtain a permit and commence sales within two years shall constitute waiver by the dealer of the dealer's right to the additional or relocated dealership, requiring renotification, a new hearing, and a new determination as provided in this section.

g. For purposes of this subdivision, the addition, creation, or operation of a 'satellite' or other facility, not physically part of or contiguous to an existing licensed new motor vehicle dealer, whether or not owned or operated by a person or other entity holding a franchise as defined by G.S. 20-286(8a), at which warranty service work authorized or reimbursed by a manufacturer is performed or at which new motor vehicles are offered for sale to the public, shall be considered an additional new motor vehicle dealer requiring a showing of good cause, prior notification to existing new motor vehicle dealers of the same line-make of vehicle within the relevant market area by the manufacturer and the opportunity for a hearing before the Commissioner as provided in this subdivision.

(6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements of subparagraph

c. and the Commissioner has determined, if requested in writing by the dealer within the time period specified in G.S. 20-305(6)c1II, III or IV, as applicable, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed, and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner ~~must~~ shall try to conduct the hearing and render a final determination ~~no later than~~ within 180 days after a petition has been ~~filed; provided, however, that the Commissioner may extend such period of time upon application of a party and for good cause shown, or upon the consent of all parties to the proceeding.~~ filed. If the termination, cancellation or nonrenewal is pursuant to G.S. 20-305(6)c1III then the Commissioner shall give the proceeding priority consideration and shall try to render his final determination no later than 90 days after the petition has been filed. Any parties to a hearing by the Commissioner under this section shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

a. Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:

1. There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship provided that the dealer has been notified in

writing of the failure within 180 days after the manufacturer first acquired knowledge of such failure;

2. If the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; and

I. The notification stated that notice was provided of failure of performance pursuant to this section;

II. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with the criteria; and

III. The new motor vehicle dealer failed to demonstrate substantial progress towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.

b. The manufacturer shall have the burden of proof under this section.

c. Notification of Termination, Cancellation and Nonrenewal. --

1. Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:

I. In the manner described in G.S. 20-305(6)c2 below; and

II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or

III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:

A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;

C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;

D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.

IV. Not less than 180 days prior to the effective date of such termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.

2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:

I. A statement of intention to terminate, cancel or not to renew the franchise;

II. A statement of the reasons for the termination, cancellation or nonrenewal; and

III. The date on which the termination, cancellation or nonrenewal takes effect.

3. Notification provided in G.S. 20-305(6)c1II of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the 180 days designated in G.S. 20-305(6)a2II provided the notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.

d. Payments. --

1. Upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, pursuant to this section, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:

I. New motor vehicle inventory that has been acquired from the manufacturer within 18 months, at a price not to exceed the original manufacturer's price to the dealer, and which has not been altered or damaged, and which has not been driven more than 200 miles, and for which no certificate of title has been issued;

II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer, at a price not to exceed the original manufacturer's price to the dealer, provided such supplies and parts are currently offered for sale by the manufacturer

or distributor in its current parts catalogs and are in salable condition;

III. Equipment and furnishings that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources; and

IV. Special tools that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise.

2. Fair and reasonable compensation for the above shall be paid by the manufacturer within 90 days of the effective date of termination, cancellation or nonrenewal, provided the new motor vehicle dealer has clear title to the inventory and has conveyed title and possession to the manufacturer.

e. Dealership Facilities Assistance upon Termination, Cancellation or Nonrenewal. -- In the event of the termination, cancellation or nonrenewal by the manufacturer or distributor under this section, except termination, cancellation or nonrenewal for insolvency, license revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner:

1. Subject to paragraph 3, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or one year's rent,

whichever is less, or such longer term as is provided in the franchise agreement between the dealer and manufacturer; or

2. Subject to paragraph 3, if the new motor vehicle dealer owns the dealership facilities, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for one year.

3. Provided nothing in this paragraph e. shall relieve a lessee or owner, as the case may be, from the obligation to mitigate damages under the lease, nor prevent a manufacturer from occupying and using the dealership facilities while paying rent under subsections 1 and 2, nor prevent a manufacturer from obligations by negotiating a lease termination, a sublease or a new lease. Any amounts recovered by the lessee or owner resulting from mitigation of damages shall be deducted from the amount due from the manufacturer.

f. The provisions of paragraphs d. and e. above shall not be applicable when the termination, nonrenewal or cancellation of the franchise agreement is the result of the voluntary act of the dealer.

(7) Notwithstanding the terms of any contract or agreement, to prevent or refuse to honor the succession to a dealership, including the franchise, by a motor vehicle dealer's designated successor as provided for under this subsection.

a. Any owner of a new motor vehicle dealership may appoint by will, or any other written instrument, a designated family member successor to succeed in the ownership interest of the said owner in the new motor vehicle dealership, including the franchise, upon the death or incapacity of the owner.

b. Any objections by a manufacturer or distributor to an owner's appointment of a

designated successor shall be asserted in accordance with the following procedure:

1. Within 30 days after receiving written notice of the identity of the owner's designated successor and general information as to the financial ability and qualifications of the designated successor, the franchisor shall send the owner and designated successor notice of objection, by registered or certified mail, return receipt requested, to the appointment of the designated successor. The notice of objection shall state in detail all facts which constitute the basis for the contention on the part of the manufacturer or distributor that good cause, as defined in this sub-subdivision below, exists for rejection of the designated ~~family member~~ successor. Failure by the franchisor to send notice of objection within 30 days and otherwise as provided in this sub-subdivision shall constitute waiver by the franchisor of any right to object to the appointment of the designated successor.
2. Any time within 30 days of receipt of the manufacturer's notice of objection the owner or the designated successor may file a request in writing with the Commissioner that the Commissioner hold an evidentiary hearing and determine whether good cause exists for rejection of the designated successor. When such a request is filed, the Commissioner shall promptly inform the affected manufacturer or distributor that a timely request has been filed.
3. The Commissioner shall endeavor to hold the evidentiary hearing required under this sub-subdivision and render a determination within 180 days after receipt of the written request from the owner or designated successor. In determining whether good cause exists for

rejection of the owner's appointed designated successor, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the franchisor's existing and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area.

4. Any parties to a hearing by the Commissioner concerning whether good cause exists for the rejection of the dealer's designated successor shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

5. Nothing in this sub-subdivision shall preclude a manufacturer or distributor from, upon its receipt of written notice from a dealer of identity of the dealer's designated successor, requiring that the designated successor promptly provide personal and financial data that is reasonably necessary to determine the financial ability and qualifications of the designated successor; provided, however, that such a request for additional information shall not delay any of the time periods or constraints contained herein.

6. In the event death or incapacity of the owner occurs prior to the time a manufacturer or distributor receives notice of the owner's appointment of a designated successor or before the Commissioner has rendered a determination as provided above, the existing franchise shall remain in effect and the designated successor shall be deemed to have succeeded to all of the owner's rights and obligations in the dealership and under the franchise until a determination

is made by the Commissioner or the rights of the parties have otherwise become fixed in accordance with this sub-subdivision.

c. Except as otherwise provided in sub-subdivision d. of this subdivision, any designated successor of a deceased or incapacitated owner of a new motor vehicle dealership appointed by such owner in substantial compliance with this section shall, by operation of law, succeed at the time of such death or incapacity to all of the ownership rights and obligations of the owner in the new motor vehicle dealership and under the existing franchise.

d. Within 60 days after the death or incapacity of the owner, a designated successor appointed in substantial compliance with this section shall give the affected manufacturer or distributor written notice of his or her succession to the ownership of the new motor vehicle dealership; provided, however, that the failure of the designated successor to give the manufacturer or distributor written notice as provided above within 60 days of the owner's death or incapacity shall not result in the waiver or termination of the designated successor's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated successor may give the notice required hereunder, provided the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity. Within 30 days of receipt of the notice by the

manufacturer or distributor from the designated successor provided in this paragraph, the manufacturer or distributor may request that the designated successor complete the application forms generally utilized by the manufacturer or distributor to review the designated successor's qualifications to establish a successor dealership. Within 30 days of receipt of the completed forms, the manufacturer or distributor shall send a letter by certified or registered mail, return receipt requested, advising the designated successor of facts and circumstances which have changed since the manufacturer's or distributor's original approval of the designated successor, and which have caused the manufacturer or distributor to object to the designated successor. Upon receipt of such notice, the designated successor may either designate an alternative successor or may file a request for evidentiary hearing in accordance with the procedures provided in sub-subdivisions b. 2.-5. of this subdivision. In any such hearing, the manufacturer or distributor shall be limited to facts and circumstances which did not exist at the time the designated successor was originally approved or evidence which was originally requested to be produced by the designated successor at the time of the original request and was either not produced or the material which was produced was incorrect.

e. The designated successor shall agree to be bound by all terms and conditions of the franchise in effect between the manufacturer or distributor and the owner at the time of the owner's death or incapacity, if so requested in writing by the manufacturer or distributor subsequent to the owner's death or incapacity.

f. This section does not preclude an owner of a new motor vehicle dealership from designating any person as his successor by written instrument filed with the manufacturer or

distributor, and, in the event there is an inconsistency between the successor named in such written instrument and the designated successor otherwise appointed by the owner consistent with the provisions of this section, and that written instrument has not been revoked by the owner of the new motor vehicle dealership in writing to the manufacturer or distributor, then the written instrument filed with the manufacturer or distributor shall govern as to the appointment of the successor.

(8) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by the manufacturer or distributor.

(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to participate monetarily in an advertising campaign or contest, or to purchase unnecessary or unreasonable quantities of any promotional materials, training materials, training programs, showroom or other display decorations or materials at the expense of the new motor vehicle dealer, provided that nothing in this subsection shall preclude a manufacturer or distributor from including an unitemized uniform charge in the base price of the new motor vehicle charged to the dealer where such charge is attributable to advertising costs incurred or to be incurred by the manufacturer or distributor in the ordinary courses of its business.

(10) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change the capital structure of the new motor vehicle dealer or the means by or through which the new motor vehicle dealer finances the operation of the dealership provided that the new motor vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria; and also provided that no change in the capital

structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor, provided that said consent shall not be unreasonably withheld.

(11) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products; Provided, however, that this subsection does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and the new motor vehicle dealer remains in compliance with any reasonable capital standards and facilities requirements of the manufacturer. The reasonable facilities requirements shall not include any requirement that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

(12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change location of the dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles so as to justify such an expansion, in light of the current market and economic conditions.

(13) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this law or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the State or the United States of America, or to the Commissioner, if such

referral would be binding upon the new motor vehicle dealer.

(14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's relevant market area, and within a reasonable time, after receipt of an order from a dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts or accessories to new vehicles as are covered by such franchise, and such vehicles, parts or accessories as are publicly advertised as being available or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who has placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within a reasonable time, without cause. This subsection is not violated, however, if such failure is caused by acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative.

(15) To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the State.

(16) To award money, goods, services, or any other benefit to any new motor vehicle dealership employee, either directly or indirectly, unless such benefit is promptly accounted for, and transmitted to, or approved by, the new motor vehicle dealer.

(17) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered and which the manufacturer or distributor has accepted for immediate delivery for private retail consumers prior to the new motor vehicle dealer's receipt of the written official price increase notification. A

sales contract signed by a private retail consumer shall constitute evidence of each such order provided that the vehicle is in fact delivered to that customer. Price differences applicable to new model or series shall not be considered a price increase or price decrease. Price changes caused by either: (i) the addition to a new motor vehicle of required or optional equipment; or (ii) revaluation of the United States dollar, in the case of foreign-make vehicles or components; or (iii) an increase in transportation charges due to increased rates imposed by carriers; or (iv) new tariffs or duties imposed by the United States of America or any other governmental authority, shall not be subject to the provisions of this subsection.

(18) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business transferred in accordance with G.S. 20-305(4) above.

(19) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the State or any political subdivision thereof without making the same offer available upon request to all other new motor vehicle dealers in the same line make within the State.

(20) To release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or new motor vehicle dealer, any confidential business, financial, or personal information which may be from time to time provided by the new motor vehicle dealer to the manufacturer, without the express written consent of the new motor vehicle dealer.

(21) To deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose.

(22) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursements or authority granted its new motor vehicle dealers to make warranty adjustments with retail customers.

(23) To engage in any predatory practice against or unfairly compete with a new motor vehicle dealer located in this State.

(24) To terminate any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise.

(25) To require, coerce, or attempt to coerce a new motor vehicle dealer in this State to either establish or maintain exclusive facilities, personnel, or display space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.

(26) To resort to or to use any false or misleading advertisement in the conducting of its business as a manufacturer or distributor in this State.

(27) To knowingly make, either directly or through any agent or employee, any material statement which is false or misleading and which induces any new motor vehicle dealer to enter into any agreement or franchise or to take any action which is materially prejudicial to that new motor vehicle dealer or his business.

(28) To require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any new motor vehicle as a precondition to purchasing, ordering, or receiving any other new motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line of new motor vehicles which are covered by the franchise agreement.

(29) To require, coerce, or attempt to coerce any new motor vehicle dealer to sell, transfer, or otherwise issue stock or other ownership interest in the dealership corporation to a general manager or any other person involved in the management of the dealership other than the dealer principal or dealer operator named in the franchise.

(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for

new motor vehicles based on any of the following factors:

a. The dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise;

b. The dealer's relocation, remodeling, repair, or renovation of existing dealership facilities;

c. The dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer; or

d. Achievement by the new motor vehicle dealer of one or more levels of customer satisfaction in sales or service specified by the manufacturer.

Such unlawful price variation shall include not only differentiation by a manufacturer in the base price of new motor vehicles, but a manufacturer's use of rebates, credits, or other consideration which has the effect of causing variance in the price of new motor vehicles offered to its franchised dealers located in this State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or incentives; provided, however, that the awarding or amount of any rebates or incentives shall not be based on a violation of sub-subdivisions a., b., c., or d. of this subdivision.

(31) Notwithstanding the terms of any contract, franchise, agreement, release, or waiver, to require that in any civil or administrative proceeding in which a new motor vehicle dealer asserts any claims, rights, or defenses arising under this Article or under the franchise, that the dealer or any nonprevailing party compensate the manufacturer or prevailing party for any court costs, attorneys' fees, or other expenses incurred in the litigation.

(32) To require that any of its franchised new motor vehicle dealers located in this State pay any extra

fee, purchase advertising displays or other materials, or remodel, renovate, or recondition the dealers' existing facilities in order to receive any model or series of vehicles manufactured or distributed by the manufacturer for which the dealers have a valid franchise. Notwithstanding the foregoing, nothing contained in this subdivision shall be deemed to prohibit or prevent a manufacturer from requiring that its franchised dealers located in this State purchase special tools or equipment, stock reasonable quantities of certain parts, or participate in training programs which are reasonably necessary for those dealers to sell or service any model or series of vehicles."

Section 4. G.S. 20-305.1 reads as rewritten:

§ 20-305.1. Automobile dealer warranty obligations.

(a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch, shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's obligations for preparation, delivery and warranty service on its products, the schedule of compensation to be paid such dealers for parts, work, and service in connection with warranty service, and the time allowances for the performance of such work and service. In no event shall such schedule of compensation fail to include reasonable compensation for diagnostic work and associated administrative requirements as well as repair service and labor. Time allowances for the performance of warranty work and service shall be reasonable and adequate for the work to be performed. The compensation which must be paid under this section must be reasonable, provided, however, that under no circumstances may the reasonable compensation under this section be in an amount less than the dealer's current retail labor rate and the amount charged to retail customers for the manufacturer's or distributor's original parts for nonwarranty work of like kind, provided such amount is competitive with other franchised dealers within the dealer's market.

(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of its warranty obligations with respect to a motor vehicle, to fail to compensate its motor vehicle dealers licensed in this State for warranty parts other than parts used to repair the living facilities of recreational vehicles, at the prevailing retail

rate according to the factors in subsection (a) of this section, or, in service in accordance with the schedule of compensation provided the dealer pursuant to subsection (a) above, and to fail to indemnify and hold harmless its franchised dealers licensed in this State against any judgment for damages or settlements agreed to by the manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or recision or revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer. Any audit for warranty parts or service compensation shall only be for the 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation shall only be for the ~~24-month~~ 18-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Provided, however, these limitations shall not be effective in the case of fraudulent claims.

(b1) All claims made by motor vehicle dealers pursuant to this section for compensation for delivery, preparation, warranty and recall work including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after receipt of claim from the dealer. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. Any claim not specifically disapproved in writing within 30 days after receipt shall be considered approved and payment is due immediately. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the ~~claim in accordance with the written requirements of the manufacturer or distributor in effect at the time the claim arose.~~ claim. A manufacturer or distributor shall not deny a claim or reduce the amount to be reimbursed to the dealer as long as the dealer has provided reasonably sufficient documentation that the dealer actually

performed the work and that the work performed was diagnosed as reasonably necessary as determined in accordance with accepted standards in the industry.

(c) In the event there is a dispute between the manufacturer, factory branch, distributor, or distributor branch, and the dealer with respect to any matter referred to in subsections ~~(a) and (b) above and subsection (d) below,~~ (a), (b), or (d) of this section, either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing on the subject and the decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Chapter 150B of the General Statutes; provided, however, that nothing contained herein shall give the Commissioner any authority as to the content of any manufacturer's or distributor's warranty. Upon the filing of a petition before the Commissioner under this subsection, any chargeback to or any payment required of a dealer by a manufacturer relating to warranty parts or service compensation, or to sales incentives, service incentives, rebates, or other forms of incentive compensation, shall be stayed during the pendency of the determination by the Commissioner.

(d) Transportation damages. --

(1) Notwithstanding the terms, provisions or conditions of any agreement or franchise, the manufacturer is liable for all damages to motor vehicles before delivery to a carrier or transporter.

(2) If a new motor vehicle dealer determines the method of transportation, the risk of loss passes to the dealer upon delivery of the vehicle to the carrier.

(3) In every other instance, the risk of loss remains with the manufacturer until such time as the new motor vehicle dealer or his designee accepts the vehicle from the carrier.

(4) Whenever a motor vehicle is damaged while in transit when the carrier or the means of transportation is designated by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to the dealer, the dealer must:

a. Notify the manufacturer or distributor of such damage within three working days or within such additional time as authorized by the franchise agreement of the occurrence of the

House Bill 739

Summary of Modifications to Motor Vehicle Franchise Laws

Summary: Following 1995 amendments to the motor vehicle franchise laws, it was demonstrated that there are several areas of the current statute that should be clarified with modifications and corrections. These additions and modifications have the effect of continuing to insure that the relationship between the 700 franchised car and truck dealers and the manufacturers and distributors of the vehicles the dealers sell, is equitable.

Proposed Changes:

The solution consists of modifications in the following areas:

- Right of First Refusal -- Adds language explicitly stating that a dealer is entitled to sell his or her dealership to another qualifying dealer without the intervention of the manufacturer. (G.S. 20-305(18))
- Franchised "Remote" Sales and Service Locations -- Explicitly states that these "remote" operations are to be treated the same as an additional dealership. (G.S. 20-305(5))
- Time Limitation on Franchise - Related Hearings -- Eliminates the absolute and unreasonable requirement to complete these complex legal hearings within 180 days. (G.S. 20-305(5))
- Manufacturer Intrusion in Dealer Operations -- Explicitly defines vehicle price variation and prohibits this practice based on participation in training programs, purchase of new facilities or other equipment, and the obtainment of certain levels of customer satisfaction. (G.S. 20-305(30))
- Manufacturer Warranty Obligations -- Provides that if reasonable proof exists that a warranty claim has been completed, an unintentional omission or failure to comply with specific requirements shall not constitute grounds for non-payment. (G.S. 20-305.1(b1))
- Advance Filing of Proposed Franchise Agreements -- Provides that prior to the adoption of a new franchise agreement, the proposed agreement must be filed with the Commissioner of Motor Vehicles and declared to be consistent with North Carolina Law. (G.S. 20-297.1)
- Ownership Requirement -- Provides that a manufacturer may not require or coerce a dealer into giving an ownership interest to the dealership's general manager. (G.S.20-305(29))
- Prohibits "Loser Pays" Awards -- Provides that in litigation involving franchise law, each party to the claim is responsible for their own legal expenses. (G.S. 20-305(31))
- Reduction of Sales Incentive Audit Period -- Prohibits manufacturers from auditing sales incentive payments made to dealers older than 12 months from the date of payment. This time span is consistent with the time required for warranty claims paid by manufacturers.(G.S. 20-305.1(a))
- Franchise within a Franchise -- Prohibits a manufacturer from requiring a dealer to pay additional costs to receive a new model of an existing line, or series, of vehicles. (G.S.20-305(32))
- Powers of Commissioner -- Provides guidelines for the Commissioner of DMV to hear franchise related complaints in addition to the unfair / deceptive practice hearings already in the statute. (G.S.20-301)

MV DEALERS/MANUFACTURERS LICENSING LAW
HB 739 AND SB 575

All of us want to offer the best possible business environment for our North Carolina business community. This is certainly true for our franchised new automobile dealers as well as the automobile manufacturers and suppliers doing business here. **The current dealer and manufacturer licensing law provides some of the strongest protection for dealers of any state in the nation.** As drafted, HB 739 and SB 575 make great changes to our existing law and to the relationships between franchised new car dealers and auto manufacturers.

These bills will significantly interfere with the freedom to contract in our state. **They will add a whole new layer of government regulation at a time when governments at all levels have recognized the need to eliminate much of the governmental interference from our lives and our businesses.**

Passage of this bill would create an unfriendly business environment in North Carolina and could greatly impact the desire of businesses and manufacturers to locate or do business in the state. Today, small and large companies located throughout North Carolina provide auto manufacturers with more than $2.0 billion each year in goods and services.

The dealer legislation would also require auto manufacturers to enter into contracts with their dealers through the government rather than with each other. Under the bill, the powers of an appointed Commissioner of Motor Vehicles would be greatly expanded, creating an auto czar with powers far beyond the scope of good representative government.

No other business in the state is afforded the legal protection the dealers currently have. **This legislation would further limit the rights of the auto manufacturers and would greatly infringe on the law of contracts.** Each franchised dealer has already signed a sales and service agreement that carefully defines the relationship between the dealer and manufacturer, and this bill is an unreasonable intrusion of the State into private business practices.

Both HB 739 and SB 575 are grossly unfair. **In fact, the effect of this legislation would be to make manufacturers guilty until proven innocent.** The burden of proof will be on the manufacturers to prove their actions are legal, rather than the usual requirement that the burden of proof is on the party alleging the violation of a statute. It gives the appointed Commissioner, who is far removed from the people, the power to assume the allegations are totally true while the manufacturer must prove them false.

The bill also prohibits manufacturers from exercising a "right of first refusal" which is contained in most auto manufacturers' franchise contracts. **Among other things, this would limit the ability of manufacturers to establish minority dealers.**

The bill is at best a serious roadblock to the growth and development of business in North Carolina and at worst an unconstitutional interference with the rights of private parties to contract freely with each other, and unreasonably interferes with the manufacturer's ability to serve the people of North Carolina.

The American Automobile Manufacturers Association urges you to modify or defeat HB 739 and SB 575.

North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

Thursday, April 24, 1997
7:30 a.m.
1327 Legislative Building

N. Leo Daughtry
Edwin M. Hardy
Co-Chairmen

Members Present

Martha Alexander	Gene G. Arnold
J. Russell Capps	J. Sam Ellis
Bobby Ray Hall	John W. Hurley
Margaret M. Jeffus	Larry T. Justus
H.M. Michaux, Jr.	Gregg Thompson

The House Committee on JUDICIARY I met at 7:30 a.m. on Thursday, April 24, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry presiding.

Committee counsels Steven Rose and Karen Cochrane-Brown were present to assist the committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

The Chairman recognized Rep. Tallent for the purpose of explaining House Bill 470, MEDICAL INVESTIGATORS / AB.

Counsel Cochrane-Brown prepared a MEMORANDUM on H.B. 470, a copy of which is attached and made a part of these minutes.

John D. Butts, M.D., Chief Medical Examiner, Office of the Medical Examiner, Dept. of Environment, Health and Natural Resources, prepared a letter dated April 3, 1997, in favor of H.B. 470, a copy of which is attached and made a part of these minutes.

On a motion by Rep. Thompson, and without objection, the committee gave H.B. 470 a favorable report.

Rep. Hall was recognized for the purpose of explaining House Bill 855 LEE COMMISSIONER ELECTIONS.

Bill Gilkeson, staff attorney, prepared a MEMORANDUM on H.B. 855, a copy of which is attached and made a part of these minutes.

On a motion by Rep. Ellis, and without objection, the committee gave H.B. 855 a favorable report.

On a motion by Rep. Ellis, the Committee agreed to accept, for the purpose of discussion, a Proposed Committee Substitute to House Bill 502 AMEND MOTOR VEHICLE DEFIN. On a motion by Rep. Hall, and without objection, the Committee gave a favorable report to the Committee substitute to H.B. 502, unfavorable to the original bill.

Rep. Thompson was recognized for the purpose of explaining House Bill 580, NONRESIDENT HANDGUN PERMIT.

Counsel Rose prepared a MEMORANDUM on H.B. 580, a copy of which is attached and made a part of these minutes.

Rep. Capps moved to amend the measure as detailed in a document entitled "H580-ARL-001," a copy of which is attached and made a part of these minutes. Counsel Rose was recognized to explain these technical amendments. There was no objection.

Rep. Thompson indicated he no objection to an amendment as outlined by Rep. Hall, and the bill was displaced temporarily to prepare such an amendment.

Rep. Thompson was futher recognized for the purpose of explaining House Bill 499, GIS RECORD EXCEPTION. Rep. Daughtry asked for a definition of "GIS," to which Rep. Thompson replied "Geographical Information Systems," and that the purpose of the bill was to allow the redistribution and sale of information already available to the public regarding the parceling of land from county Registers of Deeds.

Rep. Michaux indicated he had received correspondence from Registers of Deed opposed to the bill, and he asked if Rep. Thompson could explain why.

Chairman Daughtry recognized Tim Minton, of the North Carolina Realtors Association, who was not aware of any Registers of Deeds who were opposed to the measure.

Without objection, the committee gave H.B. 499 a favorable report.

Having prepared a written amendment to H.B. 580, a copy of which is attached and made a part of these minutes, the committee voted to accept Rep. Thompson's amendment.

Rep. Ellis moved to roll the amendments into a Proposed Committee Substitute to H.B. 580, and to give the measure a favorable report, unfavorable to the original bill, and that the bill be re-referred to the Committee on FINANCE. The motion was agreed to.

The Committee Recessed until at 10:00 a.m

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS

HOUSE COMMITTEE ON JUDICIARY I

Thursday, April 24, 1997
Room 1327 LB
7:30 a.m.

Representative N. Leo Daughtry, Chairman

H.B. 468 NC DA'S M.V. Recommendations
Sponsor: Representative Decker

H.B. 502 Motorcycle Learners Permit
Sponsor: Representative Ellis

H.B. 580 Non-Resident Handgun Permit
Sponsor: Representative Thompson

H.B. 734 Clarifying G.S.153A-15
Sponsor: Representative Fitch

H.B. 855 Lee Commissioners Elections
Sponsor: Representative Hall

H.B. 856 Tyrrell Cumulative Voting
Sponsor: Representative Culpepper

H.B. 1086 Amend Offer of Judgement Rule-2
Sponsor: Representative Miller

H.B. 1132 Date Rape Drugs
Sponsor: Representative Hunter

H.B. 1140 Littering/Require Comm. Services
Sponsor: Representative Hunter

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

April 29

H 1

HOUSE BILL 468

Short Title: N.C. DA's M.V. Recommendations/AB. (Public)

Sponsors: Representatives Decker; Starnes and Wood.

Referred to: Judiciary I.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE NORTH CAROLINA CONFERENCE OF DISTRICT ATTORNEYS WITH RESPECT TO THE OPERATION OF MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

PART I. INCREASE THE PUNISHMENT FOR MISDEMEANOR DEATH BY VEHICLE FROM A CLASS 1 MISDEMEANOR TO A CLASS A1 MISDEMEANOR.

Section 1. G.S. 20-141.4(b) reads as rewritten:

"(b) Punishments. -- Felony death by vehicle is a Class G felony. Misdemeanor death by vehicle is a ~~Class 1~~ Class A1 misdemeanor."

PART II. REQUIRE THAT A PERSON CONVICTED OF HABITUAL IMPAIRED DRIVING SHALL BE SENTENCED TO PRISON AND SHALL SERVE THE ENTIRE TERM OF IMPRISONMENT.

Section 2. G.S. 15A-1340.10 reads as rewritten:

"**§ 15A-1340.10. Applicability of structured sentencing.**

This Article applies to criminal offenses in North Carolina, other than impaired driving under ~~G.S. 20-138.1~~ G.S. 20-138.1, habitual impaired driving under G.S. 20-138.5, and failure to comply with control measures under G.S. 130A-25, that occur on or after October 1, 1994. This Article does not apply to violent habitual felons sentenced under Article 2B of Chapter 14 of the General Statutes."

Section 3. G.S. 20-138.5(b) reads as rewritten:

"(b) A person convicted of violating this section shall be punished as a Class G ~~felon.~~ felon as follows:

(1) For a first conviction of this offense, the court shall sentence the person to a term of imprisonment for not less than 12 months nor more than 18 months and may impose a fine;

(2) For a second conviction of this offense, the court shall sentence the person to a term of imprisonment for not less than 24 months nor more than 36 months and may impose a fine;

(3) For a third conviction of this offense, the court shall sentence the person to a term of imprisonment for not less than 36 months nor more than 72 months and may impose a fine;

(4) For a fourth and subsequent conviction of this offense, the court shall sentence the person to a term of imprisonment for not less than 72 months nor more than 108 months and may impose a fine.

The court shall impose a single term of imprisonment that shall be both the minimum and maximum sentence, and the court may not suspend the sentence and may not place the person sentenced on probation. The sentence shall not be reduced by any credit for good behavior, gain time, and the like, except for credit for time served under G.S. 15-196.1. A person serving the sentence shall not be eligible for parole or post-release supervision. ~~Sentences~~ A sentence imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence being served."

Section 4. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

a. Impaired driving under ~~G.S. 20-138.1.~~ G.S. 20-138.1 and habitual impaired driving under G.S. 20-138.5.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

c. Second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

d. An offense committed in another jurisdiction substantially equivalent to the offenses in subparagraphs a through c.

e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

PART III. INCLUDE PRIOR IMPAIRED DRIVING CONVICTIONS IN THE CALCULATION OF PRIOR RECORD LEVEL FOR FELONY SENTENCING.

Section 5. G.S. 15A-1340.14(b) reads as rewritten:

"(b) Points. -- Points are assigned as follows:

(1) For each prior felony Class A conviction, 10 points.

(1a) For each prior felony Class B1 conviction, 9 points.

(2) For each prior felony Class B2, C, or D conviction, 6 points.

(3) For each prior felony Class E, F, or G conviction, 4 points.

(4) For each prior felony Class H or I conviction, 2 points.

(5) For each prior Class A1 or Class 1 misdemeanor ~~conviction,~~ conviction or impaired driving conviction under G.S. 20-138.1, 1 point, except that convictions for Class 1 misdemeanor offenses under Chapter 20 of the General Statutes, other than conviction for misdemeanor death by vehicle ~~(G.S. 20-141.4(a2))~~, (G.S. 20-141.4(a2)) and conviction for impaired driving in a commercial vehicle (G.S. 20-138.2) shall not be assigned any points for purposes of determining a person's prior record for felony sentencing.

(6) If all the elements of the present offense are included in the prior offense, 1 point.

(7) If the offense was committed while the offender was on probation or parole, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

For purposes of determining prior record points under this subsection, a conviction for a first degree rape or a first degree sexual offense committed prior to the effective date of this subsection shall be treated as a felony Class B1 conviction, and a conviction for any other felony Class B offense committed prior to the effective date of this subsection shall be treated as a felony Class B2 conviction."

PART IV. EFFECTIVE DATE.

Section 6. This act becomes effective December 1, 1997, and applies to offenses committed and sentencing for offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 468
Proposed Committee Substitute H468-PCSA367

Short Title: N.C. DA's M.V. Recommendations/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE NORTH CAROLINA CONFERENCE OF DISTRICT ATTORNEYS WITH RESPECT TO INCREASING THE PUNISHMENT FOR MISDEMEANOR DEATH BY VEHICLE FROM A CLASS 1 MISDEMEANOR TO A CLASS A1 MISDEMEANOR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-141.4(b) reads as rewritten:

"(b) Punishments. -- Felony death by vehicle is a Class G felony. Misdemeanor death by vehicle is a ~~Class 1~~ Class A1 misdemeanor."

Section 2. This act becomes effective December 1, 1997, and applies to offenses committed and sentencing for offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H April 24 1

HOUSE BILL 855

Short Title: Lee Commissioners Elections. (Local)

Sponsors: Representative Hall.

Referred to: Judiciary I.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE BOARD OF COMMISSIONERS OF LEE COUNTY SHALL CONSIST OF SEVEN MEMBERS ELECTED AT LARGE FOR FOUR-YEAR STAGGERED TERMS ON A NONPARTISAN BASIS AT THE TIME OF THE GENERAL ELECTION.

The General Assembly of North Carolina enacts:

Section 1. (a) Effective with the 1998 election, the Board of Commissioners of Lee County consists of seven members elected at large for four-year terms. In 1998 and quadrennially thereafter, four commissioners shall be elected. In 2000 and quadrennially thereafter, three commissioners shall be elected.

(b) Notwithstanding the provisions of Chapter 163 of the General Statutes, the Board of Commissioners of Lee County shall be elected on a nonpartisan basis at the time set by G.S. 163-1 for the general election in each even-numbered year as terms expire. The election shall be conducted on a nonpartisan plurality basis, with the results determined in accordance with G.S. 163-292. Candidates shall file notices of candidacy not earlier than noon on the third Monday in June and not later than noon on the third Friday in July. The names of the candidates shall be printed on the ballot without reference to any party affiliations. Except as provided by this act, the election shall be conducted in accordance with the applicable provisions of Chapter 163 of the General Statutes.

Section 2. This act does not affect the terms of office of current members of the Board of Commissioners of Lee County.

Section 3. This act is effective when it becomes law.

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April 24, 1997

TO: House Judiciary I Committee

FROM: Bill Gilkeson, Staff Attorney

RE: House Bill 855 - Lee Commissioners Elections.

House Bill 855 , introduced by Rep. Hall, would require that the Lee County Board of Commissioners be elected at large on a nonpartisan basis.

Currently, the Lee County board has seven members. All serve 4-year terms. There is a mix of district representatives and at-large members. Like all other boards of commissioners in the State, it is elected on a partisan basis.

The bill would change the election to nonpartisan. It would elect all members at large. There would still be seven members, elected to staggered four year terms every two years.

Because Lee is covered by Section 5 of the Voting Rights Act, the bill if ratified would have to be submitted to the U.S. Justice Department for preclearance.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

April 28

H D

HOUSE BILL 502
Proposed Committee Substitute H502-PCS6237

Short Title: Amend Motor Vehicle Defin. (Public)

Sponsors:

Referred to:

March 12, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFINITION OF MOTOR VEHICLE IN THE DEALERS AND MANUFACTURERS LICENSING LAW TO INCLUDE PERSONAL WATERCRAFT AND ALL TERRAIN VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-286(10) reads as rewritten:

"(10) Motor vehicle. -- Any motor propelled vehicle, trailer or semitrailer, required to be registered under the laws of this ~~State.~~ State, or any personal watercraft as defined in G.S. 75A-13.2 or all terrain vehicle.

a. 'New motor vehicle' means a motor vehicle which has never been the subject of a sale other than between new motor vehicle dealers, or between manufacturer and dealer of the same franchise.

b. 'Used motor vehicle' means a motor vehicle other than described in paragraph (10)a above."

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 502
Proposed Committee Substitute
H502-CSRO-001
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Amend Motor Vehicle Defin. (Public)

Sponsors:

Referred to:

March 12, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFINITION OF MOTOR VEHICLE IN THE DEALERS AND MANUFACTURERS LICENSING LAW TO INCLUDE PERSONAL WATERCRAFT AND ALL TERRAIN VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-286(10 reads as rewritten:

(10) Motor vehicle. -- Any motor propelled vehicle, trailer or semitrailer, required to be registered under the laws of this ~~State.~~ State, or any personal watercraft as defined in G.S. 75A-13.2 or all terrain vehicle.

a. "New motor vehicle" means a motor vehicle which has never been the subject of a sale other than between new motor vehicle dealers, or between manufacturer and dealer of the same franchise.

b. "Used motor vehicle" means a motor vehicle other than described in paragraph (10)a above.

Section 2. This act is effective when it becomes law.

PUBLIC BILL

ROLL CALL

H.B. 502

CHAP. _____

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE A MOTORCYCLE LEARNER'S PERMIT.

Introduced by Representative(s) Ellis

Principal Clerk's Use Only

PASSED 1st READING
MAR 12 1997
AND REFERRED TO COMMITTEE
ON. Judiciary I

ommittee on Judiciary I
rity being present, having considered
l, recommend that it do NOT pass,
Reps. Daughtry and Hardy
For the Committee
Committee Substitute Do PASS.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H April 28 1

HOUSE BILL 580

Short Title: Nonresident Handgun Permit. (Public)

Sponsors: Representatives Thompson, Nichols; and Buchanan.

Referred to: Judiciary I, if favorable, Finance.

March 24, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON WHO IS NOT A RESIDENT MAY OBTAIN A CONCEALED HANDGUN PERMIT AND TO PROVIDE THE CRITERIA UNDER WHICH THE PERMIT MAY BE ISSUED.

The General Assembly of North Carolina enacts:

Section 1. Article 54B of Chapter 14 of the General Statutes, G.S. 14-415.10 through G.S. 14-415.23 is recodified as Part 1 of Article 54B of the General Statutes, G.S. 14-415.10 through G.S. 14-415.23.

Section 2. Article 54B of Chapter 14 of the General Statutes, as amended by Section 1 of this act, is amended by adding a new Part to read:

"Part 2. Concealed Handgun Permits for Nonresidents.

"**§ 14-415.30. Issuance of permit to nonresident; reciprocity.**

(a) Notwithstanding Part 1 of this Article, a permit may be issued under this Article to a person who is not a resident of North Carolina if the person qualifies under this Part.

(b) A permit issued under this Part shall be issued by the Attorney General rather than the sheriff of a county. Unless provided otherwise by this Part, the provisions of Part 1 of this Article shall also apply to any permit issued to a nonresident under this Part.

(c) Reciprocity in this State with regard to the issuance of concealed handgun permits to nonresidents shall be extended only if all of the following criteria are met:

(1) In the judgment of the Attorney General of North Carolina, the requirements of the other state or district under which the permit or license was issued do not conflict with the provisions of this

Article and are not lower than those specified under this Article and the guidelines prepared by the North Carolina Criminal Justice Education and Training Standards Commission in accordance with this Article.

(2) The state or district under whose authority the concealed handgun permit or license was issued extends a like comity to citizens of North Carolina with regard to concealed handgun permits issued under this Article.

(d) A permit issued under this Part shall be valid throughout the State for a period of four years from the date of issuance of the permit or license issued by the state or district under whose reciprocity provisions the applicant is applying.

"**§ 14-415.31. Criteria for a nonresident to qualify for the issuance of permit.**

The Attorney General may issue a permit under this Part if the applicant qualifies under all of the following criteria:

(1) The applicant is a United States citizen.

(2) The applicant is a resident of another state or district to which North Carolina extends reciprocity as provided in G.S. 14-415.30 and has been a resident of that state or district for 30 days or longer immediately preceding the filing of the application.

(3) The applicant holds a valid and unrevoked concealed handgun permit or license from the state or district in which the applicant resides.

(4) The applicant is 21 years of age or older.

(5) The applicant registers with the Office of the Attorney General and files a sworn affidavit that the person is knowledgeable of the laws of this State regarding concealed handguns and will obey those laws.

"**§ 14-415.32. Application for a permit; fingerprints.**

(a) A person shall apply to the Attorney General to obtain a concealed handgun permit. The applicant shall submit to the Attorney General all of the following:

(1) An application, completed under oath, on a form provided by the Attorney General.

(2) A nonrefundable permit fee.

(3) A full set of fingerprints of the applicant administered by the Attorney General.

(4) A certified copy of the applicant's permit or license to carry a concealed handgun.

(5) A release, in a form to be prescribed by the Attorney General, that authorizes and requires disclosure to the Attorney General of any records concerning the mental health or capacity of the applicant.

(b) The Attorney General shall submit the fingerprints to the State Bureau of Investigation for a records check of State and national databases. The State Bureau of Investigation shall submit the fingerprints to the Federal Bureau of Investigation as

necessary. The cost of processing the set of fingerprints shall be charged to an applicant.

"§ 14-415.33. Application form to be provided by Attorney General; information to be included in application form.

(a) The Attorney General shall make permit applications readily available at the Office of the Attorney General and at other public offices deemed appropriate by the Attorney General.

(b) The permit application shall be in triplicate, in a form to be prescribed by the Attorney General, and shall include the following information with regard to the applicant: name, address, physical description, signature, date of birth, social security number, military status, and the drivers license number or State identification card number of the applicant if used for identification in applying for the permit.

(c) The permit application shall also contain a warning substantially as follows:

'CAUTION: Federal law and State law on the possession of handguns and firearms differ. If you are prohibited by federal law from possessing a handgun or a firearm, you may be prosecuted in federal court. A State permit is not a defense to a federal prosecution.'

(d) The holder of a permit issued under this section shall apply to renew the permit at least 30 days prior to its expiration date by filing with the Attorney General a renewal form provided by the Office of the Attorney General, a notarized affidavit stating that the permittee remains qualified under the criteria provided in this Part, a newly administered full set of the permittee's fingerprints, and a renewal fee. Upon receipt of the completed renewal application, including the permittee's fingerprints, and the appropriate payment of fees, the Attorney General shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of this Part. If the permittee applies for a renewal of the permit within 30 days of its expiration date and if the permittee remains qualified to have a permit under this Part, the Attorney General shall renew the permit.

"§ 14-415.34. Renewal of permit.

The holder of a permit shall apply to renew the permit at least 30 days prior to its expiration date by filing with the Attorney General a renewal form provided by the Office of the Attorney General, a notarized affidavit stating that the permittee remains qualified under the criteria provided in this Part, a newly administered full set of the permittee's fingerprints, and a renewal fee. Upon receipt of the completed renewal application, including the permittee's fingerprints, and the appropriate payment of fees, the Attorney General shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of this Part. The permittee's criminal history shall be updated.

"§ 14-415.35. Attorney General to retain and make available to law enforcement agencies a list of permittees.

The Attorney General shall maintain a listing of those persons who are issued a permit and any pertinent information regarding the issued permit. The permit information shall be available upon request to all State and local law enforcement agencies.

Within five days of the date a permit is issued, the Attorney General shall send a copy of the permit to the State Bureau of Investigation. The State Bureau of Investigation shall make this information available to law enforcement officers and clerks of court on a statewide system.

"**§ 14-415.36. Revocation or suspension of permit.**

(a) The Attorney General may revoke a permit subsequent to a hearing for any of the following reasons:

(1) Fraud or intentional or material misrepresentation in the obtaining of a permit.

(2) Misuse of a permit, including lending or giving a permit to another person, duplicating a permit, or using a permit with the intent to unlawfully cause harm to a person or property.

(3) The doing of an act or existence of a condition which would have been grounds for the denial of the permit by the sheriff.

(4) The violation of any of the terms of this Article.

(5) The applicant is adjudicated guilty of or receives a prayer for judgment continued for a crime which would have disqualified the applicant from initially receiving a permit.

A permittee may appeal the revocation or nonrenewal of a permit by petitioning a district court judge in Wake County. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the Attorney General's refusal.

(b) The court may suspend a permit as part of and for the duration of any orders permitted under Chapter 50B of the General Statutes.

"**§ 14-415.37. Fees.**

(a) The permit fees assessed under this Part are payable to the Department of Justice. The permit fees are as follows:

Application fee	$80.00
Renewal fee	$80.00
Duplicate permit fee	$15.00

Fees collected under this section shall be used to cover the costs of State and federal criminal record checks performed in connection with processing applications, for the implementation and administration of the provisions of this Part, and for other law enforcement purposes.

(b) An additional fee, not to exceed ten dollars ($10.00), shall be collected by the Attorney General from an applicant for a permit to pay for the costs of processing the applicant's fingerprints. This fee shall also be retained by the Department of Justice."

Section 3. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

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April 22, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **House Bill 580; Nonresident handgun permits**

House Bill 580 amends Article 54B of Chapter 14 of the General Statutes to provide for the issuance of concealed handgun permits to nonresidents.

As presently written, the requirements for receiving a concealed handgun permit include being a resident of this State for a minimum of 30 days. Thus, nonresidents are prohibited from obtaining a concealed handgun permit and, as a result, may not carry a concealed handgun in North Carolina.

Section 1 of the bill designates the present parts of Article 54B as Part I.

Section 2 of the bill adds Part II to Article 54B, which covers permits for nonresidents. The new provisions include the following:

> G.S. 14-415.30 which will provide for the issuance of a permit to nonresidents by the Attorney General. The sheriff issues resident permits. Unless otherwise provided, the existing parts of the concealed handgun permit law will apply to the issuance of nonresident permits. There is a requirement that the state that issued the applicant's permit has requirements which are equal to or greater than those in North Carolina, and that the applicant's home state or district extends the same privileges to North Carolina residents. The nonresident permit would be valid for four years running from the date of issuance of the person's permit issued in their home state.
>
> G.S. 14-415.31 specifies the qualifications for issuance of the nonresident permit which include United States citizenship, residency in the person's state of permit

issuance for a minimum of 30 days before filing the application in North Carolina, that the person holds a valid and unrevoked concealed handgun permit in their state of residence, that the applicant is 21 years of age or older, and that the applicant registers with the Office of the Attorney General and files a sworn affidavit stating that they are knowledgeable of the laws of this State regarding concealed handguns and will obey those laws.

G.S. 14-415.32 specifies the contents of the sworn application, that there are fees collected, that fingerprints are obtained, that a certified copy of the applicant's existing permit is presented, and that a release is given to the Attorney General to allow disclosure of records concerning the mental health or capacity of the applicant. The State Bureau of Investigation will do the records check and will submit the fingerprints to the Federal Bureau of Investigation if necessary.

G.S. 14-415.33 will require the Attorney General to make permit applications available and prescribes the minimum information to be obtained. The permit application must contain a warning that federal and state laws on possession of firearms differ and that a state permit is not a defense to federal prosecution.

G.S. 14-415.34 will govern renewal of permits. Application for renewal must be made at least 30 days prior to the expiration date. A new set of fingerprints must be obtained and a nenewal fee paid. The Attorney General then determines if the permittee remains qualified for the permit. The criminal history of the permittee is also updated.

G.S. 14-415.35 requires the Attorney General to maintain a listing of those persons who are issued a permit. This information is available upon request to all North Carolina and local law enforcement agencies. The Attorney General must also send notification of the issuance of the permit to the State Bureau of Investigation which shall make the information available to law enforcement officers and clerks of court on a statewide system.

G.S. 14-415.36 provides for the revocation or suspension of a permit. The grounds for revocation or suspension are the same as the grounds for revocation or suspension of a permit held by a North Carolina resident. A permittee may appeal the revocation or the nonrenewal of a permit by petition to the District Court in Wake County. A court issuing an order pursuant to Chapter 50B (domestic violence proceedings) may suspend a permit as part of and for the duration of the order.

G.S. 14-415.37 provides the fees for the application, its renewal, duplicate permits, and for the processing of fingerprints.

The act becomes effective December 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 580

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H580-ARL-001

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

Representative

moves to amend the bill on page 3, lines 18 through 28, by deleting those lines; and

on page 3, line 38, by adding the following language after the word: "updated.":
"If the permittee applied for a renewal of the permit within 30 days of its expiration date and if the permittee remains qualified to have a permit under this Part, the Attorney General shall renew the permit."; and

on page 4, lines 38 and 39, by rewriting those lines to read:
"Section 3. This act becomes effective December 1, 1997.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 580
Proposed Committee Substitute H580-PCS1344

Short Title: Nonresident Handgun Permit. (Public)

Sponsors:

Referred to:

March 24, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON WHO IS NOT A RESIDENT MAY OBTAIN A CONCEALED HANDGUN PERMIT AND TO PROVIDE THE CRITERIA UNDER WHICH THE PERMIT MAY BE ISSUED.

The General Assembly of North Carolina enacts:

Section 1. Article 54B of Chapter 14 of the General Statutes, G.S. 14-415.10 through G.S. 14-415.23 is recodified as Part 1 of Article 54B of the General Statutes, G.S. 14-415.10 through G.S. 14-415.23.

Section 2. Article 54B of Chapter 14 of the General Statutes, as amended by Section 1 of this act, is amended by adding a new Part to read:

"Part 2. Concealed Handgun Permits for Nonresidents.

"**§ 14-415.30. Issuance of permit to nonresident; reciprocity.**

(a) Notwithstanding Part 1 of this Article, a permit may be issued under this Article to a person who is not a resident of North Carolina if the person qualifies under this Part.

(b) A permit issued under this Part shall be issued by the Attorney General rather than the sheriff of a county. Unless provided otherwise by this Part, the provisions of Part 1 of this Article shall also apply to any permit issued to a nonresident under this Part.

(c) Reciprocity in this State with regard to the issuance of concealed handgun permits to nonresidents shall be extended only if all of the following criteria are met:

(1) In the judgment of the Attorney General of North Carolina, the requirements of the other state or district under which the permit

or license was issued do not conflict with the provisions of this Article and are not lower than those specified under this Article and the guidelines prepared by the North Carolina Criminal Justice Education and Training Standards Commission in accordance with this Article.

(2) The state or district under whose authority the concealed handgun permit or license was issued extends a like comity to citizens of North Carolina with regard to concealed handgun permits issued under this Article.

(d) A permit issued under this Part shall be valid throughout the State for a period of four years from the date of issuance of the permit or license issued by the state or district under whose reciprocity provisions the applicant is applying.

"§ 14-415.31. Criteria for a nonresident to qualify for the issuance of permit.

The Attorney General may issue a permit under this Part if the applicant qualifies under all of the following criteria:

(1) The applicant is a United States citizen.

(2) The applicant is a resident of another state or district to which North Carolina extends reciprocity as provided in G.S. 14-415.30 and has been a resident of that state or district for 30 days or longer immediately preceding the filing of the application.

(3) The applicant holds a valid and unrevoked concealed handgun permit or license from the state or district in which the applicant resides.

(4) The applicant is 21 years of age or older.

(5) The applicant passes a test administered by the Office of the Attorney General which demonstrates that the applicant is knowledgeable of the laws of this State regarding concealed handguns.

"§ 14-415.32. Application for a permit; fingerprints.

(a) A person shall apply to the Attorney General to obtain a concealed handgun permit. The applicant shall submit to the Attorney General all of the following:

(1) An application, completed under oath, on a form provided by the Attorney General.

(2) A nonrefundable permit fee.

(3) A full set of fingerprints of the applicant administered by the Attorney General.

(4) A certified copy of the applicant's permit or license to carry a concealed handgun.

(5) A release, in a form to be prescribed by the Attorney General, that authorizes and requires disclosure to the Attorney General of any records concerning the mental health or capacity of the applicant.

(b) The Attorney General shall submit the fingerprints to the State Bureau of Investigation for a records check of State and national databases. The State Bureau of Investigation shall submit the fingerprints to the Federal Bureau of Investigation as

necessary. The cost of processing the set of fingerprints shall be charged to an applicant.

"§ 14-415.33. Application form to be provided by Attorney General; information to be included in application form.

(a) The Attorney General shall make permit applications readily available at the Office of the Attorney General and at other public offices deemed appropriate by the Attorney General.

(b) The permit application shall be in triplicate, in a form to be prescribed by the Attorney General, and shall include the following information with regard to the applicant: name, address, physical description, signature, date of birth, social security number, military status, and the drivers license number or State identification card number of the applicant if used for identification in applying for the permit.

(c) The permit application shall also contain a warning substantially as follows:

'CAUTION: Federal law and State law on the possession of handguns and firearms differ. If you are prohibited by federal law from possessing a handgun or a firearm, you may be prosecuted in federal court. A State permit is not a defense to a federal prosecution.'

"§ 14-415.34. Renewal of permit.

The holder of a permit shall apply to renew the permit at least 30 days prior to its expiration date by filing with the Attorney General a renewal form provided by the Office of the Attorney General, a notarized affidavit stating that the permittee remains qualified under the criteria provided in this Part, a newly administered full set of the permittee's fingerprints, and a renewal fee. Upon receipt of the completed renewal application, including the permittee's fingerprints, and the appropriate payment of fees, the Attorney General shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of this Part. The permittee's criminal history shall be updated. If the permittee applied for a renewal of the permit within 30 days of its expiration date and if the permittee remains qualified to have a permit under this Part, the Attorney General shall renew the permit.

"§ 14-415.35. Attorney General to retain and make available to law enforcement agencies a list of permittees.

The Attorney General shall maintain a listing of those persons who are issued a permit and any pertinent information regarding the issued permit. The permit information shall be available upon request to all State and local law enforcement agencies.

Within five days of the date a permit is issued, the Attorney General shall send a copy of the permit to the State Bureau of Investigation. The State Bureau of Investigation shall make this information available to law enforcement officers and clerks of court on a statewide system.

"§ 14-415.36. Revocation or suspension of permit.

(a) The Attorney General may revoke a permit subsequent to a hearing for any of the following reasons:

(1) Fraud or intentional or material misrepresentation in the obtaining of a permit.

(2) Misuse of a permit, including lending or giving a permit to another person, duplicating a permit, or using a permit with the intent to unlawfully cause harm to a person or property.

(3) The doing of an act or existence of a condition which would have been grounds for the denial of the permit by the sheriff.

(4) The violation of any of the terms of this Article.

(5) The applicant is adjudicated guilty of or receives a prayer for judgment continued for a crime which would have disqualified the applicant from initially receiving a permit.

A permittee may appeal the revocation or nonrenewal of a permit by petitioning a district court judge in Wake County. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the Attorney General's refusal.

(b) The court may suspend a permit as part of and for the duration of any orders permitted under Chapter 50B of the General Statutes.

"**§ 14-415.37. Fees.**

(a) The permit fees assessed under this Part are payable to the Department of Justice. The permit fees are as follows:

Application fee	$80.00
Renewal fee	$80.00
Duplicate permit fee	$15.00

Fees collected under this section shall be used to cover the costs of State and federal criminal record checks performed in connection with processing applications, for the implementation and administration of the provisions of this Part, and for other law enforcement purposes.

(b) An additional fee, not to exceed ten dollars ($10.00), shall be collected by the Attorney General from an applicant for a permit to pay for the costs of processing the applicant's fingerprints. This fee shall also be retained by the Department of Justice."

Section 3. This act becomes effective December 1, 1997.

April 28

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 499

Short Title: GIS Record Exception. (Public)

Sponsors: Representatives Thompson; Boyd-McIntyre, Buchanan, Davis, Decker, Dedmon, Hill, Howard, Miner, Nichols, Sherrill, Tallent, and C. Wilson.

Referred to: Commerce, if favorable, Judiciary I.

March 11, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO THE USE OF GEOGRAPHICAL INFORMATION SYSTEM DATABASE INFORMATION BY REAL ESTATE TRADE ASSOCIATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 132-10 reads as rewritten:

"**§ 132-10. Qualified exception for geographical information systems.**

Geographical information systems databases and data files developed and operated by counties and cities are public records within the meaning of this Chapter. The county or city shall provide public access to such systems by public access terminals or other output devices. Upon request, the county or city shall furnish copies, in documentary or electronic form, to anyone requesting them at reasonable cost. As a condition of furnishing an electronic copy, whether on magnetic tape, magnetic disk, compact disk, or photo-optical device, a county or city may require that the person obtaining the copy agree in writing that the copy will not be resold or otherwise used for trade or commercial purposes. For purposes of this section, publication or broadcast by the news ~~media~~ media, real estate trade associations, or Multiple Listing Services operated by real estate trade associations shall not constitute a resale or use of the data for trade or commercial purposes and use of information without resale by a licensed professional in the course of practicing the professional's profession shall not constitute use for a commercial purpose."

Section 2. This act is effective when it becomes law.

2 tapes 7:30 am & 2:00 pm

North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

Thursday, April 24, 1997
7:30 a.m.
1327 Legislative Building

N. Leo Daughtry
Edwin M. Hardy
Co-Chairmen

Members Present

Martha Alexander	Gene G. Arnold
J. Russell Capps	J. Sam Ellis
Bobby Ray Hall	John W. Hurley
Margaret M. Jeffus	Larry T. Justus
H.M. Michaux, Jr.	Gregg Thompson

The House Committee on JUDICIARY I met at 7:30 a.m. on Thursday, April 24, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry presiding.

Committee counsels Steven Rose and Karen Cochrane-Brown were present to assist the committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

The Chairman recognized Rep. Tallent for the purpose of explaining House Bill 470, MEDICAL INVESTIGATORS / AB.

Counsel Cochrane-Brown prepared a MEMORANDUM on H.B. 470, a copy of which is attached and made a part of these minutes.

John D. Butts, M.D., Chief Medical Examiner, Office of the Medical Examiner, Dept. of Environment, Health and Natural Resources, prepared a letter dated April 3, 1997, in favor of H.B. 470, a copy of which is attached and made a part of these minutes.

On a motion by Rep. Thompson, and without objection, the committee gave H.B. 470 a favorable report.

Rep. Hall was recognized for the purpose of explaining House Bill 855 LEE COMMISSIONER ELECTIONS.

Bill Gilkeson, staff attorney, prepared a MEMORANDUM on H.B. 855, a copy of which is attached and made a part of these minutes.

On a motion by Rep. Ellis, and without objection, the committee gave H.B. 855 a favorable report.

On a motion by Rep. Ellis, the Committee agreed to accept, for the purpose of discussion, a Proposed Committee Substitute to House Bill 502 AMEND MOTOR VEHICLE DEFIN. On a motion by Rep. Hall, and without objection, the Committee gave a favorable report to the Committee substitute to H.B. 502, unfavorable to the original bill.

Rep. Thompson was recognized for the purpose of explaining House Bill 580, NONRESIDENT HANDGUN PERMIT.

Counsel Rose prepared a MEMORANDUM on H.B. 580, a copy of which is attached and made a part of these minutes.

Rep. Capps moved to amend the measure as detailed in a document entitled "H580-ARL-001," a copy of which is attached and made a part of these minutes. Counsel Rose was recognized to explain these technical amendments. There was no objection.

Rep. Thompson indicated he no objection to an amendment as outlined by Rep. Hall, and the bill was displaced temporarily to prepare such an amendment.

Rep. Thompson was futher recognized for the purpose of explaining House Bill 499, GIS RECORD EXCEPTION. Rep. Daughtry asked for a definition of "GIS," to which Rep. Thompson replied "Geographical Information Systems," and that the purpose of the bill was to allow the redistribution and sale of information already available to the public regarding the parceling of land from county Registers of Deeds.

Rep. Michaux indicated he had received correspondence from Registers of Deed opposed to the bill, and he asked if Rep. Thompson could explain why.

Chairman Daughtry recognized Tim Minton, of the North Carolina Realtors Association, who was not aware of any Registers of Deeds who were opposed to the measure.

Without objection, the committee gave H.B. 499 a favorable report.

Having prepared a written amendment to H.B. 580, a copy of which is attached and made a part of these minutes, the committee voted to accept Rep. Thompson's amendment.

Rep. Ellis moved to roll the amendments into a Proposed Committee Substitute to H.B. 580, and to give the measure a favorable report, unfavorable to the original bill, and that the bill be re-referred to the Committee on FINANCE. The motion was agreed to.

The Committee Recessed until at 10:00 a.m

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 470

Short Title: Medical Investigators/AB. (Public)

Sponsors: Representative Tallent.

Referred to: Judiciary I.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE APPOINTMENT OF COUNTY MEDICAL INVESTIGATORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-382 reads as rewritten:

"**§ 130A-382. County medical ~~examiners;~~** examiners and medical investigators; **appointment; term of ~~office; vacancies.~~** office.

(a) One or more county medical examiners or medical investigators for each county shall be appointed by the Chief Medical Examiner for a three-year term. ~~County medical examiners shall be appointed from a list of physicians licensed to practice medicine in this State submitted by the medical society of the county in which the appointment is to be made. If no names are submitted by the society, the Chief Medical Examiner shall appoint one or more medical examiners from physicians in the county licensed to practice medicine in this State. In the event no licensed physician in a county accepts an appointment, the Chief Medical Examiner may appoint one or more physicians licensed to practice medicine in this State from other counties or the local registrar, deputy registrar, subregistrar or coroner. In the event a medical examiner is unable to serve in a particular case or for a temporary period of time, the Chief Medical Examiner shall designate a physician licensed to practice medicine in this State, the local registrar, deputy registrar, subregistrar or coroner.~~

(b) A medical examiner or medical investigator may serve more than one county.

(c) The Chief Medical Examiner may take jurisdiction in any case or appoint another medical examiner or medical investigator to do so.

(d) A medical examiner shall be a physician licensed to practice medicine in this State.

(e) A medical investigator shall:

(1) Be licensed to practice nursing in this State, or

(2) Be a physician's assistant registered under the rules of the North Carolina Board of Medical Examiners, or

(3) Successfully complete a training program in death investigation approved by the Chief Medical Examiner.

A county medical investigator appointed pursuant to this Article shall have the same powers and duties as a county medical examiner appointed under this Article."

Section 2. G.S. 130A-394 is repealed.

Section 3. Chapter 152 of the General Statutes is repealed.

Section 4. This act is effective when it becomes law except in those counties with a coroner serving on that date, in which case the act shall become effective upon the sooner of the leaving of office or the expiration of the current term of the coroner.

North Carolina General Assembly
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April 22, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel

RE: **House Bill 470 - Medical Investigators/AB.**

House Bill 470 amends G.S. 130A-382 to authorize the Chief Medical Examiner to appoint county medical investigators as well as medical examiners and deletes the provisions relating to the procedure to be used in making such appointments..

The bill establishes the qualifications necessary for a non-physician county medical investigator to perform the functions of a county medical examiner. A medical investigator must:

1. Be licensed to practice nursing, or
2. Be a registered physician's assistant, or
3. Have successfully completed a training program in death investigation approved by the Chief Medical Examiner.

The bill also provides that the medical investigator shall have the same powers and duties as the county medical examiner.

Section 2 of the bill repeals G.S. 130A-394 relating to inquests held by coroners.

Section 3 repeals Chapter 152 which deals with Coroners. Prior to 1967, there was an elected office of coroner in each county, with authority and jurisdiction similar to the medical examiner. Currently, only the following counties have coroners - Ashe, Harnett, Hoke, Hyde, Iredell, Johnston, Wilkes and Yadkin. The others were abolished by local laws. This bill would allow coroners currently serving to continue until they leave office or their current term expires.

The act would become effective when it becomes law, except with regard to coroners currently in office.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

State of North Carolina
Department of Environment,
Health and Natural Resources
James B. Hunt, Jr., Governor
Jonathan B. Howes, Secretary

Office of the Chief Medical Examiner
John D. Butts, M.D., Chief Medical Examiner

April 3, 1997

The Honorable Edwin M. Hardy
North Carolina General Assembly
417A Legislative Office Building
300 North Salisbury St.
Raleigh, North Carolina 27603-5925

Dear Representative Hardy:

On March 10, 1997, House Bill 470, *An Act To Authorize The Appointment Of County Medical Investigators*, was referred to the Committee on Judiciary I. This legislation is very important to the Office of the Chief Medical Examiner and I encourage you to favorably consider this bill when it comes up for review in your committee.

This bill will clarify the appointing of non-physician medical-legal certifiers in North Carolina. It will authorize the Chief Medical Examiner to appoint non-physicians as medical investigators where there are an insufficient number of physicians willing to serve as medical examiner, in replacement of the current practice of appointing such individuals as "acting" medical examiners. A medical investigator would be either a licensed physician assistant, a nurse or another individual who would be required to complete a course of training approved by the Chief Medical Examiner.

This bill will also abolish the office of coroner, a holdover from the Middle Ages and our colonial ancestors. Those coroners currently serving as "acting" medical examiners would be allowed to continue on as medical investigators.

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Telephone (919) 966-2253 · Telecopier (919) 962-6263 · State Courier #17-61-02

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Thank you for your support of this bill. If there is anything that I or my staff can do to assist you or answer any questions, please feel free to contact me or my Administrator Mr. Michael Olson.

Sincerely,

John D. Butts, M.D.
Chief Medical Examiner

JDB/scf

cc: Chris G. Hoke, JD, Deputy State Health Director
Richard Rogers, Legislative and Intergovernmental Affairs

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on JUDICIARY I .

☐ Committee Substitute for
H.B. 470 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE APPOINTMENT OF COUNTY MEDICAL INVESTIGATORS.

X With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 855

Short Title: Lee Commissioners Elections. (Local)

Sponsors: Representative Hall.

Referred to: Judiciary I.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE BOARD OF COMMISSIONERS OF LEE COUNTY SHALL CONSIST OF SEVEN MEMBERS ELECTED AT LARGE FOR FOUR-YEAR STAGGERED TERMS ON A NONPARTISAN BASIS AT THE TIME OF THE GENERAL ELECTION.

The General Assembly of North Carolina enacts:

Section 1. (a) Effective with the 1998 election, the Board of Commissioners of Lee County consists of seven members elected at large for four-year terms. In 1998 and quadrennially thereafter, four commissioners shall be elected. In 2000 and quadrennially thereafter, three commissioners shall be elected.

(b) Notwithstanding the provisions of Chapter 163 of the General Statutes, the Board of Commissioners of Lee County shall be elected on a nonpartisan basis at the time set by G.S. 163-1 for the general election in each even-numbered year as terms expire. The election shall be conducted on a nonpartisan plurality basis, with the results determined in accordance with G.S. 163-292. Candidates shall file notices of candidacy not earlier than noon on the third Monday in June and not later than noon on the third Friday in July. The names of the candidates shall be printed on the ballot without reference to any party affiliations. Except as provided by this act, the election shall be conducted in accordance with the applicable provisions of Chapter 163 of the General Statutes.

Section 2. This act does not affect the terms of office of current members of the Board of Commissioners of Lee County.

Section 3. This act is effective when it becomes law.

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April 24, 1997

TO: House Judiciary I Committee

FROM: Bill Gilkeson, Staff Attorney

RE: House Bill 855 - Lee Commissioners Elections.

House Bill 855 , introduced by Rep. Hall, would require that the Lee County Board of Commissioners be elected at large on a nonpartisan basis.

Currently, the Lee County board has seven members. All serve 4-year terms. There is a mix of district representatives and at-large members. Like all other boards of commissioners in the State, it is elected on a partisan basis.

The bill would change the election to nonpartisan. It would elect all members at large. There would still be seven members, elected to staggered four year terms every two years.

Because Lee is covered by Section 5 of the Voting Rights Act, the bill if ratified would have to be submitted to the U.S. Justice Department for preclearance.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on JUDICIARY I .

☐ Committee Substitute for
H.B. 855 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE BOARD OF COMMISSIONERS OF LEE COUNTY SHALL CONSIST OF SEVEN MEMBERS ELECTED AT LARGE FOR FOUR-YEAR STAGGERED TERMS ON A NONPARTISAN BASIS AT THE TIME OF THE GENERAL ELECTION.

X With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 502
Proposed Committee Substitute H502-PCS6237

Short Title: Amend Motor Vehicle Defin. (Public)

Sponsors:

Referred to:

March 12, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFINITION OF MOTOR VEHICLE IN THE DEALERS AND MANUFACTURERS LICENSING LAW TO INCLUDE PERSONAL WATERCRAFT AND ALL TERRAIN VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-286(10) reads as rewritten:

"(10) Motor vehicle. -- Any motor propelled vehicle, trailer or semitrailer, required to be registered under the laws of this ~~State.~~ State, or any personal watercraft as defined in G.S. 75A-13.2 or all terrain vehicle.

a. 'New motor vehicle' means a motor vehicle which has never been the subject of a sale other than between new motor vehicle dealers, or between manufacturer and dealer of the same franchise.

b. 'Used motor vehicle' means a motor vehicle other than described in paragraph (10)a above."

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 580

Short Title: Nonresident Handgun Permit. (Public)

Sponsors: Representatives Thompson, Nichols; and Buchanan.

Referred to: Judiciary I, if favorable, Finance.

March 24, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON WHO IS NOT A RESIDENT MAY OBTAIN A CONCEALED HANDGUN PERMIT AND TO PROVIDE THE CRITERIA UNDER WHICH THE PERMIT MAY BE ISSUED.

The General Assembly of North Carolina enacts:

Section 1. Article 54B of Chapter 14 of the General Statutes, G.S. 14-415.10 through G.S. 14-415.23 is recodified as Part 1 of Article 54B of the General Statutes, G.S. 14-415.10 through G.S. 14-415.23.

Section 2. Article 54B of Chapter 14 of the General Statutes, as amended by Section 1 of this act, is amended by adding a new Part to read:

"Part 2. Concealed Handgun Permits for Nonresidents.

"**§ 14-415.30. Issuance of permit to nonresident; reciprocity.**

(a) Notwithstanding Part 1 of this Article, a permit may be issued under this Article to a person who is not a resident of North Carolina if the person qualifies under this Part.

(b) A permit issued under this Part shall be issued by the Attorney General rather than the sheriff of a county. Unless provided otherwise by this Part, the provisions of Part 1 of this Article shall also apply to any permit issued to a nonresident under this Part.

(c) Reciprocity in this State with regard to the issuance of concealed handgun permits to nonresidents shall be extended only if all of the following criteria are met:

(1) In the judgment of the Attorney General of North Carolina, the requirements of the other state or district under which the permit or license was issued do not conflict with the provisions of this

Article and are not lower than those specified under this Article and the guidelines prepared by the North Carolina Criminal Justice Education and Training Standards Commission in accordance with this Article.

(2) The state or district under whose authority the concealed handgun permit or license was issued extends a like comity to citizens of North Carolina with regard to concealed handgun permits issued under this Article.

(d) A permit issued under this Part shall be valid throughout the State for a period of four years from the date of issuance of the permit or license issued by the state or district under whose reciprocity provisions the applicant is applying.

"§ 14-415.31. Criteria for a nonresident to qualify for the issuance of permit.

The Attorney General may issue a permit under this Part if the applicant qualifies under all of the following criteria:

(1) The applicant is a United States citizen.

(2) The applicant is a resident of another state or district to which North Carolina extends reciprocity as provided in G.S. 14-415.30 and has been a resident of that state or district for 30 days or longer immediately preceding the filing of the application.

(3) The applicant holds a valid and unrevoked concealed handgun permit or license from the state or district in which the applicant resides.

(4) The applicant is 21 years of age or older.

(5) The applicant registers with the Office of the Attorney General and files a sworn affidavit that the person is knowledgeable of the laws of this State regarding concealed handguns and will obey those laws.

"§ 14-415.32. Application for a permit; fingerprints.

(a) A person shall apply to the Attorney General to obtain a concealed handgun permit. The applicant shall submit to the Attorney General all of the following:

(1) An application, completed under oath, on a form provided by the Attorney General.

(2) A nonrefundable permit fee.

(3) A full set of fingerprints of the applicant administered by the Attorney General.

(4) A certified copy of the applicant's permit or license to carry a concealed handgun.

(5) A release, in a form to be prescribed by the Attorney General, that authorizes and requires disclosure to the Attorney General of any records concerning the mental health or capacity of the applicant.

(b) The Attorney General shall submit the fingerprints to the State Bureau of Investigation for a records check of State and national databases. The State Bureau of Investigation shall submit the fingerprints to the Federal Bureau of Investigation as

necessary. The cost of processing the set of fingerprints shall be charged to an applicant.

"§ 14-415.33. Application form to be provided by Attorney General; information to be included in application form.

(a) The Attorney General shall make permit applications readily available at the Office of the Attorney General and at other public offices deemed appropriate by the Attorney General.

(b) The permit application shall be in triplicate, in a form to be prescribed by the Attorney General, and shall include the following information with regard to the applicant: name, address, physical description, signature, date of birth, social security number, military status, and the drivers license number or State identification card number of the applicant if used for identification in applying for the permit.

(c) The permit application shall also contain a warning substantially as follows:

'CAUTION: Federal law and State law on the possession of handguns and firearms differ. If you are prohibited by federal law from possessing a handgun or a firearm, you may be prosecuted in federal court. A State permit is not a defense to a federal prosecution.'

(d) The holder of a permit issued under this section shall apply to renew the permit at least 30 days prior to its expiration date by filing with the Attorney General a renewal form provided by the Office of the Attorney General, a notarized affidavit stating that the permittee remains qualified under the criteria provided in this Part, a newly administered full set of the permittee's fingerprints, and a renewal fee. Upon receipt of the completed renewal application, including the permittee's fingerprints, and the appropriate payment of fees, the Attorney General shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of this Part. If the permittee applies for a renewal of the permit within 30 days of its expiration date and if the permittee remains qualified to have a permit under this Part, the Attorney General shall renew the permit.

"§ 14-415.34. Renewal of permit.

The holder of a permit shall apply to renew the permit at least 30 days prior to its expiration date by filing with the Attorney General a renewal form provided by the Office of the Attorney General, a notarized affidavit stating that the permittee remains qualified under the criteria provided in this Part, a newly administered full set of the permittee's fingerprints, and a renewal fee. Upon receipt of the completed renewal application, including the permittee's fingerprints, and the appropriate payment of fees, the Attorney General shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of this Part. The permittee's criminal history shall be updated.

"§ 14-415.35. Attorney General to retain and make available to law enforcement agencies a list of permittees.

The Attorney General shall maintain a listing of those persons who are issued a permit and any pertinent information regarding the issued permit. The permit information shall be available upon request to all State and local law enforcement agencies.

Within five days of the date a permit is issued, the Attorney General shall send a copy of the permit to the State Bureau of Investigation. The State Bureau of Investigation shall make this information available to law enforcement officers and clerks of court on a statewide system.

"**§ 14-415.36. Revocation or suspension of permit.**

(a) The Attorney General may revoke a permit subsequent to a hearing for any of the following reasons:

(1) Fraud or intentional or material misrepresentation in the obtaining of a permit.

(2) Misuse of a permit, including lending or giving a permit to another person, duplicating a permit, or using a permit with the intent to unlawfully cause harm to a person or property.

(3) The doing of an act or existence of a condition which would have been grounds for the denial of the permit by the sheriff.

(4) The violation of any of the terms of this Article.

(5) The applicant is adjudicated guilty of or receives a prayer for judgment continued for a crime which would have disqualified the applicant from initially receiving a permit.

A permittee may appeal the revocation or nonrenewal of a permit by petitioning a district court judge in Wake County. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the Attorney General's refusal.

(b) The court may suspend a permit as part of and for the duration of any orders permitted under Chapter 50B of the General Statutes.

"**§ 14-415.37. Fees.**

(a) The permit fees assessed under this Part are payable to the Department of Justice. The permit fees are as follows:

Application fee	$80.00
Renewal fee	$80.00
Duplicate permit fee	$15.00

Fees collected under this section shall be used to cover the costs of State and federal criminal record checks performed in connection with processing applications, for the implementation and administration of the provisions of this Part, and for other law enforcement purposes.

(b) An additional fee, not to exceed ten dollars ($10.00), shall be collected by the Attorney General from an applicant for a permit to pay for the costs of processing the applicant's fingerprints. This fee shall also be retained by the Department of Justice."

Section 3. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

North Carolina General Assembly
Legislative Services Office

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April 22, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **House Bill 580; Nonresident handgun permits**

House Bill 580 amends Article 54B of Chapter 14 of the General Statutes to provide for the issuance of concealed handgun permits to nonresidents.

As presently written, the requirements for receiving a concealed handgun permit include being a resident of this State for a minimum of 30 days. Thus, nonresidents are prohibited from obtaining a concealed handgun permit and, as a result, may not carry a concealed handgun in North Carolina.

Section 1 of the bill designates the present parts of Article 54B as Part I.

Section 2 of the bill adds Part II to Article 54B, which covers permits for nonresidents. The new provisions include the following:

G.S. 14-415.30 which will provide for the issuance of a permit to nonresidents by the Attorney General. The sheriff issues resident permits. Unless otherwise provided, the existing parts of the concealed handgun permit law will apply to the issuance of nonresident permits. There is a requirement that the state that issued the applicant's permit has requirements which are equal to or greater than those in North Carolina, and that the applicant's home state or district extends the same privileges to North Carolina residents. The nonresident permit would be valid for four years running from the date of issuance of the person's permit issued in their home state.

G.S. 14-415.31 specifies the qualifications for issuance of the nonresident permit which include United States citizenship, residency in the person's state of permit

issuance for a minimum of 30 days before filing the application in North Carolina, that the person holds a valid and unrevoked concealed handgun permit in their state of residence, that the applicant is 21 years of age or older, and that the applicant registers with the Office of the Attorney General and files a sworn affidavit stating that they are knowledgeable of the laws of this State regarding concealed handguns and will obey those laws.

G.S. 14-415.32 specifies the contents of the sworn application, that there are fees collected, that fingerprints are obtained, that a certified copy of the applicant's existing permit is presented, and that a release is given to the Attorney General to allow disclosure of records concerning the mental health or capacity of the applicant. The State Bureau of Investigation will do the records check and will submit the fingerprints to the Federal Bureau of Investigation if necessary.

G.S. 14-415.33 will require the Attorney General to make permit applications available and prescribes the minimum information to be obtained. The permit application must contain a warning that federal and state laws on possession of firearms differ and that a state permit is not a defense to federal prosecution.

G.S. 14-415.34 will govern renewal of permits. Application for renewal must be made at least 30 days prior to the expiration date. A new set of fingerprints must be obtained and a nenewal fee paid. The Attorney General then determines if the permittee remains qualified for the permit. The criminal history of the permittee is also updated.

G.S. 14-415.35 requires the Attorney General to maintain a listing of those persons who are issued a permit. This information is available upon request to all North Carolina and local law enforcement agencies. The Attorney General must also send notification of the issuance of the permit to the State Bureau of Investigation which shall make the information available to law enforcement officers and clerks of court on a statewide system.

G.S. 14-415.36 provides for the revocation or suspension of a permit. The grounds for revocation or suspension are the same as the grounds for revocation or suspension of a permit held by a North Carolina resident. A permittee may appeal the revocation or the nonrenewal of a permit by petition to the District Court in Wake County. A court issuing an order pursuant to Chapter 50B (domestic violence proceedings) may suspend a permit as part of and for the duration of the order.

G.S. 14-415.37 provides the fees for the application, its renewal, duplicate permits, and for the processing of fingerprints.

The act becomes effective December 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 580

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H580-ARL-001 Page 1 of 1

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

Representative Capps

moves to amend the bill on page 3, lines 18 through 28, by deleting those lines; and

on page 3, line 38, by adding the following language after the word: "updated.":
"If the permittee applied for a renewal of the permit within 30 days of its expiration date and if the permittee remains qualified to have a permit under this Part, the Attorney General shall renew the permit."; and

on page 4, lines 38 and 39, by rewriting those lines to read:
"Section 3. This act becomes effective December 1, 1997.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 580 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Thompson
Sen.)

moves to amend the bill on page 2, line 24-27

( ) WHICH CHANGES THE TITLE

by rewriting those lines to read:

Under-lined

"(5) The ~~Attorney~~ applicant ~~submitted~~ passes a test administered by the Attorney General which demonstrates that the applicant is knowledgeable of the laws of this State regarding concealed handguns."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 580
Proposed Committee Substitute H580-PCS1344

Short Title: Nonresident Handgun Permit. (Public)

Sponsors:

Referred to:

March 24, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON WHO IS NOT A RESIDENT MAY OBTAIN A CONCEALED HANDGUN PERMIT AND TO PROVIDE THE CRITERIA UNDER WHICH THE PERMIT MAY BE ISSUED.

The General Assembly of North Carolina enacts:

Section 1. Article 54B of Chapter 14 of the General Statutes, G.S. 14-415.10 through G.S. 14-415.23 is recodified as Part 1 of Article 54B of the General Statutes, G.S. 14-415.10 through G.S. 14-415.23.

Section 2. Article 54B of Chapter 14 of the General Statutes, as amended by Section 1 of this act, is amended by adding a new Part to read:

"Part 2. Concealed Handgun Permits for Nonresidents.

"**§ 14-415.30. Issuance of permit to nonresident; reciprocity.**

(a) Notwithstanding Part 1 of this Article, a permit may be issued under this Article to a person who is not a resident of North Carolina if the person qualifies under this Part.

(b) A permit issued under this Part shall be issued by the Attorney General rather than the sheriff of a county. Unless provided otherwise by this Part, the provisions of Part 1 of this Article shall also apply to any permit issued to a nonresident under this Part.

(c) Reciprocity in this State with regard to the issuance of concealed handgun permits to nonresidents shall be extended only if all of the following criteria are met:

(1) In the judgment of the Attorney General of North Carolina, the requirements of the other state or district under which the permit

or license was issued do not conflict with the provisions of this Article and are not lower than those specified under this Article and the guidelines prepared by the North Carolina Criminal Justice Education and Training Standards Commission in accordance with this Article.

(2) The state or district under whose authority the concealed handgun permit or license was issued extends a like comity to citizens of North Carolina with regard to concealed handgun permits issued under this Article.

(d) A permit issued under this Part shall be valid throughout the State for a period of four years from the date of issuance of the permit or license issued by the state or district under whose reciprocity provisions the applicant is applying.

"§ 14-415.31. Criteria for a nonresident to qualify for the issuance of permit.

The Attorney General may issue a permit under this Part if the applicant qualifies under all of the following criteria:

(1) The applicant is a United States citizen.

(2) The applicant is a resident of another state or district to which North Carolina extends reciprocity as provided in G.S. 14-415.30 and has been a resident of that state or district for 30 days or longer immediately preceding the filing of the application.

(3) The applicant holds a valid and unrevoked concealed handgun permit or license from the state or district in which the applicant resides.

(4) The applicant is 21 years of age or older.

(5) The applicant passes a test administered by the Office of the Attorney General which demonstrates that the applicant is knowledgeable of the laws of this State regarding concealed handguns.

"§ 14-415.32. Application for a permit; fingerprints.

(a) A person shall apply to the Attorney General to obtain a concealed handgun permit. The applicant shall submit to the Attorney General all of the following:

(1) An application, completed under oath, on a form provided by the Attorney General.

(2) A nonrefundable permit fee.

(3) A full set of fingerprints of the applicant administered by the Attorney General.

(4) A certified copy of the applicant's permit or license to carry a concealed handgun.

(5) A release, in a form to be prescribed by the Attorney General, that authorizes and requires disclosure to the Attorney General of any records concerning the mental health or capacity of the applicant.

(b) The Attorney General shall submit the fingerprints to the State Bureau of Investigation for a records check of State and national databases. The State Bureau of Investigation shall submit the fingerprints to the Federal Bureau of Investigation as

necessary. The cost of processing the set of fingerprints shall be charged to an applicant.

"§ 14-415.33. Application form to be provided by Attorney General; information to be included in application form.

(a) The Attorney General shall make permit applications readily available at the Office of the Attorney General and at other public offices deemed appropriate by the Attorney General.

(b) The permit application shall be in triplicate, in a form to be prescribed by the Attorney General, and shall include the following information with regard to the applicant: name, address, physical description, signature, date of birth, social security number, military status, and the drivers license number or State identification card number of the applicant if used for identification in applying for the permit.

(c) The permit application shall also contain a warning substantially as follows:

'CAUTION: Federal law and State law on the possession of handguns and firearms differ. If you are prohibited by federal law from possessing a handgun or a firearm, you may be prosecuted in federal court. A State permit is not a defense to a federal prosecution.'

"§ 14-415.34. Renewal of permit.

The holder of a permit shall apply to renew the permit at least 30 days prior to its expiration date by filing with the Attorney General a renewal form provided by the Office of the Attorney General, a notarized affidavit stating that the permittee remains qualified under the criteria provided in this Part, a newly administered full set of the permittee's fingerprints, and a renewal fee. Upon receipt of the completed renewal application, including the permittee's fingerprints, and the appropriate payment of fees, the Attorney General shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of this Part. The permittee's criminal history shall be updated. If the permittee applied for a renewal of the permit within 30 days of its expiration date and if the permittee remains qualified to have a permit under this Part, the Attorney General shall renew the permit.

"§ 14-415.35. Attorney General to retain and make available to law enforcement agencies a list of permittees.

The Attorney General shall maintain a listing of those persons who are issued a permit and any pertinent information regarding the issued permit. The permit information shall be available upon request to all State and local law enforcement agencies.

Within five days of the date a permit is issued, the Attorney General shall send a copy of the permit to the State Bureau of Investigation. The State Bureau of Investigation shall make this information available to law enforcement officers and clerks of court on a statewide system.

"§ 14-415.36. Revocation or suspension of permit.

(a) The Attorney General may revoke a permit subsequent to a hearing for any of the following reasons:

(1) Fraud or intentional or material misrepresentation in the obtaining of a permit.

(2) Misuse of a permit, including lending or giving a permit to another person, duplicating a permit, or using a permit with the intent to unlawfully cause harm to a person or property.

(3) The doing of an act or existence of a condition which would have been grounds for the denial of the permit by the sheriff.

(4) The violation of any of the terms of this Article.

(5) The applicant is adjudicated guilty of or receives a prayer for judgment continued for a crime which would have disqualified the applicant from initially receiving a permit.

A permittee may appeal the revocation or nonrenewal of a permit by petitioning a district court judge in Wake County. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the Attorney General's refusal.

(b) The court may suspend a permit as part of and for the duration of any orders permitted under Chapter 50B of the General Statutes.

"**§ 14-415.37. Fees.**

(a) The permit fees assessed under this Part are payable to the Department of Justice. The permit fees are as follows:

Application fee	$80.00
Renewal fee	$80.00
Duplicate permit fee	$15.00

Fees collected under this section shall be used to cover the costs of State and federal criminal record checks performed in connection with processing applications, for the implementation and administration of the provisions of this Part, and for other law enforcement purposes.

(b) An additional fee, not to exceed ten dollars ($10.00), shall be collected by the Attorney General from an applicant for a permit to pay for the costs of processing the applicant's fingerprints. This fee shall also be retained by the Department of Justice."

Section 3. This act becomes effective December 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 499

Short Title: GIS Record Exception. (Public)

Sponsors: Representatives Thompson; Boyd-McIntyre, Buchanan, Davis, Decker, Dedmon, Hill, Howard, Miner, Nichols, Sherrill, Tallent, and C. Wilson.

Referred to: Commerce, if favorable, Judiciary I.

March 11, 1997

A BILL TO BE ENTITLED

AN ACT RELATING TO THE USE OF GEOGRAPHICAL INFORMATION SYSTEM DATABASE INFORMATION BY REAL ESTATE TRADE ASSOCIATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 132-10 reads as rewritten:

"**§ 132-10. Qualified exception for geographical information systems.**

Geographical information systems databases and data files developed and operated by counties and cities are public records within the meaning of this Chapter. The county or city shall provide public access to such systems by public access terminals or other output devices. Upon request, the county or city shall furnish copies, in documentary or electronic form, to anyone requesting them at reasonable cost. As a condition of furnishing an electronic copy, whether on magnetic tape, magnetic disk, compact disk, or photo-optical device, a county or city may require that the person obtaining the copy agree in writing that the copy will not be resold or otherwise used for trade or commercial purposes. For purposes of this section, publication or broadcast by the news ~~media~~ media, real estate trade associations, or Multiple Listing Services operated by real estate trade associations shall not constitute a resale or use of the data for trade or commercial purposes and use of information without resale by a licensed professional in the course of practicing the professional's profession shall not constitute use for a commercial purpose."

Section 2. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Judiciary I 4-24-97 7:30 am

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
1. Chris Pierce	North Carolina Motorcycle Dealers Assn.
2. Ed Taylor	AOC
3. David Ferrell	Hyde, McNamara, Caldwell, McElroy & Wilkie PA
4. Andy Romanet	
5. Valerie Kennedy	Hoffmann-La Roche
6. Tim Minor	NC Assoc of Realtors
7. Charles Cramer	NCATL
8. F. Ted Valone	Grass Roots North Carolina
9. Mike Concannon	Grass Roots NC
10. Jan Allen	NC NOW
11. KENYA R. KIRBY	Durham Human Relations Commission
22. Rob Schofield	NCUCDC
23. MK Cullen	NCPP
24. Bill Pate	DEHNR.
25. Victor Carr	DHR/DSS
26. Vicki Sutton	DHR/DSS
27. Ben Watts	DHR/DSS
28. Phil Telfer	NC Dept of Justice
29. Bob Stamm	NC Forestry Association
30. James E. Lee	IP
31. Amy Gillespie	AGO

32.	Allen Jernigan	AGO
33.	Michael W. Street	NC Div Marine Fisheries
34.	TANJA VUJIĆ	NC ENV'TAL DEFENSE FUND
35.	Peg Jones	NCCDA
36.	Amanda Digby	NCATL
37.	J. Matthew Smith	Apartment Assoc. of NC
38.	Jerry Arrowood	DMV
39.	Dianne Parrish	EHNR - Forest Resources
40.	John Shepherd	EHNR - Forest Resources
41.	Kevin FitzGerald	NCOHR - DSS
42.	[illegible]	DSS
43.	Ellen Beal	DSS
44.	Ruth Sappie	NCDOT
45.	[illegible]	[illegible]
46.	Chester L. Jenkins	Durham Human Relations Dept.
47.	Dan Love	" "
48.	David Ferrell	Hoffa, McNamara, Caldwell, McElroy & Culhane
49.	Jane Gray	DOT
50.		

North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

Thursday, April 24, 1997
10:00 a.m.
1327 Legislative Building

N. Leo Daughtry
Edwin M. Hardy
Co-Chairmen

Members Present

Martha Alexander	**Gene G. Arnold**
Jerry Braswell	**J. Russell Capps**
Debbie Clary	**J. Sam Ellis**
Theresa Esposito	**Bobby Ray Hall**
George M. Holmes	**Robert Hunter**
John W. Hurley	**Margaret M. Jeffus**
Larry T. Justus	**H.M. Michaux, Jr.**
George W. Miller, Jr.	**Richard T. Morgan**
ex officio	
Stephen Wood	**Julia Howard**

The House Committee on JUDICIARY I met at 10:00 a.m. on Thursday, April 24, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry presiding.

Committee counsels Steven Rose and Karen Cochrane-Brown and House Page Meredith Roberts were present to assist the committee.

Rep. Beall was recognized to explain House Bill 936, LIABILITY FOR LLAMAS ACTIVITIES. Rep. Beall deferred an explanation of the measure to Susan Eddins, counsel at law.

Counsel Cochrane-Brown prepared a MEMORANDUM on H.B. 936, a copy of which is attached and made a part of these minutes.

At the request of the sponsor, the chairman referred H.B. 936 to a subcommittee to report on the following Monday. Appointed to the Subcommittee on H.B. 936 were Reps. Hunter, Michaux and Braswell.

Rep. Howard was recognized for the purpose of explaining a Proposed Committee Substitute to House Bill 431, PUBLIC ASSISTANCE FRAUD, a copy of which is attached and made a part of these minutes.

Rep. Howard explained the measure had been re-referred to the Committee by the House, having been heard already by the Committee on FINANCE and the Committee on WELFARE REFORM.

Carolyn D. Johnson, Counsel to the Committee on WELFARE REFORM, prepared a MEMORANDUM on H.B. 431, a copy of which is attached and made a part of these minutes.

Language regarding "erroneous" payments, question about which were raised on the floor, were amended, Rep. Howard indicated, in answer to a question by Rep. Wood.

On a motion by Rep. Ellis, the P.C.S. was amended in accordance with a document entitled "H431-ARO-001," a copy of which is attached and made a part of these minutes. Counsel Cochrane-Brown was recognized to explain the technical amendments.

On a motion by Rep. Ellis, the amendment was further rolled into another Proposed Committee Substitute, which was given a favorable report, unfavorable to the original bill.

Rep. Watson was recognized for the purpose of explaining House Bill 1079, DRUG LAW AMENDMENTS. Rep. Watson prepared a MEMORANDUM on H.B. 1079, a copy of which is attached and made a part of these minutes.

There being some question regarding the fiscal impact of the measure, in anticipation of a Fiscal Note to that effect, the chairman referred the measure to a subcommittee, and appointed to the subcommittee on H.B. 1079, Reps. Braswell, Hall and Capps.

Rep. Arnold was recognized for the purpose of explaining House Bill 674, PERMANENT CURATIVE STATUTE - SEALS

Rep. Miller had several questions regarding the use of the word "seal" and its effect on the Statute of Limitations.

The Chairman displaced the measure "until 2 o'clock."

Rep. Sexton was recognized to explain House Bill 1012, SHOOTING RANGE PROTECTION. Rep. Sexton prepared a MEMORANDUM, distributed a synopsis of the bill prepared by Bill Status, and a map showing

states which have passed such measures since 1994, copies of which are attached and made a part of these minutes.

On a motion by Rep. Capps, the measure was given a favorable report.

Rep. Capps was recognized for the purpose of explaining House Bill 1071, PAY RENT ARREARS TO STAY EJECTMENT.

On a motion by Rep. Hall, H.B. 1071 was given a favorable report.

The Committee recessed until 2 p.m.

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS

HOUSE COMMITTEE ON JUDICIARY I
Thursday, April 24, 1997 X tape
Room 1327 LB
10:00 a.m.

Representative N. Leo Daughtry, Chairman

H.B. 138 DMV Enforcement Authority
Sponsor: Representative Justus

H.B. 258 Service of ADM. Search Warrants
Sponsor: Representative Tolson

H.B. 431 Public Assistance Fraud
Sponsor: Representative Howard

H.B. 470 Medical Investigators
Sponsor: Representative Tallent

H.B. 616 Standardize Law Enf. Discipline
Sponsor: Representative Sherrill

H.B. 870 Local Working of Prisoners
Sponsor: Representative Allred

H.B. 927 Rabies Vaccine/Dog Owners Admin.
Sponsor: Representative Hardy

H.B. 936 Liability for Llama Activities
Sponsor: Representative Beall

H.B. 1012 Shooting Range Protection
Sponsor: Representative Sexton

H.B. 1071 Pay Rent to Stay Ejectment
Sponsor: Representative Capps

H.B. 1079 Drug Law Amendments
Sponsor: Representative Watson

H.B. 1085 Amend Ethnic Intimidation Law
Sponsor: Representative Luebke

H.B. 1114 Bad Check Collections Pilot
Sponsor: Representative Eddins

H.B. 1120 Prescribed Burning in Forests
Sponsor: Representative McComas

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H April 28 1

HOUSE BILL 1071

Short Title: Pay Rent Arrears to Stay Ejectment. (Public)

Sponsors: Representative Capps.

Referred to: Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE TENANTS TO PAY TO THE CLERK OF COURT THE AMOUNT OF RENT IN ARREARS TO STAY THE EXECUTION OF JUDGMENT FOR SUMMARY EJECTMENT PENDING APPEAL TO DISTRICT COURT AND TO POST A BOND FOR ANY FURTHER APPEALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 42-34 reads as rewritten:

"**§ 42-34. Undertaking on appeal and order staying execution.**

(a) Upon appeal to the district court, either party may demand that the case be tried at the first session of the court after the appeal is docketed, but the presiding judge, in his discretion, may first try any pending case in which the rights of the parties or the public demand it.

(b) It shall be sufficient to stay execution of a judgment for ejectment ~~that~~ if the defendant appellant ~~sign~~ pays any rent in arrears and signs an undertaking that he or she will pay into the office of the clerk of superior court the amount of the contract rent as it becomes due periodically after the judgment was entered and, where applicable, comply with subdivision (c) below. Any magistrate, clerk, or district court judge shall order stay of execution upon ~~such undertaking.~~ the defendant appellant's paying the rent in arrears and signing the undertaking. If either party disputes the amount of the payment or the due date in ~~such~~ the undertaking, the aggrieved party may move for modification of the terms of the undertaking before the clerk of superior court or the district court. Upon such motion and upon notice to all interested parties, the clerk or court shall hold a hearing and determine what modifications, if any, are appropriate.

(c) In an ejectment action based upon alleged nonpayment of rent where the judgment is entered more than five working days before the day when the next rent will be due under the lease, the appellant shall make an additional undertaking to stay execution pending appeal. Such additional undertaking shall be the payment of the prorated rent for the days between the day that the judgment was entered and the next day when the rent will be due under the lease. ~~Notwithstanding, such additional undertaking shall not be required of an indigent appellant who prosecutes his appeal with an in forma pauperis affidavit that meets the requirements of G.S. 1-288.~~

(c1) Notwithstanding the provisions of subsections (b) and (c) of this section, an indigent defendant appellant who prosecutes his or her appeal with an in forma pauperis affidavit that meets the requirement of G.S. 1-288 shall not be required to pay rent in arrears or to enter into an additional undertaking to stay execution pending appeal.

(d) The undertaking by the appellant and the order staying execution may be substantially in the following form:

'State of North Carolina,

'County of .....

'..... , Plaintiff

vs.

'..... , Defendant

Bond to
Stay Execution
On Appeal to
District Court

'Now comes the defendant in the above entitled action and respectfully shows the court that judgment for summary ejectment was entered against the defendant and for the plaintiff on the..... day of ....., 19..., by the Magistrate. Defendant has appealed the judgment to the District Court.

'Pursuant to the terms of the lease between plaintiff and defendant, defendant is obligated to pay rent in the amount of $..... per ....., due on the ..... day of each .....

'Where the payment of rent in arrears or an additional undertaking is required by ~~G.S. 42-34(c),~~ G.S. 42-34(b) or (c), the defendant hereby tenders $..... to the Court as required.

'Defendant hereby undertakes to pay the periodic rent hereinafter due according to the aforesaid terms of the lease and moves the Court to stay execution on the judgment for summary ejectment until this matter is heard on appeal by the District Court.

'This the ..... day of....., 19.....

.....

Defendant

'Upon execution of the above bond, execution on said judgment for summary ejectment is hereby stayed until the action is heard on appeal in the District Court. If defendant fails to make any rental payment to the clerk's office within five days of the due date, upon application of the plaintiff, the stay of execution shall dissolve and the sheriff may dispossess the defendant.

'This ..... day of ....., 19.....

.....

Assistant Clerk of Superior Court.'

(e) Upon application of the plaintiff, the clerk of superior court shall pay to the plaintiff any amount of the rental payments paid by the defendant into the clerk's office which are not claimed by the defendant in any pleadings.

(f) If the defendant fails to make a payment within five days of the due date according to the undertaking and order staying execution, the clerk, upon application of the plaintiff, shall issue execution on the judgment for possession.

(g) When it appears by stipulation executed by all of the parties or by final order of the court that the appeal has been resolved, the clerk of court shall disburse any accrued moneys of the undertaking remaining in the clerk's office according to the terms of the stipulation or order."

Section 2. Article 3 of Chapter 42 of the General Statutes is amended by adding the following new section:

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

(a) 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 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 sufficient to stay execution of the judgment if the defendant appellant posts a bond as provided in G.S. 1-292. 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 any rent in arrears paid by the defendant appellant until all appeals have been resolved."

Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

April 29

H 1

HOUSE BILL 936

Short Title: Liability for Llama Activities. (Public)

Sponsors: Representatives Beall, Ramsey, and Brown.

Referred to: Judiciary I.

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY RESPONSIBILITIES FOR LLAMA ACTIVITIES AND TO PROVIDE QUALIFIED IMMUNITY FROM LIABILITY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 68.

"Llama Activity Liability Immunity.

"**§ 106-810. Purpose; findings.**

The General Assembly finds that North Carolina is climatically and environmentally suited to raising llamas; llama breeding and the recreational use of llamas provide alternative land uses and new economically feasible ventures that are environmentally sound; llamas are used as hiking companion animals by families to carry the loads necessary for comfortable camping in the North Carolina wilderness; these gentle pack animals make the wilderness accessible to a much broader spectrum of people, especially those unable to carry a pack; commercial llama trekking companies in western North Carolina are an integral part of the growing tourism industry; llama trekking attracts tourists to our area because it is an unusual way to hike into the wilderness areas and is forecast to grow to several hundreds of thousands of dollars annually by the year 2000; llama wool and wool products are now offered commercially in regional and national fiber sales; llama breeding is a profitable business; llamas are being used increasingly as sheep and goat herd guard animals against predators both here in North Carolina and extensively with the larger

sheep herds in the West; the growth of the llama industry should be encouraged in this State.

"§ 106-811. Definitions.

As used in this Article, the term:

(1) 'Engage in a llama activity' means participate in a llama activity, assist a participant in a llama activity, or assist a llama activity sponsor or llama professional. The term 'engage in a llama activity' does not include being a spectator at a llama activity, except in cases in which the spectator places himself or herself in an unauthorized area and in immediate proximity to the llama activity.

(2) 'Inherent risks of llama activities' means those dangers or conditions that are an integral part of llama activities, including all of the following:

a. The propensity of a llama to behave in ways that may result in injury, harm, or death to persons on or around them.

b. The unpredictability of a llama's reaction to such things as sounds, sudden movement, unfamiliar objects, persons, or other animals.

c. Certain hazards such as surface and subsurface conditions.

d. Collisions with other llamas or objects.

e. The potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the participant or others, such as failing to maintain control over the animal or not acting within his or her ability.

(3) 'Llama' means a South American camelid that is an animal of the genus llama, commonly referred to as a 'one llama,' including llamas, alpacas, guanacos, and vicunas.

(4) 'Llama activity' means any one or more of the following activities:

a. Llama shows, fairs, competitions, performances, packing events, or parades that involve any or all breeds of llamas.

b. Using llamas to pull carts or to carry packs or other items.

c. Using llamas to pull travois-type carriers during rescue or emergency situations.

d. Llama training or teaching activities.

e. Taking llamas on public relations trips or visits to schools or nursing homes.

f. Participating in commercial packing trips in which participants pay a llama professional to be a guide on a hike, leading llamas.

g. Boarding llamas.

h. Riding, inspecting, or evaluating a llama belonging to another, whether or not the owner has received some

monetary consideration or other thing of value for the use of the llama or is permitting a prospective purchaser of the llama to ride, inspect, or evaluate the llama.

i. Using llamas in wool production.

j. Rides, trips, or other llama activities of any type however informal or impromptu that are sponsored by a llama activity sponsor.

k. Trimming the nails of a llama.

(5) 'Llama activity sponsor' means an individual, group, club, partnership, or corporation, whether or not the sponsor is operating for profit or nonprofit, that sponsors, organizes, or provides the facilities for a llama activity, including, but not limited to: llama clubs; 4-H clubs; hunt clubs; riding clubs; school and college-sponsored classes, programs, and activities; and therapeutic riding programs. 'Llama activity sponsor' also means operators, instructors, and promoters of llama facilities, including, but not limited to: stables; clubhouses; fairs; and arenas at which the activity is held.

(6) 'Llama professional' means a person engaged for compensation in either one or both of the following:

a. In instructing a participant or renting to a participant a llama for the purpose of riding, driving, or being a passenger upon the llama.

b. In renting equipment or tack to a participant.

(7) 'Participant' means any person, whether amateur or professional, who engages in a llama activity, whether or not a fee is paid to participate in such activity.

"§ 106-812. Immunity from liability.

(a) Except as provided in subsection (b) of this section, a llama activity sponsor; a llama professional; or any other person, including a corporation or partnership, shall not be liable for injury, loss, damage, or death of a participant resulting from the inherent risks of llama activities and, except as provided in subsection (b) of this section, no participant or participant's representative shall maintain an action against or recover from a llama activity sponsor, a llama professional, or any other person for injury, loss, damage, or death of the participant resulting from any of the inherent risks of llama activities.

(b) Nothing in subsection (a) of this section shall prevent or limit the liability of a llama activity sponsor, a llama professional, or any other person if the llama activity sponsor, llama professional, or person does any one or more of the following:

(1) Provides the equipment or tack and knew, or should have known, that the equipment or tack was faulty, and such equipment or tack was faulty to the extent that it did cause the injury.

(2) Provides the llama and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely

in the llama activity and to safely manage the particular llama based on the participant's representations of his or her ability.

(3) Owns, leases, rents, or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries because of a dangerous latent condition that was known or should have been known to the llama activity sponsor, llama professional, or person and for which warning signs have not been conspicuously posted.

(4) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission caused the injury.

(5) Intentionally injures the participant.

(c) Nothing in subsection (a) of this section shall prevent or limit the liability of a llama activity sponsor or a llama professional under liability provisions as set forth in Chapter 99B of the General Statutes.

"**§ 106-813. Warning required.**

(a) Every llama professional and every llama activity sponsor shall post and maintain signs that contain the warning notice specified in subsection (c) of this section. The signs required by this section shall be placed in a clearly visible location on or near stables, corrals, or arenas where the llama professional or the llama activity sponsor conducts llama activities. The warning notice specified in subsection (c) of this section shall be designed by the Department of Agriculture and shall consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by a llama professional or by a llama activity sponsor for the providing of professional services, instruction, or the rental of equipment, tack, or a llama to a participant, whether or not the contract involves llama activities on or off the location or site of the llama professional's or the llama activity sponsor's business, shall contain in clearly readable print the warning notice specified in subsection (c) of this section.

(b) The Department may prepare and make available for sale the warning sign specified in subsection (a) of this section. The Department shall charge a fee, not to exceed fifteen dollars ($15.00), for each warning sign.

(c) The signs and contracts described in subsection (a) of this section shall contain the following warning notice:

'WARNING

Under North Carolina law, a llama activity sponsor or a llama professional is not liable for an injury to or the death of a participant in llama activities resulting from the inherent risks of llama activities. Article 68 of Chapter 106 of the North Carolina General Statutes.'

(d) Failure to comply with the requirements concerning warning signs and notices provided in this Article shall prevent a llama activity sponsor or a llama professional from invoking the privileges of immunity provided by this Article."

Section 2. This act becomes effective January 1, 1998, and applies to causes of action arising on or after that date.

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March 10, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: House Bill 936 - Liability for Llama Activities

House Bill 936 adds a new Article to Chapter 106. It provides immunity from liability for personal injury to a participant in llama activities. The following new statutory sections are added:

G.S. 106-810 - contains statements that the state and its citizens derive economic and personal benefit from llama activities and that the Article is necessary for preservation of public peace, health, and safety. States the intent of the General Assembly to encourage llama activities.

G.S. 106-811 - Contains various definitions. Defines "engage in an llama activity" as not including being a spectator unless the spectator places himself in an unauthorized area and in immediate proximity to the llama activity. "Llama activity" is riding and otherwise participating in programs involving llamas. It also includes training, boarding, inspecting, participating in shows, fairs and other organized activities as well as informal activities, nail trimming. There are also definitions for "llama sponsor" and "llama professional." Sponsors include those conducting activities for profit, as well as nonprofit. Professionals include instructors and those who rent llamas or llama equipment. The definition of "inherent risks of llama activities" includes those dangers which are an integral part of llama activities. "Participant" means any person engaging in llama activity, amateur or professional, regardless of whether a fee is paid.

G.S. 106-812 - Provides that an llama activity sponsor, a llama professional, or any other person, is not liable for personal injuries of a participant resulting from inherent risks of llama activity. A participant may not sue an activity sponsor, a professional, or any other person. This section does not protect against liability if equipment or tack was provided and the provider knew or should have known it was faulty; if the llama is provided and the provider fails to make reasonable efforts to determine the ability of the participant, based upon the participant's representations of his ability; if the person being sued owns, leases, or is in lawful possession and control of land or facilities upon which the injury is sustained and the injury is because of a dangerous latent condition known or which should have been known by the owner or lessee, and for which warning signs have not been conspicuously posted; if the person being sued commits an act or

omission constituting willful or wanton disregard for the safety of the participant; or if the person intentionally injures the participant. In addition, this section does not prevent or limit liability under the provisions "set forth in the product liability laws."

G.S. 106-813 - requires signs to be maintained in a clearly visible location where llama activities occur. Signs are to be designed by the Department of Agriculture and may be sold by the Department of Agriculture for a fee not to exceed $15 each. The signs must state the warning that under North Carolina law a llama activity sponsor or professional is not liable for personal injuries of the participant resulting from the inherent risks of llama activities. Written contracts for the provision of llama services, instruction, or rental of equipment or a llama must also contain this notice. Failure to post the signs or provide the notice results in no protection from this Article.

The act is effective January 1, 1998, and applies to causes of action arising on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 936
Proposed Committee Substitute H936-CSLD-012
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Llama Activities/Duties and Liability. (Public)

Sponsors:

Referred to:

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY RESPONSIBILITIES AND LIABILITY FOR LLAMA ACTIVITIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is amended by adding a new Article read:

"ARTICLE 68.

"Llama Activity Liability.

"§ 106-810. Purpose; findings.

The General Assembly finds that persons who participate in llama activities may incur injuries as a result of the risks involved in such activities. The General Assembly also finds that the State and its citizens derive numerous economic and personal benefits from such activities. It is, therefore, the intent of the General Assembly to encourage llama activities by clarifying the responsibilities of llama activity sponsors, llama professionals, and participants in llama activities.

"§ 106-811. Definitions.

As used in this Article, the term:

(1) 'Engage in a llama activity' means participate in a llama activity, assist a participant in a llama activity, or assist a llama activity sponsor or llama professional. The term 'engage in an llama

activity' does not include being a spectator at a llama activity, except in cases in which the spectator places himself or herself in an unauthorized area and in immediate proximity to the llama activity.

(2) 'Inherent risks of llama activities' means those dangers or conditions that are an integral part of llama activities, including:

a. The possibility of a llama behaving in ways that may result in injury, harm, or death to persons on or around them; and

b. The unpredictability of a llama's reaction to such things as sounds, sudden movement, unfamiliar objects, persons, or other animals.

(3) 'Llama' means a South American camelid that is an animal of the genus llama, including llamas, alpacas, and guanacos.

(4) 'Llama activity' means any activity involving a llama.

(5) 'Llama activity sponsor' means an individual, group, club, partnership, or corporation, whether the sponsor is operating for profit or nonprofit, that sponsors, organizes, or provides the facilities for a llama activity. The term includes operators and promoters of llama facilities.

(6) 'Llama professional' means a person engaged for compensation in:

a. Instructing a participant;

b. Renting a llama to a participant for the purpose of riding, driving, or being a passenger upon the llama;

c. Renting equipment or tack to a participant;

d. Examining or administering medical treatment to a llama; or

e. Trimming the nails of a llama.

(7) 'Participant' means any person, whether amateur or professional, who engages in a llama activity, whether or not a fee is paid to participate in the llama activity.

"§ 106-812. Liability.

(a) Except as provided in subsection (b) of this section, a llama activity sponsor, a llama professional, or any other person, including a corporation or partnership, shall not be liable for an injury to or the death of a participant resulting

from the inherent risks of llama activities and, except as provided in subsection (b) of this section, no participant or participant's representative shall maintain an action against or recover from a llama activity sponsor, a llama professional, or any other person for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of llama activities.

(b) Nothing in subsection (a) of this section shall prevent or limit the liability of a llama activity sponsor, a llama professional, or any other person if the llama activity sponsor, llama professional, or person:

(1) Provided the equipment or tack, and knew or should have known that the equipment or tack was faulty, and such equipment or tack was faulty to the extent that it did cause the injury;

(2) Provided the llama and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the llama activity or to safely manage the particular llama;

(3) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission caused the injury; or

(4) Intentionally injures the participant.

(c) Nothing in subsection (a) of this section shall prevent or limit the liability of a llama activity sponsor or a llama professional under liability provisions as set forth in the products liability laws.

"§ 106-813. Warning required.

(a) Every llama professional and every llama activity sponsor shall post and maintain signs that contain the warning notice specified in subsection (b) of this section. The signs required by this section shall be placed in a clearly visible location on or near stables, corrals, or arenas where the llama professional or the llama activity sponsor conducts llama activities. The warning notice specified in subsection (b) of this section shall be designed by the Department of Agriculture and shall consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by a llama professional or by a llama activity sponsor for the providing of professional services, instruction, or the rental of equipment or tack or a llama to a participant, whether or not the contract involves llama activities on or off the location or site of the llama professional's or the llama activity sponsor's business,

shall contain in clearly readable print the warning notice specified in subsection (b) of this section.

(b) The signs and contracts described in subsection (a) of this section shall contain the following warning notice:

'WARNING

Under North Carolina law, a llama activity sponsor or llama professional is not liable for an injury to or the death of a participant in llama activities resulting exclusively from the inherent risks of llama activities. Article 68, Chapter 106 of the North Carolina General Statutes.'

(c) Failure to comply with the requirements concerning warning signs and notices provided in this Article shall prevent a llama activity sponsor or llama professional from invoking the privileges of immunity provided by this Article."

Section 2. This act becomes effective January 1, 1998, and applies to causes of action arising on or after that date.

North Carolina General Assembly
House of Representatives

REPRESENTATIVE CHARLES M. BEALL, DISTRICT 52
GRAHAM, HAYWOOD, JACKSON, MADISON, AND SWAIN COUNTIES

510 LEGISLATIVE OFFICE BUILDING
RALEIGH, N.C. 27601-1096
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ROUTE 3, BOX 322
CLYDE, N.C. 28721-9542
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April 28, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Cochairman
Representative Sandy Hardy, Cochairman
House Judiciary I Committee

FROM: Charles Beall CB

RE: House Bill 936-Liability for Llama Activities

I respectfully request that House Bill 936- Liability for Llama Activities be held over until the 1998 Session. By then we can determine from the equine bills as to whether or not House Bill 936 could pass.

mdc

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 431
Proposed Committee Substitute H431-CSRK-002

Short Title: Public Assistance Fraud/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE GARNISHMENT OF WAGES TO RECOUP FRAUDULENT OR ERRONEOUS PUBLIC ASSISTANCE PROGRAM PAYMENTS, TO PROVIDE INVESTIGATORY SUBPOENA POWER TO COUNTY DEPARTMENTS OF SOCIAL SERVICES AND THE DEPARTMENT OF HUMAN RESOURCES, AND TO CREATE AN OFFENSE FOR ILLEGAL POSSESSION OR USE OF FOOD STAMPS.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 2 of Chapter 108A of the General Statutes is amended by adding new sections as follows:

"§ 108A-25.1. Garnishment of wages to recoup fraudulent or erroneous public assistance program payment.

(a) The following definitions apply in this section:

(1) Disposable income. -- The part of the compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise (including periodic payments pursuant to a pension, retirement, or other deferred compensation program) which remains after the deduction of any amounts required by law to be withheld.

(2) Erroneous payment. -- Any public assistance program payment made because of a recipient's, a

recipient's representative's or recipient household member's misunderstanding or unintentional error, or any action or inaction of the county department of social services or Department of Human Resources which results in an erroneous public assistance program payment.

(3) Fraudulent payment. -- Any public assistance program payment made because of a recipient's false statement or representation or failure to disclose a material fact which occurs willfully and knowingly and with intent to deceive.

(4) Garnishee. -- The person, firm, association, or corporation owing compensation for personal services, whether denominated as wages, salary, commission, bonus, or otherwise (including periodic payments pursuant to a pension, retirement, or other deferred compensation program).

(5) Public assistance program. -- Any means-tested benefit program administered or supervised by a county department of social services or the Department of Human Resources which is funded in whole or in part by federal, State, or county resources.

(b) In any case in which a recipient or former recipient of a public assistance program, who while a recipient, obtained or benefited from a fraudulent or erroneous payment, a judge of the district court in the county where the recipient or former recipient resides or is found, or in the county where the payment was made, may enter an order of garnishment to recoup a fraudulent or erroneous payment. Not more than twenty percent (20%) of the recipient's or former recipient's monthly disposable income may be garnished to recoup payment in cases of fraudulent payment and not more than ten (10%) of the recipient's or former recipient's monthly disposable income may be garnished to recoup payment in cases of erroneous payment. The order of garnishment shall be subject to all federal and State laws or regulations that may apply to recoupment of fraudulent or erroneous payments.

(c) A county department of social services or the Department of Human Resources may petition the court for an order of garnishment to recoup a fraudulent or erroneous public assistance program payment. In cases of erroneous payment, garnishment shall be a remedy to recoup payment only after all administrative remedies are exhausted unsuccessfully. The petition shall be verified and provide the court with facts and circumstances of

the fraudulent or erroneous payment to or on behalf of the recipient or former recipient, the name and address of the garnishee, the recipient or former recipient's monthly disposable income (which may be based on information and belief), and the amount sought to be garnished from the recipient's or former recipient's disposable income. The petition shall be served on both the recipient or former recipient and the garnishee in accordance with the provisions for service of process set forth in G.S. 1A-1, Rule 4. The time period for answering or otherwise responding to process issued pursuant to this section shall be in accordance with the time periods set forth in G.S. 1A-1, Rule 12.

(d) Upon a hearing held pursuant to this section, the court may enter an order of garnishment. If an order of garnishment is entered, a copy of the same shall be served on both the recipient or the former recipient and the garnishee either personally or by certified or registered mail, return receipt requested. The order shall set forth sufficient findings of facts to support the action by the court and the amount to be garnished for each pay period. The amount garnished shall be increased by an additional one dollar ($1.00) processing fee to be assessed and retained by the garnishee for each payment under the order. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

(e) Upon receipt of the order of garnishment, the garnishee shall transmit without delay to the clerk of superior court the amount ordered by the court to be garnished. These funds shall be disbursed to the court department of social services to recoup fraudulent or erroneous payments subject to the order of garnishment entered pursuant to this section.

(f) A garnishee who violates the terms of an order of garnishment shall be subject to punishment for contempt.

(g) The Social Services Commission shall adopt rules and regulations to implement this section. The rules shall ensure that a petition for an order of garnishment sought pursuant to this section is consistent with all federal and State laws and regulations.

"§ 108A-25.2. Power to issue investigatory subpoenas.

(a) When all other reasonable means of investigating facts and circumstances pertaining to fraudulent or erroneous applications for or receipt of public assistance benefits have been exhausted, the Director of the county department of social services or the Secretary of Human Resources may issue a subpoena to a third party in the State for the production of books, papers, correspondence, memorandum, agreements, or other information,

documents or records relevant to establishing a fraudulent or erroneous claim of public assistance. The subpoena shall specify the person to whom the records and documents sought shall be produced, including time and place, and shall be served in accordance with any manner as prescribed in G.S. 1A-1, Rule 4. A county department of social services and the Department of Human Resources is authorized to administer oaths for the purpose of the examinations.

(b) An action for contempt may be initiated when such third party fails to obey a subpoena issued as provided for in subsection (a) of this section. The action shall be initiated by petition to the district court in the district where the person to whom the subpoena was directed was served. The action for contempt may be punishable by the court in the same manner as if the subpoena had been issued by the court subject to G.S. 1A-1, Rule 45.

(c) The refusal of a third party to cooperate shall not affect the eligibility of an initial application to receive public assistance.

(d) For the purpose of this section, the following definitions shall apply: "Director" means the Director of the county department of social services and "Secretary" means the Secretary of the Department of Human Resources.

(e) The Social Services Commission shall adopt rules and regulations to implement this section."

Section 2. Part 5 of Article 2 of Chapter 108A of the General Statutes is amended by adding a new section as follows:

"**§ 108A-53.1. Illegal possession or use of food stamps.**

Any person who knowingly uses, transfers, acquires, alters, or possesses food stamp coupons, authorization cards, or access devices in any manner contrary to that authorized by the Food Stamp Program (7 U.S.C. § 2011, et seq.) and the regulations issued pursuant thereto shall be guilty of a Class 1 misdemeanor if the value of such food stamp coupons, authorization cards, or access devices is less than one hundred dollars ($100.00), or a Class I felony if the value of such food stamp coupons, authorization cards, or access devices is equal to one hundred dollars ($100.00) but less than one thousand dollars ($1,000), or a Class H felony if the value of such food stamp coupons, authorization cards, or access devices equals or exceeds one thousand dollars ($1,000)."

Section 3. The Social Services Commission shall adopt rules and regulations to implement Section 1 of this act within 90 days of the date this act is signed into law.

Section 4. This act becomes effective December 1, 1997.

North Carolina General Assembly
Legislative Services Office

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March 19, 1997

To: House Welfare Reform Committee

From: Carolyn D. Johnson, Committee Counsel

Re: House Bill 431 - Public Assistance Fraud

House Bill 431 provides authority to local departments of social services or the Department of Human Resources to: (1) recoup fraudulent or erroneous payment public assistance program payments through wage garnishment, and (2) issue administrative subpoenas for the purpose of investigating fraudulent or erroneous applications for or receipt of public assistance. The bill also creates a criminal offense for the illegal possession or use of food stamps.

Section 1 creates two new sections in Part 1 of Article 2 of Chapter 108A. G.S. 108A-25.1 provides that up to 20% of the disposable income of a recipient or former recipient of public assistance may be subject to wage garnishment to recoup fraudulent or erroneous program payments. The district court in the county where the recipient or former recipient resides or is found, or in the county where the payment is made, may order garnishment upon a hearing. Any order of garnishment must also comply with all applicable federal and State laws or regulations. The Social Services Commission is directed to adopt rules and regulations to implement the section.

G.S. 108A-25.2 provides for the issuance of administrative subpoenas to third parties to investigate fraudulent or erroneous applications for or receipt of public assistance. This power shall be available to local departments of social services and the Department of Human Resources when all other reasonable means of investigation have been exhausted. On the local level, the power may be exercised by the Director of Social Services or the Director's designee. On the State level, the power may be exercised by the Secretary of Human Resources or the Secretary's designee. The failure of a third party to cooperate with a subpoena shall not affect a person's eligibility to receive public assistance. The Social Services Commission is directed to adopt rules and regulations to implement the section.

Section 2 of the bill establishes an offense for illegal possession or use of food stamps. G.S. 108A.53.1 provides that any person who knowingly uses, transfers acquires, alters or possesses food stamp coupons, authorization cards or access devices in any manner contrary to that

authorized by the Food Stamp Program shall be guilty of a Class 1 misdemeanor if the value is less than $100; guilty of a Class I felony if the value is equal to $100, but less than $1,000; and guilty of a Class H felony if the value equals or exceeds $1,000.

The bill becomes effective December 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 431

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H431-ARO-001

Page 1 of __

Date_____,1997

Comm. Sub. []
Amends Title []
Second Edition

moves to amend the bill on page 1, lines 16-18, by rewriting the lines to read:

"salary, commission, bonus, or otherwise which remains after the deduction of any"; and

on page 2, lines 9-11, by rewriting the lines to read:

"wages, salary, commission, bonus, or otherwise."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 431
Committee Substitute Favorable 3/25/97

Short Title: Public Assistance Fraud/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE GARNISHMENT OF WAGES TO RECOUP FRAUDULENT OR ERRONEOUS PUBLIC ASSISTANCE PROGRAM PAYMENTS, TO PROVIDE INVESTIGATORY SUBPOENA POWER TO LOCAL DEPARTMENTS OF SOCIAL SERVICES AND THE DEPARTMENT OF HUMAN RESOURCES, AND TO CREATE AN OFFENSE FOR ILLEGAL POSSESSION OR USE OF FOOD STAMPS.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 2 of Chapter 108A of the General Statutes is amended by adding new sections as follows:

"**§ 108A-25.1. Garnishment of wages to recoup fraudulent or erroneous public assistance program payment.**

(a) The following definitions apply in this section:

(1) Disposable income. -- The part of the compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise (including periodic payments pursuant to a pension, retirement, or other deferred compensation program) which remains after the deduction of any amounts required by law to be withheld.

(2) Erroneous payment. -- Any public assistance program payment made because of a recipient's, a recipient's representative's or recipient household member's misunderstanding or unintentional error, or any action or inaction of the local department of social

services or Department of Human Resources which results in an erroneous public assistance program payment.

(3) Fraudulent payment. -- Any public assistance program payment made because of a recipient's false statement or representation or failure to disclose a material fact which occurs willfully and knowingly and with intent to deceive.

(4) Garnishee. -- The person, firm, association, or corporation owing compensation for personal services, whether denominated as wages, salary, commission, bonus, or otherwise (including periodic payments pursuant to a pension, retirement, or other deferred compensation program).

(5) Public assistance program. -- Any means-tested benefit program administered or supervised by a local department of social services or the Department of Human Resources which is funded in whole or in part by federal, State, or local resources.

(b) In any case in which a recipient or former recipient of a public assistance program, who while a recipient, obtained or benefited from a fraudulent or erroneous payment, a judge of the district court in the county where the recipient or former recipient resides or is found, or in the county where the payment was made, may enter an order of garnishment whereby no more than twenty percent (20%) of that person's monthly disposable income may be garnished to recoup the payment. The order of garnishment shall be subject to all federal and State laws or regulations that may apply to recoupment of fraudulent or erroneous payments.

(c) A local department of social services or the Department of Human Resources may petition the court for an order of garnishment to recoup a fraudulent or erroneous public assistance program payment. The petition shall be verified and provide the court with facts and circumstances of the fraudulent or erroneous payment to or on behalf of the recipient or former recipient, the name and address of the garnishee, the recipient or former recipient's monthly disposable income (which may be based on information and belief), and the amount sought to be garnished from the recipient's or former recipient's disposable income. The petition shall be served on both the recipient or former recipient and the garnishee in accordance with the provisions for service of process set forth in G.S. 1A-1, Rule 4. The time period for answering or otherwise responding to process issued pursuant to this section shall be in accordance with the time periods set forth in G.S. 1A-1, Rule 12.

(d) Upon a hearing held pursuant to this section, the court may enter an order of garnishment. If an order of garnishment is entered, a copy of the same shall be served on both the recipient or the former recipient and the garnishee either personally or by certified or registered mail, return receipt requested. The order shall set forth sufficient findings of facts to support the action by the court and the amount to be garnished for each pay period. The amount garnished shall be increased by an additional one dollar ($1.00) processing fee to be assessed and retained by the garnishee for each payment under the order. The order shall be

subject to review for modification and dissolution upon the filing of a motion in the cause.

(e) Upon receipt of the order of garnishment, the garnishee shall transmit without delay to the clerk of superior court the amount ordered by the court to be garnished. These funds shall be disbursed to the local department of social services to recoup fraudulent or erroneous payments subject to the order of garnishment entered pursuant to this section.

(f) A garnishee who violates the terms of an order of garnishment shall be subject to punishment for contempt.

(g) The Social Services Commission shall adopt rules and regulations to implement this section. The rules shall ensure that a petition for an order of garnishment sought pursuant to this section is consistent with all federal and State laws and regulations.

"**§ 108A-25.2. Power to issue investigatory subpoenas.**

(a) When all other reasonable means of investigating facts and circumstances pertaining to fraudulent or erroneous applications for or receipt of public assistance benefits have been exhausted, the Director of the local department of social services or the Director's designee, or the Secretary of Human Resources or the Secretary's designee, may issue a subpoena to a third party in the State who has necessary and relevant information and require that pertinent records and other documents be produced for examination. The subpoena shall specify the person to whom the records and documents sought shall be produced, including time and place, and shall be served in accordance with any manner as prescribed in G.S. 1A-1, Rule 4. The local department of social services and the Department is authorized to administer oaths for the purpose of the examinations.

(b) An action for contempt may be initiated when such third party fails to obey a subpoena issued as provided for in subsection (a) of this section. The action shall be initiated by petition to the district court in the district where the person to whom the subpoena was directed was served. The action for contempt may be punishable by the court in the same manner as if the subpoena had been issued by the court subject to G.S. 1A-1, Rule 45.

(c) The refusal of a third party to cooperate shall not affect the eligibility of an initial application to receive public assistance.

(d) The Social Services Commission shall adopt rules and regulations to implement this section."

Section 2. Part 5 of Article 2 of Chapter 108A of the General Statutes is amended by adding a new section as follows:

"**§ 108A-53.1. Illegal possession or use of food stamps.**

Any person who knowingly uses, transfers, acquires, alters, or possesses food stamp coupons, authorization cards, or access devices in any manner contrary to that authorized by the Food Stamp Program (7 U.S.C. § 2011, et seq.) and the regulations issued pursuant thereto shall be guilty of a Class 1 misdemeanor if the value of such food stamp coupons, authorization cards, or access devices is less than one hundred dollars ($100.00), or a Class I felony if the value of such food stamp coupons,

authorization cards, or access devices is equal to one hundred dollars ($100.00) but less than one thousand dollars ($1,000), or a Class H felony if the value of such food stamp coupons, authorization cards, or access devices equals or exceeds one thousand dollars ($1,000)."

Section 3. The Social Services Commission shall adopt rules and regulations to implement Section 1 of this act within 90 days of the date this act is signed into law.

Section 4. This act becomes effective December 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 1079

Short Title: Drug Law Amendments. (Public)

Sponsors: Representatives Watson; Gardner and Morris.

Referred to: Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE CONTROLLED SUBSTANCES LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-95 reads as rewritten:

"**§ 90-95. Violations; penalties.**

(a) Except as authorized by this Article, it is unlawful for any person:

(1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;

(2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;

(3) To possess a controlled substance.

(b) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(1) with respect to:

(1) A controlled substance classified in Schedule I or II shall be punished as a Class ~~H~~ E felon;

(2) A controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class ~~I~~ G felon, but the transfer of less than 5 grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.

(d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

(1) A controlled substance classified in Schedule I shall be punished as a Class ~~I~~ G felon;

(2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a Class 1 misdemeanor. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, the violation shall be punishable as a Class ~~I~~ G felony. If the controlled substance is phencyclidine, or cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine or ecgonine), the violation shall be punishable as a Class ~~I~~ G felony.

(3) A controlled substance classified in Schedule V shall be guilty of a Class ~~2 misdemeanor;~~ I felony;

(4) A controlled substance classified in Schedule VI shall be guilty of a Class 3 misdemeanor, but any sentence of imprisonment imposed must be suspended and the judge may not require at the time of sentencing that the defendant serve a period of imprisonment as a special condition of probation. If the quantity of the controlled substance exceeds one-half of an ounce (avoirdupois) of marijuana or one-twentieth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a Class 1 misdemeanor. If the quantity of the controlled substance exceeds one and one-half ounces (avoirdupois) of marijuana or three-twentieths of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

(d1) Except as authorized by this Article, it is unlawful for any person to:

(1) Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

(2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Any person who violates this subsection shall be punished as a Class H felon.

(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the Commission

pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

(1) Anthranilic acid.
(2) Benzyl cyanide.
(3) Chloroephedrine.
(4) Chloropseudoephedrine.
(5) D-lysergic acid.
(6) Ephedrine.
(7) Ergonovine maleate.
(8) Ergotamine tartrate.
(9) Ethyl Malonate.
(10) Ethylamine.
(11) Isosafrole.
(12) Malonic acid.
(13) Methylamine.
(14) N-acetylanthranilic acid.
(15) N-ethylephedrine.
(16) N-ethylepseudoephedrine.
(17) N-methylephedrine.
(18) N-methylpseudoephedrine.
(19) Norpseudoephedrine.
(20) Phenyl-2-propane.
(21) Phenylacetic acid.
(22) Phenylpropanolamine.
(23) Piperidine.
(24) Piperonal.
(25) Propionic anhydride.
(26) Pseudoephedrine.
(27) Pyrrolidine.
(28) Safrole.
(29) Thionylchloride.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level;

(4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 1 misdemeanor. The prior conviction used to raise the current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level;

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age or a pregnant female shall be punished as a Class D felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant;

(6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial;

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 2 misdemeanor;

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for an elementary or secondary school or within 300 feet of the boundary of real property used for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class ~~I~~ G felony.

(f) Any person convicted of an offense or offenses under this Article who is sentenced to an active term of imprisonment that is less than the maximum active term that could have been imposed may, in addition, be sentenced to a term of special probation. Except as indicated in this subsection, the administration of special probation shall be the same as probation. The conditions of special probation shall be fixed in the same manner as probation, and the conditions may include requirements for rehabilitation treatment. Special probation shall follow the active sentence. No term of special probation shall exceed five years. Special probation may be revoked in the same manner as probation; upon revocation, the original term of imprisonment

may be increased by no more than the difference between the active term of imprisonment actually served and the maximum active term that could have been imposed at trial for the offense or offenses for which the person was convicted, and the resulting term of imprisonment need not be diminished by the time spent on special probation.

(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court division of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed.

(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of ~~50 pounds~~ one pound (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as 'trafficking in marijuana' and if the quantity of such substance involved:

a. Is in excess of ~~50 pounds~~ one pound, but less than ~~100~~ 10 pounds, such person shall be punished as a Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is ~~100~~ 10 pounds or more, but less than ~~2,000~~ 200 pounds, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is ~~2,000~~ 200 pounds or more, but less than ~~10,000~~ 1,000 pounds, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

d. Is ~~10,000~~ 1,000 pounds or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony

shall be known as 'trafficking in methaqualone' and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as 'trafficking in cocaine' and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of ~~35~~ 70 months and a maximum term of ~~42~~ 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of ~~70~~ 140 months and a maximum term of ~~84~~ 168 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of

~~175~~ 350 months and a maximum term of ~~219~~ 400 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(3a) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of amphetamine, its salts, optical isomers, and salts of its optical isomers or any mixture containing such substance, shall be guilty of a felony which felony shall be known as 'trafficking in amphetamine' and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine shall be guilty of a felony which felony shall be known as 'trafficking in methamphetamine' and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as 'trafficking in opium or heroin' and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as 'trafficking in Lysergic Acid Diethylamide'. If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced

to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge, provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy to commit any of the offenses described in subsection (h) of this section."

Section 2. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 24.

"Drug Dealer Felons.

"§ 90-325. Declaration of person as drug dealer felon; definitions.

(a) Any person who has been convicted of a drug dealer felony in any federal court, or in a court of this or any other state of the United States, is declared to be a drug dealer felon.

(b) The following definitions apply in this Article:

(1) 'Convicted'. -- The person has been adjudged guilty of or has entered a plea of guilty or no contest to the drug dealer charge, and judgment has been entered thereon when such action occurred on or after July 6, 1967. Any felony to which a pardon has been extended shall not, for the purposes of this Article, constitute a felony. The burden of proving a pardon shall rest with the defendant, and this State shall not be required to disprove a pardon.

(2) 'Drug dealer felony'. -- Includes the following offenses:

a. A violation of G.S. 90-95(a1).
b. Any trafficking offenses listed in G.S. 90-95(h).
c. A violation of G.S. 90-95(a2).
d. Any conspiracy or attempt to commit the offenses listed in subdivision (1), (2), or (3).
e. Any repealed or superseded offense substantially equivalent to the offense listed in subdivision (1), (2), (3), or (4).
f. Any offense committed in another jurisdiction substantially equivalent to the offenses set forth in subdivision (1), (2), (3), (4), or (5).

"§ 90-326. Punishment.

When a person is charged by indictment with the commission of a drug dealer felony and is also charged with being a drug dealer felon as defined in G.S. 90-325, the person must, upon conviction, be sentenced in accordance with this Article unless some other statute provides for greater punishment. In order for the punishment and sentencing provisions of this Article to apply, the date of offense for the principal drug dealer felony must occur after the conviction of the prior drug dealer felony which creates the status as drug dealer felon.

"§ 90-327. Charge of drug dealer felon.

An indictment that charges a person who is a drug dealer felon within the meaning of G.S. 90-325 with the commission of any drug dealer felony must, in order to sustain a conviction of drug dealer felon, also charge that the person is a drug dealer felon. The indictment charging the defendant as a drug dealer felon shall be separate from the indictment charging the defendant with the principal drug dealer felony. An indictment that charges a person with being a drug dealer felon must set forth the date that the prior drug dealer felony was committed, the name of the state or other sovereign against whom the drug dealer felony was committed, the date of conviction of the drug dealer felony, and the identity of the court in which the conviction took place. A defendant charged with being a drug dealer felon in a bill of indictment shall not be required to go to trial on that charge within 20 days after the finding of a true bill by the grand jury unless the defendant waives this 20-day period.

"§ 90-328. Evidence of a prior conviction of a drug dealer felony.

In all cases where a person is charged under this Article with being a drug dealer felon, the record of a prior conviction of a drug dealer felon shall be admissible in evidence, but only for the purpose of proving that the person has been convicted of a former drug dealer felony. A prior conviction may be proved by stipulation of the parties or by the original or a certified copy of the court record of the prior conviction. The original or certified copy of the court record, bearing the same name as that by which the defendant is charged, shall be prima facie evidence that the defendant named therein is the same as the defendant before the court and shall be prima facie evidence of the facts set out therein.

"§ 90-329. Verdict and judgment.

When an indictment charges a drug dealer felon with a drug dealer felony as provided in this Article and an indictment also charges that the person is a drug

dealer felon as provided in this Article, the defendant shall be tried for the principal drug dealer felony as provided by law. The indictment that the person is a drug dealer felon shall not be revealed to the jury unless the jury finds the defendant guilty of the principal drug dealer felony or another drug dealer felony with which the defendant is charged. If the jury finds the defendant guilty of a drug dealer felony, the bill of indictment charging the defendant as a drug dealer felon may be presented to the same jury. Except that the same jury may be used, the proceedings shall be as if the issue of a drug dealer felon were a principal charge. If the jury finds that the defendant is a drug dealer felon, the trial judge shall enter judgment according to the provisions of this Article. If the jury finds that the defendant is not a drug dealer felon, the trial judge shall pronounce judgment on the principal drug dealer felony or felonies as provided by law.

"**§ 90-330. Sentencing of drug dealer felons.**

A person who is convicted of a drug dealer felony and of being a drug dealer felon must, upon conviction, be sentenced as a Class B2 felon, unless other drug dealer felony statutes provide for greater punishment. In determining the prior record level, convictions used to establish a person's status as a drug dealer felon shall not be used. Sentences for drug dealer felonies imposed under this Article shall run consecutively with and shall commence at the expiration of any other sentence being served by the person."

Section 3. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

North Carolina General Assembly
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Memorandum

Date: April 24, 1997

To: Judiciary 1 Committee Members

From: Representative Cindy Watson

Subject: Drug Law Amendments HB 1079

Members of the Judiciary 1 Committee, pollution is rampant in our country.

We have too long "buried our heads in the sand" and apathetically watched pollution from untold sources destroy our land, our waterways, and our society.

We must get serious about cleaning up this pollution if Mother Earth and our great American Society is to survive.

Bills have been introduced this session that, if ratified, will help alleviate the strangle hold that pollution has on our lands and waterways.

HB 1079, Drug Law Amendments, also gives you the opportunity to pass legislation that will help rid our society of pollution. Pollution from DRUGS that has a strangle hold on many of our citizens. Drug pollution that is tearing and ripping apart the moral fiber that holds this great society together.

For the sake of our children, for the sake of the future of America, we must stop this drug pollution!

The use of illicit drugs is illegal. Therefore, the possession of drugs is illegal! I do not understand why possession of any quantity of these drugs is allowed, but under our present laws we have protection built in for the DRUG CRIMINALS and they are getting through our courts with minor sentences, turned lose too quickly and too often do they return to their practice of death, misery and the destruction of lives.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

I implore you , let's get serious about DRUGS...Criminals do not respect "JUST SAY NO"...but long term incarceration or death by capital punishment will be deterrent ...HB 1079 is a good start to accomplish this goal.

This memo provides the explanation of House Bill 1079, A BILL TO BE ENTITLED AN ACT TO STRENGTHEN THE CONTROLLED SUBSTANCES LAWS. Attaching at the end of this memorandum is a copy of the bill summary prepared by the Institute of Government. I thought that you would find it helpful to have both explanations.

The bill does the following:

- Increases the penalty for the sale, manufacture, or delivery, of a controlled substance or the possession of a controlled substance with the intent to manufacture, sell, or deliver the substance.

- Increases the penalty for the possession of a controlled substance in a prison, jail, or other penal institution or local confinement facility.

- Increases the penalty imposed for trafficking in marijuana by decreasing the amount of marijuana that a person must possess, sell, manufacture, deliver, or transport that is deemed to be trafficking.

- Increases the penalty imposed for trafficking in cocaine by decreasing the amount of cocaine that a person must possess, sell, manufacture, deliver, or transport that is deemed to be trafficking.

- Creates a new status offense of drug dealer felon. The bill provides that any person who is convicted of a drug felony may also be indicted as a drug felon. A drug felony is defined as an offense under G.S. 90-95(a)(1) or (2), an offense under G.S. 90-95(h), an offense committed in another jurisdiction that is substantially similar to any of those offenses, or a conspiracy or attempt to commit any of those offenses. G.S. 90-95(a)(1) and (2) make unlawful the manufacture, sale, or delivery of a controlled substance or a counterfeit controlled substance or possession of such a substance with the intent to manufacture, sell, or deliver the substance. G.S. 90-95(h) makes trafficking in drugs unlawful.

  A person convicted of being a drug felon shall be sentenced as a Class B2 felon, unless another statute provides greater punishment. The bill also sets out the procedure for trying a person as a drug felon.

Summary prepared by the Institute of Government for the Daily Bulletin

H 1079. DRUG LAW AMENDMENTS. *TO STRENGTHEN THE CONTROLLED SUBSTANCES LAWS.* Amends GS 90-95 to (1) increase the penalties for a variety of drug offenses and (2) decrease from 50 pounds to one pound the amount of marijuana a person must sell, manufacture, deliver, transport, or possess in order to be guilty of the felony of "trafficking in marijuana."

Adds new Art. 24 ("Drug Dealer Felons") to GS Ch. 90. "Drug dealer felon" is any person who has been convicted of a drug dealer felony (offenses specified in the act) in any federal court or a court of this or any other state. Provides for separate indictments charging a person with being a drug dealer felon and specifies required content of the indictment.

Requires that a person so charged may not be required to go to trial on that charge within 20 days after the finding of a true bill by the grand jury unless the defendant waives the 20-day period. In a trial on a charge of being a drug dealer felon, the record of a prior conviction of a drug dealer felon is admissible, but only to prove that the person has been convicted of a former drug dealer felony, and may be proved by stipulation or by the original or certified copy of the court record of the prior conviction. When a defendant is charged with a drug dealer felony and with being a drug dealer felon, the defendant must be tried for the principal drug dealer felony and the indictment for being a drug dealer felon may not be revealed to the jury unless the jury finds the defendant guilty of a drug dealer felony, in which case the charge of being a drug dealer felon may be presented to the same jury. A person convicted of a drug dealer felony and of being a drug dealer felon, upon conviction, must be sentenced as a class B2 felon, unless other drug dealer felony statutes provide a greater punishment. In determining the prior record level, convictions used to establish the person's status as a drug dealer felon may not be used. Sentences imposed for drug dealer felonies run consecutively with and commence at the expiration of any other sentence being served by the person. For the article to apply, the offense for the principal drug dealer felony must occur after the conviction of the prior drug dealer felony that creates the status as drug dealer felon. Applies to offenses committed on or after Dec. 1, 1997.

Town of Wallace

316 East Murray Street • Wallace, North Carolina 28466 • Phone (910) 285-4136

Town Manager
J. DOUGLAS DRYMON

Tax Collector
FAYE B. PETERSON

Town Attorney
RICHARD L. BURROWS

Mayor
CHARLES C. FARRIOR, JR.

Councilmen:
DAVID E. JORDAN, Mayor Pro-Tem
WILLIAM JEFFERY CARTER
MICHAEL FOX
DAVID WARREN HEPLER
KEVIN M. WILSON

January 14, 1996

State Representative Cynthia Watson
121 Ezra Moore Road
Rose Hill, NC 28458

Dear Representative Watson:

The Wallace Town Council and I would like to express to you our concern about the proliferation of illegal drug use in our community and the surrounding areas of Duplin and Pender County. At a recent presentation made before the Town Council by members of the Rally Against Drugs organization (RAD), it was made apparent to all of us that unless we as a community, as a state, and as a nation take a firmer stand against illegal drug use, our society as a whole is headed for some very serious consequences.

After considering the information which was made available by the members of RAD, it appears that the "bottom line" in the fight against illegal drug use boils down to this: The risk of punishment for dealing in illegal drugs is too small, and the rewards (financial and otherwise) are too great, to cause most users and dealers to consider it unprofitable to be involved in the illegal drug trade.

Drug users and drug dealers know that the chance of their having to serve time in prison if they are caught is almost nil, thanks to structured sentencing and overcrowded jails. Likewise, they know that their chances of losing their drug-financed wealth is slim, unless they are caught with large amounts of illegal drugs in their possession - a situation which most dealers are smart enough to avoid by using other people to perform the actual transaction of buying and selling their drugs.

The citizens and Town Council of Wallace believe that stronger and more effective laws must be enacted to enable our communities to take a more pro-active stance against illegal drug use. We ask for your support and active involvement as our state legislator in putting these needed laws in place.

With kindest regards,

Charles C. Farrior, Jr.
Mayor

cc: Mr. Joseph D. Bryant, Rally Against Drugs organization

Rally Against Drugs

Post Office Box 550
Wallace, North Carolina 28466

March 26, 1996

Enclosed are changes in the existing drug laws. These changes were made by the Duplin County District Attorney's Office and were meant to make the existing laws more restrictive to those who violate said laws. If you need further explanation, please contact Jim Freeman, Duplin County Assistant District Attorney, phone 910 296-1231 in Kenansville.

The following people have told me that their statewide associations would back these changes:

1. Sheriff George Garner, Duplin County
2. Chief of Police Bobby Maready, Wallace
3. Assistant District Attorney Jim Freeman, Duplin County

"Rally Against Drugs" is making a difference in Duplin County. For example Drug and Alcohol arrests or pending arrests are as follows:

January 1, 1994-March 1994 12 total arrested	2 Officers
January 1, 1995 - March 1995 15 total arrested	2 Officers
January 1, 1996 - March 1996 132 total arrested	6 Officers

Please help us continue this.

Please let me hear from you concerning the drug law changes.

Sincerely,

Joseph D. Bryant

JDB/cb

Enclosure

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 674

Short Title: Permanent Curative Statute--Seals. (Public)

Sponsors: Representative Arnold.

Referred to: Judiciary I.

March 31, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE PERMANENT THE CURATIVE STATUTE ON LAND TRANSFER DOCUMENTS FILED WITHOUT THE WORD "SEAL" AND TO MAKE OTHER CHANGES TO THE VALIDATION OF SOME RECORDED INSTRUMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47-108.11 reads as rewritten:

"**§ 47-108.11. Validation of recorded instruments where seals have been omitted.**

~~In all cases of any deed, deed of trust, mortgage, lien or other instrument authorized or required to be registered in the office of the register of deeds of any county in this State where it appears of record or it appears that from said instrument, as recorded in the office of the register of deeds of any county in the State, there has been omitted from said recorded or registered instrument the word "seal," "notarial seal" and that any of said recorded or registered instruments shows or recites that the grantor or grantors "have hereunto fixed or set their hands and seals" and the signature of the grantor or grantors appears without a seal thereafter or on the recorded or registered instrument or in all cases where it appears there is an attesting clause which recites "signed, sealed and delivered in the presence of," and the signature of the grantor or grantors appears on the recorded or registered instrument without any seal appearing thereafter or of record, then all such deeds, mortgages, deeds of trust, liens or other instruments, and the registration of same in the office of the register of deeds, are hereby declared to be in all respects valid and binding and are hereby made in all respects valid and binding to the same extent as if the word "seal" or "notarial seal" had not been omitted, and the registration and~~

~~recording of such instruments in the office of the register of deeds in any county in this State are hereby declared to be valid, proper, legal and binding registrations.~~

In all cases of any deed, deed of trust, mortgage, lien or other instrument authorized or required to be registered in the office of the register of deeds of any county in the State wherein it appears of record or it appears from said instrument, that there has been omitted from said instrument recorded or registered in the office of the register of deeds of any county of this State that the word 'seal', 'notarial seal', the words 'that the grantor or grantors have hereunto fixed or set their hands and seals', or the attesting clause omits to recite in substance that the instrument has been 'signed, sealed, and delivered' then all such deeds, mortgages, deeds of trust, liens or other instruments, and the registration of same in the office of the register of deeds, are hereby declared to be valid and binding and are hereby made in all respects valid and binding with the same effect and to the same extent as if the word 'seal', 'notarial seal', the words 'that the grantor or grantors have hereunto fixed or set their hands and seals' and the attesting clause recited in substance that the instrument has been 'signed, sealed, and delivered' had been set forth and the registration and recording of such instruments in the office of the register of deeds in any county of this State are hereby declared to be valid, proper, legal and binding registrations.

This section shall not apply ~~in any respect to any instrument recorded or registered subsequent to January 1, 1995 or~~ to pending litigation or to any such instruments now directly or indirectly involved in pending ~~litigation.~~ litigation, but otherwise shall have both retrospective and prospective applications."

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

1012 APR 17 97

HOUSE PRINCIPAL CLERK

H D

HOUSE DRH1267-LH179(4.9)

Short Title: Shooting Range Protection. (Public)

Sponsors: Representative Sexton.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROTECT SPORT SHOOTING RANGES AND THEIR OWNERS, OPERATORS, AND USERS FROM PUNITIVE RESTRICTIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 53C.

"Sport Shooting Range Protection Act of 1997.

"**§ 14-409.45. Definitions.**

The following definitions apply in this Article:

(1) Person. -- An individual, proprietorship, partnership, corporation, club, or other legal entity.

(2) Sport shooting range or range. -- An area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting.

"**§ 14-409.46. Sport shooting range protection.**

(a) Notwithstanding any other provision of law, a person who owns, operates, or uses a sport shooting range in this State shall not be subject to civil liability or criminal prosecution in any matter relating to noise or noise pollution resulting from the operation or use of the range if the range is in compliance with any noise control laws or ordinances that applied to the range and its operation at the time of construction or initial operation of the range.

(b) A person who owns, operates, or uses a sport shooting range is not subject to an action for nuisance, and a State court shall not enjoin the use or operation of a range on the basis of noise or noise pollution, if the range is in compliance with any

noise control laws or ordinances that applied to the range and its operation at the time of construction or initial operation of the range.

(c) Rules adopted by any State department or agency for limiting levels of noise in terms of decibel level that may occur in the outdoor atmosphere shall not apply to a sport shooting range exempted from liability under this Article.

(d) A person who acquires title to or who owns real property adversely affected by the use of property with a permanently located and improved sport shooting range shall not maintain a nuisance action against the person who owns the range to restrain, enjoin, or impede the use of the range. This section does not prohibit actions for negligence or recklessness in the operation of the range or by a person using the range.

(e) A sport shooting range that is operated and is not in violation of existing law at the time of the enactment of an ordinance shall be permitted to continue in operation even if the operation of the sport shooting range at a later date does not conform to the new ordinance or an amendment to an existing ordinance.

(f) Each person who participates in sport shooting at a sport shooting range accepts the risks associated with the sport to the extent the risks are obvious and inherent. Those risks include injuries that may result from noise, discharge of a projectile or shot, malfunction of sport shooting equipment not owned by the shooting range, natural variations in terrain, surface or subsurface snow or ice conditions, bare spots, rocks, trees and other forms of natural growth or debris.

"**§ 14-409.47. Application of Article.**

Except as otherwise provided in this Article, this Article does not prohibit a local government from regulating the location and construction of a sport shooting range after the effective date of this Article."

Section 2. This act is effect when it becomes law.

HOUSE BILL 1012 -
THE NORTH CAROLINA RANGE PROTECTION ACT

WHAT DOES THIS BILL DO?

★ HB 1012 protects existing ranges from nuisance lawsuits and local noise control ordinances brought as a result of encroaching development in the surrounding area.

★ HB 1012 recognizes that ranges are public safety resources, and protects those resources to assure continued access by law enforcement officers, hunters, and recreational shooters to ranges where safe, responsible gun ownership skills are imparted.

WHY ARE SHOOTING RANGES A VALUABLE COMMUNITY RESOURCE?

In many communities, a local shooting range may be available for:

★ Law enforcement training

★ Hunter education and training

★ Youth programs

★ Historical re-enactments

★ Self-defense training

★ Recreational shooting

WHY PROTECT SHOOTING RANGES?

★ Encroaching new development in many areas has led to conflicts between shooting ranges and their neighbors, conflicts through which longstanding operations are threatened, and range use could be curtailed.

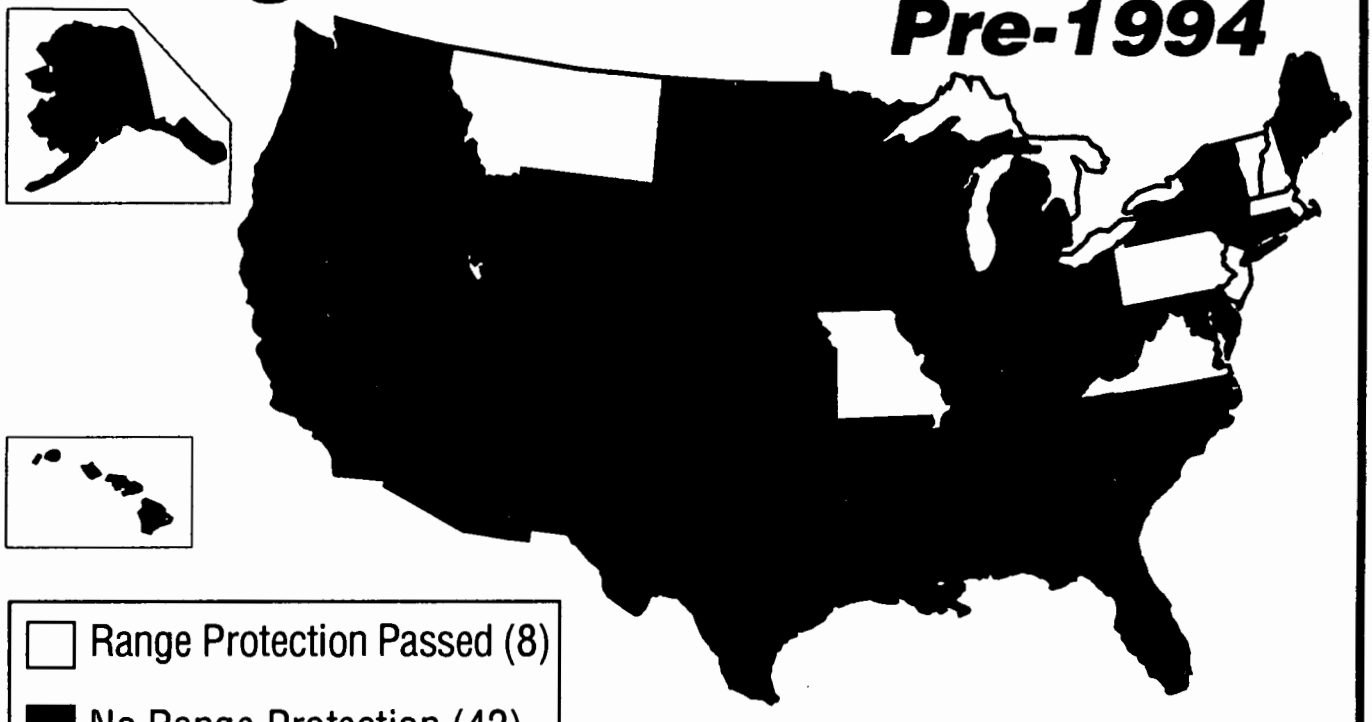
★ Ranges protect North Carolina's long standing heritage of shooting activities, including marksmanship competition and hunting.

★ Many of these ranges have been in existence for decades and when first built were purposely located away from development. Today, people are building closer and closer to these existing ranges and then filing legal actions or threatening suit against these ranges - alleging that they are a nuisance. The cost of defending a single suit is often enough to shut down a range.

★ HB 1012 is fully supported by hunters, recreational shooters, and firearms enthusiasts throughout North Carolina as a positive step to provide range owners and operators the protection they deserve as providers of a valuable community service.

Range Protection Statutes

Pre-1994

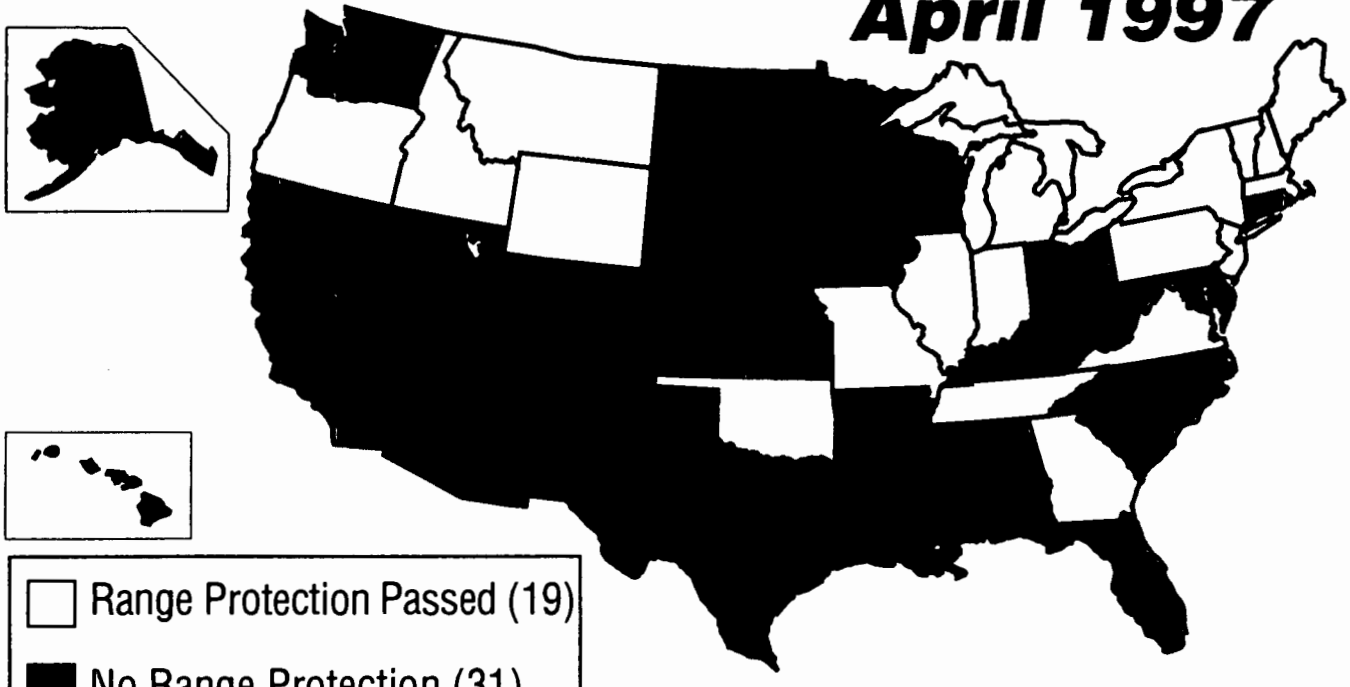


Range Protection Passed (8)

No Range Protection (42)

Since 1994, the number of states that have enacted shooting range protection legislation has more than doubled, jumping from eight to 19, as shown in these maps.

April 1997



Range Protection Passed (19)

No Range Protection (31)

H 1012. SHOOTING RANGE PROTECTION. *TO PROTECT SPORT SHOOTING RANGES AND THEIR OWNERS, OPERATORS, AND USERS FROM PUNITIVE RESTRICTIONS.* Provides that owners, operators, and users of sport shooting ranges (defined precisely in the bill) are not subject to civil liability, criminal prosecution, or nuisance action in any matter relating to noise or noise pollution related to operation of the range if the range is in compliance with applicable noise control ordinances and laws that applied at the time of its construction or initial operation. Provides that state agency rules about outdoor noise limits do not apply to ranges exempted under this bill. Does not prohibit actions for negligence or recklessness in the operation or use of the range. Provides that ranges must be permitted to continue operation if they were originally in compliance with an applicable noise ordinance and that ordinance is later amended or replaced by a new ordinance. Establishes assumption of risk standard for users of sport shooting ranges.
Intro. by Sexton.
Ref. to Judiciary I GS 14

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1071

Short Title: Pay Rent Arrears to Stay Ejectment. (Public)

Sponsors: Representative Capps.

Referred to: Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE TENANTS TO PAY TO THE CLERK OF COURT THE AMOUNT OF RENT IN ARREARS TO STAY THE EXECUTION OF JUDGMENT FOR SUMMARY EJECTMENT PENDING APPEAL TO DISTRICT COURT AND TO POST A BOND FOR ANY FURTHER APPEALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 42-34 reads as rewritten:

"**§ 42-34. Undertaking on appeal and order staying execution.**

(a) Upon appeal to the district court, either party may demand that the case be tried at the first session of the court after the appeal is docketed, but the presiding judge, in his discretion, may first try any pending case in which the rights of the parties or the public demand it.

(b) It shall be sufficient to stay execution of a judgment for ejectment ~~that~~ if the defendant appellant ~~sign~~ pays any rent in arrears and signs an undertaking that he or she will pay into the office of the clerk of superior court the amount of the contract rent as it becomes due periodically after the judgment was entered and, where applicable, comply with subdivision (c) below. Any magistrate, clerk, or district court judge shall order stay of execution upon ~~such undertaking.~~ the defendant appellant's paying the rent in arrears and signing the undertaking. If either party disputes the amount of the payment or the due date in ~~such~~ the undertaking, the aggrieved party may move for modification of the terms of the undertaking before the clerk of superior court or the district court. Upon such motion and upon notice to all interested parties, the clerk or court shall hold a hearing and determine what modifications, if any, are appropriate.

(c) In an ejectment action based upon alleged nonpayment of rent where the judgment is entered more than five working days before the day when the next rent will be due under the lease, the appellant shall make an additional undertaking to stay execution pending appeal. Such additional undertaking shall be the payment of the prorated rent for the days between the day that the judgment was entered and the next day when the rent will be due under the lease. ~~Notwithstanding, such additional undertaking shall not be required of an indigent appellant who prosecutes his appeal with an in forma pauperis affidavit that meets the requirements of G.S. 1-288.~~

(c1) Notwithstanding the provisions of subsections (b) and (c) of this section, an indigent defendant appellant who prosecutes his or her appeal with an in forma pauperis affidavit that meets the requirement of G.S. 1-288 shall not be required to pay rent in arrears or to enter into an additional undertaking to stay execution pending appeal.

(d) The undertaking by the appellant and the order staying execution may be substantially in the following form:

'State of North Carolina,

'County of .....

'..... , Plaintiff

vs.

'..... , Defendant

Bond to
Stay Execution
On Appeal to
District Court

'Now comes the defendant in the above entitled action and respectfully shows the court that judgment for summary ejectment was entered against the defendant and for the plaintiff on the..... day of ....., 19..., by the Magistrate. Defendant has appealed the judgment to the District Court.

'Pursuant to the terms of the lease between plaintiff and defendant, defendant is obligated to pay rent in the amount of $..... per ....., due on the ..... day of each .....

'Where the payment of rent in arrears or an additional undertaking is required by ~~G.S. 42-34(c),~~ G.S. 42-34(b) or (c), the defendant hereby tenders $..... to the Court as required.

'Defendant hereby undertakes to pay the periodic rent hereinafter due according to the aforesaid terms of the lease and moves the Court to stay execution on the judgment for summary ejectment until this matter is heard on appeal by the District Court.

'This the ..... day of....., 19.....

.....

Defendant

'Upon execution of the above bond, execution on said judgment for summary ejectment is hereby stayed until the action is heard on appeal in the District Court. If defendant fails to make any rental payment to the clerk's office within five days of the due date, upon application of the plaintiff, the stay of execution shall dissolve and the sheriff may dispossess the defendant.

'This ..... day of ....., 19.....

.....

Assistant Clerk of Superior Court.'

(e) Upon application of the plaintiff, the clerk of superior court shall pay to the plaintiff any amount of the rental payments paid by the defendant into the clerk's office which are not claimed by the defendant in any pleadings.

(f) If the defendant fails to make a payment within five days of the due date according to the undertaking and order staying execution, the clerk, upon application of the plaintiff, shall issue execution on the judgment for possession.

(g) When it appears by stipulation executed by all of the parties or by final order of the court that the appeal has been resolved, the clerk of court shall disburse any accrued moneys of the undertaking remaining in the clerk's office according to the terms of the stipulation or order."

Section 2. Article 3 of Chapter 42 of the General Statutes is amended by adding the following new section:

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

(a) 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 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 sufficient to stay execution of the judgment if the defendant appellant posts a bond as provided in G.S. 1-292. 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 any rent in arrears paid by the defendant appellant until all appeals have been resolved."

Section 3. This act is effective when it becomes law.

Noble Properties
Investment Real Estate
(919) 831-1744

J. MATTHEW SMITH
President

2609-A McNeil Street
Raleigh, NC 27608

4/23/97

Representative Edwin M. Hardy, Chairman
N. C. House Judiciary 1 Committee
LOB Room 417-A
Raleigh, NC 27601-1096

Re: House Bill 1071 – "Pay Rent Arrears to Stay Ejectment"

Dear Representative Hardy,

On behalf of the Apartment Association of North Carolina and as an owner/operator of 131 Raleigh apartment homes, I urge you to give consideration to House Bill 1071- "Pay Rent Arrears to Stay Ejectment". I have personally been affected by the current inequities in today's appeals process, and passage of this bill will eliminate the financial windfalls a tenant currently receives for merely appealing a lost small claims case to the district court level. Additionally, the number of frivolous appeals to district court should significantly reduce.

I look forward to meeting you at tomorrow's Judiciary 1 Committee meeting. Until then or anytime in the future, if I can be of service to you, please do not hesitate to contact me at 831-1744.

Yours Truly,

J. Matthew Smith, Director
Apartment Assoc. of North Carolina

North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

2 tapes 7:30 am & 2:00 pm

Thursday, April 24, 1997
1:30 p.m.
1327 Legislative Building

N. Leo Daughtry
Edwin M. Hardy
Co-Chairmen

Members Present

Martha Alexander	Gene G. Arnold
Jerry Braswell	J. Russell Capps
Debbie Clary	Theresa Esposito
Milton F. Fitch, Jr.	Bobby Ray Hall
Thomas C. Hardaway	George M. Holmes
Robert C. Hunter	John W. Hurley
Margaret M. Jeffus	H.M. Michaux, Jr.
George W. Miller, Jr.	Wilma T. Sherrill
Gregg Thompson	

The House Committee on JUDICIARY I met at 2:00 p.m. on Thursday, April 24, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry and Edwin M. "Sandy" Hardy, presiding.

Visitor Registration sheets were distributed by the Sergeant at Arms, and are attached and made a part of the minutes.

Committee counsels Steven Rose and Karen Cochrane-Brown and House Page Meredith Roberts were present to assist the committee.

Rep. McComas was recognized to explain House Bill 1120, PRESCRIBED BURNING IN FORESTS. Rep. McComas prepared a "Q and A" document answering frequently asked questions regarding the bill, a copy of which is attached and made a part of these minutes.

Rep. Michaux asked for and explanation of G.S. 11-6443.

Rep. Miller, regarding "liability" as addressed by the measure, asked questions regarding collateral liabilities for damages resulting from smoke-visibility-impaired traffic, etc.

Diane Parish, of the National Park Service, deferred to John Shepherd of the Division of Forest Resources. To comment on committee concerns regarding liability as addressed by the measure.

Rep. Hunter moved to amend the bill by removing lines 1,2 and 3 on page 3., reconciling section numbers to reflect this amendment. There was no objection. Rep. Sherrill moved to give H.B. 1120, in the form of a Proposed Committee Substitute, a favorable report, unfavorable to the original bill. There was no objection.

Rep. Allred was recognized for the purpose of explaining a Proposed Committee Substitute to House Bill 870, LOCAL WORKING OF PRISONERS. Rep. Thompson moved to adopt, for the purpose of discussion, the P.C.S. to H.B. 870. There was no objection.

Rep. Fitch moved a favorable report to the P.C.S., unfavorable to the original bill. There was no objection.

Rep. Davis was recognized for the purpose of resuming discussion of House Bill 869, SPEED TO ELUDE ARREST. Rep. Davis deferred to Counsel Cochrane-Brown, to explain a Proposed Committee Substitute to the original bill as prepared by a subcommittee chaired by Rep. Hall.

The bill was displaced momentarily to address further concerns concerning the bill's language as brought forth by Rep. Holmes.

Rep. Watson was recognized for the purpose of explaining House Bill 1008, CHIROPRACTIC LICENSURE AMENDMENTS.

Rep. Thompson moved to give the measure a favorable report. There was no objection.

On a motion by Rep. Hall, the Proposed Committee Substitute to House Bill 869 was accepted for the purpose of discussion.

Rep. Hall called the question, to which there was no objection, and the Proposed Committee Substitute was given a favorable report, unfavorable to the original bill.

The Committee adjourned until 1:30 p.m., Monday, April 28

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS

GENERAL ASSEMBLY OF NORTH CAROLINA FILED

SESSION 1997 1120 APR 17 97

H HOUSE PRINCIPAL CLERK D

HOUSE DRH1268-LD178(4.8)

Short Title: Prescribed Burning in Forests. (Public)

Sponsors: Representative McComas.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ALLOW PRESCRIBED BURNING IN FORESTS BY FOREST LANDOWNERS UNDER CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 113 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4E.

"North Carolina Prescribed Burning Act.

"**§ 113-60.40. Legislative findings.**

The General Assembly finds that prescribed burning of forestlands is a management tool that is beneficial to North Carolina's public safety, forest and wildlife resources, environment, and economy. All of the following are benefits that result from prescribed burning of forestlands:

(1) Prescribed burning reduces the naturally occurring buildup of vegetative fuels on forestlands. Reduction of these fuels by prescribed burning reduces the risk and severity of wildfires, thus lessening the loss of life and property.

(2) The State's ever-increasing population is resulting in urban development directly adjacent to fire prone forestlands. Such an area is referred to as a woodland-urban interface area. The use of prescribed burning in these woodland-urban interface areas substantially reduces the risk of damaging wildfires.

(3) Many of North Carolina's natural ecosystems require periodic fire for their survival. Prescribed burning is essential to the perpetuation, restoration, and management of many plant and

animal communities. Fire benefits game, nongame, and endangered wildlife species by increasing the growth and yield of plants that provide forage, escape, brooding, and other habitat needs.

(4) Forestlands are economic, biological, and aesthetic resources of statewide significance. In addition to reducing the frequency and severity of wildfires, prescribed burning of forestlands helps to prepare sites for replanting and natural seeding, to control insects and diseases, and to increase productivity.

(5) The resources on public use lands, such as State and national forests, wildlife refuges, nature preserves, and game lands, are enhanced by prescribed burning. Private lands that are managed for wildlife, recreation, and other purposes are similarly enhanced by prescribed burning.

(6) As North Carolina's population grows, pressures resulting from liability issues and smoke complaints discourage or limit prescribed burning so that these numerous benefits to forestlands often are not attainable.

(7) The General Assembly's recognition of the benefits of prescribed burning and the adoption of requirements governing prescribed burning will help to educate the public and avoid misunderstandings and reduce complaints about this valuable management tool.

"**§ 113-60.41. Definitions.**

As used in this Article:

(1) 'Certified prescribed burner' means an individual who has successfully completed a certification program approved by the Division of Forest Resources of the Department of Environment, Health, and Natural Resources.

(2) 'Prescribed burning' or 'prescribed burn' means the planned and controlled application of fire to naturally occurring vegetative fuels under safe weather, environmental, and other conditions, while following appropriate precautionary measures that will confine the fire to a predetermined area and accomplish the intended management objectives.

(3) 'Prescription' means a written plan prepared by a certified prescribed burner for starting, controlling, and extinguishing a prescribed burn.

"**§ 113-60.42. Immunity from liability.**

(a) Any prescribed burning conducted in compliance with G.S. 113-60.43 is in the public interest and does not constitute a public or private nuisance.

(b) A landowner or the landowner's agent who conducts a prescribed burn in compliance with G.S. 113-60.43 shall not be liable in any civil action for any damage or injury caused by or resulting from smoke.

(c) This section does not apply when a nuisance or damage results from the negligent or improper conduct of the prescribed burn.

"**§ 113-60.43. Prescribed burning.**

(a) Prior to the burning, a prescription for the prescribed burning shall be prepared by a certified prescribed burner and shall be filed with the Division of Forest Resources, Department of Environment, Health, and Natural Resources. A copy of the prescription shall be provided to the landowner and shall be present on the site throughout the period of the burning. The prescription shall include all of the following:

(1) The landowner's name and address.
(2) A description of the area to be burned.
(3) A map of the area to be burned.
(4) An estimate of the fuel tonnage on the area.
(5) The objectives of the prescribed burn.
(6) A list of the acceptable weather conditions and parameters for the prescribed burn.
(7) The name of the certified prescribed burner responsible for conducting the prescribed burn.
(8) A summary of the methods to be used to start, control, and extinguish the prescribed burn.

(b) The prescribed burning shall be conducted by a certified prescribed burner in accordance with the prescription that satisfies subsection (a) of this section. The certified prescribed burner shall be present on the site and shall be in charge of the burning throughout the period of the burning.

(c) The landowner or the landowner's agent shall obtain a current and valid open-burning permit under Article 4C of this Chapter from the Division of Forest Resources, Department of Environment, Health, and Natural Resources. This open-burning permit must remain in effect throughout the period of the burning. The burning shall be conducted in compliance with all of the following:

(1) The terms and conditions of the open-burning permit.
(2) The State's air pollution control statutes and any rules adopted by the Environmental Management Commission pursuant to these statutes.
(3) Any applicable local ordinances relating to open burning.
(4) The voluntary smoke management guidelines adopted by the Division of Forest Resources.
(5) Any rules adopted by the Division of Forest Resources to implement this Article.

(d) This Article does not apply when the Secretary of Environment, Health, and Natural Resources has prohibited all open burning pursuant to G.S. 113-60.25.

"**§ 113-60.44. Adoption of rules.**

The Division of Forest Resources may adopt rules that govern prescribed burning under this Article."

Section 2. This act is effective when it becomes law.

BILL

Prescribed Burning in Forests

NARRATIVE - This bill would not affect open burning or liability under the States' current laws. However, the bill would provide limited liability from smoke resulting from prescribed burning under new requirements for planning and managing a burn. Prescribed fire (planned reduction of forest fuels, under prescription, using controlled burning) is used to reduce the occurrence and destruction of forest land and woodland homes from uncontrolled forest fires, promote habitats for plants and animals, reduce forest insect and disease populations, prepare harvested forest areas for natural or artificial regeneration and improve private woodlands multi-use potentials.

Q- Would an individual be required to burn only under this law?
A- No. Only if the individual wished to have his/her smoke liability reduced.

Q- What is a certified burner?
A- A private landowner, forest consultant or private industry representative who completes a training program, designed and conducted by the NC Division of Forest Resources using existing resources.

Q- What does the certified burning training consist of?
A- Although not completed at this time, the certified burning training would follow similar training criteria as the existing Burning Manager program adopted and in use by the NC Division of Forest Resources.

Q- Why is it necessary to include limited immunity from liability in the bill?
A- Without any type of liability exclusion, there is no incentive to have a certified prescribed burner conducting a burn. Burning can presently be conducted by and would continue to be conducted by any individual who obtains a valid burning permit, under the state's current law.

Q- What restrictions must a certified burner comply with prior to burning?
A- Must have completed the certified burner training program, must obtain a valid burning permit and notify adjacent landowners, must comply with smoke management guidelines, including the prescription that smoke sensitive areas are not impacted, must ensure that weather conditions prescribed in the burning plan are present during the burning, must comply with Environmental Management rules and regulations, must comply with any local ordinances and must stay with the burn until the burn is completed.

Q- Does limited immunity from liability from smoke resulting from the burn relieve the certified burner from damage from the prescribed burning.
A- Not when a nuisance or damage results from the negligent or improper conduct of the prescribed burn.

Q- Who is liable if negligence is found or improper execution of the burn takes place.
A- The person who conducts the prescribed burn. This would be the landowner if the landowner is the certified burner conducting the burn. Otherwise the prescribed burner would be liable.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1120
Proposed Committee Substitute H1120-PCS7286

Short Title: Prescribed Burning in Forests. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW PRESCRIBED BURNING IN FORESTS BY FOREST LANDOWNERS UNDER CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 113 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4E.

"North Carolina Prescribed Burning Act.

"**§ 113-60.40. Legislative findings.**

The General Assembly finds that prescribed burning of forestlands is a management tool that is beneficial to North Carolina's public safety, forest and wildlife resources, environment, and economy. All of the following are benefits that result from prescribed burning of forestlands:

(1) Prescribed burning reduces the naturally occurring buildup of vegetative fuels on forestlands. Reduction of these fuels by prescribed burning reduces the risk and severity of wildfires, thus lessening the loss of life and property.

(2) The State's ever-increasing population is resulting in urban development directly adjacent to fire prone forestlands. Such an area is referred to as a woodland-urban interface area. The use of prescribed burning in these woodland-urban interface areas substantially reduces the risk of damaging wildfires.

(3) Many of North Carolina's natural ecosystems require periodic fire for their survival. Prescribed burning is essential to the perpetuation, restoration, and management of many plant and animal communities. Fire benefits game, nongame, and endangered wildlife species by increasing the growth and yield of plants that provide forage, escape, brooding, and other habitat needs.

(4) Forestlands are economic, biological, and aesthetic resources of statewide significance. In addition to reducing the frequency and severity of wildfires, prescribed burning of forestlands helps to prepare sites for replanting and natural seeding, to control insects and diseases, and to increase productivity.

(5) The resources on public use lands, such as State and national forests, wildlife refuges, nature preserves, and game lands, are enhanced by prescribed burning. Private lands that are managed for wildlife, recreation, and other purposes are similarly enhanced by prescribed burning.

(6) As North Carolina's population grows, pressures resulting from liability issues and smoke complaints discourage or limit prescribed burning so that these numerous benefits to forestlands often are not attainable.

(7) The General Assembly's recognition of the benefits of prescribed burning and the adoption of requirements governing prescribed burning will help to educate the public and avoid misunderstandings and reduce complaints about this valuable management tool.

"**§ 113-60.41. Definitions.**

As used in this Article:

(1) 'Certified prescribed burner' means an individual who has successfully completed a certification program approved by the Division of Forest Resources of the Department of Environment, Health, and Natural Resources.

(2) 'Prescribed burning' or 'prescribed burn' means the planned and controlled application of fire to naturally occurring vegetative fuels under safe weather, environmental, and other conditions, while following appropriate precautionary measures that will confine the fire to a predetermined area and accomplish the intended management objectives.

(3) 'Prescription' means a written plan prepared by a certified prescribed burner for starting, controlling, and extinguishing a prescribed burn.

"**§ 113-60.42. Immunity from liability.**

(a) Any prescribed burning conducted in compliance with G.S. 113-60.43 is in the public interest and does not constitute a public or private nuisance.

(b) This section does not apply when a nuisance results from the negligent or improper conduct of the prescribed burn.

"**§ 113-60.43. Prescribed burning.**

(a) Prior to the burning, a prescription for the prescribed burning shall be prepared by a certified prescribed burner and shall be filed with the Division of Forest Resources, Department of Environment, Health, and Natural Resources. A copy of the prescription shall be provided to the landowner and shall be present on the site throughout the period of the burning. The prescription shall include all of the following:

(1) The landowner's name and address.
(2) A description of the area to be burned.
(3) A map of the area to be burned.
(4) An estimate of the fuel tonnage on the area.
(5) The objectives of the prescribed burn.
(6) A list of the acceptable weather conditions and parameters for the prescribed burn.
(7) The name of the certified prescribed burner responsible for conducting the prescribed burn.
(8) A summary of the methods to be used to start, control, and extinguish the prescribed burn.

(b) The prescribed burning shall be conducted by a certified prescribed burner in accordance with the prescription that satisfies subsection (a) of this section. The certified prescribed burner shall be present on the site and shall be in charge of the burning throughout the period of the burning.

(c) The landowner or the landowner's agent shall obtain a current and valid open-burning permit under Article 4C of this Chapter from the Division of Forest Resources, Department of Environment, Health, and Natural Resources. This open-burning permit must remain in effect throughout the period of the burning. The burning shall be conducted in compliance with all of the following:

(1) The terms and conditions of the open-burning permit.
(2) The State's air pollution control statutes and any rules adopted by the Environmental Management Commission pursuant to these statutes.
(3) Any applicable local ordinances relating to open burning.
(4) The voluntary smoke management guidelines adopted by the Division of Forest Resources.
(5) Any rules adopted by the Division of Forest Resources to implement this Article.

(d) This Article does not apply when the Secretary of Environment, Health, and Natural Resources has prohibited all open burning pursuant to G.S. 113-60.25.

"**§ 113-60.44. Adoption of rules.**

The Division of Forest Resources may adopt rules that govern prescribed burning under this Article."

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 870

Short Title: Local Working of Prisoners. (Local)

Sponsors: Representatives Allred; Hardy and Capps.

Referred to: Ways and Means, if favorable, Judiciary I.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ALAMANCE, CASWELL, AND ROCKINGHAM COUNTIES TO ARRANGE FOR THE WORKING OF NONVIOLENT MISDEMEANANTS UNDER THE SUPERVISION OF EMPLOYEES OF ANOTHER UNIT OF STATE OR LOCAL GOVERNMENT OR EMPLOYEES OF A NONPROFIT, CHARITABLE CORPORATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 162-58 reads as rewritten:

"**§ 162-58. Counties may work prisoners.**

The board of commissioners of the several counties may enact by resolution all necessary rules and regulations for work on projects to benefit units of State or local government by persons convicted of crimes and imprisoned in the local confinement facilities or satellite jail/work release units of their respective counties. The sheriff shall approve rules and regulations enacted by the board. Prisoners working under this section shall be supervised by county employees or by the sheriff.

The board of county commissioners may also agree with units of State or local government or with nonprofit, charitable corporations to allow employees of those entities to supervise nonviolent misdemeanants in the custody of the county. The agreement shall set forth the terms and conditions under which employees of the unit of State or local government or the nonprofit, charitable corporation will supervise county prisoners, and is subject to the approval of the sheriff.

The rules enacted by the board of county commissioners and approved by the sheriff shall specify a procedure for ensuring that county employees or employees of another unit of State or local government or a nonprofit, charitable corporation

supervising prisoners pursuant to this section be provided with notice that the persons placed under their supervision are inmates from a local confinement facility or a satellite jail/work release unit."

Section 2. This act applies only to Alamance, Caswell, and Rockingham Counties.

Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 870
Proposed Committee Substitute H870-PCS2302

Short Title: Local Working of Prisoners. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ALAMANCE, BEAUFORT, CASWELL, CRAVEN, HYDE, PITT, AND ROCKINGHAM COUNTIES TO ARRANGE FOR THE WORKING OF NONVIOLENT MISDEMEANANTS UNDER THE SUPERVISION OF EMPLOYEES OF ANOTHER UNIT OF STATE OR LOCAL GOVERNMENT OR EMPLOYEES OF A NONPROFIT, CHARITABLE CORPORATION.

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The board of county commissioners may also agree with units of State or local government or with nonprofit, charitable corporations to allow employees of those entities to supervise nonviolent misdemeanants in the custody of the county. The agreement shall set forth the terms and conditions under which employees of the unit of State or local government or the nonprofit, charitable corporation will supervise county prisoners, and is subject to the approval of the sheriff.

The rules enacted by the board of county commissioners and approved by the sheriff shall specify a procedure for ensuring that county employees or employees of another unit of State or local government or a nonprofit, charitable corporation supervising prisoners pursuant to this section be provided with notice that the persons placed under their supervision are inmates from a local confinement facility or a satellite jail/work release unit."

Section 2. This act applies only to Alamance, Beaufort, Caswell, Craven, Hyde, Pitt, and Rockingham Counties.

Section 3. This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on JUDICIARY I .

☒ Committee Substitute for
H.B. 870 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE ALAMANCE, BEAUFORT, CASWELL, CRAVEN, HYDE, PITT, AND ROCKINGHAM COUNTIES TO ARRANGE FOR THE WORKING OF NONVIOLENT MISDEMEANANTS UNDER THE SUPERVISION OF EMPLOYEES OF ANOTHER UNIT OF STATE OR LOCAL GOVERNMENT OR EMPLOYEES OF A NONPROFIT, CHARITABLE CORPORATION.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

~~☒ With a favorable report as to committee substitute bill, unfavorable as to original bill.~~

☒ With a favorable report as to ~~House~~ committee substitute bill (# 2), ☐ ~~which changes the title~~, unfavorable as to ~~Senate~~ committee substitute bill (# 1 .

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

Proposed Committee Substitute For (#2)
H. 870

CHAP. _____

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ALAMANCE, BEAUFORT, CASWELL, CRAVEN, HYDE, PITT, AND ROCKINGHAM COUNTIES TO ARRANGE FOR THE WORKING OF NONVIOLENT MISDEMEANANTS UNDER THE SUPERVISION OF EMPLOYEES OF ANOTHER UNIT OF STATE OR LOCAL GOVERNMENT OR EMPLOYEES OF A NONPROFIT, CHARITABLE CORPORATION.

Introduced by Representative(s) Allred

Principal Clerk's Use Only

The Committee on Judiciary I
a majority being present, having considered
this bill, recommend that it do ✓ pass.

Reps. Daughtry and Hardy
For the Committee

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 1008

Short Title: Chiropractic Licensure Amendments. (Public)

Sponsors: Representatives Watson; and Morris.

Referred to: Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT REGARDING THE EDUCATIONAL REQUIREMENTS FOR CHIROPRACTIC LICENSURE AND TO AUTHORIZE THE BOARD TO LICENSE PERSONS WHO HAVE PASSED THE NATIONAL CHIROPRACTIC EXAMINATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-143 reads as rewritten:

"**§ 90-143. Definitions of chiropractic; examinations; educational requirements.**

(a) 'Chiropractic' is herein defined to be the science of adjusting the cause of disease by realigning the spine, releasing pressure on nerves radiating from the spine to all parts of the body, and allowing the nerves to carry their full quota of health current (nerve energy) from the brain to all parts of the body.

(b) It shall be the duty of the North Carolina State Board of Chiropractic Examiners (hereinafter referred to as 'Board') to examine for ~~license~~ licensure to practice chiropractic in this State ~~every~~ any applicant who ~~complies with the following provisions:~~ is or will become, within 60 days of examination, a graduate of a four-year chiropractic college that is either accredited by the Council on Chiropractic Education or deemed by the Board to be the equivalent of such a college and who furnishes to the Board, in the manner prescribed by the Board, all of the following:

(1) ~~Furnishes proof~~ Satisfactory evidence of good moral ~~character;~~ character.

(2) ~~Satisfies the Board~~ Proof that the applicant has received a baccalaureate degree from a college or university accredited by a

regional accreditation body recognized by the United States Department of ~~Education; and~~ Education.

(3) ~~Satisfies the Board that the applicant can, within 60 days of the date of examination exhibit a diploma or furnish proof of graduation from a chiropractic college accredited by the Council on Chiropractic Education or holding recognized candidate for accreditation status with the Council on Chiropractic Education or a college teaching chiropractic that, in the Board's opinion, meets the equivalent standards established by the Council on Chiropractic Education, requiring an attendance of not less than four academic years, and supplying such facilities for clinical and scientific instruction, as shall meet the approval of the Board. Provided, however, no license shall be issued until an applicant furnishes a diploma or proof of graduation, from an accredited chiropractic college, that meets the approval of the Board.~~ A transcript confirming that the applicant has received at least 4,200 hours of accredited chiropractic education. The Board shall not count any hours earned at an institution that is not accredited by the Council on Chiropractic Education or is not, as determined by the Board, the equivalent of such an institution.

The examination shall include, but not be limited to, the following studies: neurology, chemistry, pathology, anatomy, histology, physiology, embryology, dermatology, diagnosis, microscopy, gynecology, hygiene, eye, ear, nose and throat, orthopody, diagnostic radiology, jurisprudence, palpation, nerve tracing, chiropractic philosophy, theory, teaching and practice of chiropractic.

(c) The Board shall not issue a license to any applicant until the applicant exhibits a diploma or other proof that the Doctor of Chiropractic degree has been conferred.

(d) The Board may grant a license to an applicant if the applicant's scores on all parts of the examination given by the National Board of Chiropractic Examiners equal or exceed passing scores on the Board's examination and the applicant satisfies all other requirements for licensure as provided in this Article."

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 869
Proposed Committee Substitute
H869-CSRO-001

Short Title: Speed to Elude Arrest. (Public)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY AND MODIFY THE OFFENSE OF SPEEDING TO ELUDE ARREST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-141(j) reads as rewritten:

"(j) A person who does one of the following while fleeing or attempting to elude arrest or apprehension by a law enforcement officer with authority to enforce the motor vehicle laws is guilty of a Class ~~1 misdemeanor:~~ H felony, and at a minimum shall be punished by a fine of at least five hundred dollars ($500.00):

(1) ~~Drives~~ Continues to drive a vehicle on a street or highway in excess of 55 miles per hour and more than 15 miles per hour over the legal ~~limit.~~ limit after a law enforcement officer makes a reasonable attempt to engage the person's attention.

(2) Drives a vehicle in excess of 80 miles per hour.

It shall be prima facie evidence that a person is fleeing or attempting to elude arrest or apprehension by a law enforcement officer with authority to enforce the motor vehicle laws if the person violates subdivision (1) or (2) of this subsection for a distance that is a quarter of a mile or more."

Section 2. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

title change

Proposed Committee Substitute For
H.B. 869

CHAP. _____

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY AND MODIFY THE OFFENSE OF SPEEDING TO ELUDE ARREST.

Introduced by Representative(s)

_____ _____ _____ _____

_____ _____ _____ _____

_____ _____ _____ _____

_____ _____ _____ _____

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Committee on Judiciary I
jority being present, having considered
ill, recommend that it do ✓ pass.

Rep Daughtry and Hardy
For the Committee

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 869
Proposed Committee Substitute H869-PCS6238

Short Title: Speed to Elude Arrest. (Public)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY AND MODIFY THE OFFENSE OF SPEEDING TO ELUDE ARREST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-141(j) reads as rewritten:

"(j) A person who does one of the following while fleeing or attempting to elude arrest or apprehension by a law enforcement officer with authority to enforce the motor vehicle laws is guilty of a Class ~~1 misdemeanor.~~ H felony, and at a minimum shall be punished by a fine of at least five hundred dollars ($500.00):

(1) ~~Drives~~ Continues to drive a vehicle on a street or highway in excess of 55 miles per hour and more than 15 miles per hour over the legal ~~limit.~~ limit after a law enforcement officer makes a reasonable attempt to engage the person's attention, by siren and flashing lights.

(2) Drives a vehicle in excess of 80 miles per hour.

It shall be prima facie evidence that a person is fleeing or attempting to elude arrest or apprehension by a law enforcement officer with authority to enforce the motor vehicle laws if the person violates subdivision (1) or (2) of this subsection."

Section 2. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

JUDICIARY I 4-24-97 2pm

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	[illegible]	Conf. of DAs
2.	Peg Dorer	NCCBA
3.	KENDA R KIRBY	Durham HR Commission
4.	MK Cullen	NC PP
5.	Stacy Flannery	SEANC
6.	Bill Pate	DEHNR
7.	Lee Hunter	DEHNR
8.	Jan Allen	NC NOW
9.	Roz Sawyer	Lobbyist
10.	Steve Davis	DHR
11.	Ann Case	DEHNR
22.	Deborah Ross	ACLU
23.	Michelle Arrington	ACLU
24.	[illegible]	NCATL
25.	[illegible]	NCBA
26.	Bill Mast	NC PBA
27.	Steve Thompson	NCPBA
28.	[illegible]	NCPBA
29.	R. Vansoy	NCPBA.
30.	W. Sam Keith	NCPBA
31.	Valerie Kennedy	Hoffmann-La Roche

32.	Carl Goodwin OSP	
33.	Arlene Pulley	NCCBI
34.	Bill Alexander	NCPBA
35.	ROBERT R. CLATTY	NCPBA - STATE VICE PRESIDENT
36.	Mark Lanier	
37.	Dan Love	Durham Human Relations Department
38.	Chester L. Jenkins	Durham Human Relations Dept
39.	Jack Hawke	
40.	Jane C. Kirlew	NC Board of Chiropractic Examiners
41.	John Rustin	NC EPC
42.	KEITH HUNDLEY	WEYERHAEUSER
43.	James E. Lee	IP
44.	John Shepherd	EHNR - Forest Resources
45.	DAVID JARMAN	FOREST RESOURCES
46.	Jane P. Gray	DOJ
47.		
48.		
49.		
50.		

No agenda
No minutes
1 tape

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H April 28 1

HOUSE BILL 1140

Short Title: Littering/Require Comm. Service. (Public)

Sponsors: Representatives R. Hunter; Baddour, Hightower, and Mosley.

Referred to: Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT COMMUNITY SERVICE BE IMPOSED FOR A CONVICTION OF LITTERING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-399 reads as rewritten:

"**§ 14-399. Littering.**

(a) No person, including but not limited to, any firm, organization, private corporation, or governing body, agents or employees of any municipal corporation shall intentionally or recklessly throw, scatter, spill or place or intentionally or recklessly cause to be blown, scattered, spilled, thrown or placed or otherwise dispose of any litter upon any public property or private property not owned by him within this State or in the waters of this State including, but not limited to, any public highway, public park, lake, river, ocean, beach, campground, forest land, recreational area, trailer park, highway, road, street or alley except:

(1) When such property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and such person is authorized to use such property for such purpose; or

(2) Into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of such private or public property or waters.

(b) When litter is blown, scattered, spilled, thrown or placed from a vehicle or watercraft, the operator thereof shall be presumed to have committed such offense. This presumption, however, does not apply to a vehicle transporting agricultural

products or supplies when the litter from that vehicle is a nontoxic, biodegradable agricultural product or supply.

(c) Any person who violates this section in an amount not exceeding 15 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) for the first offense. In addition, the court shall require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. Any second or subsequent offense is punishable by a fine of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000). In addition, the court ~~may~~ shall require the violator to perform community service of not less than 24 hours nor more than 100 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to ~~or~~ perform other labor commensurate with the offense committed.

(d) Any person who violates this section in an amount exceeding 15 pounds but not exceeding 500 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000). In addition, the court shall require the violator to perform community service of not less than 24 hours nor more than 100 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to ~~or~~ perform other community service commensurate with the offense committed.

(e) Any person who violates this section in an amount exceeding 500 pounds or in any quantity for commercial purposes, or who discards litter that is a hazardous waste as defined in G.S. 130A-290 is guilty of a Class I felony. In addition, the court may order the violator to:

(1) Remove, or render harmless, the litter that he discarded in violation of this section;

(2) Repair or restore property damaged by, or pay damages for any damage arising out of, his discarding litter in violation of this section; or

(3) Perform community public service relating to the removal of litter discarded in violation of this section or to the restoration of an area polluted by litter discarded in violation of this section.

(f) A court may enjoin a violation of this section.

(f1) If a violation of this section involves the operation of a motor vehicle, upon a finding of guilt, the court shall forward a record of the finding to the Department of Transportation, Division of Motor Vehicles, which shall record a penalty of one point on the violator's drivers license pursuant to the point system established by G.S. 20-16. There shall be no insurance premium surcharge or assessment of points under the classification plan adopted pursuant to G.S. 58-30.4 for a finding of guilt under this section.

(g) A motor vehicle, vessel, aircraft, container, crane, winch, or machine involved in the disposal of more than 500 pounds of litter in violation of this section is declared contraband and is subject to seizure and summary forfeiture to the State.

(h) If a person sustains damages arising out of a violation of this section that is punishable as a felony, a court, in a civil action for such damages, shall order the person to pay the injured party threefold the actual damages or two hundred dollars ($200.00), whichever amount is greater. In addition, the court shall order the person to pay the injured party's court costs and attorney's fees.

(i) For the purpose of the section, unless the context requires otherwise:

(1) 'Aircraft' means a motor vehicle or other vehicle that is used or designed to fly, but does not include a parachute or any other device used primarily as safety equipment.

(2) 'Commercial vehicle' means a vehicle that is owned or used by a business, corporation, association, partnership, or sole proprietorship or any other entity conducting business for economic gain.

(3) 'Law enforcement officer' means any officer of the North Carolina Highway Patrol, the State Bureau of Investigation, the Division of Motor Vehicles of the Department of Transportation, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department, or the North Carolina Wildlife Resources Commission. In addition, and solely for the purposes of this section, 'law enforcement officer' means any employee of a county or municipality designated by the county or municipality as a litter enforcement officer; or wildlife protectors as defined in G.S. 113-128(9);

(4) 'Litter' means any garbage, rubbish, trash, refuse, can, bottle, box, container, wrapper, paper, paper product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or equipment, sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility, dead animal, or discarded material in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. 'Litter' does not include political pamphlets, handbills, religious tracts, newspapers, and other such printed materials the unsolicited distribution of which is protected by the Constitution of the United States or the Constitution of North Carolina.

(5) 'Vehicle' has the same meaning as in G.S. 20-4.01(49); and

(6) 'Watercraft' means any boat or vessel used for transportation across the water.

(j) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

(k) This section does not limit the authority of any State or local agency to enforce other laws, rules or ordinances relating to litter or solid waste management.

Section 2. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

H 1140. LITTERING/REQUIRE COMM. SERVICE. *TO PROVIDE THAT COMMUNITY SERVICE BE IMPOSED FOR A CONVICTION OF LITTERING.* Amends GS 14-399 to require community service for certain littering offenses. For a first offense of littering less than 16 lbs, requires from 8 to 24 hours service; for a second offense, from 24 to 100 hours. For the offense of littering between 16 and 500 lbs, requires community service of from 24 to 100 hours. Effective Dec. 1, 1997.

Intro. by Hunter of McDowell.

Ref. to Judiciary I GS 14

Note: Community service is in addition to the fines imposed.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H April 28 1

HOUSE BILL 1120

Short Title: Prescribed Burning in Forests. (Public)

Sponsors: Representatives McComas; and Davis.

Referred to: Agriculture, if favorable, Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW PRESCRIBED BURNING IN FORESTS BY FOREST LANDOWNERS UNDER CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 113 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4E.

"North Carolina Prescribed Burning Act.

"§ 113-60.40. Legislative findings.

The General Assembly finds that prescribed burning of forestlands is a management tool that is beneficial to North Carolina's public safety, forest and wildlife resources, environment, and economy. All of the following are benefits that result from prescribed burning of forestlands:

(1) Prescribed burning reduces the naturally occurring buildup of vegetative fuels on forestlands. Reduction of these fuels by prescribed burning reduces the risk and severity of wildfires, thus lessening the loss of life and property.

(2) The State's ever-increasing population is resulting in urban development directly adjacent to fire prone forestlands. Such an area is referred to as a woodland-urban interface area. The use of prescribed burning in these woodland-urban interface areas substantially reduces the risk of damaging wildfires.

(3) Many of North Carolina's natural ecosystems require periodic fire for their survival. Prescribed burning is essential to the

perpetuation, restoration, and management of many plant and animal communities. Fire benefits game, nongame, and endangered wildlife species by increasing the growth and yield of plants that provide forage, escape, brooding, and other habitat needs.

(4) Forestlands are economic, biological, and aesthetic resources of statewide significance. In addition to reducing the frequency and severity of wildfires, prescribed burning of forestlands helps to prepare sites for replanting and natural seeding, to control insects and diseases, and to increase productivity.

(5) The resources on public use lands, such as State and national forests, wildlife refuges, nature preserves, and game lands, are enhanced by prescribed burning. Private lands that are managed for wildlife, recreation, and other purposes are similarly enhanced by prescribed burning.

(6) As North Carolina's population grows, pressures resulting from liability issues and smoke complaints discourage or limit prescribed burning so that these numerous benefits to forestlands often are not attainable.

(7) The General Assembly's recognition of the benefits of prescribed burning and the adoption of requirements governing prescribed burning will help to educate the public and avoid misunderstandings and reduce complaints about this valuable management tool.

"**§ 113-60.41. Definitions.**

As used in this Article:

(1) 'Certified prescribed burner' means an individual who has successfully completed a certification program approved by the Division of Forest Resources of the Department of Environment, Health, and Natural Resources.

(2) 'Prescribed burning' or 'prescribed burn' means the planned and controlled application of fire to naturally occurring vegetative fuels under safe weather, environmental, and other conditions, while following appropriate precautionary measures that will confine the fire to a predetermined area and accomplish the intended management objectives.

(3) 'Prescription' means a written plan prepared by a certified prescribed burner for starting, controlling, and extinguishing a prescribed burn.

"**§ 113-60.42. Immunity from liability.**

(a) Any prescribed burning conducted in compliance with G.S. 113-60.43 is in the public interest and does not constitute a public or private nuisance.

(b) A landowner or the landowner's agent who conducts a prescribed burn in compliance with G.S. 113-60.43 shall not be liable in any civil action for any damage or injury caused by or resulting from smoke.

(c) This section does not apply when a nuisance or damage results from the negligent or improper conduct of the prescribed burn.

"**§ 113-60.43. Prescribed burning.**

(a) Prior to the burning, a prescription for the prescribed burning shall be prepared by a certified prescribed burner and shall be filed with the Division of Forest Resources, Department of Environment, Health, and Natural Resources. A copy of the prescription shall be provided to the landowner and shall be present on the site throughout the period of the burning. The prescription shall include all of the following:

(1) The landowner's name and address.
(2) A description of the area to be burned.
(3) A map of the area to be burned.
(4) An estimate of the fuel tonnage on the area.
(5) The objectives of the prescribed burn.
(6) A list of the acceptable weather conditions and parameters for the prescribed burn.
(7) The name of the certified prescribed burner responsible for conducting the prescribed burn.
(8) A summary of the methods to be used to start, control, and extinguish the prescribed burn.

(b) The prescribed burning shall be conducted by a certified prescribed burner in accordance with the prescription that satisfies subsection (a) of this section. The certified prescribed burner shall be present on the site and shall be in charge of the burning throughout the period of the burning.

(c) The landowner or the landowner's agent shall obtain a current and valid open-burning permit under Article 4C of this Chapter from the Division of Forest Resources, Department of Environment, Health, and Natural Resources. This open-burning permit must remain in effect throughout the period of the burning. The burning shall be conducted in compliance with all of the following:

(1) The terms and conditions of the open-burning permit.
(2) The State's air pollution control statutes and any rules adopted by the Environmental Management Commission pursuant to these statutes.
(3) Any applicable local ordinances relating to open burning.
(4) The voluntary smoke management guidelines adopted by the Division of Forest Resources.
(5) Any rules adopted by the Division of Forest Resources to implement this Article.

(d) This Article does not apply when the Secretary of Environment, Health, and

Natural Resources has prohibited all open burning pursuant to G.S. 113-60.25.

"**§ 113-60.44. Adoption of rules.**

The Division of Forest Resources may adopt rules that govern prescribed burning under this Article."

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1120
Proposed Committee Substitute H1120-PCS7286

Short Title: Prescribed Burning in Forests. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW PRESCRIBED BURNING IN FORESTS BY FOREST LANDOWNERS UNDER CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 113 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4E.

"North Carolina Prescribed Burning Act.

"**§ 113-60.40. Legislative findings.**

The General Assembly finds that prescribed burning of forestlands is a management tool that is beneficial to North Carolina's public safety, forest and wildlife resources, environment, and economy. All of the following are benefits that result from prescribed burning of forestlands:

(1) Prescribed burning reduces the naturally occurring buildup of vegetative fuels on forestlands. Reduction of these fuels by prescribed burning reduces the risk and severity of wildfires, thus lessening the loss of life and property.

(2) The State's ever-increasing population is resulting in urban development directly adjacent to fire prone forestlands. Such an area is referred to as a woodland-urban interface area. The use of prescribed burning in these woodland-urban interface areas substantially reduces the risk of damaging wildfires.

(3) Many of North Carolina's natural ecosystems require periodic fire for their survival. Prescribed burning is essential to the perpetuation, restoration, and management of many plant and animal communities. Fire benefits game, nongame, and endangered wildlife species by increasing the growth and yield of plants that provide forage, escape, brooding, and other habitat needs.

(4) Forestlands are economic, biological, and aesthetic resources of statewide significance. In addition to reducing the frequency and severity of wildfires, prescribed burning of forestlands helps to prepare sites for replanting and natural seeding, to control insects and diseases, and to increase productivity.

(5) The resources on public use lands, such as State and national forests, wildlife refuges, nature preserves, and game lands, are enhanced by prescribed burning. Private lands that are managed for wildlife, recreation, and other purposes are similarly enhanced by prescribed burning.

(6) As North Carolina's population grows, pressures resulting from liability issues and smoke complaints discourage or limit prescribed burning so that these numerous benefits to forestlands often are not attainable.

(7) The General Assembly's recognition of the benefits of prescribed burning and the adoption of requirements governing prescribed burning will help to educate the public and avoid misunderstandings and reduce complaints about this valuable management tool.

"**§ 113-60.41. Definitions.**

As used in this Article:

(1) 'Certified prescribed burner' means an individual who has successfully completed a certification program approved by the Division of Forest Resources of the Department of Environment, Health, and Natural Resources.

(2) 'Prescribed burning' or 'prescribed burn' means the planned and controlled application of fire to naturally occurring vegetative fuels under safe weather, environmental, and other conditions, while following appropriate precautionary measures that will confine the fire to a predetermined area and accomplish the intended management objectives.

(3) 'Prescription' means a written plan prepared by a certified prescribed burner for starting, controlling, and extinguishing a prescribed burn.

"**§ 113-60.42. Immunity from liability.**

(a) Any prescribed burning conducted in compliance with G.S. 113-60.43 is in the public interest and does not constitute a public or private nuisance.

(b) This section does not apply when a nuisance results from the negligent or improper conduct of the prescribed burn.

"**§ 113-60.43. Prescribed burning.**

(a) Prior to the burning, a prescription for the prescribed burning shall be prepared by a certified prescribed burner and shall be filed with the Division of Forest Resources, Department of Environment, Health, and Natural Resources. A copy of the prescription shall be provided to the landowner and shall be present on the site throughout the period of the burning. The prescription shall include all of the following:

(1) The landowner's name and address.
(2) A description of the area to be burned.
(3) A map of the area to be burned.
(4) An estimate of the fuel tonnage on the area.
(5) The objectives of the prescribed burn.
(6) A list of the acceptable weather conditions and parameters for the prescribed burn.
(7) The name of the certified prescribed burner responsible for conducting the prescribed burn.
(8) A summary of the methods to be used to start, control, and extinguish the prescribed burn.

(b) The prescribed burning shall be conducted by a certified prescribed burner in accordance with the prescription that satisfies subsection (a) of this section. The certified prescribed burner shall be present on the site and shall be in charge of the burning throughout the period of the burning.

(c) The landowner or the landowner's agent shall obtain a current and valid open-burning permit under Article 4C of this Chapter from the Division of Forest Resources, Department of Environment, Health, and Natural Resources. This open-burning permit must remain in effect throughout the period of the burning. The burning shall be conducted in compliance with all of the following:

(1) The terms and conditions of the open-burning permit.
(2) The State's air pollution control statutes and any rules adopted by the Environmental Management Commission pursuant to these statutes.
(3) Any applicable local ordinances relating to open burning.
(4) The voluntary smoke management guidelines adopted by the Division of Forest Resources.
(5) Any rules adopted by the Division of Forest Resources to implement this Article.

(d) This Article does not apply when the Secretary of Environment, Health, and Natural Resources has prohibited all open burning pursuant to G.S. 113-60.25.

"**§ 113-60.44. Adoption of rules.**

The Division of Forest Resources may adopt rules that govern prescribed burning under this Article."

Section 2. This act is effective when it becomes law.

BILL
Prescribed Burning in Forests

NARRATIVE - This bill would not affect open burning or liability under the States' current laws. However, the bill would provide limited liability from smoke resulting from prescribed burning under new requirements for planning and managing a burn. Prescribed fire (planned reduction of forest fuels, under prescription, using controlled burning) is used to reduce the occurrence and destruction of forest land and woodland homes from uncontrolled forest fires, promote habitats for plants and animals, reduce forest insect and disease populations, prepare harvested forest areas for natural or artificial regeneration and improve private woodlands multi-use potentials.

Q- Would an individual be required to burn only under this law?
A- No. Only if the individual wished to have his/her smoke liability reduced.

Q- What is a certified burner?
A- A private landowner, forest consultant or private industry representative who completes a training program, designed and conducted by the NC Division of Forest Resources using existing resources.

Q- What does the certified burning training consist of?
A- Although not completed at this time, the certified burning training would follow similar training criteria as the existing Burning Manager program adopted and in use by the NC Division of Forest Resources.

Q- Why is it necessary to include limited immunity from liability in the bill?
A- Without any type of liability exclusion, there is no incentive to have a certified prescribed burner conducting a burn. Burning can presently be conducted by and would continue to be conducted by any individual who obtains a valid burning permit, under the state's current law.

Q- What restrictions must a certified burner comply with prior to burning?
A- Must have completed the certified burner training program, must obtain a valid burning permit and notify adjacent landowners, must comply with smoke management guidelines, including the prescription that smoke sensitive areas are not impacted, must ensure that weather conditions prescribed in the burning plan are present during the burning, must comply with Environmental Management rules and regulations, must comply with any local ordinances and must stay with the burn until the burn is completed.

Q- Does limited immunity from liability from smoke resulting from the burn relieve the certified burner from damage from the prescribed burning.
A- Not when a nuisance or damage results from the negligent or improper conduct of the prescribed burn.

Q- Who is liable if negligence is found or improper execution of the burn takes place.
A- The person who conducts the prescribed burn. This would be the landowner if the landowner is the certified burner conducting the burn. Otherwise the prescribed burner would be liable.

April 28

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on JUDICIARY I

☒ Committee Substitute for
H.B. 431 A BILL TO BE ENTITLED AN ACT TO PERMIT THE GARNISHMENT OF WAGES TO RECOUP FRAUDULENT OR ERRONEOUS PUBLIC ASSISTANCE PROGRAM PAYMENTS, TO PROVIDE INVESTIGATORY SUBPOENA POWER TO LOCAL DEPARTMENTS OF SOCIAL SERVICES AND THE DEPARTMENT OF HUMAN RESOURCES, AND TO CREATE AN OFFENSE FOR ILLEGAL POSSESSION OR USE OF FOOD STAMPS.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

~~X With a favorable report as to committee substitute bill, unfavorable as to original bill.~~

☒ With a favorable report as to ~~House~~ committee substitute bill (# 2), ☑ which changes the title, unfavorable as to ~~Senate~~ committee substitute bill #1.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

ROLL CALL

~~Proposed~~ Committee Substitute For

H.B. 431

CHAP. _____

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE GARNISHMENT OF WAGES TO RECOUP FRAUDULENT OR ERRONEOUS PUBLIC ASSISTANCE PROGRAM PAYMENTS, TO PROVIDE INVESTIGATORY SUBPOENA POWER TO LOCAL DEPARTMENTS OF SOCIAL SERVICES AND THE DEPARTMENT OF HUMAN RESOURCES, AND TO CREATE AN OFFENSE FOR ILLEGAL POSSESSION OR USE OF FOOD STAMPS.

Introduced by Representative(s) Howard

Principal Clerk's Use Only

Committee on Welfare Reform

majority being present, having considered bill, recommend that it do ✓ pass.

Rep. Berry

For the Committee

FAVORABLE TO COMM. SUB.

~~UNFAVORABLE TO BILL~~

MAR 25 1997

~~AND PLACED ON CALENDAR FOR~~

pursuant Rule 38

re-referred to Finance

Committee on Finance

majority being present, having considered bill, recommend that it do ✓ pass.

Gray, Brawley, Dickson

For the Committee C. Wilson

REPORTED FAVORABLY APR 2 1997

PLACED ON CALENDAR

APR 2 1997

Pursuant to Rule 36(a)

11/5/97

AMENDMENT NO 1

ADOPTED APR 9 1997

58-51 EV

PASSED 2nd READING

Ayes 106 Noes 6

APR 9 1997

AND PLACED ON 3rd CALENDAR

~~FAILED~~

DATE 4-15-97

APR 10 1997

AMENDMENT NO 2

ADOPTED APR 15 1997

113-3 EV

Representative Blue offers amendment #3

APR 15 1997

ON MOTION OF

REP Howard

WITHDRAWN FROM

calendar

with amendment #3 pending

APR 15 1997 (VV)

RECOMMITTED TO

Judiciary I

The Committee on Judiciary I

a majority being present, having considered this bill, recommend that it do NOT pass,

Reps. Daughtry and Hardy

For the Committee

but Committee Substitute DO PASS

ROLL CALL

title change

Proposed Committee Substitute For
431

CHAP. _____

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE GARNISHMENT OF WAGES TO RECOUP FRAUDULENT OR ERRONEOUS PUBLIC ASSISTANCE PROGRAM PAYMENTS, TO PROVIDE INVESTIGATORY SUBPOENA POWER TO COUNTY DEPARTMENTS OF SOCIAL SERVICES AND THE DEPARTMENT OF HUMAN RESOURCES, AND TO CREATE AN OFFENSE FOR ILLEGAL POSSESSION OR USE OF FOOD STAMPS.

Introduced by Representative(s) Howard

Principal Clerk's Use Only

Committee on Judiciary IV

ajority being present, having considered
bill, recommend that it do ✓ pass.

Reps. Daughtry and Hardy
For the Committee

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 2

HOUSE BILL 431
Committee Substitute Favorable 3/25/97

Short Title: Public Assistance Fraud/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE GARNISHMENT OF WAGES TO RECOUP FRAUDULENT OR ERRONEOUS PUBLIC ASSISTANCE PROGRAM PAYMENTS, TO PROVIDE INVESTIGATORY SUBPOENA POWER TO LOCAL DEPARTMENTS OF SOCIAL SERVICES AND THE DEPARTMENT OF HUMAN RESOURCES, AND TO CREATE AN OFFENSE FOR ILLEGAL POSSESSION OR USE OF FOOD STAMPS.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 2 of Chapter 108A of the General Statutes is amended by adding new sections as follows:

"**§ 108A-25.1. Garnishment of wages to recoup fraudulent or erroneous public assistance program payment.**

(a) The following definitions apply in this section:

(1) Disposable income. -- The part of the compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise (including periodic payments pursuant to a pension, retirement, or other deferred compensation program) which remains after the deduction of any amounts required by law to be withheld.

(2) Erroneous payment. -- Any public assistance program payment made because of a recipient's, a recipient's representative's or recipient household member's misunderstanding or unintentional error, or any action or inaction of the local department of social

services or Department of Human Resources which results in an erroneous public assistance program payment.

(3) Fraudulent payment. -- Any public assistance program payment made because of a recipient's false statement or representation or failure to disclose a material fact which occurs willfully and knowingly and with intent to deceive.

(4) Garnishee. -- The person, firm, association, or corporation owing compensation for personal services, whether denominated as wages, salary, commission, bonus, or otherwise (including periodic payments pursuant to a pension, retirement, or other deferred compensation program).

(5) Public assistance program. -- Any means-tested benefit program administered or supervised by a local department of social services or the Department of Human Resources which is funded in whole or in part by federal, State, or local resources.

(b) In any case in which a recipient or former recipient of a public assistance program, who while a recipient, obtained or benefited from a fraudulent or erroneous payment, a judge of the district court in the county where the recipient or former recipient resides or is found, or in the county where the payment was made, may enter an order of garnishment whereby no more than twenty percent (20%) of that person's monthly disposable income may be garnished to recoup the payment. The order of garnishment shall be subject to all federal and State laws or regulations that may apply to recoupment of fraudulent or erroneous payments.

(c) A local department of social services or the Department of Human Resources may petition the court for an order of garnishment to recoup a fraudulent or erroneous public assistance program payment. The petition shall be verified and provide the court with facts and circumstances of the fraudulent or erroneous payment to or on behalf of the recipient or former recipient, the name and address of the garnishee, the recipient or former recipient's monthly disposable income (which may be based on information and belief), and the amount sought to be garnished from the recipient's or former recipient's disposable income. The petition shall be served on both the recipient or former recipient and the garnishee in accordance with the provisions for service of process set forth in G.S. 1A-1, Rule 4. The time period for answering or otherwise responding to process issued pursuant to this section shall be in accordance with the time periods set forth in G.S. 1A-1, Rule 12.

(d) Upon a hearing held pursuant to this section, the court may enter an order of garnishment. If an order of garnishment is entered, a copy of the same shall be served on both the recipient or the former recipient and the garnishee either personally or by certified or registered mail, return receipt requested. The order shall set forth sufficient findings of facts to support the action by the court and the amount to be garnished for each pay period. The amount garnished shall be increased by an additional one dollar ($1.00) processing fee to be assessed and retained by the garnishee for each payment under the order. The order shall be

subject to review for modification and dissolution upon the filing of a motion in the cause.

(e) Upon receipt of the order of garnishment, the garnishee shall transmit without delay to the clerk of superior court the amount ordered by the court to be garnished. These funds shall be disbursed to the local department of social services to recoup fraudulent or erroneous payments subject to the order of garnishment entered pursuant to this section.

(f) A garnishee who violates the terms of an order of garnishment shall be subject to punishment for contempt.

(g) The Social Services Commission shall adopt rules and regulations to implement this section. The rules shall ensure that a petition for an order of garnishment sought pursuant to this section is consistent with all federal and State laws and regulations.

"**§ 108A-25.2. Power to issue investigatory subpoenas.**

(a) When all other reasonable means of investigating facts and circumstances pertaining to fraudulent or erroneous applications for or receipt of public assistance benefits have been exhausted, the Director of the local department of social services or the Director's designee, or the Secretary of Human Resources or the Secretary's designee, may issue a subpoena to a third party in the State who has necessary and relevant information and require that pertinent records and other documents be produced for examination. The subpoena shall specify the person to whom the records and documents sought shall be produced, including time and place, and shall be served in accordance with any manner as prescribed in G.S. 1A-1, Rule 4. The local department of social services and the Department is authorized to administer oaths for the purpose of the examinations.

(b) An action for contempt may be initiated when such third party fails to obey a subpoena issued as provided for in subsection (a) of this section. The action shall be initiated by petition to the district court in the district where the person to whom the subpoena was directed was served. The action for contempt may be punishable by the court in the same manner as if the subpoena had been issued by the court subject to G.S. 1A-1, Rule 45.

(c) The refusal of a third party to cooperate shall not affect the eligibility of an initial application to receive public assistance.

(d) The Social Services Commission shall adopt rules and regulations to implement this section."

Section 2. Part 5 of Article 2 of Chapter 108A of the General Statutes is amended by adding a new section as follows:

"**§ 108A-53.1. Illegal possession or use of food stamps.**

Any person who knowingly uses, transfers, acquires, alters, or possesses food stamp coupons, authorization cards, or access devices in any manner contrary to that authorized by the Food Stamp Program (7 U.S.C. § 2011, et seq.) and the regulations issued pursuant thereto shall be guilty of a Class 1 misdemeanor if the value of such food stamp coupons, authorization cards, or access devices is less than one hundred dollars ($100.00), or a Class I felony if the value of such food stamp coupons,

authorization cards, or access devices is equal to one hundred dollars ($100.00) but less than one thousand dollars ($1,000), or a Class H felony if the value of such food stamp coupons, authorization cards, or access devices equals or exceeds one thousand dollars ($1,000)."

Section 3. The Social Services Commission shall adopt rules and regulations to implement Section 1 of this act within 90 days of the date this act is signed into law.

Section 4. This act becomes effective December 1, 1997.

North Carolina General Assembly
Legislative Services Office

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March 19, 1997

To: House Welfare Reform Committee

From: Carolyn D. Johnson, Committee Counsel

Re: House Bill 431 - Public Assistance Fraud

House Bill 431 provides authority to local departments of social services or the Department of Human Resources to: (1) recoup fraudulent or erroneous payment public assistance program payments through wage garnishment, and (2) issue administrative subpoenas for the purpose of investigating fraudulent or erroneous applications for or receipt of public assistance. The bill also creates a criminal offense for the illegal possession or use of food stamps.

Section 1 creates two new sections in Part 1 of Article 2 of Chapter 108A. G.S. 108A-25.1 provides that up to 20% of the disposable income of a recipient or former recipient of public assistance may be subject to wage garnishment to recoup fraudulent or erroneous program payments. The district court in the county where the recipient or former recipient resides or is found, or in the county where the payment is made, may order garnishment upon a hearing. Any order of garnishment must also comply with all applicable federal and State laws or regulations. The Social Services Commission is directed to adopt rules and regulations to implement the section.

G.S. 108A-25.2 provides for the issuance of administrative subpoenas to third parties to investigate fraudulent or erroneous applications for or receipt of public assistance. This power shall be available to local departments of social services and the Department of Human Resources when all other reasonable means of investigation have been exhausted. On the local level, the power may be exercised by the Director of Social Services or the Director's designee. On the State level, the power may be exercised by the Secretary of Human Resources or the Secretary's designee. The failure of a third party to cooperate with a subpoena shall not affect a person's eligibility to receive public assistance. The Social Services Commission is directed to adopt rules and regulations to implement the section.

Section 2 of the bill establishes an offense for illegal possession or use of food stamps. G.S. 108A.53.1 provides that any person who knowingly uses, transfers acquires, alters or possesses food stamp coupons, authorization cards or access devices in any manner contrary to that

authorized by the Food Stamp Program shall be guilty of a Class 1 misdemeanor if the value is less than $100; guilty of a Class I felony if the value is equal to $100, but less than $1,000; and guilty of a Class H felony if the value equals or exceeds $1,000.

The bill becomes effective December 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 431
Proposed Committee Substitute H431-CSRK-002

Short Title: Public Assistance Fraud/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE GARNISHMENT OF WAGES TO RECOUP FRAUDULENT OR ERRONEOUS PUBLIC ASSISTANCE PROGRAM PAYMENTS, TO PROVIDE INVESTIGATORY SUBPOENA POWER TO COUNTY DEPARTMENTS OF SOCIAL SERVICES AND THE DEPARTMENT OF HUMAN RESOURCES, AND TO CREATE AN OFFENSE FOR ILLEGAL POSSESSION OR USE OF FOOD STAMPS.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 2 of Chapter 108A of the General Statutes is amended by adding new sections as follows:

"§ 108A-25.1. Garnishment of wages to recoup fraudulent or erroneous public assistance program payment.

(a) The following definitions apply in this section:

(1) Disposable income. -- The part of the compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise (including periodic payments pursuant to a pension, retirement, or other deferred compensation program) which remains after the deduction of any amounts required by law to be withheld.

(2) Erroneous payment. -- Any public assistance program payment made because of a recipient's, a

recipient's representative's or recipient household member's misunderstanding or unintentional error, or any action or inaction of the county department of social services or Department of Human Resources which results in an erroneous public assistance program payment.

(3) Fraudulent payment. -- Any public assistance program payment made because of a recipient's false statement or representation or failure to disclose a material fact which occurs willfully and knowingly and with intent to deceive.

(4) Garnishee. -- The person, firm, association, or corporation owing compensation for personal services, whether denominated as wages, salary, commission, bonus, or otherwise (including periodic payments pursuant to a pension, retirement, or other deferred compensation program).

(5) Public assistance program. -- Any means-tested benefit program administered or supervised by a county department of social services or the Department of Human Resources which is funded in whole or in part by federal, State, or county resources.

(b) In any case in which a recipient or former recipient of a public assistance program, who while a recipient, obtained or benefited from a fraudulent or erroneous payment, a judge of the district court in the county where the recipient or former recipient resides or is found, or in the county where the payment was made, may enter an order of garnishment to recoup a fraudulent or erroneous payment. Not more than twenty percent (20%) of the recipient's or former recipient's monthly disposable income may be garnished to recoup payment in cases of fraudulent payment and not more than ten (10%) of the recipient's or former recipient's monthly disposable income may be garnished to recoup payment in cases of erroneous payment. The order of garnishment shall be subject to all federal and State laws or regulations that may apply to recoupment of fraudulent or erroneous payments.

(c) A county department of social services or the Department of Human Resources may petition the court for an order of garnishment to recoup a fraudulent or erroneous public assistance program payment. In cases of erroneous payment, garnishment shall be a remedy to recoup payment only after all administrative remedies are exhausted unsuccessfully. The petition shall be verified and provide the court with facts and circumstances of

the fraudulent or erroneous payment to or on behalf of the recipient or former recipient, the name and address of the garnishee, the recipient or former recipient's monthly disposable income (which may be based on information and belief), and the amount sought to be garnished from the recipient's or former recipient's disposable income. The petition shall be served on both the recipient or former recipient and the garnishee in accordance with the provisions for service of process set forth in G.S. 1A-1, Rule 4. The time period for answering or otherwise responding to process issued pursuant to this section shall be in accordance with the time periods set forth in G.S. 1A-1, Rule 12.

(d) Upon a hearing held pursuant to this section, the court may enter an order of garnishment. If an order of garnishment is entered, a copy of the same shall be served on both the recipient or the former recipient and the garnishee either personally or by certified or registered mail, return receipt requested. The order shall set forth sufficient findings of facts to support the action by the court and the amount to be garnished for each pay period. The amount garnished shall be increased by an additional one dollar ($1.00) processing fee to be assessed and retained by the garnishee for each payment under the order. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

(e) Upon receipt of the order of garnishment, the garnishee shall transmit without delay to the clerk of superior court the amount ordered by the court to be garnished. These funds shall be disbursed to the court department of social services to recoup fraudulent or erroneous payments subject to the order of garnishment entered pursuant to this section.

(f) A garnishee who violates the terms of an order of garnishment shall be subject to punishment for contempt.

(g) The Social Services Commission shall adopt rules and regulations to implement this section. The rules shall ensure that a petition for an order of garnishment sought pursuant to this section is consistent with all federal and State laws and regulations.

"§ 108A-25.2. Power to issue investigatory subpoenas.

(a) When all other reasonable means of investigating facts and circumstances pertaining to fraudulent or erroneous applications for or receipt of public assistance benefits have been exhausted, the Director of the county department of social services or the Secretary of Human Resources may issue a subpoena to a third party in the State for the production of books, papers, correspondence, memorandum, agreements, or other information,

documents or records relevant to establishing a fraudulent or erroneous claim of public assistance. The subpoena shall specify the person to whom the records and documents sought shall be produced, including time and place, and shall be served in accordance with any manner as prescribed in G.S. 1A-1, Rule 4. A county department of social services and the Department of Human Resources is authorized to administer oaths for the purpose of the examinations.

(b) An action for contempt may be initiated when such third party fails to obey a subpoena issued as provided for in subsection (a) of this section. The action shall be initiated by petition to the district court in the district where the person to whom the subpoena was directed was served. The action for contempt may be punishable by the court in the same manner as if the subpoena had been issued by the court subject to G.S. 1A-1, Rule 45.

(c) The refusal of a third party to cooperate shall not affect the eligibility of an initial application to receive public assistance.

(d) For the purpose of this section, the following definitions shall apply: "Director" means the Director of the county department of social services and "Secretary" means the Secretary of the Department of Human Resources.

(e) The Social Services Commission shall adopt rules and regulations to implement this section."

Section 2. Part 5 of Article 2 of Chapter 108A of the General Statutes is amended by adding a new section as follows:

"**§ 108A-53.1. Illegal possession or use of food stamps.**

Any person who knowingly uses, transfers, acquires, alters, or possesses food stamp coupons, authorization cards, or access devices in any manner contrary to that authorized by the Food Stamp Program (7 U.S.C. § 2011, et seq.) and the regulations issued pursuant thereto shall be guilty of a Class 1 misdemeanor if the value of such food stamp coupons, authorization cards, or access devices is less than one hundred dollars ($100.00), or a Class I felony if the value of such food stamp coupons, authorization cards, or access devices is equal to one hundred dollars ($100.00) but less than one thousand dollars ($1,000), or a Class H felony if the value of such food stamp coupons, authorization cards, or access devices equals or exceeds one thousand dollars ($1,000)."

Section 3. The Social Services Commission shall adopt rules and regulations to implement Section 1 of this act within 90 days of the date this act is signed into law.

Section 4. This act becomes effective December 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 431

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H431-ARO-001

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]
Second Edition

moves to amend the bill on page 1, lines 16-18, by rewriting the lines to read:

"salary, commission, bonus, or otherwise which remains after the deduction of any"; and

on page 2, lines 9-11, by rewriting the lines to read:

"wages, salary, commission, bonus, or otherwise."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 431
Proposed Committee Substitute H431-PCS1340

Short Title: Public Assistance Fraud/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE GARNISHMENT OF WAGES TO RECOUP FRAUDULENT OR ERRONEOUS PUBLIC ASSISTANCE PROGRAM PAYMENTS, TO PROVIDE INVESTIGATORY SUBPOENA POWER TO COUNTY DEPARTMENTS OF SOCIAL SERVICES AND THE DEPARTMENT OF HUMAN RESOURCES, AND TO CREATE AN OFFENSE FOR ILLEGAL POSSESSION OR USE OF FOOD STAMPS.

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 2 of Chapter 108A of the General Statutes is amended by adding new sections as follows:

"**§ 108A-25.1. Garnishment of wages to recoup fraudulent or erroneous public assistance program payment.**

(a) The following definitions apply in this section:

(1) Disposable income. -- The part of the compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise which remains after the deduction of any amounts required by law to be withheld.

(2) Erroneous payment. -- Any public assistance program payment made because of a recipient's, a recipient's representative's, or recipient household member's misunderstanding or unintentional error, or any action or inaction of the county department of social services or the Department of Human Resources which results in an erroneous public assistance program payment.

(3) Fraudulent payment. -- Any public assistance program payment made because of a recipient's false statement or representation or failure to disclose a material fact which occurs willfully and knowingly and with intent to deceive.

(4) Garnishee. -- The person, firm, association, or corporation owing compensation for personal services, whether denominated as wages, salary, commission, bonus, or otherwise.

(5) Public assistance program. -- Any means-tested benefit program administered or supervised by a county department of social services or the Department of Human Resources which is funded in whole or in part by federal, State, or county resources.

(b) In any case in which a recipient or former recipient of a public assistance program, who while a recipient, obtained or benefited from a fraudulent or erroneous payment, a judge of the district court in the county where the recipient or former recipient resides or is found, or in the county where the payment was made, may enter an order of garnishment to recoup a fraudulent or erroneous payment. Not more than twenty percent (20%) of the recipient's or former recipient's monthly disposable income may be garnished to recoup payment in cases of fraudulent payment and not more than ten (10%) of the recipient's or former recipient's monthly disposable income may be garnished to recoup payment in cases of erroneous payment. The order of garnishment shall be subject to all federal and State laws or regulations that may apply to recoupment of fraudulent or erroneous payments.

(c) A county department of social services or the Department of Human Resources may petition the court for an order of garnishment to recoup a fraudulent or erroneous public assistance program payment. In cases of erroneous payment, garnishment shall be a remedy to recoup payment only after all administrative remedies are exhausted unsuccessfully. The petition shall be verified and provide the court with facts and circumstances of the fraudulent or erroneous payment to or on behalf of the recipient or former recipient, the name and address of the garnishee, the recipient's or former recipient's monthly disposable income (which may be based on information and belief), and the amount sought to be garnished from the recipient's or former recipient's disposable income. The petition shall be served on both the recipient or former recipient and the garnishee in accordance with the provisions for service of process set forth in G.S. 1A-1, Rule 4. The time period for answering or otherwise responding to process issued pursuant to this section shall be in accordance with the time periods set forth in G.S. 1A-1, Rule 12.

(d) Upon a hearing held pursuant to this section, the court may enter an order of garnishment. If an order of garnishment is entered, a copy of the same shall be served on both the recipient or the former recipient and the garnishee either personally or by certified or registered mail, return receipt requested. The order shall set forth sufficient findings of facts to support the action by the court and the amount to be garnished for each pay period. The amount garnished shall be increased by an additional one dollar ($1.00) processing fee to be assessed and

retained by the garnishee for each payment under the order. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

(e) Upon receipt of the order of garnishment, the garnishee shall transmit without delay to the clerk of superior court the amount ordered by the court to be garnished. These funds shall be disbursed to the court department of social services to recoup fraudulent or erroneous payments subject to the order of garnishment entered pursuant to this section.

(f) A garnishee who violates the terms of an order of garnishment shall be subject to punishment for contempt.

(g) The Social Services Commission shall adopt rules and regulations to implement this section. The rules shall ensure that a petition for an order of garnishment sought pursuant to this section is consistent with all federal and State laws and regulations.

"**§ 108A-25.2. Power to issue investigatory subpoenas.**

(a) When all other reasonable means of investigating facts and circumstances pertaining to fraudulent or erroneous applications for or receipt of public assistance benefits have been exhausted, the Director of the county department of social services or the Secretary of Human Resources may issue a subpoena to a third party in the State for the production of books, papers, correspondence, memoranda, agreements, or other information, documents, or records relevant to establishing a fraudulent or erroneous claim of public assistance. The subpoena shall specify the person to whom the records and documents sought shall be produced, including time and place, and shall be served in accordance with any manner as prescribed in G.S. 1A-1, Rule 4. A county department of social services and the Department of Human Resources are authorized to administer oaths for the purpose of the examinations.

(b) An action for contempt may be initiated when such third party fails to obey a subpoena issued as provided for in subsection (a) of this section. The action shall be initiated by petition to the district court in the district where the person to whom the subpoena was directed was served. The action for contempt may be punishable by the court in the same manner as if the subpoena had been issued by the court subject to G.S. 1A-1, Rule 45.

(c) The refusal of a third party to cooperate shall not affect the eligibility of an initial application to receive public assistance.

(d) For the purpose of this section, the following definitions shall apply: 'Director' means the Director of the county department of social services and 'Secretary' means the Secretary of the Department of Human Resources.

(e) The Social Services Commission shall adopt rules and regulations to implement this section."

Section 2. Part 5 of Article 2 of Chapter 108A of the General Statutes is amended by adding a new section as follows:

"**§ 108A-53.1. Illegal possession or use of food stamps.**

Any person who knowingly uses, transfers, acquires, alters, or possesses food stamp coupons, authorization cards, or access devices in any manner contrary to that

authorized by the Food Stamp Program (7 U.S.C. § 2011, et seq.) and the regulations issued pursuant thereto shall be guilty of a Class 1 misdemeanor if the value of such food stamp coupons, authorization cards, or access devices is less than one hundred dollars ($100.00), or a Class I felony if the value of such food stamp coupons, authorization cards, or access devices is equal to one hundred dollars ($100.00) but less than one thousand dollars ($1,000), or a Class H felony if the value of such food stamp coupons, authorization cards, or access devices equals or exceeds one thousand dollars ($1,000)."

Section 3. The Social Services Commission shall adopt rules and regulations to implement Section 1 of this act within 90 days of the date this act is signed into law.

Section 4. This act becomes effective December 1, 1997.

VISITOR REGISTRATION SHEET

JUDICIARY II 4-28-97

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	V. Kinney	Hoffmann - La Roche
2.	Bernard Allen	Secy. of State
3.	Bonnie Brinn	Hyde Cnty - Supporting Commercial Fishermen
4.	Daniel Brinn	Hyde County - We want to keep it
5.	Ray Dorsi	NCCDA
6.	Colon Willoughby	District Attorney - 10th Dist.
7.	Jim Keith	DA-21st Dist. NC Conference of DA Attys
8.	Charles Cromer	NCATL
9.	BILL SCOGGIN	NCBA
10.	Ed Taylor	AOC
11.	Nellie Piles	OSP
22.	LEE HUNTER	DEHNR
23.	Danny Talley	NCUMA
24.	Charles FRANCIS	Alcon/Yadkin
25.	Dick Taylor	NCAOC
26.	Mary Anne Hoecutt	DHC - Personnel
27.	Tim Kent	American Institute of Architects
28.		
29.		
30.		
31.		

No minutes
No agenda
2 pages

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H April 29 1

HOUSE BILL 1132

Short Title: Date Rape Drugs. (Public)

Sponsors: Representatives R. Hunter; Hightower and Warwick.

Referred to: Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIMINAL OFFENSE TO CONTAMINATE FOOD OR DRINK WITH ANY SUBSTANCE THAT WOULD RENDER A PERSON MENTALLY INCAPACITATED OR PHYSICALLY HELPLESS WITH THE INTENT OF COMMITTING A CRIME AGAINST THAT PERSON.

The General Assembly of North Carolina enacts:

Section 1. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-401.15. Contaminate food or drink to render one mentally incapacitated or physically helpless.**

(a) It is unlawful knowingly to place a controlled substance, chemical, compound, or any foreign substance that would render a person mentally incapacitated or physically helpless into any food, drink, or other edible or potable substance with the intent of causing another person to be mentally incapacitated or physically helpless with the intent of committing a crime against that person.

(b) It is unlawful knowingly to manufacture, sell, deliver, or possess with the intent to manufacture, sell, deliver, or possess a controlled substance, chemical, compound, or any foreign substance for the purpose of violating subsection (a) of this section.

(c) A violation of this section is a Class H felony. However, if a person violates this section with the intent of committing an offense under G.S. 14-27.3 or G.S. 14-27.5, the violation is a Class G felony."

Section 2. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1132

Short Title: Date Rape Drugs. (Public)

Sponsors: Representatives R. Hunter; Hightower and Warwick.

Referred to: Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIMINAL OFFENSE TO CONTAMINATE FOOD OR DRINK WITH ANY SUBSTANCE THAT WOULD RENDER A PERSON MENTALLY INCAPACITATED OR PHYSICALLY HELPLESS WITH THE INTENT OF COMMITTING A CRIME AGAINST THAT PERSON.

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Section 1. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-401.15. Contaminate food or drink to render one mentally incapacitated or physically helpless.**

(a) It is unlawful knowingly to place a controlled substance, chemical, compound, or any foreign substance that would render a person mentally incapacitated or physically helpless into any food, drink, or other edible or potable substance with the intent of causing another person to be mentally incapacitated or physically helpless with the intent of committing a crime against that person.

(b) It is unlawful knowingly to manufacture, sell, deliver, or possess with the intent to manufacture, sell, deliver, or possess a controlled substance, chemical, compound, or any foreign substance for the purpose of violating subsection (a) of this section.

(c) A violation of this section is a Class H felony. However, if a person violates this section with the intent of committing an offense under G.S. 14-27.3 or G.S. 14-27.5, the violation is a Class G felony."

Section 2. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

April 29

H 1

HOUSE BILL 1122

Short Title: Controlled Substances Evidence. (Public)

Sponsors: Representative Gulley.

Referred to: Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO FACILITATE THE TRIAL OF DRUG OFFENSES BY AUTHORIZING THE USE OF LABORATORY REPORTS IN SUPERIOR COURT AND JUVENILE COURT PROCEEDINGS AND BY ELIMINATING THE NEED FOR UNNECESSARY WITNESSES IN ESTABLISHING A CHAIN OF CUSTODY, WHEN THE DEFENDANT DOES NOT TIMELY OBJECT TO THE ADMISSION OF A LABORATORY REPORT OR THE CHAIN OF CUSTODY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-95 reads as rewritten:

"**§ 90-95. Violations; penalties.**

(a) Except as authorized by this Article, it is unlawful for any person:

(1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;

(2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;

(3) To possess a controlled substance.

(b) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(1) with respect to:

(1) A controlled substance classified in Schedule I or II shall be punished as a Class H felon;

(2) A controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class I felon, but the transfer of less than 5 grams

of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.

(d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

(1) A controlled substance classified in Schedule I shall be punished as a Class I felon;

(2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a Class 1 misdemeanor. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, the violation shall be punishable as a Class I felony. If the controlled substance is phencyclidine, or cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine or ecgonine), the violation shall be punishable as a Class I felony.

(3) A controlled substance classified in Schedule V shall be guilty of a Class 2 misdemeanor;

(4) A controlled substance classified in Schedule VI shall be guilty of a Class 3 misdemeanor, but any sentence of imprisonment imposed must be suspended and the judge may not require at the time of sentencing that the defendant serve a period of imprisonment as a special condition of probation. If the quantity of the controlled substance exceeds one-half of an ounce (avoirdupois) of marijuana or one-twentieth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a Class 1 misdemeanor. If the quantity of the controlled substance exceeds one and one-half ounces (avoirdupois) of marijuana or three-twentieths of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

(d1) Except as authorized by this Article, it is unlawful for any person to:

(1) Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

(2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Any person who violates this subsection shall be punished as a Class H felon.

(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

(1) Anthranilic acid.
(2) Benzyl cyanide.
(3) Chloroephedrine.
(4) Chloropseudoephedrine.
(5) D-lysergic acid.
(6) Ephedrine.
(7) Ergonovine maleate.
(8) Ergotamine tartrate.
(9) Ethyl Malonate.
(10) Ethylamine.
(11) Isosafrole.
(12) Malonic acid.
(13) Methylamine.
(14) N-acetylanthranilic acid.
(15) N-ethylephedrine.
(16) N-ethylepseudoephedrine.
(17) N-methylephedrine.
(18) N-methylpseudoephedrine.
(19) Norpseudoephedrine.
(20) Phenyl-2-propane.
(21) Phenylacetic acid.
(22) Phenylpropanolamine.
(23) Piperidine.
(24) Piperonal.
(25) Propionic anhydride.
(26) Pseudoephedrine.
(27) Pyrrolidine.
(28) Safrole.
(29) Thionylchloride.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses

under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level;

(4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 1 misdemeanor. The prior conviction used to raise the current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level;

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age or a pregnant female shall be punished as a Class D felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant;

(6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial;

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 2 misdemeanor;

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for an elementary or secondary school or within 300 feet of the boundary of real property used for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class I felony.

(f) Any person convicted of an offense or offenses under this Article who is sentenced to an active term of imprisonment that is less than the maximum active term that could have been imposed may, in addition, be sentenced to a term of special probation. Except as indicated in this subsection, the administration of special

probation shall be the same as probation. The conditions of special probation shall be fixed in the same manner as probation, and the conditions may include requirements for rehabilitation treatment. Special probation shall follow the active sentence. No term of special probation shall exceed five years. Special probation may be revoked in the same manner as probation; upon revocation, the original term of imprisonment may be increased by no more than the difference between the active term of imprisonment actually served and the maximum active term that could have been imposed at trial for the offense or offenses for which the person was convicted, and the resulting term of imprisonment need not be diminished by the time spent on special probation.

~~(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court division of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed.~~

(g1) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, that a report is admissible in a criminal proceeding in the superior court division or in an adjudicatory hearing in juvenile court in the district court division only if:

(1) The State notifies the defendant at least 10 days before trial of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the report into evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(g2) Procedure for establishing chain of custody without calling unnecessary witnesses. --

(1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody

that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g1) of this section.

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant at least 10 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of 50 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

a. Is in excess of 50 pounds, but less than 100 pounds, such person shall be punished as a Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 100 pounds or more, but less than 2,000 pounds, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

d. Is 10,000 pounds or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in methaqualone" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in cocaine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of

42 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(3a) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of amphetamine, its salts, optical isomers, and salts of its optical isomers or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in amphetamine" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine shall be guilty of a felony which felony shall be known as "trafficking in methamphetamine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced

to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in Lysergic Acid Diethylamide". If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge, provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy to commit any of the offenses described in subsection (h) of this section."

Section 2. This act becomes effective December 1, 1997, and applies to criminal offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H1122-PCSRL-001

PROPOSED COMMITTEE SUBSTITUTE FOR
HOUSE BILL 1122
THIS IS A DRAFT: LINE NUMBERS MAY CHANGE AFTER ADOPTION
28-APR-97 16:21:12

Short Title: Controlled Substances Evidence. (Public)

Sponsors:

Referred to: Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO FACILITATE THE TRIAL OF DRUG OFFENSES BY AUTHORIZING THE USE OF LABORATORY REPORTS IN SUPERIOR COURT AND JUVENILE COURT PROCEEDINGS AND BY ELIMINATING THE NEED FOR UNNECESSARY WITNESSES IN ESTABLISHING A CHAIN OF CUSTODY, WHEN THE DEFENDANT DOES NOT TIMELY OBJECT TO THE ADMISSION OF A LABORATORY REPORT OR THE CHAIN OF CUSTODY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-95 reads as rewritten:

"§ 90-95. **Violations; penalties.**

(a) Except as authorized by this Article, it is unlawful for any person:

(1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;

(2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;

(3) To possess a controlled substance.

(b) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(1) with respect to:

(1) A controlled substance classified in Schedule I or II shall be punished as a Class H felon;

(2) A controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class I felon, but the transfer of less than 5 grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.

(d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

(1) A controlled substance classified in Schedule I shall be punished as a Class I felon;

(2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a Class 1 misdemeanor. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, the violation shall be punishable as a Class I felony. If the controlled substance is phencyclidine, or cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine or ecgonine), the violation shall be punishable as a Class I felony.

(3) A controlled substance classified in Schedule V shall be guilty of a Class 2 misdemeanor;

(4) A controlled substance classified in Schedule VI shall be guilty of a Class 3 misdemeanor, but any sentence of imprisonment imposed must be suspended

and the judge may not require at the time of sentencing that the defendant serve a period of imprisonment as a special condition of probation. If the quantity of the controlled substance exceeds one-half of an ounce (avoirdupois) of marijuana or one-twentieth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a Class 1 misdemeanor. If the quantity of the controlled substance exceeds one and one-half ounces (avoirdupois) of marijuana or three-twentieths of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

(d1) Except as authorized by this Article, it is unlawful for any person to:

(1) Possess an immediate precursor chemical with intent to manufacture a controlled substance; or

(2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Any person who violates this subsection shall be punished as a Class H felon.

(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

(1) Anthranilic acid.

(2) Benzyl cyanide.

(3) Chloroephedrine.

(4) Chloropseudoephedrine.

(5) D-lysergic acid.

(6) Ephedrine.

(7) Ergonovine maleate.

(8) Ergotamine tartrate.

(9) Ethyl Malonate.

(10) Ethylamine.

(11) Isosafrole.

(12) Malonic acid.
(13) Methylamine.
(14) N-acetylanthranilic acid.
(15) N-ethylephedrine.
(16) N-ethylepseudoephedrine.
(17) N-methylephedrine.
(18) N-methylpseudoephedrine.
(19) Norpseudoephedrine.
(20) Phenyl-2-propane.
(21) Phenylacetic acid.
(22) Phenylpropanolamine.
(23) Piperidine.
(24) Piperonal.
(25) Propionic anhydride.
(26) Pseudoephedrine.
(27) Pyrrolidine.
(28) Safrole.
(29) Thionylchloride.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1), (2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level;

(4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 1 misdemeanor. The prior conviction used to raise the current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level;

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a

controlled substance to a person under 16 years of age or a pregnant female shall be punished as a Class D felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant;

(6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial;

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 2 misdemeanor;

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for an elementary or secondary school or within 300 feet of the boundary of real property used for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class I felony.

(f) Any person convicted of an offense or offenses under this Article who is sentenced to an active term of imprisonment that is less than the maximum active term that could have been imposed may, in addition, be sentenced to a term of special probation. Except as indicated in this subsection, the administration of special probation shall be the same as probation. The conditions of special probation shall be fixed in the same manner as probation, and the conditions may include requirements for rehabilitation treatment. Special probation shall follow the active sentence. No term of special probation shall exceed five years. Special probation may be revoked in the same manner as

probation; upon revocation, the original term of imprisonment may be increased by no more than the difference between the active term of imprisonment actually served and the maximum active term that could have been imposed at trial for the offense or offenses for which the person was convicted, and the resulting term of imprisonment need not be diminished by the time spent on special probation.

~~(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court division of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed.~~

(g1) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, that a report is admissible in a criminal proceeding in the superior court division or in an adjudicatory hearing in juvenile court in the district court division only if:

(1) The State notifies the defendant in writing at least 10 days before trial of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant notifies the State in writing at least five days before trial that the defendant does not object to the introduction of the report into evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(g2) Procedure for establishing chain of custody without calling unnecessary witnesses. --

(1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

(2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g1) of this section.

(3) The provisions of this subsection may be utilized by the State only if:

a. The State notifies the defendant in writing at least 10 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and

b. The defendant notifies the State in writing at least five days before trial that the defendant does not object to the introduction of the statement into evidence.

(4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.

(1) Any person who sells, manufactures, delivers, transports, or possesses in excess of 50 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

a. Is in excess of 50 pounds, but less than 100 pounds, such person shall be punished as a Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months in the State's prison and shall be fined not less than five thousand dollars ($5,000);

b. Is 100 pounds or more, but less than 2,000 pounds, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

c. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

d. Is 10,000 pounds or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in methaqualone" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in cocaine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(3a) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of amphetamine, its salts, optical isomers, and salts of its optical isomers or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in amphetamine" and if the quantity of such substance or mixture involved:

a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine shall be guilty of a felony which felony shall be known as "trafficking in methamphetamine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000).

(4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000).

(4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in Lysergic Acid Diethylamide". If the quantity of such substance or mixture involved:

a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars ($25,000);

b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars ($200,000).

(5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and

place a person on probation when such person has, to the best of his knowledge, provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

(6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy to commit any of the offenses described in subsection (h) of this section."

Section 2. This act becomes effective December 1, 1997, and applies to criminal offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

April 29

H 1

HOUSE BILL 1124

Short Title: Fire/Rescue Personnel Records Checks. (Public)

Sponsors: Representatives Capps; and Watson.

Referred to: Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT THE DEPARTMENT OF JUSTICE MAY PERFORM CRIMINAL RECORDS CHECKS TO FACILITATE BACKGROUND INVESTIGATIONS FOR FIREFIGHTER AND RESCUE SQUAD APPLICANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 114-19.1 is amended by adding a new subsection to read:

"(e) The Department of Justice may provide to a local or volunteer fire department or rescue squad a criminal history record check of any individual who applies for a position as a volunteer member or career employee of the fire department or rescue squad. The Department of Justice shall process these requests as voluntary noncriminal justice criminal history records checks."

Section 2. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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April 28, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **House Bill 1124 - Fire/Rescue Personnel Records Checks.**

House Bill 1124 amends G.S. 114-19.1 to authorize the Department of Justice to provide to local or volunteer fire departments or rescue squads, criminal history record checks of individuals who apply for a positions with the fire department or rescue squad. The bill also states that the Department of Justice shall process these requests as voluntary noncriminal justice criminal history records checks, which is the lowest priority provided by law.

This bill would become effective when it becomes law.

VISITOR REGISTRATION SHEET

JUDICIARY I 4-29-97 2pm

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Bonnie Brinn	Represent Concerned Business Fishermen, Rec. Sportsfishermen Hyde & Beaufort Counties
2.	Amy Jo Baker	Smith Anderson
3.	Bill Alexander	NCPBA
4.	Jim Keith	NC Coalition of DAs
5.	Peg Dorer	NCDAs
6.	PETER GILCHRIST	NC Conference of DAs
7.	Charles Brewer	NCATL
8.	Nellie Riley	OSP
9.	Sandra Brittle	Senate Staff
10.	Lola Rustin	NCFPC
11.	Chris Lands	DA Crib
22.	Wes Carter	Carter & Assoc
23.	Richard Rogers	NC DOT
24.	Lori Ann Harris	Sanford Holshouser
25.	Joseph D. Pat	McGuire Woods
26.	Mary Thomas	Clerk of Superior Court - Forsyth
27.	Ralph Bailey	AIPO
28.	Samuel Brinn	
29.	Jeff Hall	NC Academy of Trial Lawyers
30.	Jack Mattox	NC P.B.A.
31.		Ricky Bailey PBA

32.	Susan Valauri	Nationwide
33.	Powell	AOC
34.	John McMillan	Manning Fulton & Skinner PA.
35.	Jane Gray	DOJ
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VISITOR REGISTRATION SHEET

JUDICIARY I — Name of Committee — 4-29-97 — Date — 7:30am

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Charles Cromer	NCATL
D.dl Jayne	NCATL
Marshall Hurley	atty.
L. Rogers	E H/R
MK Cullen	NC-BP
Daniel Brinn	
Bonnie Brinn	Fishermen & Signatures - Businesses Hyde + Beaufort Cnty Rt.1 Box 14 Scranton N.C. 27875
Alan Nixon	Bailey & Dixon LLP
[illegible]	[illegible]
Darrell Arnold	SEANC
Mike Carnute	NCDOA

VISITOR REGISTRATION SHEET

JUDICIARY I — 4-29-97 — 10am
Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Myrna Nail	NASW-NC
MK Cullen	NC PP
Peg Dorn	NCCDA
Phyllis Cromer	NCATL
Bill Alexander	NCPBA
Susan Harrison	WCPSS
Patrice Mullen	Mullen Co.
John Rustin	NC FPC
Peter Matt	DEHNR Solid Waste Section
Ralph Bailey	Bailey + Dixon AIA
Suzanne Williams	Boney Assoc.
Jon Aller	NCACPA
Carl Goodwin	OSP
Darrell Conrad	SEANC

VISITOR REGISTRATION SHEET

JI 4/29/97 10am

Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Nellie Riley	OSP
Anne Belcher	SBE
Bonnie Brinn	Hyde Cnty Fishermens Need - Recreational Sportsfishermen
Marshall Hurley	atty
Ed Regan	N.C.A.C.C.
Tom Katt	DA-21st Prob Dist / NC. Conf. of DAs
Susan Vallaumi	Nall Group
Wendy Mills	SEANC
Lori Ann Davis	SHGRC
Otis Carter	Carter & Assoc.
Jane O. Gray	DOT
Sandra Long	Porter-Steel
Tom Beam	NC Wildlife Federation

VISITOR REGISTRATION SHEET

JI — Name of Committee

4/29/97 10am — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Dary Thoma	Clerk of Supreme Court - W.S
Pete Powell	A.O.C. - Raleigh

No minutes
2 tapes

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE

You are hereby notified that the Committee on **JUDICIARY I** will meet as follows:

DAY & DATE: **Wednesday April 30, 1997**

TIME: **10:00 a.m.**

LOCATION: **1327 LB**

The following bills will be considered (Bill # & Short Title):

H.B. 1074 Representations to Consolidate Debts.
H.B. 1075 Appreciation of Reverse Mortgages
H.B. 1086 Amend Offer of Judgment Rule-2
H.B. 1091 Crim. Record Check by Private Bus.

HB 344 – Clary

Respectfully,

Representatives N. Leo Daughtry and Edwin M. Hardy
Co-Chairmen

I hereby certify this notice was filed by the committee clerk at the following offices at **5:00 p.m.** on **April 29, 1997**.

___Principal Clerk
___Reading Clerk - House Chamber

Joel Raupe (Committee Clerk)

GENERAL ASSEMBLY OF NORTH CAROLINA

April 30

SESSION 1997

H 1

HOUSE Bill 1074

Short Title: Representations to Consolidate Debts. (Public)

Sponsors: Representatives Hall; Baker Barbee, Bonner, Capps, Clary, Creech, Culp, Davis, Eddins, Fox, Grady, Hiatt, Hill, Justus, Kinney, Kiser, Mitchell, Mosley, Prston, Rayfield, Starnes, Tallent, Weatherly, and Womble.

Referred to: Commerce, if favorable, Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT A PERSON FROM REPRESENTING THAT THE PERSON PROVIDES OR OBTAINS DEBT CONSOLIDATION WHEN THE SERVICE THAT PERSON PRIMARILY PROVIDES IS RELATED TO BANKRUPTCY PROCEEDINGS.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-36. Representation of providing or obtaining debt consolidation.**

(a) No person, firm, or corporation engaged in commerce shall, in connection with the sale or solicitation for sale of any service, represent that the person, firm, or corporation obtains or provides debt consolidation when the service that person primarily obtains or provides is related to bankruptcy proceedings without clearly disclosing that the person primarily obtains or provides services related to bankruptcy proceedings.

(b) To the extent that representations of the type governed by this section are broadcast by radio or television or carried by cable-television, the required disclosure shall be clearly and prominently disclosed.

(c) Nothing in this section shall create any liability for acts by the publisher, owner, agent, or employee of a newspaper, periodical, radio station, television station, cable-television system or other advertising medium arising out of the publication or

dissemination of any advertisement or promotion governed by this section, when the publisher, owner, agent, or employee did not know that the advertisement or promotion violated the requirements of this section."

Section 2. This act becomes effective October 1, 1997, and applies to violations that occur on or after that date.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Elaine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

April 30, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **House Bill 1074 - Representations to Consolidate Debt.**

House Bill 1074 adds a new section G.S. 75-36, which prohibits any person, firm or corporation engaged in commerce from making a representation, in connection with the sale or solicitation for sale of any service, indicating that the person, firm or corporation can obtain or provide debt consolidation for its customers, when in fact, the service actually being provided is related to bankruptcy, without clearly disclosing that fact. The bill further requires that the disclosure be clearly and prominently disclosed when the representation is being broadcast by radio or television. The bill states that this new section does not create liability for acts by publishers, owners, agents, or employees of various media in cases in which such persons did not know that an advertisement or promotion violated the section.

This act becomes effective October 1, 1997, and applies to violations that occur on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H April 30 1

HOUSE BILL 1075

Short Title: Appreciation of Reverse Mortgages. (Public)

Sponsors: Representatives Hall; Baker, Bonner, Boyd-McIntyre, Culp, Cunningham, Davis, Eddins, Fox, Grady, Hiatt, Hill, Justus, Kinney, Kiser, Mitchell, Morris, Mosley, Owens, Rayfield, Sherrill, Smith, Starnes, Tolson, Weatherly, Wilkins, C. Wilson, and Womble.

Referred to: Commerce, if favorable, Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PERMIT LENDERS TO CONTRACT FOR AND RECEIVE SHARED APPRECIATION IN CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-270 reads as rewritten:

"**§ 53-270. Prohibited acts.**

Reverse mortgage lenders are prohibited from engaging in any of the following acts in connection with the making, servicing, or collecting of a reverse mortgage loan:

(1) Misrepresenting material facts, making false promises, or engaging in a course of misrepresentation through agents or otherwise.

(2) Failing to disburse funds in accordance with the terms of the reverse mortgage loan contract or other written commitment.

(3) Improperly refusing to issue a satisfaction of a mortgage.

(4) Engaging in any action or practice that is unfair or deceptive, or that operates a fraud on any person.

(5) Contracting for or receiving shared ~~appreciation.~~ appreciation or shared equity, other than in an amount:

a. Not to exceed ten percent (10%) of the value of the property at the time of the loan repayment; and

b. Permitted in conjunction with a loan that:

1. Is outstanding for 24 months or longer; and

2. Either (i) is guaranteed or insured by an agency of the federal government, or (ii) has originated under a reverse mortgage program approved by the Federal National Mortgage Corporation, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation.

(6) Closing a reverse mortgage loan without receiving certification from a ~~counselor~~ person who is certified as a reverse mortgage counselor by the State that the borrower has received counseling on the advisability of a reverse mortgage loan and the appropriate reverse mortgage loan for the borrower.

(7) Failing to comply with this Article."

Section 2. This act becomes effective October 1, 1997, and applies to contracts for loans entered into on or after that date.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

Raine W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
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Terrence D. Sullivan, Director
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Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

April 30, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

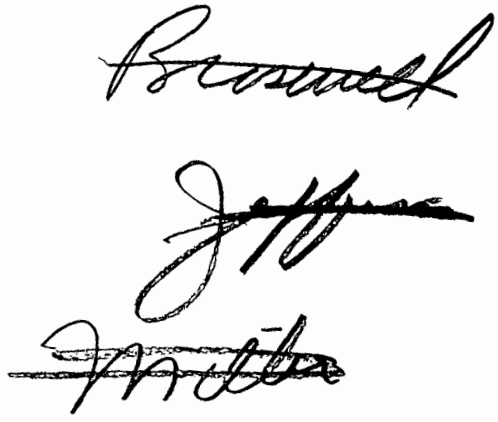
RE: **House Bill 1075 - Appreciation of Reverse Mortgages.**

House Bill 1075 amends the Reverse Mortgage Act to allow lenders to contract for and receive shared appreciation or equity if the amount does not exceed 10% of the value of the property at the time of the loan repayment, the loan involved is outstanding 24 months or longer, and the reverse mortgage is guaranteed or insured by the federal government or originated under a program approved by specified federal mortgage entities.

The Reverse Mortgage Act, (Article 21 of Chapter 53) was enacted by the General Assembly in 1991 to allow senior homeowners (62 years of age or older) to access the equity in their homes without having to sell their homes or take out home equity loans. A reverse mortgage provides payments to the homeowner over a period of years, and the debt is generally paid off when the homeowner dies, moves or sells the home.

Under current law, contracting for or receiving shared appreciation is included as a prohibited act by a reverse mortgage lender. This bill would allow the lender to receive it under the conditions listed above. In addition, this bill requires that mandated counseling be provided by a state certified reverse mortgage counselor.

This act becomes effective October 1, 1997, and applies to contracts for loans entered into on or after that date.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

April 30

H 1

HOUSE BILL 1086

Short Title: Amend Offer of Judgment Rule-2. (Public)

Sponsors: Representative Miller.

Referred to: Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND RULE 68 OF THE RULES OF CIVIL PROCEDURE REGARDING OFFERS OF JUDGMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 68 reads as rewritten:

"**Rule 68. Offer of judgment and disclaimer.**

(a) Offer of judgment. --

(1) At any time more than ~~10~~ 30 days before the trial begins, a party defending against a claim may serve upon the adverse party ~~an~~ a written offer to allow judgment to be ~~taken~~ entered against ~~him for the money or property or to the effect specified in his offer, with costs then accrued.~~ the defending party and in favor of the adverse party for the relief specified in the offer, plus any interest that has accrued as of that date, and, as may be awarded by the court, costs and statutorily authorized attorneys' fees incurred as of that date. The defending party shall not file the written offer with the court at this time.

(2) If within ~~10~~ 30 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service ~~thereof and thereupon the clerk shall enter judgment.~~ thereof. The court shall determine costs, interest, and statutorily authorized attorneys' fees and enter judgment accordingly. An offer not accepted within ~~10~~ 30 days after its service shall be

deemed withdrawn and evidence of the offer is not admissible except in a proceeding to determine costs. The defending party shall file the offer deemed withdrawn prior to the proceeding to determine costs. If the ~~judgment finally obtained by the offeree is~~ damages assessed by the finder of fact are not ~~more favorable than~~ greater than the amount stated in the offer, the offeree must pay the costs incurred after ~~the making~~ service of the offer. The fact that an offer is ~~made~~ served but not accepted does not preclude a subsequent offer.

(3) This subsection applies only to claims for monetary damages in which any nonmonetary claims are ancillary and incidental to the monetary claims.

(b) Conditional offer of judgment for damages. -- A party defending against a claim arising in contract or quasi contract may, with his or her responsive pleading, serve upon the claimant an offer in writing that if ~~he~~ the party fails in his or her defense, the damages shall be assessed at a specified sum; and if the claimant signifies his or her acceptance thereof in writing within 20 days of the service of such offer, and on the trial prevails, ~~his~~ damages shall be assessed accordingly. If the claimant does not accept the offer, he or she must prove ~~his~~ damages as if the offer had not been made. If the damages assessed in the claimant's favor do not exceed the sum stated in the offer, the party defending shall recover the costs in respect to the question of damages.

(c) Definitions. -- For purposes of this rule:

(1) 'Costs' mean the court costs that the court is authorized by law to award. Costs do not include interest and attorneys' fees.

(2) 'Offer' means all relief tendered to the offeree pursuant to this rule. Offer does not include costs, interest, or attorneys' fees. Further, offer does not mean an offer of a lump sum that purports to include any or all of the following: costs, interest, or attorneys' fees."

Section 2. G.S. 1A-1, Rule 84 is amended by adding a form at the end to read:

"**(17) Offer of Judgment Under Rule 68(a).**

Defendant offers that judgment be entered against it and in favor of Plaintiff for $_____, plus interest that has accrued as of the time of service of this offer, and, as may be awarded by the court, costs and statutorily authorized attorneys' fees incurred as of the time of service of this offer."

Section 3. This act becomes effective October 1, 1997, and applies to offers of judgment made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1086
Proposed Committee Substitute H1086-PCS6258

Short Title: Amend Offer of Judgment Rule-2. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND RULE 68 OF THE RULES OF CIVIL PROCEDURE REGARDING OFFERS OF JUDGMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 68 reads as rewritten:

"**Rule 68. Offer of judgment and disclaimer.**

(a) Offer of judgment. --

(1) At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party ~~an~~ a written offer to allow judgment to be ~~taken~~ entered against ~~him for the money or property or to the effect specified in his offer, with costs then accrued.~~ the defending party and in favor of the adverse party for the relief specified in the offer, plus any interest that has accrued as of that date, and, as may be awarded by the court, costs and statutorily authorized attorneys' fees incurred as of that date. The defending party shall not file the written offer with the court at this time.

(2) If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service ~~thereof and thereupon the clerk shall enter judgment.~~ thereof. The court shall determine costs, interest, and statutorily authorized attorneys' fees and enter judgment accordingly. An

offer not accepted within 10 days after its service shall be deemed withdrawn and evidence of the offer is not admissible except in a proceeding to determine costs. The defending party shall file the offer deemed withdrawn prior to the proceeding to determine costs. If the ~~judgment finally obtained by the offeree is~~ damages assessed by the finder of fact are not ~~more favorable than~~ greater than the amount stated in the offer, the offeree must pay the costs incurred after ~~the making~~ service of the offer. The fact that an offer is ~~made~~ served but not accepted does not preclude a subsequent offer.

(3) This subsection applies only to claims for monetary damages in which any nonmonetary claims are ancillary and incidental to the monetary claims.

(b) Conditional offer of judgment for damages. -- A party defending against a claim arising in contract or quasi contract may, with his or her responsive pleading, serve upon the claimant an offer in writing that if ~~he~~ the party fails in his or her defense, the damages shall be assessed at a specified sum; and if the claimant signifies his or her acceptance thereof in writing within 20 days of the service of such offer, and on the trial prevails, ~~his~~ damages shall be assessed accordingly. If the claimant does not accept the offer, he or she must prove ~~his~~ damages as if the offer had not been made. If the damages assessed in the claimant's favor do not exceed the sum stated in the offer, the party defending shall recover the costs in respect to the question of damages.

(c) Definitions. -- For purposes of this rule:

(1) 'Costs' mean the court costs that the court is authorized by law to award. Costs do not include interest and attorneys' fees.

(2) 'Offer' means all relief tendered to the offeree pursuant to this rule. Offer does not include costs, interest, or attorneys' fees. Further, offer does not mean an offer of a lump sum that purports to include any or all of the following: costs, interest, or attorneys' fees."

Section 2. G.S. 1A-1, Rule 84 is amended by adding a form at the end to read:

"**(17) Offer of Judgment Under Rule 68(a).**

Defendant offers that judgment be entered against it and in favor of Plaintiff for $_____, plus interest that has accrued as of the time of service of this offer, and, as may be awarded by the court, costs and statutorily authorized attorneys' fees incurred as of the time of service of this offer."

Section 3. This act becomes effective October 1, 1997, and applies to offers of judgment made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

April 30

H D

HOUSE BILL 1091
Proposed Committee Substitute H1091-PCS6252

Short Title: Crim. Record Check by Private Bus. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW CERTAIN CRIMINAL RECORD CHECKS TO BE CONDUCTED BY PRIVATE BUSINESS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-40(a) reads as rewritten:

"(a) Requirement. -- An offer of employment by an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. An adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, an ~~An~~ adult care home shall submit a request to the Department of Justice under ~~G.S. 114-19.3~~ G.S. 114-19.3, or shall request a private business entity to conduct a criminal history record ~~check~~ check. ~~within five business days of making the conditional offer of employment.~~ All criminal history information received ~~by the home~~ from the Department of Justice is confidential and may not be disclosed."

Section 2. G.S. 131E-265(a) reads as rewritten:

"(a) Requirement. -- An offer of employment by a nursing home or a home care agency licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the

conditional offer of employment, a ~~A~~ nursing home or home care agency shall submit a request to the Department of Justice under ~~G.S. 114-19.3~~ G.S. 114-19.3, or shall request a private business entity to conduct a criminal history record ~~check within five business days of making the conditional offer of employment.~~ check. All criminal history information received ~~by the home or agency~~ from the Department of Justice is confidential and may not be disclosed."

Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H1091-HPCSRL-001
HOUSE PROPOSED COMMITTEE SUBSTITUTE FOR
HOUSE BILL 1091
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Crim. Record Check by Private Bus. (Public)

Sponsors:

Referred to: Commerce, if favorable, Judiciary I.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW CERTAIN CRIMINAL RECORD CHECKS TO BE CONDUCTED BY PRIVATE BUSINESS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-40(a) reads as rewritten:

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Section 3. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

JUDICIARY I 4/30/97 1pm

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Carl Goodall	OSP
2.	Charles Cromer	NCATL
3.	Jeff Miller	NCATL
4.	[illegible]	NCBA
5.	[illegible]	OSP
6.	Dick Taylor	NCAOC
7.	Stacy Flannery	SEANC
8.	Wendy Mills	SEANC
9.	Pat Bradford	SEANC
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VISITOR REGISTRATION SHEET

JUDICIARY I 4/30/97 10am

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Jewell Winner	NCBA
2.	Mary Ann Talley	Atty.
3.	Charles Cromer	NCATL
4.	Carolyn Allen	Opticians
5.	Gordon Allen	NCBA
6.	Paul Stock	NC Bankers Assn.
7.	John Johnson	Sentinel Corp
8.	Carl Goodwin	DSP
9.	Jane P Gray	DOJ
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HOUSE COMMITTEE ON JUDICIARY I

Tuesday, May 6, 1997
Room 1327 LB
10:00 a.m.

Representatives N. Leo Daughtry,
Edwin M. "Sandy" Hardy
Co-Chairmen

S.B. 16 CLARIFY COMMUNITY-BASED CORRECTIONS
Sponsor: Senator Ballance

S.B. 106 SALE OF PROPERTY FOR UNPAID TAXES
Sponsor: Senator Cooper

S.B. 172 NO SAFETY COURSE/DISABLED HUNTERS
Sponsor: Senator Albertson

S.B. 250 CLARIFY PERFECTION-SECUR. INTEREST
S.B. 251 CREATION OF EASEMENTS BY LANDOWNER
Sponsor: Senator Wellons

Adjournment

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hardy and Daughtry** for the Committee on **JUDICIARY I** .

☐ Committee Substitute for
S. 106 A BILL TO BE ENTITLED AN ACT TO ALLOW REGIONAL SALES OF PERSONAL PROPERTY SEIZED FOR UNPAID TAXES TO BE HELD IN ANY COUNTY.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill, unfavorable as to original bill.

X With a favorable report as to House committee substitute bill, unfavorable as to Senate bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 106

Short Title: Sale of Property for Unpaid Taxes. (Public)

Sponsors: Senators Cooper, Cochrane, Kerr, Shaw of Cumberland, and Soles.

Referred to: Finance.

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW REGIONAL SALES OF PERSONAL PROPERTY SEIZED FOR UNPAID TAXES TO BE HELD IN ANY COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-242(a) reads as rewritten:

"(a) Warrants for Collection of Taxes. -- If any tax levied by the State and payable to the Secretary has not been paid within 30 days after the taxpayer was given a notice of final assessment of the tax under G.S. 105-241.1(d1), the Secretary may take either of the following actions to collect the tax:

(1) The Secretary may issue a warrant or an order under the Secretary's hand and official seal, directed to the sheriff of any county of the State, commanding him to levy upon and sell the real and personal property of the taxpayer found within the county for the payment of the tax, including penalties and interest, and the cost of executing the warrant and to return to the Secretary the money collected, within a time to be specified in the warrant, not less than 60 days from the date of the warrant; the sheriff upon receipt of the warrant shall proceed in all respects with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for ~~his~~ services in executing the warrant, to be collected in the same manner.

(2) The Secretary may issue a warrant or order under the Secretary's hand and seal to any revenue officer or other employee of the

Department of Revenue charged with the duty to collect taxes, commanding the officer or employee to levy upon and sell the taxpayer's personal property, including that described in G.S. 105-366(d), found within the State for the payment of the tax, including penalties and interest. Except as otherwise provided in this subdivision, the levy upon the sale of personal property shall be governed by the laws regulating levy and sale under execution. The person to whom the warrant is directed shall proceed to levy upon and sell the personal property subject to levy in the same manner and with the same powers and authority normally exercised by sheriffs in levying upon and selling personal property under execution, except that the property may be sold in ~~Wake County or in the county in which it was seized,~~ any county, in the discretion of the Secretary. In addition to the notice of sale required by the laws governing sale of property levied upon under execution, the Secretary may advertise the sale in any reasonable manner and for any reasonable period of time to produce an adequate bid for the property. Levy and sale fees, plus actual advertising costs, shall be added to and collected in the same manner as taxes."

Section 2. This act becomes effective July 1, 1997.

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April 17, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **Senate Bill 106; Sale of property for unpaid taxes**

Senate Bill 106 is one of the bills recommended to the 1997 General Assembly by the Revenue Laws Study Committee. It gives the Department of Revenue the ability to sell in any county in this State personal property the Department has seized to obtain payment of delinquent State taxes. Current law requires this property to be sold in Wake County or the county in which the property was seized. The bill becomes effective July 1, 1997, and applies to property sold on or after that date.

G.S. 105-242(a)(2) authorizes the Secretary of Revenue to levy on a taxpayer's personal property to collect delinquent unpaid taxes. and to sell the property either in Wake County or in the county in which it was seized. This statute is used almost exclusively by the Controlled Substance Tax Division, which collects the tax on illegal drugs. Vehicles and other property are often seized for these taxes pursuant to G.S. 105-113.111 and sold at auction. Seventy-five percent of the proceeds of these sales are distributed among the law enforcement agencies whose investigation led to the assessment and the remaining 25% is credited to the General Fund.

S106-SMRL-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 106 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 2, line 21

( ) WHICH CHANGES THE TITLE

by rewriting that line

Section 2. This act becomes effective when it becomes law."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997 may 6

S 2

SENATE BILL 250
Judiciary Committee Substitute Adopted 4/14/97

Short Title: Clarify Perfection-Secur. Interest. (Public)

Sponsors:

Referred to:

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY PERFECTION OF A SECURITY INTEREST IN AFTER-ACQUIRED REAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47-20.5(c) reads as rewritten:

"(c) An after-acquired property clause is effective to pass after-acquired property as between the parties to the instrument containing such clause, but shall not be effective to pass title to after-acquired property as against lien creditors or purchasers for a valuable consideration from the grantor of the instrument unless and until such instrument has been registered or reregistered at or subsequent to the time such after-acquired property is acquired by such ~~grantor.~~ grantor and the deed to the grantor of the after-acquired property is registered."

Section 2. This act is effective when it becomes law and applies to instruments registered before, on, or after the effective date except that it shall not apply to litigation pending on the effective date or to any instrument directly or indirectly involved in litigation pending on that date.

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May 6, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **SENATE BILL 250 - Clarify perfection of security interest in after acquired property**

Senate Bill 250 would clarify that a security interest in after acquired real property can be created even if the instrument granting an interest in after acquired property is registered subsequent to the acquisition and registration of property in which the interest is being acquired. This bill is a recommendation of the Real Property Section of the North Carolina Bar Association.

The bill amends G.S. 47-20.5(c) by permitting the original recording, in addition to rerecording, of the instrument containing an "after acquired property" clause in order to effect a security interest in property acquired after the execution of the granting document, but before its recordation. Current law provides that such a clause is valid as against lien creditor and purchasers for value after the instrument granting the after acquired interest is reregistered. The statute currently makes no provision for circumstances where the "after acquired property"' is acquired before the security instrument is recorded or registered. The language in this change is consistent with subsection (g) of this same section which currently refers to the registering or reregistering of the security instrument. A copy of G.S. 47-20.5 which includes the definition of after acquired property is attached.

The bill will become effective when it becomes law and will apply to instruments registered before, on, and after the effective date, but will not apply to pending litigation or instruments involved in pending litigation.

S250-SMRL-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§47-20.5. Real property; effectiveness of after-acquired property clause.

(a) As used in this section, "after-acquired property clause" means any provision or provisions in an instrument which create a security interest in real property acquired by the grantor of the instrument subsequent to its execution.

(b) As used in this section, "after-acquired property," and "property subsequently acquired" mean any real property which the grantor of a security instrument containing an after-acquired property clause acquires subsequent to the execution of such instrument, and in which the terms of the after-acquired property clause would create a security interest.

(c) An after-acquired property clause is effective to pass after- acquired property as between the parties to the instrument containing such clause, but shall not be effective to pass title to after- acquired property as against lien creditors or purchasers for a valuable consideration from the grantor of the instrument unless and until such instrument has been reregistered at or subsequent to the time such after-acquired property is acquired by such grantor.

(d) In lieu of reregistering the instrument containing the after- acquired property clause as specified in subsection (c), such instrument may be made effective to pass title to after-acquired property as against lien creditors and purchasers for a valuable consideration from the grantor of the instrument by registering a notice of extension as specified in subsection (e) at or subsequent to the time of acquisition of the after-acquired property by the grantor.

(e) The notice of extension shall

(1) Show that effective registration of the after-acquired property clause is extended,

(2) Include the names of the parties to the instrument containing the after-acquired property clause,

(3) Refer to the book and page where the instrument containing the after-acquired property clause is registered, and

(4) Be signed by the grantee or the person secured by the instrument containing the after-acquired property clause or his successor in interest.

(f) The register of deeds shall index the notice of extension in the same manner as the instrument containing the after-acquired property clause.

(g) Except as provided in subsection (h) of this section, no instrument which has been heretofore executed or registered and which contains an after-acquired property clause shall be effective to pass title to after-acquired property as against lien creditors or purchasers for a valuable consideration from the grantor of such instrument unless and until such instrument or a notice of extension thereof has been registered or reregistered as herein provided.

(h) Notwithstanding the provisions of this section with respect to registration, reregistration and registration of notice of extension, an after-acquired property clause in an instrument which creates a security interest made by a public utility as defined in G.S. 62-3(23) or a natural gas company as defined in section 2(6) of the Natural Gas Act, 15 U.S.C.A. 717a(6), or by an electric or telephone membership corporation incorporated or domesticated in North Carolina shall be effective to pass after-acquired property as against lien creditors or purchasers for a valuable consideration from the grantor of the instrument from the time of original registration of such instrument. (1967, c. 861, s. 1; 1969, c. 813, ss. 1-3.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

may 6

S 3

SENATE BILL 172
Corrected Copy 2/19/97
House Committee Substitute Favorable 4/16/97

Short Title: No Safety Course/Disabled Hunters. (Public)

Sponsors:

Referred to:

February 18, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF HUNTING LICENSES FOR CERTAIN DISABLED HUNTERS WHO HAVE NOT COMPLIED WITH THE HUNTING SAFETY COURSE REQUIREMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-270.1A reads as rewritten:

"**§ 113-270.1A. Hunter safety course required.**

(a) ~~On~~ Except as provided in subsection (a1) of this section, on or after July 1, 1991, a person, regardless of age, may not procure a hunting license or hunt in this State without producing a certificate of competency or a hunting license issued prior to July 1, 1991, or signing a statement on a form provided by the Wildlife Resources Commission that he had such a license.

(a1) A person who qualifies for a totally disabled resident combination hunting-fishing license under G.S. 113-270.1C(b)(3) need not comply with the requirements of subsection (a) of this section in order to receive that license, so long as the person does not make use of the license unless:

(1) The person is accompanied by an adult of at least 21 years of age who is licensed to hunt; and

(2) The adult hunter maintains a proximity to the disabled hunter which enables the adult to take immediate control of the hunting device at all times.

(b) The Wildlife Resources Commission shall institute and coordinate a statewide course of instruction in hunter ethics, wildlife laws and regulations, and competency and safety in the handling of firearms, and in so doing, may cooperate with any political subdivision, or with any reputable organization having as one of its objectives the promotion of competency and safety in the handling of firearms, including local rod and gun clubs.

(1) The Wildlife Resources Commission shall designate those persons or agencies authorized to give the course of instruction, and this designation shall be valid until revoked by the Commission. Those designated persons shall submit to the Wildlife Resources Commission validated listings naming all persons who have successfully completed the course of instruction.

(2) The Wildlife Resources Commission may conduct the course in hunter safety, using Commission personnel or other persons at times and in areas where other competent agencies are unable or unwilling to meet the demand for instruction.

(3) The Wildlife Resources Commission shall issue a certificate of competency and safety to each person who successfully completes the course of instruction, and the certificate shall be valid until revoked by the Commission.

(4) Any similar certificate issued outside the State by a governmental agency, shall be accepted as complying with the requirements of subsection (a) above, if the privileges are reciprocal for North Carolina residents.

(5) The Wildlife Resources Commission shall adopt rules and regulations to provide for the course of instruction and the issuance of the certificates consistent with the purpose of this section.

(c) On or after July 1, 1991, any person who obtains a hunting license by presenting a fictitious certificate of competency or who attempts to obtain a certificate of competency or hunting license through fraud shall have his hunting privileges revoked by the Wildlife Resources Commission for a period not to exceed one year.

(d) Nothing in this section shall be construed to prohibit the sale of lifetime licenses as provided in G.S. 113-270.2(c)(1a). Pending satisfactory completion of the hunter safety course, persons who possess such licenses may exercise the privileges thereof when accompanied by an adult at least 21 years of age who is licensed to hunt in this State. For the purpose of this section, 'accompanied' is defined as being able to take immediate control of the hunting device."

Section 2. Notwithstanding the provisions of Section 1 of this act, locations where hunting safety is taught shall not be relieved of their obligation to make the course accessible to persons with disabilities who wish to take the course.

Section 3. This act is effective when it becomes law.

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May 5, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **Senate Bill 172 - No Safety Course/Disabled Hunters.**

Senate Bill 172 amends the law relating to licenses and permits issued by the Wildlife Resources Commission to authorize the issuance of hunting licenses to certain disabled hunters who have not completed the required hunting safety course.

The bill exempts a person who qualifies for a "Totally Disabled Resident Combination Hunting-Fishing License" from the hunting safety course requirement. In order to obtain such a license, an individual must be a resident of the State who is totally disabled (physically incapable of being gainfully employed). The exemption authorized by this bill applies only if (1) the disabled person is accompanied by an adult at least 21 years of age who is licensed to hunt, and (2) this adult remains close enough to the disabled person to take immediate control of the hunting devise at all times.

This act would become effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 16
Judiciary Committee Substitute Adopted 3/20/97 may 6

Short Title: Clarify Community-Based Corrections. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION TO MODIFY STATUTORY LANGUAGE DEFINING CERTAIN INTERMEDIATE PUNISHMENTS, TO CHANGE THE JUDICIAL AUTHORITY TO DELEGATE RESPONSIBILITIES TO PROBATION OFFICERS AND TO MODIFY THOSE DELEGATED RESPONSIBILITIES, TO MODIFY THE TARGET POPULATION FOR COMMUNITY PENALTIES, AND TO IDENTIFY THE POPULATION INELIGIBLE FOR COMMUNITY SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-262(c) reads as rewritten:

"(c) The Department shall establish within the Division of Adult Probation and Parole a program of Intensive ~~Probation and Parole.~~ Supervision. This program shall provide intensive supervision for ~~probationers~~ probationers, post-release supervisees, and parolees who require close supervision in order to remain in the community pursuant to a community penalties plan, community work plan, community restitution plan, or other plan of rehabilitation. The intensive ~~probation and parole~~ supervision program shall be available to both felons and misdemeanants. Each offender shall be required to comply with the rules adopted for the Program as well as the requirements specified in G.S. 15A-1340.11(5)."

Section 2. G.S. 15A-1340.11 reads as rewritten:

"**§ 15A-1340.11. Definitions.**

The following definitions apply in this Article:

(1) Active punishment. -- A sentence in a criminal case that requires an offender to serve a sentence of imprisonment and is not suspended. Special probation, as defined in G.S. 15A-1351, is not an active punishment.

(2) Community punishment. -- A sentence in a criminal case that does not include an active punishment or an intermediate punishment.

(3) Day-reporting center. -- A facility to which offenders are required, as a condition of probation, to report on a daily or other regular basis at specified times for a specified length of time to participate in activities such as counseling, treatment, social skills training, or employment training.

~~(4) Electronic monitoring. -- A condition of probation in which the offender is required to remain in one or more specified places for a specified period or periods each day, and in which the offender shall wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.~~

(4a) House arrest with electronic monitoring. -- Probation in which the offender is required to remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(5) Intensive probation. -- Probation that requires the offender to submit to supervision by officers assigned to the Intensive ~~Probation~~ Supervision Program established pursuant to G.S. 143B-262(c), and to comply with the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(6) Intermediate punishment. -- A sentence in a criminal case that places an offender on supervised probation and includes at least one of the following conditions:

a. Special probation as defined in G.S. 15A-1351(a).
b. Assignment to a residential program.
c. ~~Electronic monitoring.~~ House arrest with electronic monitoring.
d. Intensive probation.
e. Assignment to a day-reporting center.

In addition, a sentence to regular supervised probation imposed pursuant to a community penalties plan as defined in G.S. 7A-771(2) is an intermediate punishment, regardless of whether any of the above conditions is imposed, if the plan is accepted by the court and the plan does not include active punishment.

(7) Prior conviction. -- A person has a prior conviction when, on the date a criminal judgment is entered, the person being sentenced has been previously convicted of a crime:

a. In the district court, and the person has not given notice of appeal and the time for appeal has expired; or

b. In the superior court, regardless of whether the conviction is on appeal to the appellate division; or

c. In the courts of the United States, another state, the armed services of the United States, or another country, regardless of whether the offense would be a crime if it occurred in North Carolina,

regardless of whether the crime was committed before or after the effective date of this Article.

(8) Residential program. -- A program in which the offender, as a condition of probation, is required to reside in a facility for a specified period and to participate in activities such as counseling, treatment, social skills training, or employment training, conducted at the residential facility or at other specified locations."

Section 3. G.S. 15A-1343(b1) reads as rewritten:

"(b1) Special Conditions. -- In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

(1) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

(2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.

(2a) Submit to a period of imprisonment in a facility for youthful offenders for a minimum of 90 days or a maximum of 120 days under special probation, reference G.S. 15A-1351(a) or G.S. 15A-1344(e), and abide by all rules and regulations as provided in conjunction with the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT), which provides an atmosphere for learning personal confidence, personal responsibility, self-respect, and respect for attitudes and value systems.

(3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).

~~(3a) Remain in one or more specified places for a specified period or periods each day, and wear a device that permits the defendant's compliance with the condition to be monitored electronically.~~

(3b) Submit to supervision by officers assigned to the Intensive ~~Probation~~ Supervision Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(4) Surrender his driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.

(5) Compensate the Department of Environment, Health, and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment, Health, and Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(6) Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

(7) Submit at reasonable times to warrantless searches by a probation officer of his person and of his vehicle and premises while he is present, for purposes specified by the court and reasonably related to his probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required

to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

(8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

(8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and which constitute the basis of the offense or offenses of which he was convicted.

(9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.

(10) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation."

Section 4. G.S. 15A-1343.2 reads as rewritten:

"**§ 15A-1343.2. Special probation rules for persons sentenced under Article 81B.**

(a) Applicability. -- This section applies only to persons sentenced under Article 81B of this Chapter.

(b) Purposes of Probation for Community and Intermediate Punishments. -- The Department of Correction shall develop a plan to handle offenders sentenced to community and intermediate punishments. The probation program designed to handle these offenders shall have the following principal purposes: to hold offenders accountable for making restitution, to ensure compliance with the court's judgment, to effectively rehabilitate offenders by directing them to specialized treatment or education programs, and to protect the public safety.

(c) Probation Caseload Goals. -- It is the goal of the General Assembly that, subject to the availability of funds, caseloads for probation officers supervising persons sentenced to community punishment should not exceed an average of 90 offenders per officer, and caseloads for offenders sentenced to intermediate punishments should not exceed an average of 60 offenders per officer by July 1, 1998.

(d) Lengths of Probation Terms Under Structured Sentencing. -- Unless the court makes specific findings that longer or shorter periods of probation are necessary, the length of the original period of probation for offenders sentenced under Article 81B shall be as follows:

(1) For misdemeanants sentenced to community punishment, not less than six nor more than 18 months;
(2) For misdemeanants sentenced to intermediate punishment, not less than 12 nor more than 24 months;
(3) For felons sentenced to community punishment, not less than 12 nor more than 30 months; and
(4) For felons sentenced to intermediate punishment, not less than 18 nor more than 36 months.

If the court finds at the time of sentencing that a longer period of probation is necessary, that period may not exceed a maximum of five years, as specified in G.S. 15A-1342 and G.S. 15A-1351.

Extension. -- The court may with the consent of the offender extend the original period of the probation if necessary to complete a program of restitution or to complete medical or psychiatric treatment ordered as a condition of probation. This extension may be for no more than three years, and may only be ordered in the last six months of the original period of probation.

(e) Delegation to Probation Officer in Community Punishment. -- ~~The court may delegate to~~ Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Adult Probation and Parole in the Department of Correction ~~the authority to~~ may require an offender sentenced to community punishment to:

(1) Perform up to 20 hours of community service, and pay the fee prescribed by law for this supervision;
(2) Report to the offender's probation officer on a frequency to be determined by the officer; or
(3) Submit to substance abuse assessment, monitoring or treatment.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

If the probation officer exercises authority delegated by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court.

(f) Delegation to Probation Officer in Intermediate Punishments. -- ~~The court may delegate to~~ Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Adult Probation and Parole in the Department of Correction ~~the authority to~~ may require an offender sentenced to intermediate punishment to:

(1) Perform up to 50 hours of community service, and pay the fee prescribed by law for this supervision;
(2) Submit to ~~electronic monitoring;~~ a curfew which requires the offender to remain in a specified place for a specified period each

day and wear a device that permits the offender's compliance with the condition to be monitored electronically;

(3) Submit to substance abuse assessment, monitoring or treatment; or

(4) Participate in an educational or vocational skills development program.

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

If the probation officer exercises authority delegated to him or her by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court.

(g) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 19, s. 3.

(h) Definitions. -- For purposes of this section, the definitions in G.S. 15A-1340.11 apply."

Section 5. G.S. 7A-771(5) reads as rewritten:

"(5) 'Targeted offenders' means persons charged with or convicted of misdemeanors or felonies who are eligible to receive an intermediate punishment based on their class of offense and prior record level and who are facing an imminent and substantial threat of imprisonment."

Section 6. G.S. 15A-1368.4 is amended by adding a new subsection to read:

"(e1) Prohibited Conditions. -- The Commission shall not impose community service as a condition of post-release supervision."

Section 7. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

North Carolina General Assembly
Legislative Services Office

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March 11, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel

RE: **SENATE BILL 16 - CLARIFY COMMUNITY-BASED CORRECTIONS**

Senate Bill 16 implements recommendations of the N.C. Sentencing Commission regarding community-based corrections.

The bill modifies statutory language defining certain intermediate punishments. Section 1 of the bill renames the Intensive Probation Program as Intensive Supervision, as the program is also available for offenders on parole and post-release supervision. Sections 2 of the bill amends the definition of intensive supervision to require multiple contacts each week by a probation officer, to require curfew restrictions, and to require that offenders be employed or pursuing a course of study or vocational training. It also redefines the intermediate sanction of "electronic monitoring" as "house arrest with electronic monitoring" . Section 3 of the bill uses the revised definitions in the list of special conditions of probation.

The bill changes judicial authority to delegate certain responsibilities to the Division of Adult Probation and Parole. Under structured sentencing, the court may, at the time of sentencing, delegate to DAPP the authority to impose additional requirements on an offender who violates probation - without bringing the offender back to court. Section 4 of the bill makes the delegation of authority automatic, unless the presiding judge finds that it is not appropriate. Section 4 also adds curfew with electronic monitoring as an optional condition of probation for an offender sentenced to intermediate punishment, when the offender has violated probation.

Senate Bill 16 modifies the target population for community penalties. Community penalties programs develop plans for offenders who are convicted of misdemeanors or felonies. According to the Sentencing Commission, often an offender is convicted and sentenced on the same day, which does not

give the community penalties program sufficient time to develop a plan. Section 5 of the bill expands the Community Penalties statute to allow programs to develop plans for persons charged with misdemeanors and felonies but not yet convicted. The change was recommended by the Community Penalties Division of the AOC.

Section 6 of the bill prohibits community service as a condition of post-release supervision.

The bill would be effective December 1, 1997 and apply to offenses occurring on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

may 8

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hardy and Daughtry** for the Committee on **JUDICIARY I** .

X Committee Substitute for
S. 251 A BILL TO BE ENTITLED AN ACT TO MODIFY THE COMMON LAW TO PERMIT THE CREATION OF EASEMENTS, RESTRICTIONS, AND COVENANTS BY A LANDOWNER.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill, unfavorable as to original bill.

X With a favorable report as to House committee substitute bill ~~(#1),~~ unfavorable as to Senate ~~Judiciary~~ Committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 251
Judiciary Committee Substitute Adopted 4/14/97

Short Title: Creation of Easements by Landowner. (Public)

Sponsors:

Referred to:

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE COMMON LAW TO PERMIT THE CREATION OF EASEMENTS, RESTRICTIONS, AND COVENANTS BY A LANDOWNER.

The General Assembly of North Carolina enacts:

Section 1. Chapter 39 of the General Statutes is amended by adding a new section to read:

"**§ 39-6.4. Creation of easements, restrictions, and conditions.**

(a) The holder of legal or equitable title of an interest in real property may create, grant, reserve, or declare valid easements, restrictions, or conditions of record burdening or benefiting the same interest in real property.

(b) Subsection (a) of this section shall not affect the application of the doctrine of merger after the severance and subsequent reunification of title to all of the benefited or burdened real property or interests therein."

Section 2. This act is effective when it becomes law and applies to all easements, restrictions, conditions, or interests created, granted, reserved, or declared before, on, or after the effective date of this act but shall not apply to any litigation pending on the effective date or to any instrument directly or indirectly involved in litigation pending on that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 251
Judiciary Committee Substitute Adopted 4/14/97
Proposed House Committee Substitute S251-PCS7794

Short Title: Creation of Easements by Landowner. (Public)

Sponsors:

Referred to:

February 26, 1997

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Section 2. This act is effective when it becomes law and applies to all easements, restrictions, conditions, or interests created, granted, reserved, or declared before, on, or after the effective date of this act but shall not apply to any litigation pending on the effective date or to any instrument directly or indirectly involved in litigation pending on that date, nor shall this act apply to any litigation in which final judgment has been rendered or to any instrument directly or indirectly involved in any litigation in which final judgment has been rendered on or before that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 251

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S251-ARL-001 Page 1 of 1

Date_____,1997

Comm. Sub. [YES]
Amends Title [ ]
2nd Edition

1 moves to amend the bill on page 1, line 18,
2 by rewriting that line to read:
3 "litigation pending on that date, nor shall this act apply to any
4 litigation in which final judgment has been rendered or to any
5 instrument directly or indirectly involved in any litigation in
6 which final judgment has been rendered on or before that date.".
7

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

North Carolina General Assembly
Legislative Services Office

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May 6, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **SENATE BILL 251 - Creation of easements by landowner**

Senate Bill 251 will permit landowners to record easements, restrictions and covenants over their own property even when the property owners own the entire interest in all the property effected. This bill is a recommendation of the Real Property Section of the North Carolina Bar Association.

This bill is an attempt to overturn a ruling by the North Carolina Court of Appeals in Tower Development Partners v. Zell, 120 NC App 136 (1995) which reaffirmed the common law of North Carolina that a person cannot have an easement (or presumably restrictions or covenants) on their own land under a doctrine of merger where the owner holds both the dominant and servient interest in the property. Prior to this case it had been presumed that the law in North Carolina was that property conveyed subject to prior recorded easements, restrictions, or covenants were subject to those covenants. This is the typical way that easements and restrictive covenants in subdivisions, townhouse and condominium developments, and planned unit developments are created in this state. The Tower decision put these types of arrangements and conveyances in doubt, resulting in considerable uncertain as to the state of title to a great amount of real property and the effectiveness of security interest held by lending institutions.

This bill would overturn the Tower decision and the common law and permit property owners to subject their real property to easements, restrictions, and covenants prior to conveying a part of their property to another person. This would allow these conditions to run with the land and apply to all subsequent owners, subjecting them to these recorded burdens and giving them the benefit of common restrictions. The bill affirms that the doctrine of merger would apply if the subjected property were recombined and the title to the affected tracts merged again into a common owner.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Because the owner of an undivided tract owns all the property that might be subject to these types of burdens, the owner would always have the right to change or remove any recorded easements, restrictions, or covenants before any of the land subject to these matters is conveyed to another person. Also because all such easements, restriction, or covenants must be recorded in the Register of Deeds office prior to becoming effective, all subsequent owners of the land will have record notice of these burdens and will buy the property such to these matters.

The bill becomes effective when it becomes law and applies to easements, restrictions, conditions or interests created before, on, or after the effective date but will not apply to pending litigation on the effective date, nor to instruments involved in pending litigation.

S251-SMRL-001

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 251

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S251-ARL-001 Page 1 of 1

Date_____,1997

Comm. Sub. [YES]
Amends Title []
2nd Edition

moves to amend the bill on page 1, line 18,
by rewriting that line to read:
"litigation pending on that date, nor shall this act apply to any litigation in which final judgment has been rendered or to any instrument directly or indirectly involved in any litigation in which final judgment has been rendered on or before that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

Judiciary I 5-6-97 10am

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Rev. Paul Wilms	NCMDA
2.	[illegible]	DOC
3.	[illegible]	NCCOSA
4.	ERIC ZOGRY	NC SENTENCING COMMISSION
5.	John Madler	Sentencing Commission
6.	[illegible]	NCATL
7.	[illegible]	DOC
8.	MT Bennett	GACFD - DOA
9.	Dee Kubert	CYPC
10.	Nancy Bradley	NCCPBS
11.	Gary Walker	ALLTEL
22.	Willie Riddick	DOT
23.		
24.		
25.		
26.		
27.		
28.		
29.		
30.		
31.		

No minutes
1 tape

HOUSE COMMITTEE ON JUDICIARY I

Thursday, May 8, 1997
Room 1327 LB
10:00 a.m.

Representatives N. Leo Daughtry,
Edwin M. "Sandy" Hardy
Co-Chairmen

S.B. 152 SERVICE OF ADMIN. SEARCH WARRANTS
Sponsor: Senator Cooper

S.B. 402 DEBTOR PROTECTION/SIMPLE IRAS
S.B. 953 CORPORATE REINSTATEMENT
Sponsor: Senator Webster

S.B. 409 AIRPORT LAW ENFORCEMENT
Sponsor: Senator Shaw

S.B. 625 SPEEDING ON SCHOOL GROUNDS
Sponsor: Senator Page

Adjournment

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE

You are hereby notified that the Committee on **JUDICIARY I** will meet as follows:

DAY & DATE: **Thursday, May 8, 1997**

TIME: **10:00 a.m.**

LOCATION: **1327 LB**

The following bills will be considered (Bill # & Short Title):

PB → **S.B. 152 SERVICE OF ADMIN. SEARCH WARRANTS**
PB **S.B. 402 DEBTOR PROTECTION/SIMPLE IRAS**
PB **S.B. 409 AIRPORT LAW ENFORCEMENT**
PB **S.B. 625 SPEEDING ON SCHOOL GROUNDS** - TRANS Comm Sub. for SB625 ELLIS
PB **S.B. 953 CORPORATE REINSTATEMENT**

Respectfully,

Representatives N. Leo Daughtry and Edwin M. Hardy
Co-Chairmen

I hereby certify this notice was filed by the committee clerk at the following offices at **5:00 p.m.** on **May 5, 1997**.

___Principal Clerk
___Reading Clerk - House Chamber

Joel Raupe (Committee Clerk)

Same bills on TUESDAY
1097 at 10am Thursday

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

may 14

SENATE BILL 409

Short Title: Airport Law Enforcement. (Public)

Sponsors: Senator Shaw of Guilford.

Referred to: Judiciary.

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO PERMIT AIRPORT LAW ENFORCEMENT AGENCIES TO ENTER COOPERATION AGREEMENTS WITH OTHER LAW ENFORCEMENT AGENCIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-288(d) reads as rewritten:

"(d) For purposes of this section, the following shall be considered the equivalent of a municipal police department:

(1) Campus law-enforcement agencies established pursuant to G.S. 116-40.5(a); and

(2) Colleges or universities which are licensed, or exempted from licensure, by G.S. 116-15 and which employ company police officers commissioned by the Attorney General pursuant to Chapter ~~74E.~~ 74E; and

(3) Law enforcement agencies operated by a municipality pursuant to G.S. 63-53(2)."

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

S409-PCSRL-001
PROPOSED COMMITTEE SUBSTITUTE FOR
SENATE BILL 409

Short Title: Airport Law Enforcement. (Public)

Sponsors:

Referred to: Judiciary.

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO PERMIT AIRPORT LAW ENFORCEMENT AGENCIES TO ENTER COOPERATION AGREEMENTS WITH OTHER LAW ENFORCEMENT AGENCIES.

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(2) Colleges or universities which are licensed, or exempted from licensure, by G.S. 116-15 and which employ company police officers commissioned by the Attorney General pursuant to Chapter ~~74E.~~ 74E; and

(3) Law enforcement agencies operated or eligible to be operated by a municipality pursuant to G.S. 63-53(2)."

Section 2. This act is effective when it becomes law.

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May 7, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **SENATE BILL 409; AIRPORT LAW ENFORCEMENT**

Senate Bill 409 would permit airport law enforcement agencies to enter cooperation agreements with other law enforcement agencies.

The bill amends G.S. 160A-288, regarding cooperation between law enforcement agencies. The statute provides that the head of any law-enforcement agency may temporarily provide assistance to another agency in enforcing the laws of the State if so requested in writing by the head of the requesting agency. While working with the requesting agency, an officer has the same jurisdiction and powers as the officers of the requesting agency. For purposes of the statute, law-enforcement agency is defined as "only a municipal police department, a county police department, or a sheriff's department." Presently under G.S. 160A-288(d), campus police are considered the equivalent of a municipal police department. Senate Bill 409 would make airport law enforcement agencies operated by a municipality the equivalent of a municipal police department for purposes of the statute regarding cooperation with other law enforcement agencies.

The bill would be effective when it becomes law.

S409-SMRL-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Editor's Note. — This section was enacted as § 160A-286. It was renumbered § 160A-287 by Session Laws 1971, c. 896, s. 4.

CASE NOTES

Applied in Craven County Hosp. Corp. v. Lenoir County, 75 N.C. App. 453, 331 S.E.2d 690 (1985).

§ 160A-288. Cooperation between law-enforcement agencies.

(a) In accordance with rules, policies, or guidelines officially adopted by the governing body of the city or county by which he is employed, and subject to any conditions or restrictions included therein, the head of any law-enforcement agency may temporarily provide assistance to another agency in enforcing the laws of North Carolina if so requested in writing by the head of the requesting agency. The assistance may comprise allowing officers of the agency to work temporarily with officers of the requesting agency (including in an undercover capacity) and lending equipment and supplies. While working with the requesting agency under the authority of this section, an officer shall have the same jurisdiction, powers, rights, privileges and immunities (including those relating to the defense of civil actions and payment of judgments) as the officers of the requesting agency in addition to those he normally possesses. While on duty with the requesting agency, he shall be subject to the lawful operational commands of his superior officers in the requesting agency, but he shall for personnel and administrative purposes, remain under the control of his own agency, including for purposes of pay. He shall furthermore be entitled to workers' compensation and the same benefits when acting pursuant to this section to the same extent as though he were functioning within the normal scope of his duties.

(b) As used in this section:

(1) "Head" means any director or chief officer of a law-enforcement agency including the chief of police of a local department, chief of police of county police department, and the sheriff of a county, or an officer of one of the above named agencies to whom the head of that agency has delegated authority to make or grant requests under this section, but only one officer in the agency shall have this delegated authority at any time.

(2) "Law-enforcement agency" means only a municipal police department, a county police department, or a sheriff's department. All other State and local agencies are exempted from the provisions of this section.

(c) This section in no way reduces the jurisdiction or authority of State law-enforcement officers.

(d) For purposes of this section, the following shall be considered the equivalent of a municipal police department:

(1) Campus law-enforcement agencies established pursuant to G.S. 116-40.5(a); and

(2) Colleges or universities which are licensed, or exempted from licensure, by G.S. 116-15 and which employ company police officers commissioned by the Attorney General pur-

suant to [redacted]
896, s.4; [redacted]
1989, c. 518, s. 2
c. 1043, s. 6.)

Cross References. — As to of counties under this section, § 153A-212.

Editor's Note. — This sectio

§ 160A-288.1. Assis officers

(a) The governing bod Governor to assign tempo statewide authority to local law-enforcement of engaged in a slowdown; enforcement responsibili request from the govern writing. The request fro the advice of the sherif

(b) The Governor shal lines as may be necessar rary State law-enforceme counties. The Governor n ing appropriate rules, pol department. The Governo the authority to determi a particular case, if any assigned.

(c) While prov as enforcement officer shall all purposes, including

(d) While providing as cer shall be subject to the superior officers. The ra forcement agency provid priate city or county offi cers under his comman

§ 160A-288.2. Assi agenci

(a) In accordance wi adopted by the governin employed, and subject therein, the head of any rarily provide assistanc forcing the laws of Nor head of the State age officers of the local ag State agency (includin equipment and supplies der the authority of t jurisdiction, powers, r

suant to Chapter 74E. (1967, c. 846; 1971, c. 698, s.1; c. 896, s.4; 1977, c. 534; 1981, c. 93, s. 2; 1987, c. 671, s. 4; 1989, c. 518, s. 2; 1991, c. 636, s. 3; 1991 (Reg. Sess., 1992), c. 1043, s. 6.)

Cross References. — As to authority of counties under this section, see also § 153A-212.

Editor's Note. — This section was enacted as § 160A-287. It was renumbered § 160A-288 by Session Laws 1971, c. 896, s. 4.

§ 160A-288.1. Assistance by State law-enforcement officers; rules; cost.

(a) The governing body of any city or county may request the Governor to assign temporarily State law-enforcement officers with statewide authority to provide law-enforcement protection when local law-enforcement officers: (i) are engaged in a strike; (ii) are engaged in a slowdown; (iii) otherwise refuse to fulfill their law-enforcement responsibilities; or (iv) submit mass resignations. The request from the governing body of the city or county shall be in writing. The request from a county governing board shall be upon the advice of the sheriff of the county.

(b) The Governor shall formulate such rules, policies or guidelines as may be necessary to establish a plan under which temporary State law-enforcement assistance will be provided to cities and counties. The Governor may delegate the responsibility for developing appropriate rules, policies or guidelines to the head of any State department. The Governor may also delegate to a department head the authority to determine the number of officers to be assigned in a particular case, if any, and the length of time they are to be assigned.

(c) While providing assistance to a city or county, a State law-enforcement officer shall be considered an employee of the State for all purposes, including compensation and fringe benefits.

(d) While providing assistance to the city or county, a State officer shall be subject to the lawful operational commands of his State superior officers. The ranking representative of each State law-enforcement agency providing assistance shall consult with the appropriate city or county officials prior to deployment of the State officers under his command. (1979, c. 639, s. 1.)

§ 160A-288.2. Assistance to State law-enforcement agencies.

(a) In accordance with rules, policies, or guidelines officially adopted by the governing body of the city or county by which he is employed, and subject to any conditions or restrictions included therein, the head of any local law-enforcement agency may temporarily provide assistance to a State law-enforcement agency in enforcing the laws of North Carolina if so requested in writing by the head of the State agency. The assistance may comprise allowing officers of the local agency to work temporarily with officers of the State agency (including in an undercover capacity) and lending equipment and supplies. While working with the State agency under the authority of this section, an officer shall have the same jurisdiction, powers, rights, privileges and immunities (including

the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this Article and of the regulations adopted and orders and rulings made pursuant thereto. (1941, c. 250, s. 7; 1993, c. 539, s. 498; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 498, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 63-37.1. Airport obstructions illegal.

Any person, other than the owner or operator of an airport, who intentionally obstructs the lawful takeoff and landing operations and patterns of aircraft at an existing public or private airport shall be guilty of a Class 1 misdemeanor. (1995, c. 507, s. 19.5(m).)

Editor's Note. — Session Laws 1995, c. 507, s. 1.1 provides that this act shall be known and cited as the Expansion and Capital Improvements Appropriations Act of 1995.

Session Laws 1995, c. 507, s. 28.12 is a severability clause.

Session Laws 1995, c. 507, s. 19.5(q), provides that this section is effective December 1, 1995, and is applicable to offenses committed on or after that date.

ARTICLE 6.

Public Airports and Related Facilities.

§ 63-53. Specific powers of municipalities operating airports.

In addition to the general powers in this Article conferred, and without limitation thereof, a municipality which has established or may hereafter establish airports, restricted landing areas or other air navigation facilities, or which has acquired or set apart or may hereafter acquire or set apart real property for such purpose or purposes is hereby authorized:

(1) To vest authority for the construction, enlargement, improvement, maintenance, equipment, operation and regulation thereof in an officer, a board or body of such municipality by ordinance or resolution which shall prescribe the powers and duties of such officer, board or body. The expense of such construction, enlargement, improvement, maintenance, equipment, operation and regulation shall be a responsibility of the municipality.

(2) To adopt and amend all needful rules, regulations and ordinances for the management, government and use of any properties under its control whether within or without the territorial limits of the municipality; to appoint airport guards or police with full police powers; to fix by ordinance, penalties for the violation of said ordinances and enforce

said penalties in the same manner in which penalties prescribed by other ordinances of the municipality are enforced. It may also adopt ordinances designed to safeguard the public upon or beyond the limits of private airports or landing strips within such municipality or its police jurisdiction against the perils and hazards of instrumentalities used in aerial navigation. Such ordinances shall be published as provided by general law or the charter of the municipality for the publication of similar ordinances. They must conform to and be consistent with the laws of this State and shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder and rules and standards issued from time to time pursuant thereto.

(3) To lease such airports or other air navigation facilities, or real property acquired or set apart for airport purposes, to private parties, to any municipal or State government or to the national government, or to any department of either thereof, for operation; to lease to private parties, to any municipal or State government or to the national government, or any department of either thereof, for operation or use consistent with the purpose of this Article, space, area, improvements, or equipment on such airports; to sell any part of such airports, other air navigation facilities or real property to any municipal government, or to the United States or to any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and to confer the privileges of concessions of supplying upon its airports goods, commodities, things, services and facilities; provided that in each case in so doing the public is not deprived of its rightful, equal, and uniform use thereof.

(4) To sell or lease any property, real or personal, acquired for airport purposes and belonging to the municipality, which, in the judgment of its governing body, may not be required for aeronautic purposes in accordance with the laws of this State or the provisions of the charter of the municipality governing the sale or leasing of similar municipally owned property.

(5) To determine the charge or rental for the use of any properties under its control and the charges for any services or accommodations and the terms and conditions under which such properties may be used, provided that in all cases the public is not deprived of its rightful, equal, and uniform use of such property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expense of operation to the municipality. The municipality shall have and may enforce liens as provided by law for liens and enforcement thereof, for repairs to or improvement or storage or care of any personal property, to enforce the payment of any such charges.

(6) To engage, on an airport, in commercial and industrial land development projects which relate to, develop, or further airborne commerce and cargo and passenger traffic, and, in connection with any project, to improve real estate on an

airport and lease that improved real estate to public or private commercial and industrial enterprises, or contract with others to do so.

(7) To exercise all powers necessarily incidental to the exercise of the general and special powers herein created. (1945, c. 490, s. 6; 1991, c. 501, s. 1.)

Local Modification. — Goldsboro-Wayne Airport Authority: 1987 (Reg. Sess., 1988), c. 1006. s. 5.

For additional local modifications to this section, see the main pamphlet.

Editor's Note. — Session Laws 1991, c. 501, s. 2 provides: "This act provides additional powers and shall not be regarded as limiting powers conferred by other laws."

Session Laws 1991, c. 501, s. 3 is a severability clause.

§ 63-56. Joint operation of airports.

(a) All powers, rights and authority granted to any municipality in this Article may be exercised and enjoyed by two or more municipalities either within or without the territorial limits of either or any of said municipalities and within or without this State, or by any municipality acting jointly with any other municipality therein either within or without this State, provided the laws of such other state permit such joint action.

(b) Any two or more municipalities may enter into agreements with each other, duly authorized by ordinance or resolution, as may be appropriate, for joint action pursuant to the provisions of this section. Concurrent action by the governing bodies of the municipalities involved shall constitute joint action.

(c) Each such agreement shall specify its terms; the proportionate interest which each municipality shall have in the property, facilities and privileges involved, and the proportion of preliminary costs, costs of acquisition, establishment, construction, enlargement, improvement and equipment, and of expenses of maintenance, operation and regulation to be borne by each, and make such other provisions as may be necessary to carry out the provisions of this section. It shall provide for amendments thereof and for conditions and methods of termination; for the disposition of all or any part of the property, facilities and privileges jointly owned if said property, facilities and privileges, or any part thereof, shall cease to be used for the purposes herein provided or if the agreement shall be terminated, and for the distribution of the proceeds received upon any such disposition, and of any funds or other property jointly owned and undisposed of, and the assumption or payment of any indebtedness arising from the joint venture which remains unpaid, upon any such disposition or upon a termination of the agreement.

(d) Municipalities acting jointly as herein authorized may create a board from the inhabitants of such municipalities for the purpose of acquiring property for establishing, constructing, enlarging, improving, maintaining, equipping, operating and regulating the airports and other air navigation facilities and airport protection privileges to be jointly acquired, controlled, and operated. Such board shall consist of members to be appointed by the governing body of each municipality involved, the number to be appointed by each to be provided for by the agreement for the joint venture. Each member shall serve for such time and upon such terms and as to compensation, if any, as may be provided for in the agreement

VISITOR REGISTRATION SHEET

JUDICIARY I 5/8/97 10AM

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Ann Cook	DEHNR
2.	Mike Carpenter	NCHSA
3.	Julian Philpott	NCFB
4.	R. Neal Wilkins	NCMBA
5.	Faye O. Gray	DOJ
6.	Rob Schofield	NCJCDC
7.	Nancy Bradley	NCCBS
8.	Michelle Cook	Weyerhaeuser
9.	[illegible]	BCBSNC
10.	Don McCorquodale	NCNMA
11.	Yolanda White	Rep. Adams (Bennett College)
22.	Dianne V. Long	Rep. Adams (Bennett College)
23.	Flossie M Killian	Moore-Van Allen
24.	Janet H. Hall	wife of Rep. Hall
25.	[illegible]	[illegible]
26.	Butch Bunnells	NCSODA
27.	Laura Hartsell	MCIC
28.	Andy Ellen	NCFB
29.		
30.		
31.		

HOUSE COMMITTEE ON JUDICIARY I

No minutes
1 tape

Thursday, May 15, 1997
Room 1327 LB
10:00 a.m.

Representatives N. Leo Daughtry,
Edwin M. "Sandy" Hardy
Co-Chairmen

H.B. 1097 Fisheries Reform Act - 2
Sponsor: Representative Preston

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H May 15 D

HOUSE BILL 1097
Committee Substitute Favorable 4/23/97
Proposed Committee Substitute H1097-PCS4119

Short Title: Fisheries Reform Act-2. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT THE FISHERIES REFORM ACT OF 1997 TO PROTECT, ENHANCE, AND BETTER MANAGE COASTAL FISHERIES IN NORTH CAROLINA.

Whereas, the State of North Carolina has one of the most diverse fisheries in the United States; and

Whereas, the General Assembly recognizes that commercial fishermen perform an essential function by providing wholesome food for the citizens of the State and thereby properly earn a livelihood; and

Whereas, the General Assembly recognizes the economic contribution and important heritage of traditional full-time and part-time commercial fishing; and

Whereas, the General Assembly recognizes that for many citizens fishing is an important recreational activity and that recreational fishing is a source of great personal enjoyment and satisfaction; and

Whereas, the General Assembly recognizes the importance of providing plentiful fishery resources to maintain and enhance tourism as a major contributor to the economy of the State; and

Whereas, the General Assembly recognizes the need to protect our coastal fishery resources and to balance the commercial and recreational interests through better management of these resources; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. SHORT TITLE; PERFORMANCE AUDIT

Section 1.1. This act shall be known as the "Fisheries Reform Act of 1997".

Section 1.2. The State Auditor shall conduct a performance audit, including a detailed operational review, of the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources. The performance audit report shall be delivered to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 February 1998.

PART II. MARINE FISHERIES COMMISSION

Section 2.1. Article 7 of Chapter 143B is amended by adding a new Part to read:

"Part 5B. Marine Fisheries Commission.

"**§ 143B-289.20. Definitions.**

(a) As used in this Part:

(1) 'Commission' means the Marine Fisheries Commission.

(2) 'Department' means the Department of Environment, Health, and Natural Resources.

(3) 'Fisheries Director' means the Director of the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources.

(4) 'Secretary' means the Secretary of Environment, Health, and Natural Resources.

(b) The definitions set out in G.S. 113-129 and G.S. 113-130 shall apply throughout this Part.

"**§ 143B-289.21. Marine Fisheries Commission -- creation; purposes.**

(a) There is hereby created the Marine Fisheries Commission in the Department of Environment, Health, and Natural Resources.

(b) The functions, purposes, and duties of the Marine Fisheries Commission are to:

(1) Manage, restore, develop, cultivate, conserve, protect, and regulate the marine and estuarine resources of the State.

(2) Implement the laws relating to coastal fisheries, coastal fishing, shellfish, crustaceans, and other marine and estuarine resources enacted by the General Assembly by the adoption of rules and policies, to provide a sound, constructive, comprehensive, continuing, and economical coastal fisheries program directed by citizens who are knowledgeable in the protection, restoration, proper use, and management of marine and estuarine resources.

(3) Advise the State regarding ocean and marine fisheries within the jurisdiction of the Atlantic States Marine Fisheries Compact, the South Atlantic Fishery Management Council, the Mid-Atlantic

Fishery Management Council, and other similar organizations established to manage or regulate fishing in the Atlantic Ocean.

"**§ 143B-289.22. Marine Fisheries Commission -- powers and duties.**

(a) The Marine Fisheries Commission shall adopt rules to be followed in the management, protection, preservation, and enhancement of the marine and estuarine resources of the State including commercial and sports fisheries resources. The Marine Fisheries Commission shall have the power and duty:

(1) To authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:
   a. Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish.
   b. Seasons for taking fish.
   c. Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

(2) To provide fair regulation of commercial and recreational fishing groups in the interest of the public.

(3) To adopt rules and take all steps necessary to develop and improve mariculture, including the cultivation, harvesting, and marketing of shellfish and other marine resources in the State, involving the use of public grounds and private beds as provided in G.S. 113-201.

(4) To close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish as provided in G.S. 113-204.

(5) In the interest of conservation of the marine and estuarine resources of the State, to institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of the State registered with the Department as provided in G.S. 113-206(d).

(6) To make reciprocal agreements with other jurisdictions respecting any of the matters governed in this Subchapter as provided by G.S. 113-223.

(7) To adopt relevant provisions of federal laws and regulations as State rules pursuant to G.S. 113-228.

(8) To delegate to the Fisheries Director the authority by proclamation to suspend or implement, in whole or in part, a particular rule of the Commission that may be affected by variable conditions as provided in G.S. 113-221(e).

(9) To comment on and otherwise participate in the determination of permit applications received by State agencies that may have an effect on the marine and estuarine resources of the State.

(10) To adopt Fishery Management Plans as provided in G.S. 113-182.1, to establish a Priority List to determine the order in which Fishery

Management Plans are developed, to establish a Schedule for the development and adoption of each Fishery Management Plan, and to establish guidance criteria as to the contents of Fishery Management Plans.

(11) To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8.

(12) To hear appeals by persons denied a fishing license, permit, or lease under this Chapter.

(b) The Marine Fisheries Commission shall have the power and duty to establish standards and adopt rules:

(1) To implement the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134.

(2) To manage the disposition of confiscated property as set forth in G.S. 113-137.

(3) To govern all license requirements and taxes prescribed in Article 14A of Chapter 113 of the General Statutes.

(4) To regulate the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of the State as provided in G.S. 113-170.

(5) To regulate the possession, transportation, and disposition of seafood, as provided in G.S. 113-170.4.

(6) To regulate the disposition of the young of edible fish, as provided by G.S. 113-185.

(7) To manage the leasing of public grounds for mariculture, including oysters and clam production, as provided in G.S. 113-202.

(8) To govern the utilization of private fisheries, as provided in G.S. 113-205.

(9) To impose further restrictions upon the throwing of fish offal in any coastal fishing waters, as provided in G.S. 113-265.

(10) To regulate the location and utilization of artificial reefs in coastal waters.

(11) To regulate the placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational or recreational safety as well as from a conservation standpoint.

(c) The Commission is authorized to authorize, license, prohibit, prescribe, or restrict:

(1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities.

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all

marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to carry out its duties.

(d) The Commission may adopt rules required by the federal government for grants-in-aid for coastal resource purposes that may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from federal grants-in-aid.

(e) The Commission shall adopt rules as provided in this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environment, Health, and Natural Resources.

(f) As a quasi-judicial agency, the Commission, in accordance with Article IV, Section 3 of the Constitution of North Carolina, has those judicial powers reasonably necessary to accomplish the purposes for which it was created.

"**§ 143B-289.23. Marine Fisheries Commission -- quasi-judicial powers; procedures.**

(a) With respect to those matters within its jurisdiction, the Marine Fisheries Commission shall exercise quasi-judicial powers in accordance with the provisions of Chapter 150B of the General Statutes. This section and any rules adopted by the Marine Fisheries Commission shall govern the following proceedings:

(1) Exceptions to recommended decisions in contested cases shall be filed with the Secretary within 30 days of the receipt by the Secretary of the official record from the Office of Administrative Hearings, unless additional time is allowed by the Chair of the Commission.

(2) Oral arguments by the parties may be allowed by the Chair of the Commission upon request of the parties.

(3) Deliberations of the Commission shall be conducted in its public meeting unless the Commission determines that consultation with its counsel should be held in a closed session pursuant to G.S. 143-318.11.

(b) The final agency decision in contested cases that arise from civil penalty assessments shall be made by the Commission. In the evaluation of each violation, the Commission shall recognize that harm to the marine and estuarine resources of the State arising from the violation of a statute or rule enacted or adopted to protect those resources may be immediately observed through damaged resources or may be incremental or cumulative with no damage that can be immediately observed or documented. Penalties up to the maximum authorized may be based on any one or combination of the following factors:

(1) The degree and extent of harm to the marine and estuarine resources of the State, to the public health, or to private property resulting from the violation.

(2) The frequency and gravity of the violation.

(3) The cost of rectifying the damage.

(4) Whether the violation was committed willfully or intentionally.

(5) The prior record of the violator in complying or failing to comply with programs over which the Marine Fisheries Commission has regulatory authority.

(6) The cost to the State of the enforcement procedures.

(c) The Chair shall appoint a Committee on Civil Penalty Remissions from the members of the Commission. No member of the Committee on Civil Penalty Remissions may hear or vote on any matter in which the member has an economic interest. The Committee on Civil Penalty Remissions shall make the final agency decision on remission requests. In determining whether a remission request will be approved, the Committee shall consider the recommendation of the Secretary and the following factors:

(1) Whether one or more of the civil penalty assessment factors in subsection (b) of this section were wrongly applied to the detriment of the petitioner.

(2) Whether the violator promptly abated continuing environmental damage resulting from the violation.

(3) Whether the violation was inadvertent.

(4) Whether the violator had been assessed civil penalties for any previous violations.

(5) Whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(d) The Committee on Civil Penalty Remissions may remit the entire amount of the penalty only when the violator has not been assessed civil penalties for previous violations and when payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

(e) If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary of Environment, Health, and Natural Resources shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.

(f) The Secretary may delegate his powers and duties under this section to the Fisheries Director.

"§ 143B-289.24. Marine Fisheries Commission -- members; appointment; term; oath; ethical standards; removal; compensation; staff.

(a) Members, Selection. -- The Marine Fisheries Commission shall consist of nine members appointed by the Governor as follows:

(1) One person actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of annual earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(2) One person actively engaged in, or recently retired from, commercial fishing as demonstrated by currently or recently deriving at least fifty percent (50%) of earned income from taking and selling fishery resources in coastal fishing waters of the State. The spouse of a commercial fisherman who meets the criteria of this subdivision may be appointed under this subdivision.

(3) One person actively connected with, and experienced as, a licensed fish dealer or in seafood processing or distribution as demonstrated by deriving at least fifty percent (50%) of earned annual income from activities involving the buying, selling, processing, or distribution of seafood landed in this State. The spouse of a person qualified under this subdivision may be appointed provided that the spouse is actively involved in the qualifying business.

(4) One person actively engaged in recreational sports fishing in coastal waters in this State. An appointee under this subdivision may not derive more than ten percent (10%) of earned annual income from sports fishing activities.

(5) One person actively engaged in recreational sports fishing in coastal waters in this State. An appointee under this subdivision may not derive more than ten percent (10%) of earned annual income from sports fishing activities.

(6) One person actively engaged in the sports fishing industry as demonstrated by deriving at least fifty percent (50%) of earned annual income from selling goods or services in this State. The spouse of a person qualified under this subdivision may be appointed provided that the spouse is actively involved in the qualifying business.

(7) One person having general knowledge of and experience related to subjects and persons regulated by the Commission.

(8) One person having general knowledge of and experience related to subjects and persons regulated by the Commission.

(9) One person who is a fisheries scientist having special training and expertise in marine and estuarine fisheries biology, ecology, population dynamics, water quality, habitat protection, or similar knowledge. A person appointed under this subdivision may not receive more than ten percent (10%) of earned annual income from either the commercial or sports fishing industries, including the processing and distribution of seafood.

(b) Residential Qualifications. -- For purposes of providing regional representation on the Commission, the following three coastal regions of the State are designated: (i) Northeast Coastal Region comprised of Bertie, Camden, Chowan, Currituck, Dare, Gates, Halifax, Hertford, Martin, Northampton, Pasquotank, Perquimans, Tyrrell, and Washington Counties, (ii) Central Coastal Region comprised of Beaufort, Carteret, Craven, Hyde, Jones, and Pamlico Counties; and (iii) Southeast Coastal Region

comprised of Bladen, Brunswick, Columbus, New Hanover, Onslow, and Pender Counties. Persons appointed under subdivisions (1), (2), (3), (4), and (8) of subsection (a) of this section shall be residents of one of the coastal regions of the State. The membership of the Commission shall include at least one person who is a resident of each of the three coastal regions of the State.

(c) Additional Considerations. -- In making appointments to the Commission, the Governor shall provide for appropriate representation of women and minorities on the Commission.

(d) Terms. -- The term of office of members of the Commission is three years. A member may be reappointed to any number of successive three-year terms. Upon the expiration of a three-year term, a member shall continue to serve until a successor is appointed and duly qualified as provided by G.S. 128-7. The term of members appointed under subdivisions (1), (2), and (3) of subsection (a) of this section shall expire on 30 June of years evenly divisible by three. The term of members appointed under subdivisions (4), (5), and (6) of subsection (a) of this section shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. The term of members appointed under subdivisions (7), (8), and (9) of subsection (a) of this section shall expire on 30 June of years that follow by one year those years that are evenly divisible by three.

(e) Vacancies. -- An appointment to fill a vacancy shall be for the unexpired balance of the term.

(f) Oath of Office. -- Each member of the Commission, before assuming the duties of office, shall take an oath of office as provided in Chapter 11 of the General Statutes.

(g) Ethical Standards. --

(1) Disclosure statements. -- Any person under consideration for appointment to the Commission shall provide both a financial disclosure statement and a potential bias disclosure statement to the Governor. A financial disclosure statement shall include statements of the nominee's financial interests in and related to State fishery resources use, licenses issued by the Division of Marine Fisheries held by the nominee or any business in which the nominee has a financial interest, and uses made by the nominee or by any business in which the nominee has a financial interest of the regulated resources. A potential bias disclosure statement shall include a statement of the nominee's membership or other affiliation with, including offices held in societies, organizations, or advocacy groups pertaining to the management and use of the State's coastal fishery resources. Disclosure statements shall be treated as public records under Chapter 132 of the General Statutes and shall be updated on an annual basis.

(2) Voting/conflict of interest. -- A member of the Commission shall not vote on any issue before the Commission that would have a 'significant and predictable effect' on the member's financial

interest. For purposes of this subdivision, 'significant and predictable effect' means there is or may be a close causal link between the decision of the Commission and an expected disproportionate financial benefit to the member that is shared only by a minority of persons within the same industry sector or gear group. A member of the Commission shall also abstain from voting on any petition submitted by an advocacy group of which the member is an officer or sits as a member of the advocacy group's board of directors. A member of the Commission shall not use the member's official position as a member of the Commission to secure any special privilege or exemption of substantial value for any person. No member of the Commission shall, by the member's conduct, create an appearance that any person could improperly influence the member in the performance of the member's official duties.

(3) Regular attendance. -- It shall be the duty of each member of the Commission to regularly attend meetings of the Commission.

(h) Removal. -- The Governor may remove, as provided in G.S. 143-13, any member of the Commission for misfeasance, malfeasance, or nonfeasance.

(i) Office May Be Held Concurrently With Others. -- The office of member of the Marine Fisheries Commission may be held concurrently with any other elected or appointed office, as authorized by Article VI, Section 9, of the Constitution of North Carolina.

(j) Compensation. -- Members of the Commission who are State officers or employees shall receive no per diem compensation for serving on the Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Commission who are full-time salaried public officers or employees other than State officers or employees shall receive no per diem compensation for serving on the Commission, but shall be reimbursed for their expenses in accordance with G.S. 138-6 in the same manner as State officers or employees. All other Commission members shall receive per diem compensation and reimbursement in accordance with the compensation rate established in G.S. 93B-5.

(k) Staff. -- All clerical and other services required by the Commission shall be supplied by the Fisheries Director and the Department.

(l) Legal Services. -- The Attorney General shall: (i) act as attorney for the Commission; (ii) at the request of the Commission, initiate actions in the name of the Commission; and (iii) represent the Commission in any appeal or other review of any order of the Commission.

"§ 143B-289.25. Marine Fisheries Commission -- officers; organization; seal.

(a) The Governor shall appoint a member of the Commission to serve as Chair. The Chair shall serve at the pleasure of the Governor. The Commission shall elect one of its members to serve as Vice-Chair. The Vice-Chair shall serve a one-year term beginning 1 July and ending 30 June of the following year. The Vice-Chair may serve any number of consecutive terms.

(b) The Chair shall guide and coordinate the activities of the Commission in fulfilling its duties as set out in this Article. The Chair shall report to and advise the Governor and the Secretary on the activities of the Commission, on marine and estuarine conservation matters, and on all marine fisheries matters.

(c) The Commission shall determine its organization and procedure in accordance with the provisions of this Article. The provisions of the most recent edition of Robert's Rules of Order shall govern any procedural matter for which no other provision has been made.

(d) The Commission may adopt a common seal and may alter it as necessary.

"**§ 143B-289.26. Marine Fisheries Commission -- meetings; quorum.**

(a) The Commission shall meet at least once each calendar quarter and may hold additional meetings at any time and place within the State at the call of the Chair or upon the written request of at least four members. At least three of the four quarterly meetings of the Commission shall be held in one of the coastal regions designated in G.S. 143B-289.24.

(b) Five members of the Commission shall constitute a quorum for the transaction of business.

"**§ 143B-289.27. Marine Fisheries Commission Advisory Committees established; members; selection; duties.**

(a) The Commission shall be assisted in the performance of its duties by three standing advisory committees and four regional advisory committees. Each standing and regional advisory committee shall consist of no more than 11 members. The Chair of the Commission shall designate one member of each advisory committee to serve as Chair of the committee. Members shall serve staggered three-year terms as determined by the Commission. The Commission shall establish other policies and procedures for standing and regional advisory committees that are consistent with those governing the Commission as set out in this Part.

(b) The Chair of the Commission shall appoint the following standing advisory committees:

(1) The Habitat/Water Quality Committee, which shall be a technical committee comprised of scientists or other experts in fisheries biology, ecology, water quality, sociology, and economics.

(2) The Fisheries Assessment Committee, which shall be a technical committee comprised of scientists or other experts in fisheries biology, ecology, water quality, sociology, and economics.

(3) The Fisheries Resources/Users Committee, which shall be comprised of members of the fishing public, including the chairs of four regional committees.

(c) Each standing advisory committee shall review all matters referred to the committee by the Commission and shall make findings and recommendations on these matters. A standing advisory committee may, on its own motion, make findings and recommendations as to any matter related to its subject area. The Commission, in the performance of its duties, shall consider all findings and recommendations submitted by standing advisory committees.

(d) The Chair of the Commission shall appoint a regional advisory committee for each of the three coastal regions designated in G.S. 143B-289.24(b) and shall appoint a regional advisory committee for that part of the State that is not included in the three coastal regions. In making appointments to regional advisory committees, the Chair of the Commission shall ensure that both commercial and recreational fishing interests are fairly represented.

"§ 143B-289.28. Marine Fisheries Endowment Fund.

(a) Recognizing the inestimable importance to the State and its people of conserving the marine and estuarine resources of the State, and for the purpose of providing the opportunity for citizens and residents of the State to invest in the future of its marine and estuarine resources, there is created the North Carolina Marine Fisheries Endowment Fund, the income and principal of which shall be used only for the purpose of supporting marine and estuarine resource conservation programs of the State in accordance with this section.

(b) There is created the Board of Trustees of the Marine Fisheries Endowment Fund of the Marine Fisheries Commission, with full authority over the administration of the Marine Fisheries Endowment Fund, whose ex officio Chair, Vice-Chair, and members shall be the Chair, Vice-Chair, and members of the Marine Fisheries Commission. The State Treasurer shall be the custodian of the Marine Fisheries Endowment Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3.

(c) The assets of the Marine Fisheries Endowment Fund shall be derived from the following:

(1) The proceeds of any gifts, grants, and contributions to the State that are specifically designated for inclusion in the Fund.

(2) Any other sources specified by law.

(d) The Marine Fisheries Endowment Fund is declared to constitute a special trust derived from a contractual relationship between the State and the members of the public whose investments contribute to the Fund. In recognition of this special trust, the following limitations and restrictions are placed on expenditures from the Fund:

(1) Any limitations or restrictions specified by the donors on the uses of the income derived from the gifts, grants, and voluntary contributions shall be respected but shall not be binding.

(2) No expenditure or disbursement shall be made from the principal of the Marine Fisheries Endowment Fund except as otherwise provided by law.

(3) The income received and accruing from the investments of the Marine Fisheries Endowment Fund must be spent only to further the conservation of marine and estuarine resources.

(e) The Board of Trustees of the Marine Fisheries Endowment Fund may accumulate the investment income of the Fund until the income, in the sole judgment of the trustees, can provide a significant supplement to the budget for the conservation and management of marine and estuarine resources. After that time the

trustees, in their sole discretion and authority, may direct expenditures from the income of the Fund for the purposes set out in subdivision (3) of subsection (d) above.

(f) Expenditure of the income derived from the Marine Fisheries Endowment Fund shall be made through the State budget accounts of the Marine Fisheries Commission in accordance with the provisions of the Executive Budget Act. The Marine Fisheries Endowment Fund is subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

(g) The Marine Fisheries Endowment Fund and the income therefrom shall not take the place of State appropriations, but any portion of the income of the Marine Fisheries Endowment Fund available for the purpose set out in subdivision (3) of subsection (d) above shall be used to supplement other income of and appropriations for the conservation and management of marine and estuarine resources to the end that the Commission may improve and increase its services and become more useful to a greater number of people.

"§ 143B-289.29. Conservation Fund; Commission may accept gifts.

(a) The Marine Fisheries Commission may accept gifts, donations, or contributions from any sources. These funds shall be held in a separate account and used solely for the purposes of marine and estuarine conservation and management. These funds shall be administered by the Marine Fisheries Commission and shall be used for marine and estuarine resources management, including education about the importance of conservation, in a manner consistent with marine and estuarine conservation management principles.

(b) The Marine Fisheries Commission is hereby authorized to issue and sell appropriate emblems by which to identify recipients thereof as contributors to a special marine and estuarine resources Conservation Fund that shall be made available to the Marine Fisheries Commission for conservation, protection, enhancement, preservation, and perpetuation of marine and estuarine species that may be endangered or threatened with extinction and for education about these issues. The special Conservation Fund is subject to oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. Emblems of different sizes, shapes, types, or designs may be used to recognize contributions in different amounts, but no emblem shall be issued for a contribution amounting in value to less than five dollars ($5.00).

"§ 143B-289.30. Article subject to Chapter 113.

Nothing in this Article shall be construed to affect the jurisdictional division between the Marine Fisheries Commission and the Wildlife Resources Commission contained in Subchapter IV of Chapter 113 of the General Statutes or in any way to alter or abridge the powers and duties of the two agencies conferred in that Subchapter.

"§ 143B-289.31. Jurisdictional questions.

In the event of any question arising between the Wildlife Resources Commission and the Marine Fisheries Commission or between the Department of Environment, Health, and Natural Resources and the Marine Fisheries Commission as to any duty,

responsibility, or authority imposed upon any of these bodies by law or with respect to conflict involving rules or administrative practices, the question or conflict shall be resolved by the Governor, whose decision shall be binding."

PART III. COASTAL HABITAT PROTECTION PLANS; FISHERY MANAGEMENT PLANS

Section 3.1. Article 7 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-279.8. Coastal Habitat Protection Plans.**

(a) The Department shall coordinate the preparation of draft Coastal Habitat Protection Plans for critical fisheries habitats. The Department shall use the staff of those divisions within the Department that have jurisdiction over marine fisheries, water quality, and coastal area management in the preparation of the Coastal Habitat Protection Plans and shall request assistance from other federal and State agencies as necessary. The plans shall:

(1) Describe and classify biological systems in the habitats, including wetlands, fish spawning grounds, estuarine or aquatic endangered or threatened species, primary or secondary nursery areas, shellfish beds, submerged aquatic vegetation (SAV) beds, and habitats in outstanding resource waters.

(2) Evaluate the function, value to coastal fisheries, status, and trends of the habitats.

(3) Identify existing and potential threats to the habitats and the impact on coastal fishing.

(4) Recommend actions to protect and restore the habitats.

(b) Once a draft Coastal Habitat Protection Plan has been prepared, the chairs of the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall each appoint two members of the commission he or she chairs to a six-member review committee. The six-member review committee, in consultation with the Department, shall review the draft Plan and may revise the draft Plan on a consensus basis. The draft Plan, as revised by the six-member review committee, shall then be submitted to the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission, each of which shall independently consider the Plan for adoption. If any of the three commissions is unable to agree to any aspect of a Plan, the chair of each commission shall refer that aspect of the Plan to a six-member conference committee to facilitate the resolution of any differences. The six-member conference committee shall be appointed in the same manner as a six-member review committee and may include members of the six-member review committee that reviewed the Plan. Each final Coastal Habitat Protection Plan shall consist of those provisions adopted by all three commissions. The three commissions shall review and revise each Coastal Habitat Protection Plan at least once every five years.

(c) In carrying out their powers and duties, the Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall ensure, to the maximum extent practicable, that their actions are consistent with the Coastal Habitat Protection Plans as adopted by the three commissions. The obligation to act in a manner consistent with a Coastal Habitat Protection Plan is prospective only and does not oblige any commission to modify any rule adopted, permit decision made, or other action taken prior to the adoption or revision of the Coastal Habitat Protection Plan by the three commissions.

(d) If any of the three commissions concludes that another commission has taken an action that is inconsistent with a Coastal Habitat Protection Plan, that commission may request a written explanation of the action from the other commission. A commission shall provide a written explanation: (i) upon the written request of one of the other two commissions, or (ii) upon its own motion if the commission determines that it must take an action that is inconsistent with a Coastal Habitat Protection Plan.

(e) The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall report to the Joint Legislative Commission on Seafood and Aquaculture on progress in developing and implementing the Coastal Habitat Protection Plans, including the extent to which the actions of the three commissions are consistent with the Plans, on or before 1 September of each year."

Section 3.2. G.S. 143B-282(a)(1) is amended by adding a new sub-subdivision to read:

"v. To approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8."

Section 3.3. Part 1 of Article 7 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-106.1. Adoption of Coastal Habitat Protection Plans.**

The Commission shall approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8."

Section 3.4. Article 15 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-182.1. Fishery Management Plans.**

(a) The Department shall prepare proposed Fishery Management Plans for adoption by the Marine Fisheries Commission for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. Proposed Fishery Management Plans shall be developed in accordance with the Priority List, Schedule, and guidance criteria established by the Marine Fisheries Commission under G.S. 143B-289.22.

(b) The goal of the plans shall be to ensure the long-term viability of the State's commercially and recreationally significant species or fisheries. Each plan shall be designed to reflect fishing practices so that one plan may apply to a specific fishery, while other plans may be based on gear or geographic areas. Each plan shall:

(1) Contain necessary information pertaining to the fishery or fisheries, including management goals and objectives, status of relevant fish stocks, stock assessments for multiyear species, fishery habitat and water quality considerations consistent with Coastal Habitat Protection Plans adopted pursuant to G.S. 143B-279.8, social and economic impact of the fishery to the State, and user conflicts.

(2) Recommend management actions pertaining to the fishery or fisheries.

(c) To assist in the development of each Fishery Management Plan, the Chair of the Marine Fisheries Commission shall appoint an Advisory Council. Each Advisory Council shall be composed of commercial fishermen, recreational fishermen, and scientists, all with expertise in the fishery for which the Fishery Management Plan is being developed.

(d) Each Fishery Management Plan shall be revised at least once every three years. The Marine Fisheries Commission may revise the Priority List and guidance criteria whenever it determines that a revision of the Priority List or guidance criteria will facilitate or improve the development of Fishery Management Plans or is necessary to restore, conserve, or protect the marine and estuarine resources of the State. The Marine Fisheries Commission may not revise the Schedule for the development of a Fisheries Management Plan, once adopted, without the approval of the Secretary of Environment, Health, and Natural Resources.

(e) The Secretary of Environment, Health, and Natural Resources shall monitor progress in the development and adoption of Fishery Management Plans in relation to the Schedule for development and adoption of the plans established by the Marine Fisheries Commission. The Secretary of Environment, Health, and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture on progress in developing and implementing the Fishery Management Plans on or before 1 September of each year."

PART IV. MARINE FISHERIES LAW ENFORCEMENT

Section 4.1. G.S. 113-136(d1) reads as rewritten:

"(d1) In addition to law enforcement authority granted elsewhere, ~~a protector has~~ inspectors and protectors have the authority to enforce criminal laws under the following circumstances:

(1) When the inspector or protector has probable cause to believe that a person committed a criminal offense in his presence and at the time of the violation the inspector or protector is engaged in the enforcement of laws otherwise within his ~~jurisdiction; or~~ jurisdiction.

(2) When the inspector or protector is asked to provide temporary assistance by the head of a State or local law enforcement agency or his designee and the request is within the scope of the agency's subject matter jurisdiction.

While acting pursuant to this subsection, an inspector or a protector shall have the same powers invested in law enforcement officers by statute or common law. When acting pursuant to (2) of this subsection an inspector or a protector shall not be considered an officer, employee, or agent for the state or local law enforcement agency or designee asking for temporary assistance. Nothing in this subsection shall be construed to expand the authority of inspectors or protectors to initiate or conduct an independent investigation into violations of criminal laws outside the scope of their subject matter or territorial jurisdiction."

Section 4.2. G.S. 113-187 reads as rewritten:

"**§ 113-187. Penalties for violations of Subchapter and rules.**

(a) Any person who participates in a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in an operation in connection with which any vessel is used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

(b) Any owner of a vessel who knowingly permits it to be used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

(c) Any person in charge of a commercial fishing operation conducted in violation of any provision of this Subchapter and its implementing rules or in charge of any vessel used in violation of any provision of this Subchapter and its implementing rules is guilty of a ~~Class 1~~ Class A1 misdemeanor.

(d) Any person in charge of a commercial fishing operation conducted in violation of the following provisions of this Subchapter or the following rules of the Marine Fisheries Commission; and any person in charge of any vessel used in violation of the following provisions of the Subchapter or the following rules, shall be guilty of a ~~Class 2~~ Class A1 misdemeanor. The violations of the statute or the rules for which the penalty is mandatory are:

(1) Taking or attempting to take, possess, sell, or offer for sale any oysters, mussels, or clams taken from areas closed by statute, rule, or proclamation because of suspected pollution.

(2) Taking or attempting to take or have in possession aboard a vessel, shrimp taken by the use of a trawl net, in areas not opened to shrimping, pulled by a vessel not showing lights required by G.S. 75A-6 after sunset and before sunrise.

(3) Using a trawl net in any coastal fishing waters closed by proclamation or rule to trawl nets.

(4) Violating the provisions of a special permit or gear license issued by the Department.

(5) Using or attempting to use any trawl net, long haul seine, swipe net, mechanical methods for oyster or clam harvest or dredge in designated primary nursery areas."

Section 4.3. Article 15 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"**§ 113-190. Unlawful sale or purchase of fish; criminal and civil penalties.**

(a) Any person who sells fish in violation of G.S. 113-168.4 or a rule of the Marine Fisheries Commission to implement that section is guilty of a Class A1 misdemeanor.

(b) Any person who purchases fish in violation of G.S. 113-169.3 or a rule of the Marine Fisheries Commission to implement that section is guilty of a Class A1 misdemeanor.

(c) A civil penalty of not more than ten thousand dollars ($10,000) may be assessed by the Secretary against any person who sells fish in violation of G.S. 113-168.4 or purchases fish in violation of G.S. 113-169.3.

(d) In determining the amount of the penalty, the Secretary shall consider the factors set out in G.S. 143B-289.23(b). The procedures set out in G.S. 143B-289.23 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(e) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed pursuant to G.S. 150B-23 within 30 days of receipt of the notice of assessment.

(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless filed within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-289.23(c), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Marine Fisheries Commission appointed pursuant to G.S. 143B-289.23(c).

(g) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (e) of this section, or requests remission of the assessment in whole or in part as provided in subsection (f) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the superior court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Civil actions must be filed within three years of the date the final agency decision or court order was served on the violator."

Section 4.4. G.S. 113-221(e) reads as rewritten:

"(e) The Marine Fisheries Commission may delegate to the Fisheries Director the authority to issue proclamations suspending or implementing, in whole or in part,

particular rules of the Commission which may be affected by variable conditions. Such proclamations are to be issued by the Fisheries Director or by a person designated by the Fisheries Director. All proclamations must state the hour and date upon which they become effective and must be issued at least 48 hours in advance of the effective date and time. In those situations in which the proclamation prohibits the taking of certain fisheries resources for reasons of public health, the proclamation can be made effective immediately upon issuance. Notwithstanding any other provisions of this subsection, a proclamation can be issued at least 12 hours in advance of the effective date and time to reopen the taking of certain fisheries resources closed for reason of public health through a prior proclamation made effective immediately upon issuance. Persons violating any proclamation which is made effective immediately shall not be charged with a criminal offense during the time between the issuance and 48 hours after such issuance unless such person had actual notice of the issuance of such proclamation. Fisheries resources taken or possessed by any person in violation of any proclamation may be seized regardless of whether such person had actual notice of the proclamation. A permanent file of the text of all proclamations shall be maintained in the office of the Fisheries Director. Certified copies of proclamations are entitled to judicial notice in any civil or criminal proceeding.

The Fisheries Director must make every reasonable effort to give actual notice of the terms of any proclamation to the persons who may be affected thereby. ~~Such~~ Reasonable effort includes press releases to communications media, posting of notices at docks and other places where persons affected may gather, personal communication by inspectors and other agents of the Fisheries Director, and such other measures designed to reach the persons who may be affected. The Fisheries Director may determine, on a case-by-case basis and at the Fisheries Director's sole discretion, that a proclamation did not apply to an individual licensee when an act of God occurred that prevented the licensee from receiving notice of the proclamation."

Section 4.5. The Marine Fisheries Commission shall develop a Violation Points System applicable to the fishing licenses of all persons who violate marine fisheries statutes or rules. In developing this system, the Marine Fisheries Commission shall consider the recommendations made in the Final Report of the Moratorium Steering Committee and the suspension, revocation, and reissuance procedures under G.S. 113-166. The Marine Fisheries Commission shall also develop an implementation schedule for the Violation Points System. The Marine Fisheries Commission shall report to the Joint Legislative Commission on Seafood and Aquaculture no later than 1 July 1999, on the development of the Violation Points System and the implementation schedule.

PART V. COMMERCIAL FISHING LICENSES; TRANSITIONAL PROVISIONS

Section 5.1. Chapter 113 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 14A.

"Coastal and Estuarine Commercial Fishing Licenses.

"§ 113-168. Definitions.

As used in this Article:

(1) 'Commercial fishing operation' means any activity preparatory to, during, or subsequent to the taking of any fish, the taking of which is subject to regulation by the Commission, either with the use of commercial fishing equipment or gear, or by any means if the purpose of the taking is to obtain fish for sale. Commercial fishing operation includes taking people fishing for hire.

(2) 'Commission' means the Marine Fisheries Commission.

(3) 'Division' means the Division of Marine Fisheries in the Department of Environment, Health, and Natural Resources.

(4) 'License year' means the period beginning 1 July of a year and ending on 30 June of the following year.

(5) 'North Carolina resident' means a person is a resident within the meaning of G.S. 113-130(4) and who filed a State income tax return as a resident of the State for the previous calendar or tax year.

(6) 'RCGL' means Recreational Commercial Gear License.

(7) 'RSCFL' means Retired Standard Commercial Fishing License.

(8) 'SCFL' means Standard Commercial Fishing License.

"§ 113-168.1. General provisions for commercial licenses and endorsements.

(a) Duration, Fees. -- All licenses and endorsements issued under this Article expire on the last day of the license year. An applicant for any license shall pay the full annual license fee at the time the applicant applies for the license regardless of when application is made.

(b) Licenses Required to Engage in Commercial Fishing. -- It is unlawful for any person to engage in a commercial fishing operation without having first obtained a license as required by this Article. It is unlawful for anyone to command a vessel engaged in a commercial fishing operation without complying with the provisions of this Article and rules adopted by the Commission under this Article.

(c) Licenses and Endorsements Available for Inspection. -- It is unlawful for any person to engage in a commercial fishing operation in the State without having ready at hand for inspection all currently valid licenses and endorsements required under this Article. To comply with this subsection, a person must have either a currently valid (i) license issued in the person's true name and bearing the person's current address or (ii) an assignment of a SCFL authorized under this Article. A licensee or assignee shall not refuse to exhibit the licenses and endorsements upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(d) No Dual Residency. -- It is unlawful for any person to hold any currently valid license issued under this Article to the person as a North Carolina resident if that person holds any currently valid license issued by another state to the person as a resident of that state.

(e) License Format. -- Licenses issued under this Article shall be issued in the name of the applicant. Each license shall show the type of license and any endorsements; the name, address, and date of birth of the licensee; the date on which the license is issued; the date on which the license expires; and any other information that the Commission or the Division determines to be necessary to accomplish the purposes of this Subchapter.

"§ 113-168.2. Standard Commercial Fishing License.

(a) Requirement. -- No person shall harvest, land, and sell fish from the coastal fishing waters of this State without having first obtained a Standard Commercial Fishing License issued by the Division.

(b) Purchase; Renewal. -- A person may purchase a SCFL at any office of the Division. The SCFL and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's Morehead City office. Any person who is issued a SCFL or a RSCFL is eligible to renew the SCFL or RSCFL and any endorsements if the SCFL or RSCFL has not been suspended or revoked.

(c) Replacement License. -- A licensee may obtain a replacement license for a lost or destroyed license, including all endorsements, upon receipt of a proper application in the offices of the Division together with a ten-dollar ($10.00) fee. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received. The Commission may provide by rule for the replacement of lost, obliterated, destroyed, or otherwise illegible license plates or decals upon tender of the original license receipt or upon other evidence that the Commission deems sufficient.

(d) Nonresident Certification Required. -- Persons obtaining licenses who are not North Carolina residents shall certify that their conviction record in their state of residence is such that they would not be denied a license under the standards in G.S. 113-171. When a license application is denied for violations of fisheries laws, whether the violations occurred in North Carolina or another jurisdiction, the license fees shall not be refunded and shall be applied to the costs of processing the application.

(e) Fees. -- The annual SCFL fee for a North Carolina resident shall be two hundred dollars ($200.00). The annual SCFL fee for a person who is not a resident of North Carolina shall be two thousand dollars ($2,000) or the amount charged to a North Carolina resident in the nonresident's state, whichever is lesser.

(f) Assignment. -- The holder of a SCFL may assign the SCFL to any individual, provided that the individual has not been issued a SCFL or RSCFL that has been suspended or revoked. If the SCFL is endorsed for one or more vessels, each vessel endorsement may be assigned, independently of the SCFL, to another holder of a SCFL. An assignment of a SCFL vessel endorsement shall be valid only for use by a holder or assignee of a SCFL in the operation of the vessel for which the SCFL is endorsed. The assignment shall be in writing on a form provided by the Division and

shall include the name of the licensee, the license number, any endorsements, the assignee's name and mailing address, and the duration of the assignment. A notarized copy of the assignment shall be filed with the Division. The assignee shall carry the assignment on the assignee's person and have the assignment available for inspection at all times while using the vessel. The assignment may be revoked by: (i) written notification by the assignor that the assignment has been terminated; or (ii) a determination by the Division that the assignee is operating in violation of the terms and conditions applicable to the assignment.

(g) Transferability. -- A SCFL may be transferred:

(1) By the license holder to a member of the license holder's immediate family.

(2) By the State to a surviving family member of the license holder upon the death of the license holder.

(3) By a surviving family member to whom a license was transferred pursuant to subdivision (2) of this subsection to a third-party purchaser of the license holder's fishing vessel upon the death of the license holder.

(4) By the license holder to a third-party purchaser of the license holder's fishing vessel upon retirement of the license holder from commercial fishing.

(5) Under any other circumstance authorized by rule of the Commission.

(h) Identification as Commercial Fisherman. -- The receipt of a current and valid SCFL, RSCFL, or shellfish license issued by the Division shall serve as proper identification of the licensee as a commercial fisherman.

(i) Record-Keeping Requirements. -- The fish dealer shall record each transaction at the time and place of landing on a form provided by the Division. The transaction form shall include the information on the SCFL, RSCFL, or shellfish license, the quantity of the fish, the identity of the fish dealer, and other information as the Division deems necessary to accomplish the purposes of this Subchapter. The person who records the transaction shall provide a completed copy of the transaction form to the Division and to the other party of the transaction. The Division's copy of each transaction form shall be transmitted to the Division by the fish dealer on or before the tenth day of the month following the transaction.

"§ 113-168.3. Retired Standard Commercial Fishing License.

(a) SCFL Provisions Applicable. -- Except as provided below, the provisions set forth in G.S. 113-168.2 concerning the SCFL shall apply to the RSCFL.

(b) Eligibility; Fee. -- Any person who is 65 years of age or older and who is otherwise eligible for a SCFL under G.S. 113-168.2 may purchase a RSCFL for an annual fee of one hundred dollars ($100.00). Proof of age shall be supplied at the time the application is made.

(c) Transferability. -- The holder of a RSCFL may transfer the RSCFL as provided in G.S. 113-168.2 or, upon retirement from commercial fishing, to a third-party purchaser of the RSCFL holder's fishing vessel. If the third-party

purchaser is less than 65 years of age, that purchaser shall pay the fee for the SCFL set forth in G.S. 113-168.2.

(d) Assignability. -- The RSCFL shall not be assignable.

"§ 113-168.4. Regulations concerning the sale of fish.

(a) Except as otherwise provided in this section, it is unlawful for any person who takes or lands any species of fish under the authority of the Commission from coastal fishing waters by any means whatever, including mariculture operations, to sell, offer for sale, barter or exchange for merchandise these fish, without having first procured a current and valid SCFL or RSCFL issued under G.S. 113-168.2 or G.S. 113-168.3, or a valid shellfish license issued under G.S. 113-169.2. It is unlawful for fish dealers to buy fish unless the seller presents a current and valid SCFL, RSCFL, or shellfish license at the time of the transaction. Any subsequent sale of fish shall be subject to the licensing requirements of fish dealers under G.S. 113-169.3.

(b) It is unlawful for any person licensed under this section to sell fish taken outside the territorial waters of the State or to sell fish taken from coastal fishing waters except to:

(1) Fish dealers licensed under G.S. 113-169.3; or

(2) The public, if the seller is also licensed as a fish dealer under G.S. 113-169.3.

(c) A person who organizes a nonprofit recreational fishing tournament may sell fish taken in connection with the tournament pursuant to a recreational fishing tournament license to sell fish. A person who organizes a nonprofit recreational fishing tournament may obtain a recreational fishing tournament license to sell fish upon application to the Division and payment of a fee of one hundred dollars ($100.00). A recreational fishing tournament is an organized fishing competition occurring within a specified time period not to exceed one week and that is not a commercial fishing operation. Proceeds derived from the sale of fish may be used only for charitable purposes.

"§ 113-168.5. License endorsements for Standard Commercial Fishing License and Retired Standard Commercial Fishing License.

(a) A SCFL, RSCFL, or shellfish license may be endorsed to authorize:

(1) The use of a vessel in a commercial fishing operation.

(2) Taking and selling menhaden.

(3) Taking and selling shellfish by a North Carolina resident.

(b) Vessel Endorsements. --

(1) As used in this subsection, a North Carolina vessel is a vessel that has its primary situs in the State. A vessel that is titled under Article 4 of Chapter 75A of the General Statutes has its primary situs in the State.

(2) It is unlawful to use a vessel in a commercial fishing operation in the coastal fishing waters of the State without obtaining a vessel endorsement of a SCFL, RSCFL, or shellfish license. It is unlawful for a North Carolina vessel to land fish in the State that are taken during a commercial fishing operation outside the coastal

fishing waters of the State without obtaining a vessel endorsement of a SCFL, RSCFL, or shellfish license. No endorsement is required, however, for a vessel of any length that does not have a motor if the vessel is used only in connection with another vessel for which a SCFL, RSCFL, or shellfish license has been properly endorsed.

(3) The fee for a vessel endorsement shall be determined by the length of the vessel and shall be in addition to the fee for a SCFL, RSCFL, or shellfish license. The length of a vessel shall be determined by measuring the distance between the ends of the vessel along the deck and through the cabin, excluding the sheer. The fee for a vessel endorsement is:

a. One dollar ($1.00) per foot for a vessel not over 18 feet in length.

b. One dollar and fifty cents ($1.50) per foot for a vessel over 18 feet but not over 38 feet in length.

c. Three dollars ($3.00) per foot for a vessel over 38 feet but not over 50 feet in length.

d. Six dollars ($6.00) per foot for a vessel over 50 feet in length.

(4) A vessel endorsement may be assigned as provided in G.S. 113-168.2(f).

(5) When the owner of a vessel for which a SCFL, RSCFL, or shellfish license has been endorsed transfers ownership of the vessel to a holder of a SCFL, RSCFL, or shellfish license, the vessel endorsement may be transferred from the former owner's SCFL, RSCFL, or shellfish license to the new owner's SCFL, RSCFL, or shellfish license upon the request of the new owner. The new owner of the vessel shall notify the Division of the change in ownership and request that the vessel endorsement be transferred within 30 days of the date on which the transfer of ownership occurred. The notification of a change in the ownership of a vessel and request that the vessel endorsement be transferred shall be made on a form provided by the Division and shall be accompanied by satisfactory proof of the transfer of vessel ownership. Transfer of vessel ownership may be proven by a notarized copy of: (i) the bill of sale; (ii) a temporary vessel registration; or (iii) a vessel documentation transfer.

(c) Menhaden Endorsements. -- Except as provided in G.S. 113-169, it is unlawful to use a vessel to take menhaden by purse seine in the coastal fishing waters of the State, to land menhaden in the State, or to sell menhaden from a vessel in the State without obtaining a menhaden endorsement of a SCFL or RSCFL. The fee for a menhaden endorsement shall be two dollars ($2.00) per ton, based on gross tonnage as determined by the custom house measurement for the mother ship. The

menhaden endorsement shall be required for the mother ship but no separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden endorsement must state the name of the person in command of the vessel. Upon a change in command of a menhaden vessel, the owner must notify the Division in writing within 30 days.

(d) Shellfish Endorsement for North Carolina Residents. -- The Commission shall issue a shellfish endorsement of a SCFL or RSCFL to a North Carolina resident at no charge.

"§ 113-169. Menhaden license for nonresidents not eligible for a SCFL.

A person who is not a resident of North Carolina, who is not eligible for a SCFL under this Article, and who only seeks to engage in menhaden fishing shall be eligible to purchase a menhaden license for nonresidents. The fee for vessels engaged in menhaden fishing shall be two dollars ($2.00) per ton, gross tonnage, customhouse measurements for the mother ship. The menhaden license shall be required for the mother ship to harvest, land, or sell menhaden in North Carolina taken by purse seine. No separate endorsement shall be required for a purse boat carrying a purse seine. The application for a menhaden license must state the name of the person in command of the vessel. Upon change in command of a menhaden vessel, the owner must notify the Division within 30 days.

"§ 113-169.1. Other commercial licenses and permits authorized by the Commission.

The Commission may adopt rules to establish licenses or permits as set forth in this section. Licenses or permits shall be issued upon the payment of fees as prescribed by the Commission in its duly adopted rules at a rate to be established by the Commission. The fee rate for licenses or permits authorized under this section shall, at a minimum, be adequate to compensate the Division for the actual and administrative cost associated with the conservation and management of the fishery.

(1) Crew licenses. -- The Commission may adopt rules to establish an individual crew license for persons working on commercial vessels at a rate not to exceed one hundred dollars ($100.00) per license.

(2) Permits. -- The Commission may adopt rules to establish permits for gear, equipment, and specialized activities at a rate not to exceed fifty dollars ($50.00) per permit. The Commission may require permits for commercial fishing operations that do not involve the use of a vessel. The Commission may require that a person obtain a special permit prior to transplanting oysters or clams.

"§ 113-169.2. Shellfish license for North Carolina residents without a SCFL.

(a) License or Endorsement Necessary to Harvest or Sell Shellfish. -- It is unlawful for an individual to take shellfish from the public grounds of the State by mechanical means or for commercial use by any means without having first procured either a SCFL with a shellfish endorsement or an individual shellfish license. A North Carolina resident who seeks only to harvest and sell shellfish shall be eligible to purchase a shellfish license without having first obtained a SCFL. The license includes the privilege to sell shellfish to a licensed fish dealer.

(b) Purchase; Renewal. -- A person may purchase a shellfish license at any office of the Division. The shellfish license and endorsements may be renewed by mail by forwarding a completed application, including applicable fees, to the Division's Morehead City Office. Any person who is issued a shellfish license is eligible to renew the shellfish license and any endorsements if the shellfish license has not been suspended or revoked.

(c) Fees. -- Shellfish licenses shall be issued annually upon payment of a fee of twenty-five dollars ($25.00) upon proof that the license applicant is a North Carolina resident: Provided, that persons under 16 years of age are exempt from the license requirements of this section if accompanied by a parent or guardian who is in compliance with the requirements of this section or if in possession of a parent's or guardian's shellfish license.

(d) License Available for Inspection. -- It is unlawful for any individual to take shellfish for commercial use from the public grounds of the State without having ready at hand for inspection a current and valid shellfish license issued to the licensee personally and bearing the licensee's correct name and address. It is unlawful for any individual taking or possessing freshly taken shellfish to refuse to exhibit the individual's license upon the request of an officer authorized to enforce the fishing laws.

(e) Vessel Endorsement Required. -- A license holder under this section shall be required to purchase a vessel endorsement under G.S. 113-168.5 if a vessel is used in the harvest or sale of shellfish.

(f) Name or Address Change. -- In the event of a change in name or address or upon receipt of an erroneous shellfish license, the licensee shall, within 30 days, apply for a replacement shellfish license bearing the correct name and address. Upon a showing by the individual that the name or address change occurred within the past 30 days, the trial court or prosecutor shall dismiss any charges brought pursuant to this subsection.

(g) Transferability Not Allowed. -- It is unlawful for an individual issued a shellfish license to transfer or offer to transfer the license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure a shellfish license from a source not authorized by the Commission.

(h) Limitation on Taking Shellfish Without a License. --

(1) A person who is not required to obtain a shellfish license under subsection (a) of this section shall not take more than:
   a. One bushel of oysters per day.
   b. One-half bushel of scallops per day.
   c. One hundred clams per day.

(2) Two or more persons who are not required to obtain a shellfish license under subsection (a) of this section and who are using a vessel to take shellfish shall not take more than:
   a. Two bushels of oysters per day.
   b. One bushel of scallops per day.
   c. Two hundred clams per day.

"§ 113-169.3. Licenses for fish dealers.

(a) Eligibility. -- A fish dealer license shall be issued to a North Carolina resident upon receipt of a proper application in the Morehead City Office of the Division together with all license fees including the total number of dealer categories set forth in this section. The license shall be issued in the name of the applicant and shall include all dealer categories on the license.

(b) Application for License. -- Applications shall not be accepted from persons ineligible to hold a license issued by the Division, including any applicant whose license is suspended or revoked on the date of the application. The applicant shall be provided with a copy of the application marked received. The copy shall serve as the fish dealer's license until the license issued by the Division is received, or the Division determines that the applicant is ineligible to hold a license. Where an applicant does not have an established location for transacting the fisheries business within the State, the license application shall be denied unless the applicant satisfies the Secretary that his residence, or some other office or address within the State, is a suitable substitute for an established location and that records kept in connection with licensing, sale, and purchase requirements will be available for inspection when necessary. Fish dealers' licenses are issued on a fiscal year basis upon payment of a fee as set forth herein upon proof, satisfactory to the Secretary, that the license applicant is a North Carolina resident.

(c) License Requirement. -- Except as otherwise provided in this section, it is unlawful for any person not licensed pursuant to this article:

(1) To buy fish for resale from any person involved in a commercial fishing operation that takes any species of fish from coastal fishing waters. For purposes of this subdivision, a retailer who purchases fish from a fish dealer shall not be liable if the fish dealer has not complied with the licensing requirements of this section;

(2) To sell fish to the public; or

(3) To sell to the public any species of fish under the authority of the Commission taken from coastal fishing waters.

Any person subject to the licensing requirements of this section is a fish dealer. Any person subject to the licensing requirements of this section shall obtain a separate license for each physical location conducting activities required to be licensed under this section.

(d) Exceptions to License Requirements. -- The Commission may adopt rules to implement this subsection including rules to clarify the status of the listed classes of exempted persons, require submission of statistical data, and require that records be kept in order to establish compliance with this section. Any person not licensed pursuant to this section is exempt from the licensing requirements of this section if all fish handled within any particular licensing category meet one or more of the following requirements:

(1) The fish are sold by persons whose dealings in fish are primarily educational, scientific, or official, and who have been issued a permit by the Division that authorizes the educational, scientific, or

official agency to sell fish harvested or processed in connection with research or demonstration projects;

(2) The fish are sold by individual employees of fish dealers when transacting the business of their duly licensed employer;

(3) The fish are shipped to a person by a dealer from without the State;

(4) The fish are of a kind the sale of which is regulated exclusively by the Wildlife Resources Commission; or

(5) The fish are purchased from a licensed dealer.

(e) Application Fee for New Fish Dealers. -- An applicant for a new fish dealer license shall pay a nonrefundable application fee of fifty dollars ($50.00) in addition to the license category fees set forth in this section.

(f) License Category Fees. -- Every fish dealer subject to licensing requirements shall secure an annual license at each established location for each of the following activities transacted there, upon payment of the fee set out:

(1) Dealing in oysters: $50.00;

(2) Dealing in scallops: $50.00;

(3) Dealing in clams: $50.00;

(4) Dealing in hard or soft crabs: $50.00;

(5) Dealing in shrimp, including bait: $50.00;

(6) Dealing in finfish, including bait: $50.00;

(7) Operating menhaden or other fish-dehydrating or oil-extracting processing plants: $50.00; or

(8) Consolidated license (all categories): $300.00.

Any person subject to fish dealer licensing requirements who deals in fish not included in the above categories shall secure a finfish dealer license. The Commission may adopt rules implementing and clarifying the dealer categories of this subsection. Bait operations shall be licensed under either the finfish or shrimp dealer license categories.

(g) License Format. -- The format of the license shall include the name of the licensee, date of birth, name and physical address of each business location, expiration date of the license, and any other information the Division deems necessary to accomplish the purposes of this Subchapter.

(h) Application for Replacement License. -- A replacement license shall only be obtained from an office of the Division. The Division shall not accept an application for a replacement license unless the Division determines that the applicant's current license has not been suspended or revoked. A copy of an application duly filed with the Division shall serve as the license until the replacement license has been received.

(i) Purchase and Sale of Fish. -- It is unlawful for a fish dealer to buy fish unless the seller possesses a current and valid SCFL, RSCFL, shellfish license, menhaden license for nonresidents, or a special fisheries sale permit issued under G.S. 113-168.4(c), and the dealer records the transaction consistent with the record-keeping requirements of G.S. 113-168.2(i). It is unlawful for any person to

purchase, possess, or sell fish taken from coastal fishing waters in violation of this Subchapter or the rules adopted by the Commission implementing this Subchapter.

(j) License Nontransferable. -- Any fish dealer license issued under this section is nontransferable. It is unlawful to use a fish dealer license issued to another person in the sale or attempted sale of fish or for a licensee to lend or transfer a fish dealer license for the purpose of circumventing the requirements of this section.

"§ 113-169.4. Licensing of ocean fishing piers; fees.

(a) Every manager of an ocean fishing pier within the coastal fishing waters who charges the public a fee to fish in any manner from the pier shall secure a current and valid pier license from the Division. An application for a pier license shall disclose the names of all parties involved in the pier operations, including the owner of the property, owner of the pier if different, and all leasehold or other corporate arrangements, and all persons with a substantial financial interest in the pier.

(b) Within 30 days following a change of ownership of a pier, or a change as to the manager, the manager or new manager shall secure a replacement pier license from the Division. The replacement license is issued without charge.

(c) Pier licenses are issued upon payment of fifty cents (50¢) per linear foot, to the nearest foot, that the pier extends into coastal fishing waters beyond the mean high tide line. The length of the pier shall be measured to include all extensions of the pier.

(d) The manager who secures the pier license shall be the individual with the duty of executive-level supervision of pier operations.

"§ 113-169.5. Land or sell license; vessels fishing beyond territorial waters.

(a) Persons aboard vessels not having their primary situs in the State that are carrying a cargo of fish taken outside the waters of the State may land or sell their catch in the State by purchasing a land or sell license as set forth in this section with respect to the vessel in question. The Commission may by rule modify the land or sell licensing procedure in order to devise an efficient and convenient procedure for licensing out-of-state vessels to only land, or after landing to permit sale of cargo.

(b) The fee for a land or sell license for a vessel owned by a person who is not a North Carolina resident is two hundred dollars ($200.00), or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater. Persons aboard vessels having a primary situs in a jurisdiction that would allow North Carolina vessels without restriction to land or sell their catch, taken outside the jurisdiction, may land or sell their catch in the State without complying with this section if the persons are in possession of a valid license from their state of residence.

"§ 113-170. Exportation and importation of fish and equipment.

The Commission may adopt rules governing the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of the State. These rules may regulate, license, prohibit, or restrict importation into the State and exportation from the State of any and all species of fish that are native to coastal fishing waters or may thrive if introduced into these waters.

"§ 113-170.1. Nonresidents reciprocal agreements.

Persons who are not North Carolina residents are not entitled to obtain licenses under the provisions of this Article except as provided in this section. Residents of jurisdictions that sell commercial fishing licenses to North Carolina residents are entitled to North Carolina commercial fishing licenses under the provisions of G.S. 113-168.2. Licenses may be restricted in terms of area, gear, and fishery by the Commission so that the nonresidents are licensed to engage in North Carolina fisheries on the same or similar terms that North Carolina residents can be licensed to engage in the fisheries of other jurisdictions. The Secretary may enter into reciprocal agreements with other jurisdictions as necessary to allow nonresidents to obtain commercial fishing licenses in the State subject to the foregoing provisions.

"§ 113-170.2. Fraud or deception as to licenses, permits, or records.

(a) It is unlawful for any person to give any false information or willfully to omit giving required information to the Division or any license agent when the information is material to the securing of any license or permit under this Article. It is unlawful to falsify, fraudulently alter, or counterfeit any license, permit, identification, or record to which this Article applies or otherwise practice any fraud or deception designed to evade the provisions of this Article or reasonable administrative directives made under the authority of this Article.

(b) A violation of this section is punishable by a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00).

"§ 113-170.3. Record-keeping requirements.

(a) The Commission may require all licensees under this Article to keep and to exhibit upon the request of an authorized agent of the Department records and accounts as may be necessary to the equitable and efficient administration and enforcement of this Article. In addition, licensees may be required to keep additional information of a statistical nature or relating to location of catch as may be needed to determine conservation policy. Records and accounts required to be kept must be preserved for inspection for not less than three years.

(b) It is unlawful for any licensee to refuse or to neglect without justifiable excuse to keep records and accounts as may be reasonably required. The Department may distribute forms to licensees to aid in securing compliance with its requirements, or it may inform licensees of requirements in other effective ways such as distributing memoranda and sending agents of the Department to consult with licensees who have been remiss. Detailed forms or descriptions of records, accounts, collection and inspection procedures, and the like that reasonably implement the objectives of this Article need not be embodied in rules of the Commission in order to be validly required.

(c) The following records collected and compiled by the Department shall not be considered public records within the meaning of Chapter 132 of the General Statutes, but shall be confidential and shall be used only for the equitable and efficient administration and enforcement of this Article or for determining conservation policy, and shall not be disclosed except when required by the order of a court of competent jurisdiction: all records, accounts, and reports that licensees are required by the Commission to make, keep, and exhibit pursuant to the provisions of this

section, and all records, accounts, and memoranda compiled by the Department from records, accounts, and reports of licensees and from investigations and inspections, containing data and information concerning the business and operations of licensees reflecting their assets, liabilities, inventories, revenues, and profits; the number, capacity, capability, and type of fishing vessels owned and operated; the type and quantity of fishing gear used; the catch of fish or other seafood by species in numbers, size, weight, quality, and value; the areas in which fishing was engaged in; the location of catch; the time of fishing, number of hauls, and the disposition of the fish and other seafood. The Department may compile statistical information in any aggregate or summary form that does not directly or indirectly disclose the identity of any licensee who is a source of the information, and any compilation of statistical information by the Department shall be a public record open to inspection and examination by any person, and may be disseminated to the public by the Department.

"§ 113-170.4. Rules as to possession, transportation, and disposition of fisheries resources.

The Commission may adopt rules governing possession, transportation, and disposition of fisheries resources by all persons, including those not subject to fish dealer licensing requirements, in order that inspectors may adequately distinguish regulated coastal fisheries resources from those not so regulated and enforce the provisions of this Article equitably and efficiently. These rules may include requirements as to giving notice, filing declarations, securing permits, marking packages, and the like.

"§ 113-170.5. Violations with respect to coastal fisheries resources.

It is unlawful to take, possess, transport, process, sell, buy, or in any way deal in coastal fisheries resources without conforming with the provisions of this Article or of rules adopted under the authority of this Article.

"§ 113-171. Suspension, revocation, and reissuance of licenses.

(a) Upon receipt of reliable notice that a person licensed under this Article has had imposed against the person a conviction of a criminal offense within the jurisdiction of the Department under the provisions of this Subchapter or of rules of the Commission adopted under the authority of this Subchapter, the Secretary must suspend or revoke all licenses held by the person in accordance with the terms of this section. Reliable notice includes information furnished the Secretary in prosecution or other reports from inspectors. As used in this section, a conviction includes a plea of guilty or nolo contendere, any other termination of a criminal prosecution unfavorably to the defendant after jeopardy has attached, or any substitute for criminal prosecution whereby the defendant expressly or impliedly confesses the defendant's guilt. In particular, procedures whereby bond forfeitures are accepted in lieu of proceeding to trial and cases indefinitely continued upon arrest of judgment or prayer for judgment continued are deemed convictions. The Secretary may act to suspend or revoke licenses upon the basis of any conviction in which:

(1) No notice of appeal has been given;

(2) The time for appeal has expired without an appeal having been perfected; or

(3) The conviction is sustained on appeal. Where there is a new trial, finality of any subsequent conviction will be determined in the manner set out above.

(b) The Secretary must initiate an administrative procedure designed to give the Secretary systematic notice of all convictions of criminal offenses by licensees covered by subsection (a) of this section above and keep a file of all convictions reported. Upon receipt of notice of conviction, the Secretary must determine whether it is a first, a second, a third, or a fourth or subsequent conviction of some offense covered by subsection (a). In the case of second convictions, the Secretary must suspend all licenses issued to the licensee for a period of 10 days. In the case of third convictions, the Secretary must suspend all licenses issued to the licensee for a period of 30 days. In the case of fourth or subsequent convictions, the Secretary must revoke all licenses issued to the licensee. Where several convictions result from a single transaction or occurrence, they are to be treated as a single conviction so far as suspension or revocation of the licenses of any licensee is concerned. Anyone convicted of taking or of knowingly possessing, transporting, buying, selling, or offering to buy or sell oysters or clams from areas closed because of suspected pollution will be deemed by the Secretary to have been convicted of two separate offenses on different occasions for license suspension or revocation purposes.

(c) Where a license has been suspended or revoked, the former licensee is not eligible to apply for reissuance of license or for any additional license authorized in this Article during the suspension or revocation period. Licenses must be returned to the licensee by the Secretary or the Secretary's agents at the end of a period of suspension. Where there has been a revocation, application for reissuance of license or for an additional license may not be made until six months following the date of revocation. In such case of revocation, the eligible former licensee must satisfy the Secretary that the licensee will strive in the future to conduct the operations for which the license is sought in accord with all applicable laws and rules. Upon the application of an eligible former licensee after revocation, the Secretary, in the Secretary's discretion, may issue one license sought but not another, as deemed necessary to prevent the hazard of recurring violations of the law.

(d) Upon receiving reliable information of a licensee's conviction of a second or subsequent criminal offense covered by subsection (a) of this section, the Secretary shall promptly cause the licensee to be personally served with written notice of suspension or revocation, as the case may be. The written notice may be served upon any responsible individual affiliated with the corporation, partnership, or association where the licensee is not an individual. The notice of suspension or revocation may be served by an inspector or other agent of the Department, must state the ground upon which it is based, and takes effect immediately upon personal service. The agent of the Secretary making service shall then or subsequently, as may be feasible under the circumstances, collect all license certificates and plates and other forms or

records relating to the license as directed by the Secretary. It is unlawful for any licensee willfully to evade the personal service prescribed in this subsection.

(e) A licensee served with a notice of suspension or revocation may obtain an administrative review of the suspension or revocation by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice. The only issue in the hearing shall be whether the licensee was convicted of a criminal offense for which a license must be suspended or revoked. A license remains suspended or revoked pending the final decision by the Secretary.

(f) If the Secretary refuses to reissue the license of or issue an additional license to an applicant whose license was revoked, the applicant may contest the decision by filing a petition for a contested case under G.S. 150B-23 within 20 days after the Secretary makes the decision. The Commission shall make the final agency decision in a contested case under this subsection. An applicant whose license is denied under this subsection may not reapply for the same license for at least six months.

(g) The Commission may adopt rules to provide for the disclosure of the identity of any individual or individuals in responsible positions of control respecting operations of any licensee that is not an individual. For the purposes of this section, individuals in responsible positions of control are deemed to be individual licensees and subject to suspension and revocation requirements in regard to any applications for license they may make -- either as individuals or as persons in responsible positions of control in any corporation, partnership, or association. In the case of individual licensees, the individual applying for a license or licensed under this Article must be the real party in interest.

(h) In determining whether a conviction is a second or subsequent offense under the provisions of this section, the Secretary may not consider convictions for:

(1) Offenses that occurred three years prior to the effective date of this Article; or

(2) Offenses that occurred more than three years prior to the time of the latest offense the conviction for which is in issue as a subsequent conviction.

"**§ 113-171.1. Use of spotter planes in commercial fishing operations regulated.**

(a) Spotter Plane Defined. -- A 'spotter plane' is an aircraft used for aerial identification of the location of fish in coastal fishing waters so that a vessel may be directed to the fish.

(b) License. -- Before an aircraft is used as a spotter plane in a commercial fishing operation, the owner or operator of the aircraft must obtain a license for the aircraft from the Commission. The fee for a license for a spotter plane is one hundred dollars ($100.00). An applicant for a license for a spotter plane shall include in the application the identity, either by boat or by company, of the specific commercial fishing operations in which the spotter plane will be used during the license year. If, during the course of the license year, the aircraft is used as a spotter plane in a commercial fishing operation that is not identified in the original license application, the owner or operator of the aircraft shall amend the license application to add the identity of the additional commercial fishing operation.

(c) Unlawful Activity. -- It shall be unlawful to:

(1) Use a spotter plane directed at food fish, except in connection with a purse seine operation authorized by a rule of the Commission.

(2) Use or permit the use of an unlicensed spotter plane or a licensed spotter plane whose license application does not identify the specific commercial fishing operation involved.

(3) Participate knowingly in a commercial fishing operation that uses an unlicensed spotter plane or a licensed spotter plane whose license application does not identify the specific commercial fishing operation involved.

(d) Violation a Misdemeanor. -- A violation of subsection (c) of this section is a Class 1 misdemeanor.

"§ 113-172. License agents.

(a) The Secretary shall designate license agents for the Department. At least one license agent shall be designated for each county that contains or borders on coastal fishing waters. The Secretary may designate additional license agents in any county if the Secretary determines that additional agents are needed to provide efficient service to the public. The Division and license agents designated by the Secretary under this section shall issue all licenses authorized under this Article in accordance with this Article and the rules of the Commission. The Secretary shall require license agents to enter into a contract that provides for their duties and compensation, post a bond, and submit to reasonable inspections and audits. If a license agent violates any provision of this Article, the rules of the Commission, or the terms of the contract, the Secretary may initiate proceedings for the forfeiture of the license agent's bond and may summarily suspend, revoke, or refuse to renew a designation as a license agent and may impound or require the return of all licenses, moneys, record books, reports, license forms and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency. The Secretary shall report evidence or misuse of State property, including license fees, by a license agent to the State Bureau of Investigation as provided by G.S. 114-15.1.

(b) License agents shall be compensated by adding a surcharge of one dollar ($1.00) to each license sold and retaining the surcharge. If more than one license is listed on a consolidated license form, the license agent shall be compensated as if a single license were sold. It is unlawful for a license agent to add more than the surcharge authorized by this section to the fee for each license sold.

"§ 113-173. Recreational Commercial Gear License.

(a) License Required. -- Except as provided in subsection (k) of this section, it is unlawful for any person to take or attempt to take fish for recreational purposes by means of commercial fishing equipment or gear in coastal fishing waters without having first procured a RCGL. As used in this section, fish are taken for recreational purposes if the fish are not taken for the purpose of sale. The RCGL entitles the licensee to use authorized commercial gear to harvest fish for personal use subject to recreational quotas or limits.

(b) Sale of Fish Prohibited. -- It is unlawful for the holder of a RCGL or for a person who is exempt under subsection (k) of this section to sell fish taken under the RCGL or pursuant to the exemption.

(c) Authorized Commercial Gear. -- The Commission shall adopt rules authorizing the use of a limited amount of commercial fishing equipment or gear for recreational fishing under a RCGL. The Commission may authorize the limited use of commercial gear on a uniform basis in all coastal fishing waters or may vary the limited use of commercial gear within specified areas of the coastal fishing waters. The Commission shall periodically evaluate and revise the authorized use of commercial gear for recreational fishing. Authorized commercial gear shall be identified by visible colored tags or other means specified by the Commission in order to distinguish between commercial gear used in a commercial operation and commercial gear used for recreational purposes.

(d) Purchase; Renewal. -- A RCGL may be purchased at designated offices of the Division and from a license agent authorized under G.S. 113-172. A RCGL may be renewed by mail.

(e) Replacement RCGL. -- Upon receipt of a proper application and a two-dollar ($2.00) replacement fee, the Division may issue a duplicate RCGL to replace an unexpired RCGL that has been lost or destroyed.

(f) Duration; Fees. -- The RCGL shall be valid for a one-year period from the date of purchase. The fee for a RCGL for a North Carolina resident shall be thirty-five dollars ($35.00). The fee for a RCGL for an individual who is not a North Carolina resident shall be two hundred fifty dollars ($250.00).

(g) RCGL and Vessel Endorsement Available for Inspection. -- It is unlawful for any person to engage in recreational fishing by means of restricted commercial gear in the State without having ready at hand for inspection a valid RCGL and, if using a vessel, a vessel endorsement. A holder of a RCGL shall not refuse to exhibit the RCGL and endorsement upon the request of an inspector or any other law enforcement officer authorized to enforce federal or State laws, regulations, or rules relating to marine fisheries.

(h) Assignability and Transferability Prohibited. -- A RCGL is not transferable. It is unlawful to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL, or to attempt to buy, sell, lend, borrow, assign, or otherwise transfer a RCGL.

(i) Reporting Requirements. -- The holder of a RCGL shall comply with the biological data sampling and survey programs of the Commission and the Division.

(j) Exemptions. --

(1) A person who is under 16 years of age may take fish for recreational purposes by means of authorized commercial gear without having procured a RCGL if the person is accompanied by a parent, grandparent, or guardian who holds a valid RCGL or if the person has in the person's possession a valid RCGL issued to the person's parent, grandparent, or guardian.

(2) A person may take crabs for recreational purposes by means of one or more crab pots attached to the shore along privately owned land

or to a privately owned pier without having procured a RCGL provided that the crab pots are attached with the permission of the owner of the land or pier.

(3) A person who is on a vessel may take fish for recreational purposes by means of authorized commercial gear without having procured a RCGL if there is another person on the vessel who holds a valid RCGL. This exemption does not authorize the use of commercial gear in excess of that authorized for use by the person who holds the valid RCGL or, if more than one person on the vessel holds a RCGL, in excess of that authorized for use by those persons."

Section 5.2. (a) Definitions; Citations. The definitions set out in G.S. 113-168 apply to this section. A citation to a provision of the General Statutes in this section means that provision of the General Statutes as enacted by this act.

(b) Transitional Provisions. In order to effect an orderly implementation of this act and the transition from the moratorium imposed by subsection (a) of Section 3 of Chapter 675 of the 1993 Session Laws (1994 Regular Session), as amended by subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws and Section 6.1 of this act, to the licensing provisions of Article 14A of Chapter 113 of the General Statutes, the provisions of this section shall apply to the issuance of licenses under Article 14A of Chapter 113 of the General Statutes until all Fishery Management Plans have been adopted as required by G.S. 113-182.1 and G.S. 143B-289.22.

(c) Temporary Cap. There is hereby imposed a temporary cap on the total number of SCFLs that the Division may issue. The temporary cap equals the total number of endorsements to sell fish and Appeals Panel petition denials that establish eligibility for a SCFL under subsection (g) of this section plus 500 additional SCFLs, authorized by subsection (d) of this section.

(d) 1999-2000 License Year. For the 1999-2000 license year, the Commission is authorized to issue SCFLs as provided in subsection (g) of this section plus an additional 500 SCFLs using the procedure set out in subsection (h) of this section.

(e) Subsequent License Years. For license years beginning with the 2000-01 license year, the Commission is authorized to issue SCFLs from the pool of available SCFLs as provided in subsection (f) of this section using the procedure set out in subsection (h) of this section.

(f) Adjustment of Number of SCFLs. The number of SCFLs in the pool of available SCFLs in license years beginning with the 2000-01 license year is the temporary cap less the number of SCFLs that are renewed. The Commission may increase or decrease the number of SCFLs that are issued from the pool of available SCFLs. The Commission may increase the number of SCFLs that are issued from the pool of available SCFLs up to the temporary cap. The Commission may decrease the number of SCFLs that are issued from the pool of available SCFLs but may not refuse to renew a SCFL that is issued during the previous license year and that has not been suspended or revoked. The Commission shall increase or decrease the

number of SCFLs that are issued to reflect its determination as to the effort that the fishery can support, based on the best available scientific evidence.

(g) Eligibility for SCFL. Any person who held a valid endorsement to sell fish prior to 1 July 1999 is eligible to receive a SCFL. Any person who filed a petition with the Appeals Panel under 15A NCAC 3O.0303 for an endorsement to sell fish and whose petition was denied by the Appeals Panel prior to 1 May 1997 is eligible to receive a SCFL. The Division shall issue a SCFL to any person who is eligible under this subsection upon receipt of an application and required fees. If the person held more than one endorsement to sell fish, the person is eligible to receive a SCFL for each endorsement to sell previously held. Eligibility to receive a SCFL under this subsection shall expire 1 July 2000.

(h) Procedure for Issuing Additional SCFLs. The Commission shall determine a procedure for issuing the 500 additional SCFLs authorized by subsection (d) of this section for the 1999-2000 license year and for issuing SCFLs from the pool of available SCFLs authorized by subsection (e) of this section. The procedure shall set a date on which the Division will begin receiving applications and a date on which the determination by lot of which applicants will receive a SCFL will be made. The Commission shall develop criteria for determining eligibility for a SCFL under this subsection. Criteria shall include the past involvement of the applicant and the applicant's family in commercial fishing; the extent to which the applicant has relied on commercial fishing for the applicant's livelihood; the extent to which the applicant has complied with federal and State laws, regulations, and rules relating to coastal fishing and protection of the environment; and any other factors the Commission determines to be relevant. The Division shall review each application for a SCFL that it receives during the application period to determine whether the applicant is eligible under the eligibility criteria established by the Commission. The Division shall issue SCFLs under this subsection by lot. All applicants who are determined to be eligible shall have an equal chance of being issued a SCFL.

Section 5.3. The Marine Fisheries Commission shall adopt rules authorizing the use of a limited amount commercial gear for recreational fishing under a Recreational Commercial Gear License, as required by G.S. 113-173, as enacted by Section 5.1 of this act, on or before 1 July 1999.

Section 5.4. G.S. 113-153.1 is recodified as G.S. 113-168.9 in Article 14A of Chapter 113 of the General Statutes, as enacted by Section 5.1 of this act. All other sections of Article 14 of Chapter 113 of the General Statutes are repealed.

Section 5.5. The Marine Fisheries Commission shall adopt a Fishery Management Plan for the blue crab fishery in accordance with G.S. 143B-289.22, as enacted by Section 2.1 of this act, and G.S. 113-182.1, as enacted by Section 3.4 of this act, no later than 1 January 2000.

Section 5.6. Notwithstanding the provisions of G.S. 113-168.2 and G.S. 113-168.3, as enacted by Section 5.1 of this act, it is unlawful for any person to take crabs from the coastal fishing waters of the State for commercial use without having first obtained an individual crab license under G.S. 113-168.9.

Section 5.7. G.S. 113-153.1, recodified as G.S. 113-168.9 by Section 5.4 of this act, is repealed.

Section 5.8. The Revisor of Statutes shall set out Section 5.2 of this act as a note to G.S. 113-168.2, as enacted by Section 5.1 of this act.

Section 5.9. G.S. 113-203(a)(2) reads as rewritten:

"(2) When the transplanting is done by a dealer in accordance with the provisions of G.S. ~~113-158~~ 113-169.1(2) and implementing rules; or".

PART VI. MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Section 6.1. Subsection (a) of Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994, as amended by subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws, reads as rewritten:

"(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the Department shall not issue any new licenses for a period beginning 1 July ~~1, 1994,~~ 1994 and ending ~~June 30, 1997,~~ 1 July 1999 under the following statutes:

(1) G.S. 113-152. ~~Vessel licenses.~~ Consolidated license for vessels, equipment, and operations; fees.

(2) G.S. 113-153.1. Crab ~~license.~~ License.

(3) G.S. 113-154. Shellfish ~~license~~ license.

(4) G.S. 113-154.1. ~~Nonvessel endorsements to sell fish.~~ Endorsement to sell fish, with respect to nonvessel endorsements only."

Section 6.2. Subsection (a) of Section 3 of Chapter 675 of the 1993 Session Laws, Regular Session 1994, as amended by subsection (a) of Section 26.5 of Chapter 507 of the 1995 Session Laws and Section 6.1 of this act, reads as rewritten:

"(a) Except as provided in subsections (b), (c), (c1), or (c2) of this section, the Department shall not issue any new licenses for a period beginning 1 July 1994 and ending 1 July ~~1999~~ 2000 under ~~the following statutes:~~

~~(1) G.S. 113-152. Consolidated license for vessels, equipment, and operations; fees.~~

~~(2)~~ G.S. 113-153.1. Crab license.

~~(3) G.S. 113-154. Shellfish license.~~

~~(4) G.S. 113-154.1. Endorsement to sell fish, with respect to nonvessel endorsements only.~~"

Section 6.3. (a) Part 5A of Article 7 of Chapter 143B of the General Statutes is repealed, except that G.S. 143B-289.19 is not repealed but is recodified as G.S. 143B-289.40 within Part 5C of Article 7 of Chapter 143B of the General Statutes and reads as rewritten:

"**§ ~~143B-289.19.~~ 143B-289.40. Office of Marine Affairs -- creation.**

~~There~~ The Office of Marine Affairs is created in the Department of ~~Administration the Office of Marine Affairs.~~ Environment, Health, and Natural Resources."

(b) Part 5B of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-289.20 through G.S. 143B-289.22) is recodified as Part 5C of Article 7 of Chapter 143B of the General Statutes (G.S. 143B-289.41 through G.S. 143B-289.43).

(c) G.S. 143B-289.40(a)(1b)g., as recodified by subsection (a) of this section, reads as rewritten:

"g. Create local advisory committees in accordance with the provisions of G.S. ~~143B-289.22.~~ 143B-289.42."

Section 6.4. The records, personnel, property, unexpended balances of appropriations, allocations, and other funds, including the functions of budgeting and purchasing, heretofore vested in the Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.3 of this act, are transferred to the Marine Fisheries Commission created under Part 5B of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of this act. All rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5 of Article 7 of Chapter 143B of the General Statutes, repealed by Section 1 of Chapter 641 of the 1987 Session Laws, and all rules, decisions, and actions, heretofore adopted, made, or taken by the Marine Fisheries Commission created under Part 5A of Article 7 of Chapter 143B of the General Statutes, repealed by Section 6.2 of this act, that have not been heretofore repealed or rescinded shall continue in effect until repealed or rescinded by the Marine Fisheries Commission created under Part 5B of Article 7 of Chapter 143B of the General Statutes, as enacted by Section 2.1 of this act.

Section 6.5. In order to establish a schedule of staggered terms of three years for the Marine Fisheries Commission, the terms of members of the Commission initially filling positions established by subdivisions (1), (2), and (3) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 2001; the terms of members of the Commission initially filling positions established by subdivisions (4), (5), and (6) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 2000; the terms of members of the Commission initially filling positions established by subdivisions (7), (8), and (9) of subsection (a) of G.S. 143B-289.24, as enacted by Section 2.1 of this act, shall begin on the date the member is appointed and duly qualified and shall expire on 30 June 1999.

Section 6.6. G.S. 113-182(b) reads as rewritten:

"(b) The Marine Fisheries Commission is authorized to authorize, regulate, prohibit, prescribe, or restrict and the Department is authorized to license:

(1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities within the jurisdiction of the Department; and

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment,

implements, vessels, and conveyances as necessary to implement the work of the Department in carrying out its duties.

(3) The possession, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all fish taken in the Atlantic Ocean out to a distance of 200 miles from the State's mean low watermark, consistent with the Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801, et seq., as amended. ~~when the harvest or landing of the fish is controlled by a quota imposed on the State by a federal fisheries management plan.~~"

Section 6.7. G.S. 113-190, as enacted by Section 2 of Chapter 633 of the 1995 Session Laws (1996 Regular Session), is recodified as G.S. 113-200.

Section 6.8. All of the Coastal Habitat Protection Plans required by G.S. 143B-279.8, as enacted by Section 3.1 of this act, shall be adopted no later than 1 July 2003. The Coastal Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission shall make the first report on progress in developing and implementing Coastal Habitat Protection Plans, as required by G.S. 143B-279.8(d), as enacted by Section 3.1 of this act, on or before 1 September 1999. The Secretary of Environment, Health, and Natural Resources shall make the first report on progress in developing and implementing Fishery Management Plans, as required by G.S. 113-182.1(f), as enacted by Section 3.4 of this act, on or before 1 September 1999.

Section 6.9. The Joint Legislative Commission on Seafood and Aquaculture shall study the establishment of a comprehensive State program to acquire, preserve, and restore habitats critical to marine and estuarine fisheries. The Joint Legislative Commission on Seafood and Aquaculture shall report its findings and recommendations, if any, to the 1998 Regular Session of the 1997 General Assembly.

Section 6.10. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. Every agency to which this act applies that is authorized to adopt rules to implement the provisions of this act may adopt temporary rules to implement the provisions of this act. This section shall continue in effect until all rules necessary to implement the provisions of this act have become effective as either temporary rules or permanent rules.

Section 6.11. The Marine Fisheries Commission may adopt temporary rules to implement or comply with a fisheries management plan adopted by the Atlantic States Marine Fisheries Commission or an interstate fisheries management council of which the State is a member.

Section 6.12. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 6.13. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or

provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 6.14. Sections 1.1, 5.8, 6.7, 6.9, 6.10, 6.12, 6.13, and 6.14 of this act are effective when this act becomes law. Sections 2.1, 4.5, 5.3, 6.3, 6.4, 6.5, 6.6, and 6.11 of this act become effective 1 September 1997. Sections 4.1 through 4.4 of this act become effective 1 September 1997 and apply to violations and offenses on or after 1 September 1997. Section 1.2 of this act is effective retroactively as of 1 March 1997. Section 6.1 of this act becomes effective 30 June 1997. Sections 3.1, 3.2, 3.3, 3.4, 5.5, and 6.8 of this act become effective 1 July 1998. Sections 5.1, 5.2, 5.4, 5.6, 5.7, 5.9, and 6.2 of this act become effective 1 July 1999. Sections 5.1, 5.2, and 5.6 of this act expire 1 September 2003.

Bernice Bullard (Rep. Daughtry)

From: Alice Falcone (Rep. Preston)
Sent: Wednesday, May 14, 1997 5:38 PM
To: Rep. Leo Daughtry
Subject: Representative Preston's Speaker List for HB 1097

Judiciary I - 05-15.doc

I. Introduction of HB 1097 — Representative Preston
Background and Brief Comments

II. Invited Speakers

Franklin Freeman	Governor's Office
Jerry Schill	NCFA
Henry Lancaster/Sherri Evans Stanton	DEHNR
Dick Brame	Coastal Conservation Association
Bob Lucas	Moratorium Steering Committee

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS4119

H. B. No. 1097 DATE _____

S. B. No. _____ Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE Yes

(Rep.) Ellis

~~Sen.~~

moves to amend the bill on page 8, line 5

( ) WHICH CHANGES THE TITLE

by inserting, at the end of that line:

"Persons appointed under subdivisions (5), (6), (7), and (8) of subsection (a) of this section shall be residents of a county located, in whole or in part, west of United States Interstate Highway 95."; and on page 8, line 2, by deleting "(4), and (8)" and substituting "and (4) of".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

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Administrative Division
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16 W. Jones Street
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(919) 733-7500

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Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

May 15, 1997

MEMORANDUM

To: House Judiciary I Committee

From: Jeff Hudson, Committee Counsel
Mary Beach Shuping, Administrative Assistant

Re: **Proposed Committee Substitute for House Bill 1097 - Fisheries Reform Act-2**

WHEREAS CLAUSES

The General Assembly recognizes

- The State of North Carolina has one of the most diverse fisheries in the United States;
- That commercial fishermen perform an essential function by providing wholesome food for the citizens of the State and thereby properly earn a livelihood;
- The economic contribution and important heritage of commercial fishing;
- That for many citizens, fishing is an important recreational activity and that recreational fishing is a source of great personal enjoyment and satisfaction;
- The importance of plentiful fisheries resources to maintain and enhance tourism in the State; and
- The need to protect our coastal fisheries resources and to balance commercial and recreational interests.

PART I. SHORT TITLE; PERFORMANCE AUDIT

Section 1.1 entitles this act the Fisheries Reform Act of 1997.

Section 1.2 directs the State Auditor to conduct a performance audit of the Division of Marine Fisheries (Division) and to report to the Joint Legislative Commission on Seafood and Aquaculture (Seafood and Aquaculture) by February 1, 1998

Effective Date: Audit is effective retroactively to March 1, 1997

PART II. MARINE FISHERIES COMMISSION

(Note: Current Marine Fisheries Commission (MFC) is repealed in Section 6.3(a) of this act.)

Section 2.1 amends Article 7 of Chapter 143B by adding a new Part entitled "Part 5B. Marine Fisheries Commission. This section:

- Reduces Marine Fisheries Commission (MFC) from 17 to 9 members comprised of:
    - two persons actively engaged in, or recently retired from, commercial fishing;
    - one person actively connected with, and experienced as, a licensed fish dealer or seafood processor;
    - two persons actively engaged in recreational sports fishing;
    - one person actively engaged in the sports fishing industry;
    - two persons having general knowledge of and experience related to subjects and persons regulated by the MFC; and,
    - one person who is a fisheries scientist.
- Provides that appointments are to be made by the Governor;
- Provides that at least 5 members must be residents of a coastal region of the State;
- Strengthens ethical standards;
- Establishes 3 standing advisory committees (Habitat/Water Quality, Fisheries Assessment, Fisheries Resources/Users) and 4 regional advisory committees representing the different regions of the State; and
- Authorizes the MFC to act as an appellate body for civil penalty assessments.

Effective Date: Sept. 1, 1997

PART III. COASTAL HABITAT PROTECTION PLANS; FISHERY MANAGEMENT PLANS

Coastal Habitat Protection Plans (CHPPs)

Section 3.1 amends Chapter 143B by adding a new section, G.S. 143B-279.8 that directs DEHNR to coordinate the preparation of draft Coastal Habitat Protection Plans (CHPPs) for critical fisheries habitats. A CHPP shall: (i) describe and classify biological systems in habitats; (ii) evaluate the function, value to coastal fisheries, status, and trends of habitats; (iii) identify existing and potential threats to habitats and impacts on coastal fishing; and (iv) make recommendations to protect and restore critical fisheries habitats. Once a draft CHPP has been prepared, the MFC, Environmental Management Commission (EMC), and Coastal Resources Commission (CRC) must appoint a six-member review committee to review and revise the draft CHPP. The CHPP will then be submitted to each commission to consider for adoption. The commissions may appoint a six-member conference committee to facilitate the resolution of any aspect of a CHPP on which they cannot agree. The final CHPP will consist of the provisions concurrently agreed upon by all three commissions. Each CHPP must be reviewed and revised at least once every five years. Each commission must, to the maximum extent practicable, ensure that its actions are consistent with the CHPPs and must provide a written explanation of any action it takes that is inconsistent with a CHPP. The three commissions must report annually to Seafood and Aquaculture on progress and implementation of CHPPs.

Sections 2.1, 3.2, and 3.3 direct the MFC, EMC, and the CRC to adopt CHPPs.

Sections 6.8 requires that the CHPPs be adopted by July 1, 2003.

Effective Date: July 1, 1998.

Fishery Management Plans

Section 3.4 amends Chapter 113 by adding a new section, G.S. 113-182.1 that directs DEHNR to prepare proposed Fishery Management Plans (FMPs) for all commercially or recreationally significant species or fisheries that comprise State marine or estuarine resources. The FMPs are to be developed in accordance with a Priority List, Schedule, and guidance criteria established by MFC, and FMPs must incorporate fishery habitat and water quality considerations consistent with CHPPs and recommend management actions. This section also provides that Advisory Councils composed of experts on each particular fishery will assist in the development of the FMPs, and that the Secretary of Environment, Health and Natural Resources (SEHNR) will monitor progress of development and adoption of FMPs and will report annually to Seafood and Aquaculture on this progress.

Section 2.1 directs the MFC to establish a Priority List, schedule, and guidance criteria for FMPs.

Effective Date: July. 1, 1998.

PART IV. MARINE FISHERIES LAW ENFORCEMENT

Section 4.1 amends G.S 113-136(d1) to expand the jurisdiction of marine patrol inspectors to that of Wildlife Resources Commission protectors.

Section 4.2 amends G.S. 113-187 to increase the penalties for violation of general fisheries laws.

Section 4.3 adds G.S. 113-190 to increase the penalties for the unlawful sale or purchase of fish. This section also authorizes the SEHNR to assess a civil penalty up to $10,000 for illegal sale or purchase of fish.

Section 4.4 amends G.S. 113-221(e) to authorize the Fisheries Director to determine, on a case-by-case basis and in the Director's sole discretion, that a proclamation did not apply to a licensee who was without notice due to an act of God or unforeseeable circumstance.

Section 4.5 directs the MFC to develop a Violations Points System and implementation schedule and report to Seafood and Aquaculture by July 1, 1999 on the development of the Violation Points System and the implementation schedule.

Effective Date: Sept. 1, 1997; provisions apply to violations and offenses on or after September 1, 1997.

PART V. COMMERCIAL FISHING LICENSES; TRANSITIONAL PROVISIONS

Standard Commercial Fishing License (SCFL)

Section 5.1 establishes Article 14A of G.S. 113 to be entitled the Coastal and Estuarine Commercial Fishing Licenses which establishes SCFLs as follows:

- Entitles holder to sell fish;
- Fees: $200 for residents; $2,000 for nonresidents or the amount charged to a NC resident in the nonresident's state, whichever is less;
- Assignability - SCFL is assignable. Vessel endorsements may be assigned independently of SCFL to another SCFL holder;

- Transferability - SCFLs may be transferred under certain circumstances to a member of the SCFL holder's immediate family; a third-party purchaser of the SCFL holder's fishing vessel; or as authorized by MFC; and
- Vessel endorsement required for an additional fee based on length of vessel.

Other commercial fishing licenses

Section 5.1 also provides for the following:

- Retired SCFL available to persons 65 and older for an annual fee of $100;
- Shellfish license for NC residents not holding a SCFL available for $25; and
- Fish dealer license available for various fees.

Section 5.2 establishes provisions to implement Section 5.1. These transitional provisions apply to the issuance of fishing licenses until all FMPs have been adopted. These provisions provide for the following:

- Eligibility - SCFLs are available to any person who held an endorsement to sell or whose petition was denied by the Appeals Panel;
- Flexibility for new entrants - 500 SCFLs will be available for distribution by lot for persons not otherwise eligible for a SCFL;
- Establishment of a temporary cap on the total number of SCFLs the MFC may issue. The temporary cap is equal to the total number of endorsements to sell and Appeals Panel denials that establish eligibility for a SCFL plus an additional 500 SCFLs for new entrants;
- For the 1999-2000 license year, the MFC is authorized to:
    - issue an SCFL to any person who held a valid endorsement to sell fish prior to July 1, 1998;
    - issue an SCFL to any person who filed a petition with the Appeals Panel which was denied; and,
    - distribute an additional 500 SCFLs by lot.

  For subsequent license years, the MFC is authorized to issue licenses from the pool of available SCFLs. (The pool of available SCFLs is the temporary cap less the number of SCFLs renewed from the previous license year.)

Effective Date: July 1, 1999.

Recreational Commercial Gear License (RCGL)

Section 5.1 also establishes a Recreational Commercial Gear License (RCGL) as follows:

- RCGL holder may use limited amounts of commercial gear;
- License holder is not entitled to sell fish; and
- Fees: $35 for residents; $250 for nonresidents.

Section 5.3 directs the MFC to adopt rules authorizing the use of a limited amount of commercial gear for recreational fishing by July 1, 1999.

Effective Date: July 1, 1999

Sections 5.4, 5.5, 5.6, 5.7 and 6.2 govern the taking of crabs by:

- Retaining the current crab license;
- Extending the moratorium on the issuance of crab licenses until July 1, 2000;
- Directing the MFC to adopt a blue crab FMP by January 1, 2000; and
- Providing that only those persons currently holding crab licenses may take crabs.

PART VI. MORATORIUM EXTENSION; MISCELLANEOUS PROVISIONS; EFFECTIVE DATE.

Section 6.1 extends moratorium on issuance of licenses from June 30, 1997, to July 1, 1999; effective June 30, 1997.

Section 6.3 recodifies G.S. 143B-289.19 to G.S. 143B-289.40 and makes technical and clarifying changes.

Section 6.4 transfers all records personnel, property, unexpended funds and functions from the current Marine Fisheries Commission to the Marine Fisheries Commission established by this act.

Section 6.5 establishes staggered terms for members of the MFC.

Section 6.6 authorizes the MFC to regulate NC fisheries consistent with federal law.

Section 6.7 recodifies G.S. 113-190 to G.S. 113-200.

Section 6.8 requires that the CHPPs be adopted by July 1, 2003.

Section 6.9 directs Seafood and Aquaculture to study the establishment of a comprehensive State program to acquire, preserve, and restore habitats critical to marine and estuarine fisheries. Seafood and Aquaculture will report its findings and recommendations, if any, to the 1998 Regular Session of the General Assembly.

Section 6.10 clarifies that this act constitutes a recent act of the General Assembly pursuant the G.S. 150B (APA), and therefore, agencies are authorized to adopt temporary rules to implement the provisions of this act. This section will continue to be in effect until all rules necessary to implement this act have been adopted as temporary or permanent rules.

Section 6.13 Severability Clause.

Section 6.14 Effective Dates.

VISITOR REGISTRATION SHEET

JUDICIARY I 5-15-97 10am

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY
1. Lyn Salto	Commercial Fisherman
2. J. Robinson	commercial fisherman
3. J. Forsythe	OSA
4. Allen Jernigan	AGO
5. Amy Gillespie	AGO
6. Boyce A. Hudson	DEHNR
7. Jill D Wheat	MSC
8. Sandra Gaskill	Commercial Fishermen
9. Janice M. Smith	Seafood Dealer
10. Hoyt Smith	Commercial fisherman
11. Carol Smith	Retired
22. [illegible]	STERG
23. Jane P Gray	DOJ
24. Bert Gregory	Commercial Fisherman
25. Lloyd Foster	Fosters Seafood
26. Stephen Foster	Mamas Pride seafood
27. [illegible]	NCPC
28. David Berlong	State Planning
29. Michael W. Street	NC DMF
30. Ronnie Hopkins	
31. Clyde Pitts	Belhaven, N.C.

32.	Danny Tate	Commercial Fisherman
33.	Floyd Tate	Commercial Fisherman
34.	Tam BEAN	NC Wildlife Federation
35.	Dan White	EHNR
36.	Edna Tate	Comm fisherman
37.	David M Tate	" "
38.	John David Daniels	" "
39.	TANJA VUJIĆ	NC EDF
40.	Gladys Kirk	Comercial Fisherman
41.	Wesley A Kirk Sr	" "
42.	Doris E Hopkins	Comercial Fisherman + Buyer
43.	CURTIS W WILKINS	" " "
44.	Troy Bryant	" "
45.	HAROLD Webb	Johnson et al
46.	Sam Johnson	Atty
47.	Pete Riverbark	Marine Patrol
48.	Mike Buhl	ND DMF
49.	Lisa Gregory	Commercial Fishing
50.	John Gregory Sr.	Commercial fisherman
51.	Cynthia B Walton	N.C. General Assembly District 10
52.	Edgar Watson Jr	" " " "
53.	Rodney L Simpkins Jr.	NFC
54.	Bob Lucas	
55.	Frankie Freeman	Gov. office
56.	Mark E. Barnes	NC Comm. Fisherman
57.	Dick BRAME	CCA-NC
58.	[illegible]	CCA
59.		
60.	Molly Diggins	NC Sierra Club
61.	Twila Nelson	NFC
62.	Sheri Evans Hunter	DEHNR
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66.		

VISITOR REGISTRATION SHEET

JUDICIARY I 5-13-97 10am

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Phil Telfer	NC - DOJ
2.	Joshua Farmer	Isothermal Community College
3.	Connie A Davis	Isothermal Community College
4.	Rebekah L. Reynolds	Isothermal Community College
5.	Andrea Plummer	Isothermal Community College
6.	Marisa Baron	Isothermal CC
7.	Vivian Sitton	Isothermal CC
8.	Crystal Nodine	Isothermal CC
9.	Hope Studlacick	Isothermal C.C.
10.	Ty Clement	Isothermal C.C
11.	Laura Hartsell	MCC
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VISITOR REGISTRATION SHEET

JUDICIARY I 5-20-97 10 a.m.

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	R. Paul Wilms	NCAJA
2.	Jim Kent	NC Conference of Dist. Attys.
3.	Ron Moore	Conference of District Atty
4.	Belinda Foster	Conference of District Attys & Conference of DAs (13th District)
5.	[illegible] Joiner	
6.	[illegible]	NCAA
7.	NC Coalition Against DV	Robyn S. Sawtt
8.	Ellen B. Scouten	NC Dept of Justice
9.	Chet Hodgin	NC VAN
10.	CHIEF TOM MOSS	NC ASSN. OF CHIEFS OF POLICE
11.	Sheriff Billy Vandiford	Sheriff Pitt County
22.	W. GENE COLEY	N.C. V.A.N.
23.	[illegible]	N.C. Van
24.	David A. Mabry	Secretary of State
25.	Mel D. Guston	Adult Probation/Parole
26.	David Simmons	265 Alley, PA
27.	Colon Willoughby	Conf. of District Attorneys
28.	Donna Loyd	NC Victim Assistance Network
29.	Rose Marie White-Hearn	NC Victim Assistance Network
30.	Jim Hardin, Jr.	District Attorney - Durham
31.	Vernetta DeVane	Winston-Salem Police Dept.

32.	Pamela Priddy	Winston-Salem Police Dept
33.	Lou Smith	Victim
34.	Gayle Klutz	Victim
35.	Pam Wescott	Victim
36.	Birdie Funk	Victim
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North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

NOT in computer
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Tuesday, May 20, 1997
10:00 a.m.
1327 Legislative Building

N. Leo Daughtry
Edwin M. "Sandy" Hardy
Co-Chairman

Members Present:

Jerry Braswell	Daniel T. Blue, Jr.
J. Russell Capps	J. Sam Ellis
Theresa H. Esposito	Bobby Ray Hall
Thomas C. Hardaway	Robert C. Hunter
John W. Hurley	Margaret M. Jeffus
Larry T. Justus	George W. Miller, Jr.
Wilma M. Sherrill	Gregg Thompson

(Rep. Alexander was excused)

The House Committee on JUDICIARY I met at 10:00 a.m. on Tues., May 20, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry and Edwin M. "Sandy" Hardy presiding.

Committee Counsels Steven Rose and Karen Cochrane-Brown were present to assist the Committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

Chairman Daughtry recognized Rep. Culpepper to explain the Senate Judiciary Committee Substitute to House Bill 202 INCREASE MINIMUM UPSET AMOUNT.

Committee Counsel Steven Rose prepared a MEMORANDUM on the Senate Judiciary Committee Substitute to H.B. 202 which was distributed and is attached and made a part of these minutes.

Rep. Hurley moved that the committee concur with the Senate Judiciary Committee Substitute to H.B. 202. There was no objection.

Rep. Eddins was recognized for the purpose of explaining House Bill 665, CRIME VICTIMS' RIGHTS ACT.

Without objection, on a motion made by Rep. Capps, the committee voted to accept for the purpose of discussion a Proposed Committee Subsitute to House Bill 665, a copy of which is attached and made a part of these minutes.

Committee counsels Karen Cocraine Brown and Steven Rose prepared a MEMORANDUM on the Proposed Committee Substitute to House Bill 665, a copy of which is attached and made a part of these minutes.

Jim Mills of Fiscal Research, on a query by the Chairman, indicated a fiscal note on the P.C.S. to H.B. ~~202~~ 665 was in preparation and that the bill, if approved by the committee, would need to be re-referred to FINANCE and, if favorable, to APPROPRIATIONS.

Rep. Sherrill asked staff if Domestic Violence was excluded from the provisions of the P.C.S., and Cousel Rose indicated that misdemeanor crimes were excluded from the bill.

Kathryn Smith, of the North Carolina Victims' Assistance Network Coalition testifiyed the P.C.S. did not single out "Domestic Violence," as such.

Thomas J. Keith, president of the North Carolina Conference of District Attorneys was recgonized and indicated no opposition to the bill. He indicated half of criminal court cases presently were "domestic violence related," and that court officials wished to implement the Crime Victims' Act gradually, focusing on felony classes A through E.

In response to a query by Rep. Hall, counsel Rose indicated funding of the measure would come specifically out of assessments adminsitered by Crime Control and Public Safety adminsitered through local application.

Ms. Smith indicated it was "no secret" the N.C. Crime Victims' Assistance Network Coalition favored a wide restitution policy as an integral part of Criminal Justice.

On a motion by Rep. Blue, the Committee accepted an amendment to the P.C.S. to H.B. 665 on page 1 line 18 by "deleting the words "or sibling" and substituting the following: "siblings or grandparents."

The Committee adjourned at 10:50 a.m.

REPRESENTATIVE N. LEO DAUGHTRY

REPRESENTATIVE EDWIN M. HARDY

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS:

Joel Raupe (Rep. Hardy)

From: Christine Bruske (Rep. Daughtry)
Sent: Tuesday, May 20, 1997 11:50 AM
To: Joel Raupe (Rep. Hardy)
Subject: J1 on Thurs

Mr. Ralph Knott, Clerk of Superior Court, Franklin County, will address the J1 committee on Thurs. ref HB 665- Crime victims Rights Act. Thanks

Relate to H.B. 217
will be combined w/ H.B. 665

Kathryn Smith (last)

cp.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 665
Proposed Committee Substitute
H665-CSRO-001
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Crime Victims' Rights Act. (Public)

Sponsors:

Referred to:

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIME VICTIMS' RIGHTS ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 15A of the General Statutes is amended by adding a new Subchapter to read:

"SUBCHAPTER XVI. CRIME VICTIMS' RIGHTS.

"ARTICLE 101.

"Crime Victims' Rights Act.

"§ 15A-2010. Definitions.

The following definitions apply in this Article:

(1) Accused. -- A person who has been arrested and charged with committing a crime covered by this Article.

(2) Law enforcement agency. -- The law enforecement agency within whose territorial jurisdiction the criminal act occurred.

(3) Next of kin. -- The victim's spouse, children, parents, or siblings. The term does not include the accused unless the charges are dismissed or the person is found not guilty.

(4) Victim. -- A person against whom there is probable cause to believe one of the following crimes was committed:

a. A Class A, B1, B2, C, D, or E felony.

b. A Class F felony if it is a violation of one of the following: G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.2; 14-43.3; 14-190.17; 14-190.19; 14-202.1; or 14-288.9.

c. A Class G felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; 20-138.5(b); or 20-141.4.

d. A Class H felony if it is a violation of one of the following: G.S. 14-32.3(a); 14-32.3(c); or 14-33.2.

e. A Class I felony if it is a violation of one of the following: G.S. 14-277.3; 14-32.3(b); 14-34.6(b); or 14-190.17A.

If the victim is deceased, then the next of kin, in the order set forth in the definition contained in this section, is entitled to the victim's rights under this Article, except for the rights contained in G.S. 15A-2014. An individual entitled to exercise the victim's rights as a member of the class of next of kin may designate anyone in the class to act on behalf of the class.

"§ 15A-2011. Responsibilities of law enforcement agency.

(a) Within 24 hours after identifying a victim covered by this Article, the law enforcement agency shall provide the victim with the following information:

(1) The availability of medical services, if needed.

(2) The availability of crime victims' compensation funds under Chapter 15B of the General Statutes and the address and telephone number of the agency responsible for dispensing the funds.

(3) The address and telephone number of the district attorney's office that will be responsible for prosecuting the victim's case.

(4) The name and telephone number of a law enforcement agency employee whom the victim may contact if the victim has not been notified of an arrest in the

victim's case within six months after the crime was reported to the law enforcement agency.

(b) Within 24 hours after the arrest of a person believed to have committed a crime covered by this Article, the law enforcement agency shall:

(1) Inform the victim of the accused's opportunity for pretrial release.

(2) Provide the victim with the name and telephone number of a law enforcement agency employee whom the victim may contact to find out whether the accused has been released from custody.

(c) Within 24 hours after an accused has been detained and no later than five days after the accused has been arrested if the accused is not detained, the law enforcement agency shall forward to the district attorney's office that will be responsible for prosecuting the case the victim's name, address, date of birth, social security number, race, sex, and telephone number.

"**§ 15A-2012. Responsibilities of the district attorney's office.**

(a) Within 21 days after the arrest of the accused, but not less than 24 hours before the accused's first scheduled probable cause hearing, the district attorney's office shall provide to the victim a pamphlet or other written material that explains in a clear and concise manner the following:

(1) The victim's rights under this Article, including the right to confer with the attorney prosecuting the case about the disposition of the case.

(2) The responsibilities of the law enforcement agency and the district attorney's office under this Article.

(3) The victim's eligibility for compensation under the Crime Victims' Compensation Act and the date by which the victim must file a claim for compensation.

(4) The steps generally taken by the district attorney's office when prosecuting a felony case.

(5) Suggestions on what the victim should do if threatened or intimidated by the accused or someone acting on the accused's behalf.

(6) The name and telephone number of a victim and witness assistant in the district attorney's office whom the victim may contact for further information.

(b) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the district

attorney's office, indicate whether the victim wishes to receive any further notices of trial proceedings involving the accused. If the victim elects to receive further notices, the victim shall be responsible for notifying the district attorney's office or any other department or agency that has a responsibility under this Article of any changes in the victim's address and telephone number.

(c) A victim has the right to be present at every court proceeding at which the accused has the right to be present. The district attorney's office shall notify a victim of the date, time, and place of these proceedings. All notices required to be given by the district attorney's office shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the court proceeding.

(d) Whenever practical, the district attorney's office shall provide a secure waiting area during court proceedings that does not place the victim in close proximity to the defendant or the defendant's family.

(e) When the victim is to be called as a witness in a court proceeding, the court shall make every effort to permit the fullest attendance possible by the victim in the proceedings.

(f) Prior to the disposition of the case, the district attorney's office shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of the case, including the victim's views about dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.

"**§ 15A-2013. Victim impact statement.**

(a) A victim has the right to make an oral or written victim's impact statement, which shall be considered by the court or jury, as the case may be, in sentencing the defendant. The statement may include the following:

(1) A description of the nature and extent of any physical, psychological, or emotional injury suffered by the victim as a result of the offense committed by the defendant.

(2) An explanation of any economic or property loss suffered by the victim as a result of the offense committed by the defendant.

(3) A request for restitution and an indication of whether the victim has applied for or received compensation under the Crime Victims' Compensation Act.

(b) No victim shall be required to make a victim's impact statement. The court shall not draw any inference or conclusion from a victim's decision not to make a victim's impact statement.

(c) The district attorney's office shall notify the victim of the victim's rights under this section.

"**§ 15A-2014. Restitution.**

(a) A court shall, in addition to any penalty authorized by law, require that the defendant make restitution to a victim or the victim's estate for any injuries or damages arising out of the offense committed by the defendant.

(b) The amount the defendant is ordered to pay in restitution may include the following, if it is a result of the offense committed by the defendant:

(1) The cost of any medical or other professional services and devices or equipment required by the victim.

(2) The cost of physical therapy, occupational therapy, and rehabilitation required by the victim.

(3) Any income loss, after taxes, suffered by the victim.

(4) The cost of any psychological or medical treatment for the victim's next of kin.

(5) The cost of the victim's funeral and any related services.

The court may require that the victim or the victim's estate provide evidence that documents the costs claimed by the victim or the victim's estate under this section. Any such documentation shall be shared with the defendant before the sentencing hearing.

(c) In deciding whether to require that restitution be made, the court shall take into consideration the resources of the defendant, including all real and personal property owned by the defendant and the income derived from the property, the defendant's ability to earn, the defendant's obligation to support dependents, and any other matters that pertain to the defendant's ability to make restitution, but the court is not required to make findings of fact or conclusions of law on these matters. The amount of restitution must be limited to that supported by the record, and the court may order partial restitution when it appears that the damage or loss caused by the offense is greater than that which the defendant is able to pay.

(d) An order providing for restitution does not abridge the right of a victim or the victim's estate to bring a civil action against the defendant for damages arising out of the offense

committed by the defendant, but any amount paid by the defendant under the terms of an order under this section shall be credited against any judgment rendered against the defendant in a civil action.

(e) The court may order the defendant to make restitution to a person other than the victim, or to any organization, corporation, or association, including the Crime Victims' Compensation Fund that provided assistance to the victim following the commission of the offense by the defendant. Restitution shall be made to the victim or the victim's estate before it is made to any other person, organization, corporation, or association.

(f) The court may require the defendant to make full restitution no later than a certain date or, if the circumstances warrant, may allow the defendant to make restitution in installments over a specified time period.

(g) If the defendant is placed on probation or post-release supervision, or is paroled, any restitution ordered under this Article shall be a condition of probation, supervision, or parole.

(h) If the court does not order restitution, or orders partial restitution, the court shall state on the record the reasons for such an order.

"§ 15A-2015. Docketing of order of restitution.

An order of restitution shall be docketed with the clerk of superior court and may be collected in the same manner as a civil judgment.

"§ 15A-2016. Posttrial responsibilities.

(a) Within 30 days after the final proceeding of the trial phase of the case, the district attorney's office shall notify the victim, in writing, of:

(1) The final disposition of the case.

(2) The crimes of which the defendant was convicted.

(3) The defendant's right to appeal, if any.

(b) Upon a defendant's giving notice of appeal to the Court of Appeals or the Supreme Court, the district attorney's office shall forward to the Attorney General's Office the victim's name, address, and telephone number. Upon receipt of this information, and thereafter as the circumstances require, the Attorney General's Office shall provide the victim with the following:

(1) A clear and concise explanation of how the appellate process works, including information about possible actions that may be taken by the appellate court.

(2) Notice of the date, time, and place of any appellate proceedings involving the defendant. Notice shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the proceedings.

(3) The final disposition of an appeal.

(c) If the defendant has been released on bail pending the outcome of the appeal, the agency that has custody of the defendant shall notify the victim that the defendant has been released.

(d) If the defendant's conviction is overturned and the district attorney's office decides to retry the case or the case is remanded to superior court for a new trial, the victim shall be entitled to the same rights under this Article as if the first trial did not take place.

(e) The Administrative Office of the Courts shall maintain a repository relating to victims identity, address and other appropriate information for use by agencies charged with responsibilities under this Article.

"**§ 15A-2017. Responsibilities of agency with custody of defendant.**

The State or local agency that has custody of the defendant shall notify the victim of:

(1) The projected date by which the defendant can become parole eligible or be released from custody. The calculation of the release date shall be as exact as possible, including earned time and disciplinary credits if the sentence of imprisonment exceeds 90 days. The agency with custody or the Post Release Supervision and Parole Commission shall be required to provide notice of the defendant's earliest parole eligibility date upon receipt of the defendant and annually thereafter.

(2) An inmate's assignment to a minimum custody unit and the address of the unit. This notification shall include notice that the inmate's minimum custody status may lead to the inmate's participation in one or more community based programs such as work release or supervised leaves in the community.

(3) The victim's right to submit any concerns to the agency with custody and the procedure for submitting such concerns.

(4) The defendant's escape from custody.
(5) The defendant's capture.
(6) The date of any review held by the Post Release Supervision and Parole Commission to consider whether the defendant should be released from custody. Notice should be given not later than 90 days before a review is held.
(7) The victim's right to submit a written or oral statement to the Post Release Supervision and Parole Commission before the defendant is released.
(8) The Post Release Supervision and Parole Commission's decision about whether to release or continue the incarceration of a defendant.
(9) The date the defendant is scheduled to be released from the facility. Whenever practical, notice shall be given 60 days before release.
(10) The defendant's death.

"**§ 15A-2018. Responsibilities of Division of Adult Probation and Parole.**

The Division of Adult Probation and Parole shall notify the victim of:

(1) The defendant's supervision requirements and any special conditions.
(2) The date of a hearing to determine whether the defendant's supervision should be revoked, continued with or without modifications or terminated.
(3) The final disposition of any hearing referred to in subdivision (2) of this section.
(4) Any restitution modification.
(5) The defendant's movement into or out of the special condition of house arrest with electronic monitoring and the level of intensive supervision.
(6) The defendant absconding supervision.
(7) The capture of a defendant described in subdivision (6) of this section.
(8) The date when the defendant is terminated or discharged.
(9) The defendant's death.

"**§ 15A-2019. Notice of commuted sentence or pardon.**

The Governor's Clemency Office shall notify a victim when it is considering commuting the defendant's sentence or pardoning the defendant. The Governor's Clemency Office shall also give notice that the victim has the right to present a written statement to

be considered by the Office before the defendant's sentence is commuted or the defendant is pardoned. The Governor's Clemency Office shall notify the victim of its decision. Notice shall be given in a manner that is reasonable calculated to allow for a timely response to the commutation or pardon decision.

"§ 15A-2020. No money damages.

This Article does not create a claim for damages against the State, a county, or a municipality, or any of its agencies, instrumentalities, or employees.

"§ 15A-2021. No ground for relief.

The failure or inability of any person to provide a right or service under this Article may not be used by a defendant in a criminal case, by an inmate, or by any other accused as a ground for relief in any criminal or civil proceeding.

"§ 15A-2022. Appointment of guardian.

When a victim is rendered mentally or physically incompetent, or when the victim is a minor, the court shall appoint a guardian to exercise the victim's rights under this Article. The court shall not appoint as guardian a person who is accused of causing the victim's injuries.

"ARTICLE 102.

"Crime Victims' Rights Fund.

"§ 15A-2025. Crime Victims' Rights Fund established.

There is hereby established within the State treasury a special revenue fund to be known as the Crime Victims' Rights Fund (hereinafter Fund). The Fund shall be administered by the Department of Crime Control and Public Safety and shall be used to supplement the budgets of law enforcement agencies, district attorneys' offices, and other agencies given responsibilities under this Article that provide services to crime victims as required by the General Statutes. Revenue in the Fund at the end of each fiscal year shall not revert, and interest and other investment income earned by the Fund must be credited to the Fund.

"§ 15A-2026. Assessments.

(a) In every criminal case where the defendant is convicted of or enters a plea of guilty or nolo contendere to a felony, a Class 1 or 1A misdemeanor, or to an offense of impaired driving under Chapter 20 of the General Statutes, the court shall order the defendant to pay the sum of thirty dollars ($30.00) to be used to supplement the budgets of law enforcement agencies, district attorneys' offices, and other agencies that provide services to crime victims as required by the General Statutes.

Such sum shall be in addition to any costs, fines, or penalties imposed.

(b) If the court authorizes the payment of fines, costs, restitution, probation oversight fees, or any other obligations of the defendant to be paid in installments, the assessment imposed under this section shall be collected from the first monies paid by the defendant. The clerk of superior court shall transmit daily all monies collected pursuant to this Article to the Department of Crime Control and Public Safety for deposit in the Fund.

"**§ 15A-2027. Application for supplemental funds.**

(a) A law enforcement agency, district attorney's office, or other agency that has a responsibility to provide services to crime victims as required by the General Statutes may apply annually to the Department of Crime Control and Public Safety for supplemental funds. Such funds shall be used to supplement local, State, or federal funds that are available to agencies and district attorneys' offices to provide services to crime victims.

(b) The Department of Crime Control and Public Safety shall establish procedures for screening, recording, and processing applications for supplemental funds. The Department shall prepare and transmit annually to the General Assembly a report of the Department's activities."

Section 2. G.S. 15A-824 through G.S. 15A-827 are repealed.

Section 3. This act becomes effective January 1, 1998, and applies to crimes committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 665

Short Title: Crime Victims' Rights Act. (Public)

Sponsors: Representatives Eddins; Aldridge, Arnold, Baddour, Baker, Barbee, Berry, Braswell, Brawley, Buchanan, Cansler, Capps, Clary, Creech, Culp, Davis, Decker, Dockham, Earle, Ellis, Esposito, Gardner, Goodwin, Grady, Gulley, Hall, Hardy, Hiatt, Hightower, Hill, Holmes, Howard, R. Hunter, Ives, Jeffus, Justus, Kiser, McMahan, Miner, Moore, Morgan, Morris, Mosley, Neely, Nichols, Oldham, Rayfield, Redwine, Reynolds, Russell, Saunders, Sexton, Shubert, Sutton, Warwick, Watson, Weatherly, C. Wilson, G. Wilson, Wood, and Yongue.

Referred to: Judiciary I.

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIME VICTIMS' RIGHTS ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 15A of the General Statutes is amended by adding a new Subchapter to read:

"SUBCHAPTER XVI. CRIME VICTIMS' RIGHTS.

"ARTICLE 101.

"Crime Victims' Rights Act.

"**§ 15A-2010. Definitions.**

The following definitions apply in this Article:

(1) Accused. -- A person who has been arrested and charged with committing a crime covered by this Article.

(2) Law enforcement agency. -- The police or sheriff department responsible for investigating a crime covered by this Article.

(3) Next of kin. -- The victim's spouse, children, parents, or siblings. The term does not include such a person, however, if the person caused the victim's injuries or death.

(4) Victim. -- A person against whom there is probable cause to believe one of the following crimes was committed:

a. A Class A, B, C, D, or E felony.

b. A Class F felony if it is a violation of one of the following: G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-32.3(b); 14-34.2; 14-34.5; 14-41; 14-43.2; 14-43.3; 14-190.17; 14-190.19; 14-202.1; or 14-288.9.

c. A Class G felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; 20-138.5(b); or 20-141.4.

d. A Class H felony if it is a violation of one of the following: G.S. 14-32.3(a); 14-32.3(c); or 14-33.2.

e. A Class I felony if it is a violation of one of the following: G.S. 14-277.3; 14-32.3(b); 14-34.6(b); or 14-190.17A.

A person is also a victim if the perpetrator of one of the crimes listed above is a juvenile, and the case was referred to superior court for adjudication or the perpetrator was found not guilty by reason of insanity.

"§ 15A-2011. Responsibilities of law enforcement agency.

(a) Within 24 hours after identifying a victim covered by this Article, the law enforcement agency shall provide the victim with the following information:

(1) The availability of medical services, if needed.

(2) The availability of crime victims' compensation funds under Chapter 15B of the General Statutes and the address and phone number of the agency responsible for dispensing the funds.

(3) The address and phone number of the district attorney's office that will be responsible for prosecuting the victim's case.

(4) The name and phone number of a law enforcement agency employee whom the victim may contact if the victim has not been notified of an arrest in the victim's case within six months after the crime was reported to the law enforcement agency.

(b) Within 24 hours after the arrest of a person believed to have committed a crime covered by this Article, the law enforcement agency shall:

(1) Inform the victim of the accused's opportunity for pretrial release.

(2) Provide the victim with the name and phone number of a law enforcement agency employee whom the victim may contact to find out whether the accused has been released from custody.

(c) Within 24 hours after an accused has been detained and no later than five days after the accused has been arrested if the accused is not detained, the law enforcement agency shall forward to the district attorney's office that will be responsible for prosecuting the case the victim's name, address, date of birth, social security number, race, sex, and phone number.

"§ 15A-2012. Responsibilities of the district attorney's office.

(a) Within 21 days after the arrest of the accused, but not less than 24 hours before the accused's first scheduled probable cause hearing, the district attorney's office shall provide to the victim a pamphlet or other written material that explains in a clear and concise manner the following:

(1) The victim's rights under this Article, including the right to confer with the attorney prosecuting the case about the disposition of the case.

(2) The responsibilities of the law enforcement agency and the district attorney's office under this Article.

(3) The victim's eligibility for compensation under the Crime Victims' Compensation Act and the date by which the victim must file a claim for compensation.

(4) The steps generally taken by the district attorney's office when prosecuting a felony case.

(5) Suggestions on what the victim should do if threatened or intimidated by the accused or someone acting on the accused's behalf.

(6) The name and phone number of a victim and witness assistant in the district attorney's office whom the victim may contact for further information.

(b) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the district attorney's office, indicate whether the victim wishes to receive any further notices of trial proceedings involving the accused. If the victim elects to receive further notices, the victim shall be responsible for notifying the district attorney's office or any other department or agency that has a responsibility under this Article of any changes in the victim's address and phone number.

(c) A victim has the right to be present at every court proceeding at which the accused has the right to be present. The district attorney's office shall notify a victim of the date, time, and place of these proceedings. All notices required to be given by the district attorney's office shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the court proceeding.

(d) Whenever practical, the district attorney's office shall provide a secure waiting area during court proceedings that does not place the victim in close proximity to the defendant or the defendant's family.

(e) When the victim is to be called as a witness in a court proceeding, the court shall make every effort to permit the fullest attendance possible by the victim in the proceedings.

(f) Prior to the disposition of the case, the district attorney's office shall offer the victim of crime the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of a crime, including the victim's views about dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.

"§ 15A-2013. Victim impact statement.

(a) The district attorney's office shall notify the victim that the victim has the right to make an oral or written victim impact statement, which shall be considered by the court or jury, as the case may be, in sentencing the defendant. The notice shall explain that the victim may include in the statement the following:

(1) A description of the nature and extent of any physical, psychological, or emotional injury suffered by the victim as a result of the offense committed by the defendant.

(2) An explanation of any economic or property loss suffered by the victim as a result of the offense committed by the defendant.

(3) An opinion of whether there is a need for restitution and whether the victim has applied for or received compensation under the Crime Victims' Compensation Act.

(4) The victim's recommendation of an appropriate sentence for the defendant.

(b) No victim shall be required to make a victim's impact statement. The court shall not draw any inference or conclusion from a victim's decision not to make a victim's impact statement.

"**§ 15A-2014. Restitution.**

(a) A court shall, in addition to or instead of any penalty authorized by law, require that the defendant make restitution to a victim or the victim's estate for any injuries or damages arising out of the offense committed by the defendant.

(b) The amount the defendant is ordered to pay in restitution may include, if they are a result of the offense committed by the defendant:

(1) The cost of any medical or other professional services and devices or equipment required by the victim.

(2) The cost of physical therapy, occupational therapy, and rehabilitation required by the victim.

(3) Any income loss, after taxes, suffered by the victim.

(4) The cost of any psychological or medical treatment for the victim's next of kin.

(5) The cost of the victim's funeral and any related services.

The court may require that the victim or the victim's estate provide evidence that documents the costs claimed by the victim or the victim's estate under this section. Any such documentation shall be shared with the defendant before the sentencing hearing.

(c) In deciding whether to require that restitution be made, the court shall take into consideration the resources of the defendant, including all real and personal property owned by the defendant and the income derived from the property, the defendant's ability to earn, the defendant's obligation to support dependents, and any other matters that pertain to the defendant's ability to make restitution, but the court is not required to make findings of fact or conclusions of law on these matters when the sentence is imposed. The amount of restitution must be limited to that supported by the record, and the court may order partial restitution when it appears that the

damage or loss caused by the offense is greater than that which the defendant is able to pay.

(d) An order providing for restitution does not abridge the right of a victim or the victim's estate to bring a civil action against the defendant for damages arising out of the offense committed by the defendant, but any amount paid by the defendant under the terms of an order under this section shall be credited against any judgment rendered against the defendant in a civil action. Any amount paid by the defendant shall also be subtracted from any compensation paid by the Crime Victims' Compensation Fund if the compensation is paid after restitution has been made.

(e) The court may order the defendant to make restitution to a person other than the victim, or to any organization, corporation, or association, including the Crime Victims' Compensation Fund that provided assistance to the victim following the commission of the offense by the defendant. Restitution shall be made to the victim or the victim's estate before it is made to any other person, organization, corporation, or association.

(f) The court may require the defendant to make full restitution no later than a certain date or, if the circumstances warrant, may allow the defendant to make restitution in installments over a specified time period.

(g) If the defendant is placed on probation or post-release supervision, or is paroled, any restitution ordered under this Article shall be a condition of probation, supervision, or parole.

(h) If the court does not order restitution, or orders partial restitution, the court shall state on the record the reasons for such a finding.

"**§ 15A-2015. Docketing of order of restitution.**

An order of restitution shall be docketed with the clerk of superior court and may be collected in the same manner as a civil judgment.

"**§ 15A-2016. Posttrial responsibilities.**

(a) Within 30 days after the final proceeding in a case, the district attorney's office shall notify the victim, in writing, of:

(1) The final disposition of the case.

(2) The crimes of which the defendant was convicted.

(3) The defendant's right to appeal, if any.

(b) Upon a defendant's giving notice of appeal to the Court of Appeals or the Supreme Court, the district attorney's office shall forward to the Attorney General's Office the victim's name, address, and phone number. Upon receipt of this information, the Attorney General's Office shall provide the victim with the following:

(1) A clear and concise explanation of how the appellate process works, including information about possible actions that may be taken by the appellate court.

(2) Notice of the date, time, and place of any appellate proceedings involving the defendant. Notice shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the proceedings.

(3) The final disposition of an appeal.

(c) If the defendant has been released on bail pending the outcome of the appeal, the agency that has custody of the defendant shall notify the victim that the defendant has been released.

(d) If the defendant's conviction is overturned and the district attorney's office decides to retry the case or the case is remanded to superior court for a new trial, the victim shall be entitled to the same rights under this Article as if the first trial did not take place.

"§ 15A-2017. Responsibilities of agency with custody of defendant.

The law enforcement agency that has custody of the defendant or the Department of Correction, if it has custody of the defendant, shall notify the victim of:

(1) The earliest date by which the defendant can be released from custody. The calculation of the release date shall be as exact as possible, including earned time and disciplinary credits if the sentence of imprisonment exceeds 90 days. The law enforcement agency or Department of Correction shall be required to provide notice of the defendant's earliest release date only once during the defendant's incarceration.

(2) The defendant's transfer to a minimum security facility and the address of the facility.

(3) The defendant's release or pending release into a community residential program or under extended furlough, or the transfer of the defendant to community status.

(4) Any reduction of the defendant's minimum sentence.

(5) The defendant's escape from custody.

(6) The date of any hearings held by the Parole Commission to consider whether the defendant should be released from custody. Notice should be given not later than 90 days before a hearing is held.

(7) The victim's right to submit a written or oral statement to the Parole Commission before the defendant is released.

(8) The Parole Commission's decision about whether to release or continue the incarceration of a defendant.

(9) The date the defendant is scheduled to be released from the facility. Whenever practical, notice shall be given 60 days before release.

(10) The defendant's death.

"§ 15A-2018. Responsibilities of Department of Adult Probation and Parole.

The Department of Adult Probation and Parole shall notify the victim of:

(1) The date of a hearing to determine whether the defendant's probation should be revoked or extended.

(2) The final disposition of any hearing held in subdivision (1) of this section.

(3) The defendant's leaving the jurisdiction of the court that sentenced the defendant without the permission of the court or the defendant's probation officer.

(4) The capture of a defendant described in subdivision (3) of this section.

(5) The date when the defendant is discharged from probation.

"§ 15A-2019. Notice of commuted sentence or pardon.

The Governor shall notify a victim that the Governor is considering commuting the defendant's sentence or pardoning the defendant. The Governor shall also give notice that the victim has the right to present a written statement to be considered by the Governor before the defendant's sentence is commuted or the defendant is pardoned.

"§ 15A-2020. No money damages.

This Article does not create a claim for damages against the State, a county, or a municipality, or any of its agencies, instrumentalities, or employees.

"§ 15A-2021. No ground for relief.

The failure or inability of any person to provide a right or service under this Article may not be used by a defendant in a criminal case, by an inmate, or by any other accused as a ground for relief in any criminal or civil proceeding.

"§ 15A-2022. Appointment of guardian.

When a victim is rendered mentally or physically incompetent, the court shall appoint a guardian to exercise the victim's rights under this Article. The court shall not appoint as guardian a person who was responsible for causing the victim's injuries.

"ARTICLE 102.

"Crime Victims' Rights Fund.

"§ 15A-2025. Crime Victims' Rights Fund established.

There is hereby established within the State treasury a special revenue fund to be known as the Crime Victims' Rights Fund (hereinafter Fund). The Fund shall be administered by the Department of Crime Control and Public Safety and shall be used to supplement the budgets of law enforcement agencies and district attorneys' offices that provide services to crime victims as required by the General Statutes. Revenue in the Fund at the end of each fiscal year shall not revert, and interest and other investment income earned by the Fund must be credited to the Fund.

"§ 15A-2026. Assessments.

(a) In every criminal case where the defendant is convicted of or enters a plea of guilty or nolo contendere to a felony, a Class 1 or 1A misdemeanor, or to an offense of impaired driving under Chapter 20 of the General Statutes, the court shall order the defendant to pay a sum of thirty dollars ($30.00) to be used to supplement the budgets of law enforcement agencies and district attorneys' offices who provide services to crime victims as required by the General Statutes.

(b) If the court authorizes the payment of fines, costs, restitution, probation oversight fees, or any other obligations of the defendant to be paid in installments, the assessment imposed under this section shall be collected from the first monies

paid by the defendant. The clerk of superior court shall transmit daily all monies collected to the Department of Crime Control and Public Safety for deposit in the Fund.

"**§ 15A-2027. Application for supplemental funds.**

(a) A law enforcement agency or district attorney's office that has a responsibility to provide services to crime victims as required by the General Statutes may apply annually to the Department of Crime Control and Public Safety for supplemental funds. Supplemental funds may not be used to supplant local, State, or federal funds that are available to agencies and district attorneys' offices to provide services to crime victims.

(b) The Department of Crime Control and Public Safety shall establish procedures for screening, recording, and processing applications for supplemental funds. The Department shall prepare and transmit annually to the General Assembly a report of the Department's activities."

Section 2. G.S. 7A-304 is amended by adding a new subdivision to read:

"(7) For the Crime Victims' Rights Fund, the sum of thirty dollars ($30.00) to be remitted to the Department of Crime Control and Public Safety to be administered under the provisions of Article 102 of Chapter 15A of the General Statutes."

Section 3. G.S. 15A-824 through G.S. 15A-827 are repealed.

Section 4. Article 102 as enacted in Section 1 of this act becomes effective January 1, 1998. The remainder of this act is effective when it becomes law.

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May 20, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose & Karen Cochrane-Brown, Committee Counsel**

RE: **Proposed Committee Substitute for House Bill 665; Crime Victims' Rights Act and Fund**

The proposed committee substitute for House Bill 665 creates Articles 101 and 102 of Chapter 15A, the Crime Victims' Rights Act and the Crime Victims' Rights Fund. The bill implements the provisions of Section 37 of Article I of the North Carolina Constitution, which provides for basic rights for victims of crime. It was passed by the 1995 General Assembly and approved by the voters.

Section 1 of the bill establishes Articles 101 and 102 of Chapter 15A and adds the following sections to the General Statutes:

G.S. 15A-2010, which provides definitions to be used in the Crime Victims' Rights Act. Under the description of the term "victim" the crimes to which this Article are applicable are set out. These include Class A, B1, B2, C, D, and E felonies. The crimes also include certain Class

F, G, H, and I felonies, most of which involve acts where physical harm to a victim is involved. Some, however, involve crimes against property, such as second degree burglary and second degree arson, and still others involve crimes of exploitation, such as second and third degree sexual exploitation of minors.

G.S. 15A-2011 sets out the responsibilities of law enforcement agencies. Within 24 hours after identifying a victim covered by this Article, the law enforcement agency within whose territorial jurisdiction the criminal act occurred must provide the victim with information concerning availability of medical services, availability of crime victims' compensation funds under Chapter 15B of the General Statutes, the address and telephone number of the district attorney's office responsible for prosecution, and the name and telephone number of a law enforcement agency employee whom the victim may contact if the victim is not notified of an arrest in the case within 6 months after report of the crime. Within 24 hours after arrest of a person believed to have committed a crime covered by this Article, the law enforcement agency must inform the victim of the accused's opportunity for pretrial release and provide the victim with the name and telephone number of a law enforcement agency employee whom the victim may contact to find out whether the accused has been released. Within 24 hours after detention of an accused, and no later than 5 days after arrest if the accused is not previously detained, the law enforcement agency must forward to the district attorney's office the crime victim's name, address, date of birth, social security number, race, sex, and telephone number.

G.S. 15A-2012 sets out the responsibilities of the district attorney's office. Within 21 days after arrest of an accused, but not less than 24 hours before the first scheduled probable cause

hearing, the district attorney must provide the victim with a pamphlet or other written material explaining the victims rights under this Article, including the right to confer with the prosecutor, the responsibilities of the law enforcement agency and the district attorney's office, the victim's eligibility for compensation under the Crime Victims' Compensation Act and the deadline to file a claim, steps generally taken in the prosecution of a felony case, suggestions on what the victim should do if threatened or intimidated by an accused, and the name and telephone number of a victim and witness assistant in the district attorney's office. The district attorney will provide a form on which the victim can indicate whether he or she wishes further notice of trial proceedings. The victim has the right to be present at every court proceeding where the accused has the right to be present, the victim must be notified of the date, time and location of these proceedings and, where practical, secure waiting areas must be provided for the victim during court proceedings. When a victim is to be called as a witness in a court proceeding, the court is required to make every effort to permit the fullest attendance possible by the victim in the proceeding. This last provision may impact **Rule 615 of the North Carolina Rules of Evidence** which grants discretion to the trial court on the question of sequestration of witnesses. The district attorney, prior to disposition of the case, must afford the victim the opportunity to consult with the district attorney and make known the victim's views on dismissal, plea bargaining, sentencing, and pretrial diversion programs.

G.S. 15A-2013 grants victims the right to make a victim impact statement, which must be considered by the court or jury, as applicable, when the sentencing of the defendant is considered. The statement may include a description of the harm and losses suffered by the victim, a request for restitution and whether compensation has been applied for or received under

the Crime Victims' Compensation Act. The victim impact statement is not required and no inference may be drawn from a victim's decision not to make one. The district attorney's office must notify the victim of the victim's rights under this section.

G. S. 15A-2014 directs the court to require a defendant to make restitution to a victim or victim's estate for injuries or damages to the victim. Restitution may include medical or other professional services, various types of rehabilitation therapy, loss of income, psychological or medical treatment for a victim's next of kin, and the cost of funeral and related expenses. In reaching a decision on restitution, the court must take into consideration the resources of the defendant and the defendant's earning ability, together with the defendant's support obligations, and any other matters pertaining to the defendants ability to make restitution. The court is not required to make findings of fact or conclusions of law with regard to these considerations, but the amount of restitution is limited to that which is supported by the record. The court may order partial restitution if that is all that is within the ability of the defendant to pay. Restitution does not limit the victim's rights with regard to bringing a civil action against the defendant, but any amount already paid by the defendant under a restitution order must be credited against any civil judgment. The court may order that restitution be paid to a person other than the victim if that third party provided assistance to the victim following commission of the offense. However, restitution must be made to the victim or his estate before it is made to any other party. The court is given flexibility with regard to the time when restitution is to be paid, but if a defendant is placed on probation or post-release supervision, or is paroled, restitution must be a condition of probation, supervision, or parole. If the court does not order restitution, or if restitution is partial, the court must state the reasons on the record.

G.S. 15A-2015 provides that an order of restitution is docketed with the clerk of superior court and may be collected like a civil judgment.

G.S. 15A-2016 provides that within 30 days after completion of the trial phase of the case, the district attorney must notify the victim of final disposition of the case, crimes of which the defendant was convicted, and the defendant's right to appeal. If the defendant appeals, the district attorney must forward the victim information to the Attorney General who must provide the victim with information on the appellate process, notification of appellate proceedings, and final disposition of appeal. If a defendant is released on bail pending appeal, the agency with custody must notify the victim of the release. If the conviction is overturned and there is a retrial, the victim is entitled to the same rights he had during the first trial. The Administrative Office of the Courts is required to maintain a repository relating to victims for use by agencies charged with responsibilities under the provisions of this Article.

G.S. 15A-2017 sets out the responsibilities of the agency that has custody of the defendant after conviction. The agency must notify the victim of the projected date of parole eligibility or release from custody. Notice must also be provided of the defendant's parole eligibility date on an annual basis. In addition, the victim must be notified of the defendant's transfer to a minimum security facility and the location of the facility, and that this could lead to the defendant's participation in community based programs such as work release or supervised leave. The victim must be notified if the defendant escapes and if the defendant is recaptured. The victim must be notified of the date of any Parole Commission hearings to consider the defendant's release from

custody and has the right to submit a written or oral statement to the Parole Commission before the defendant is released, and the victim must be notified about the Parole Commission's decision on release or continued incarceration. The victim must be notified prior to the defendant's release from an incarceration facility, and the victim must be notified of the defendant's death.

G.S. 15A-2018 deals with responsibilities of the Division of Adult Probation and Parole. The victim must be notified of the defendant's supervision requirements, hearings on revocation or other alterations of the defendant's supervision and the disposition of such hearings, any restitution modifications, movement of the defendant into or out of electronic monitoring and intensive supervision conditions, escape from supervision and subsequent capture, the date of the defendant's termination or discharge from supervision, and the defendant's death.

G.S. 15A-2019 deals with commutation and pardon proceedings by the Governor's Clemency Office. The Office must notify the victim and give the victim the right to present a written statement for consideration by the Office. The victim must also be given notification of the decision and an opportunity to respond to that decision.

G.S. 15A-2020 provides that this legislation does not create a claim for damages against the State, any local government, any agency, or any employee of those entities.

G.S. 15A-2021 provides that failure or inability of a person to provide a right or service under this Article may not be used by any defendant or inmate as grounds for relief in any criminal or civil proceedings.

G.S. 15A-2022 provides for the court to appoint a guardian for a victim who is mentally or physically incompetent, or who is a minor, and that guardian will exercise the victim's rights under this Article.

G.S. 15A-2025 is the first section of Article 102, the Crime Victims' Rights Fund. This provision creates a fund to be administered by the Department of Crime Control and Public Safety and to be used to supplement the budgets of law enforcement agencies, district attorneys' offices, and other agencies that provide victim services. This is a nonreverting fund.

G.S. 15A-2026 provides that in criminal cases where a defendant is convicted of or pleads guilty to a felony or a Class 1 or 1A misdemeanor or to an offense of impaired driving, the defendant is required to pay a $30 fee to be used to supplement the law enforcement and district attorney budgets for services to crime victims. Where the court authorizes a defendant is to make payments of fines, costs, and other fees in installments, the $30 fee is collected in the first installments.

G.S. 15A-2027 provides that law enforcement agencies and district attorneys' offices may apply on an annual basis to the Department of Crime Control and Public Safety for funds to provide services to crime victims. The Department will establish procedures for dealing with

these applications and must annually report to the General Assembly concerning its activities in that area.

Section 2 of the bill repeals G.S. 15A-824 through 15A-827, the current provisions providing for the rights of victims of crimes.

The act is effective January 1, 1998, and applies to crimes committed on or after that date.

H665-SMRL-001

N.C. App. 474, 328 S.E.2d 895 (1985); Coastal Neuro-Psychiatric Assocs. v. Onslow Mem. Hosp., 795 F.2d 340 (4th Cir. 1986); Jetstream Aero Servs., Inc. v. New Hanover County, 672 F. Supp. 879 (E.D.N.C. 1987); Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 677 F. Supp. 847 (W.D.N.C. 1988).

Sec. 35. Recurrence to fundamental principles.

Legal Periodicals. — For an essay, "On the Significance of Constitutional Spirit," see 70 N.C.L. Rev. 1803 (1992).

CASE NOTES

Quoted in Treants Enters., Inc. v. Onslow County, 83 N.C. App. 345, 350 S.E.2d 365 (1986); Corum v. University of N.C. ex rel. Bd. of Governors, 330 N.C. 761, 413 S.E.2d 276, reh'g denied, 331 N.C. 558, 418 S.E.2d 664, cert. denied, 506 U.S. 985, 113 S. Ct. 493, 121 L. Ed. 2d 431 (1992).

Cited in State v. Avery, 315 N.C. 1, 337 S.E.2d 786 (1985); Corum v. University of N.C., 97 N.C. App. 527, 389 S.E.2d 596 (1990); Boesche v. Raleigh-Durham Airport Auth., 111 N.C. App. 149, 432 S.E.2d 137 (1993).

Sec. 36. Other rights of the people.

CASE NOTES

Cited in Boesche v. Raleigh-Durham Airport Auth., 111 N.C. App. 149, 432 S.E.2d 137 (1993).

Sec. 37. (Effective upon certification of approval) Rights of victims of crime.

(1) *Basic rights.* Victims of crime, as prescribed by law, shall be entitled to the following basic rights:

(a) The right as prescribed by law to be informed of and to be present at court proceedings of the accused.

(b) The right to be heard at sentencing of the accused in a manner prescribed by law, and at other times as prescribed by law or deemed appropriate by the court.

(c) The right as prescribed by law to receive restitution.

(d) The right as prescribed by law to be given information about the crime, how the criminal justice system works, the rights of victims, and the availability of services for victims.

(e) The right as prescribed by law to receive information about the conviction or final disposition and sentence of the accused.

(f) The right as prescribed by law to receive notification of escape, release, proposed parole or pardon of the accused, or notice of a reprieve or commutation of the accused's sentence.

(g) The right as prescribed by law to present their views and concerns to the Governor or agency considering any action that could result in the release of the accused, prior to such action becoming effective.

(h) The right as prescribed by law to confer with the prosecution.

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(2) *No money damages; other enforcement.* Nothing in this section shall be construed as creating a claim for money damages against the State, a county, a municipality, or any of the agencies, instrumentalities, or employees thereof. The General Assembly may provide for other remedies to ensure adequate enforcement of this section.

(3) *No ground for relief in criminal case.* The failure or inability of any person to provide a right or service provided under this section may not be used by a defendant in a criminal case, an inmate, or any other accused as a ground for relief in any trial, appeal, postconviction litigation, habeas corpus, civil action, or any similar criminal or civil proceeding. (1995, c. 438, s. 1.)

Editor's Note. — Session Laws 1995, c. 438, s. 2, provides that this proposed new section be submitted to the qualified voters of the State at the general election to be held in November 1996 under the laws then governing elections in the State, and that ballots, voting systems, or both may be used which shall be conducted, in accordance with Chapter 163 of the General Statutes.

Session Laws 1995, c. 438, s. 3, makes this section effective upon certification of approval by the State Board of elections to the Secretary of State.

ARTICLE II

LEGISLATIVE

Section 1. Legislative power.

CASE NOTES

The Power to Zone, etc. — Power to zone real property is vested in the General Assembly by this section. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Discretion to Determine Whether Commissioners Should Be Elected or Appointed. — Discretion provided by § 156-81(a) and (i) to the clerks of superior court to determine whether drainage commissioners should be elected or appointed is an unconstitutional delegation of legislative powers. Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

Cited in State v. Gravette, 327 N.C. 114, 393 S.E.2d 856 (1990).

OPINIONS OF ATTORNEY GENERAL

Delay of Rules by Review Commission. — An act vesting in the Administrative Rules Review Commission (ARRC), a commission appointed by the General Assembly, the power to delay indefinitely the effective date of duly adopted agency rules which it deems in excess of statutory authority would likely be held to violate this section by vesting the ARRC with judicial powers reserved to the court and with supreme legislative powers reserved to the General Assembly. See opinion of Attorney General to Henson P. Barnes, President Pro Tempore, Senate, — N.C.A.G. — (February 25, 1991).

Sec. 2. Number of Senators.

Defeated Amendment Proposals. —

An amendment proposed by Session Laws 1985, c. 768, s. 11, and defeated at the primary election held on May 6, 1986, would have added "Except that there shall be no election in 1988, and elections shall be conducted in 1989 and biennially thereafter" at the end of the section.

COMMENTARY

Subdivisions (a) and (b) of this rule are identical to Fed. R. Evid. 614(a) and (b).

Subdivision (a) authorizes the court to call witnesses and is consistent with North Carolina practice. See *Brandis on North Carolina Evidence* § 37 (1982).

Subdivision (b) authorizes the court to examine witnesses, whether called by itself or by a party, and is consistent with North Carolina practice. *Id.*

It is anticipated that the court will exercise its authority to call or interrogate a witness only in extraordinary circumstances.

The court may not in calling or interrogating a witness do so in a manner as to suggest an opinion as to the weight of the evidence or the credibility of the witness in violation of G.S. 15A-1222 or G.S. 1A-1, Rule 51(a). *Id.*

Subdivision (c) differs from Fed. R. Evid. 614(c) by providing for an automatic objection to the calling or interrogation of witnesses by the court. Subdivision (c) is consistent with N. C. Civ. Pro. Rule 46(a)(3) which provides that no objections are necessary with respect to questions propounded to a witness by the court.

CASE NOTES

Clarification of Testimony. — The court may question a witness for the purpose of clarifying the witness' testimony and for promoting a better understanding of it. Such examination must be conducted with care and in a manner which avoids prejudice to either party. State v. Chandler, 100 N.C. App. 706, 398 S.E.2d 337 (1990).

The court properly uses its authority under subsection (b) of this rule when it questions witnesses in order to clarify ambiguous testimony and to enable the court to rule on the admissibility of certain evidence and exhibits. State v. Quick, 329 N.C. 1, 405 S.E.2d 179 (1991).

When Judge's Question Constitutes Expression of Opinion. — A trial judge's question, propounded for the purpose of clarification, is an expression of opinion only if a jury reasonably could infer that the question intimated an opinion as to a factual issue, the witness' credibility or the defendant's guilt. State v. Ramey, 318 N.C. 457, 349 S.E.2d 566 (1986).

Applied in State v. Hill, 105 N.C. App. 489, 414 S.E.2d 73 (1992).

Cited in State v. Bright, 320 N.C. 491, 358 S.E.2d 498 (1987).

Rule 615. Exclusion of witnesses.

At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party that is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of his cause, or (4) a person whose presence is determined by the court to be in the interest of justice. (1983, c. 701, s. 1.)

COMMENTARY

This rule is similar to Fed. R. Evid. 615 except that the word "shall" in the first sentence has been changed to "*may* order witnesses excluded," and the phrase "a person whose presence is determined by the court to be in the interest of justice" has been added as a fourth exception.

The use of "*may* order witnesses excluded" rather than "shall," as in the federal rule, is intended to preserve discretion in the trial judge, allowing him to take into account such things as the physical setting of the trial. However, the practice should be to sequester witnesses on request of either party unless

ARTICLE 43.

Uniform Act to Secure Attendance of Witnesses from without a State in Criminal Proceedings.

§ 15A-812. Summoning witness in this State to testify in another state.

CASE NOTES

Evidence Insufficient to Show Witness Not a Material Witness. — Where the trial court failed to make findings of fact or conclusions of law, there was insufficient competent evidence to support the trial court's order finding that individual sought to be subpoenaed from out-of-state was not a material witness and that enforcement of the subpoena duces tecum would cause an undue hardship to her. In re McKinny, — N.C. App. —, 462 S.E.2d 530 (1995).

§ 15A-813. Witness from another state summoned to testify in this State.

CASE NOTES

Cited in State v. Bowie, 340 N.C. 199, 456 S.E.2d 771 (1995).

ARTICLE 45.

Fair Treatment for Victims and Witnesses.

§ 15A-824. Definitions.

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

(1) "Crime" means a serious misdemeanor as determined in the sole discretion of the district attorney, any felony, or any act committed by a juvenile that, if committed by a competent adult, would constitute a felony.

(2) "Family member" means a spouse, child, parent or legal guardian, or the closest living relative.

(3) "Victim" means a person against whom there is probable cause to believe a crime has been committed.

(4) "Witness" means a person who has been or is expected to be summoned to testify for the prosecution in a criminal action concerning a felony, or who by reason of having relevant information is subject to being called or is likely to be called as a witness for the prosecution in such an action, whether or not an action or proceeding has been commenced. (1985 (Reg. Sess., 1986), c. 998, s. 1; 1989, c. 596, s. 1.)

§ 15A-825. Treatment due victims and witnesses.

To the extent reasonably possible and subject to available resources, the employees of law-enforcement agencies, the prosecutorial system, the judicial system, and the correctional system should make a reasonable effort to assure that each victim and witness within their jurisdiction:

(1) Is provided information regarding immediate medical assistance when needed and is not detained for an unreasonable length of time before having such assistance administered.

(2) Is provided information about available protection from harm and threats of harm arising out of cooperation with law-enforcement prosecution efforts, and receives such protection.

(2a) Is provided information that testimony as to one's home address is not relevant in every case, and that the victim or witness may request the district attorney to raise an objection should he/she deem it appropriate to this line of questioning in the case at hand.

(3) Has any stolen or other personal property expeditiously returned by law-enforcement agencies when it is no longer needed as evidence, and its return would not impede an investigation or prosecution of the case. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property whose ownership is disputed, should be photographed and returned to the owner within a reasonable period of time of being recovered by law-enforcement officials.

(4) Is provided appropriate employer intercession services to seek the employer's cooperation with the criminal justice system and minimize the employee's loss of pay and other benefits resulting from such cooperation whenever possible.

(5) Is provided, whenever practical, a secure waiting area during court proceedings that does not place the victim or witness in close proximity to defendants and families or friends of defendants.

(6) Is informed of the procedures to be followed to apply for and receive any appropriate witness fees or victim compensation.

(6a) Is informed of the right to be present throughout the entire trial of the defendant, subject to the right of the court to sequester witnesses.

(7) Is given the opportunity to be present during the final disposition of the case or is informed of the final disposition of the case, if he has requested to be present or be informed.

(8) Is notified, whenever possible, that a court proceeding to which he has been subpoenaed will not occur as scheduled.

(9) Has a victim impact statement prepared for consideration by the court.

(9a) Prior to trial, is provided information about plea bargaining procedures and is told that the district attorney may recommend a plea bargain to the court.

(10) Is informed that civil remedies may be available and that statutes of limitation apply in civil cases.

(11) Upon the victim's written request, is notified before a proceeding is held at which the release of the offender from custody is considered, if the crime for which the offender was placed in custody is a Class G or more serious felony.

(12) Upon the victim's written request, is notified if the offender escapes from custody or is released from custody, if the crime for which the offender was placed in custody is a Class G or more serious felony.

(13) Has family members of a homicide victim offered all the guarantees in this section, except those in subdivision (1).

Nothing in this section shall be construed to create a cause of action for failure to comply with its requirements. (1985 (Reg. Sess., 1986), c. 998, s. 1; 1989, c. 596, s. 2.)

Legal Periodicals. — For comment, "Repairing the Breach and Reconciling the Discordant: Mediation in the Criminal Justice System," see 72 N.C.L. Rev. 1479 (1994).

CASE NOTES

Use of Victim Impact Statements at Sentencing Hearings. — Victim impact statements may be used at sentencing hearings, except in capital cases. State v. Phillips, 325 N.C. 222, 381 S.E.2d 325 (1989).

Victim's or Witness' View of Evidence Has No Proper Place in Impact Statement. — What a victim or a witness thinks the evidence in a case shows or what the defendant's punishment should be is not an effect of crime, but advocacy, and such thoughts have no place in a proper impact statement, but holding that statements by victim's sisters on Victim Impact Statement forms as to the sentence which they believed defendant should receive were harmless under the circumstances. State v. Jackson, 91 N.C. App. 124, 370 S.E.2d 687 (1988).

Introduction of Victim Impact Statements Not Prejudicial. — Where court found no aggravating factor based on evidence adduced by victim impact statements introduced at defendant's sentencing hearing, defendant was shown the statements at the hearings and objected to their admission but did not move for a continuance to seek evidence in rebuttal or to issue subpoenas for the persons who made the statements, and the matters contained in the statements had been brought to the court's attention during the actual trial, defendant failed to show how he was prejudiced by introduction of the statements. State v. Phillips, 325 N.C. 222, 381 S.E.2d 325 (1989).

SUBCHAPTER IX. PRETRIAL PROCEDURE.

ARTICLE 48.

Discovery in the Superior Court.

§ 15A-901. Application of Article.

CASE NOTES

Court's Power to Compel Disclosure Regarding Post-Trial Motion. — The judiciary must and does have the inherent power to compel disclosure of relevant facts regarding a post-trial motion and may order such disclosure prior to a hearing on such motion. State v. Taylor, 327 N.C. 147, 393 S.E.2d 801 (1990).

Criminal Investigatory Reports. — Plaintiff was precluded by this Article from obtaining copies of recordings which were unquestionably gathered by a city police department in the course of a criminal investigation and were part of the State's file in a pending criminal action. Piedmont Publishing Co. v. City

The trial courts should exercise extreme caution in conducting in camera hearings and insure that all information received by the court relating to punishment is made known to the defendant and his counsel and that he be given the opportunity to explain or refute it. State v. Midyette, — N.C. App. —, 360 S.E.2d 507 (1987).

Opportunity for Defendant to Refute Victim's Statement. — A new sentencing hearing is required when a judge conducts an in camera victim input session and pronounces judgment without the defendant having an opportunity to refute any of the matters urged by the victim's statement. State v. Midyette, — N.C. App. —, 360 S.E.2d 507 (1987).

§ 15A-826. Victim and witness assistants.

Victim and witness assistants are responsible for coordinating efforts within the law-enforcement and judicial systems to assure that each victim and witness is treated in accordance with this Article. (1985 (Reg. Sess., 1986), c. 998, s. 1.)

§ 15A-827. Scope.

This Article does not create any civil or criminal liability on the part of the State of North Carolina or any criminal justice agency, employee, or volunteer. (1985 (Reg. Sess., 1986), c. 998, s. 1.)

§§ 15A-828 to 15A-849: Reserved for future codification purposes.

OFFICIAL COMMENTARY

The General Assembly deleted proposed provisions relating to depositions and reserved this Article for future codification. The deletion leaves present deposition law unchanged.

ARTICLE 46.

§§ 15A-850 to 15A-875: Reserved for future codification purposes.

ARTICLE 47.

§§ 15A-876 to 15A-900: Reserved for future codification purposes.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 665 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Blue
Sen.)

moves to amend the bill on page 1, line 18

( ) WHICH CHANGES THE TITLE

by deleting the words "or sibling."

and substituting the following:

"siblings, or grandparents."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 202*
Committee Substitute Favorable 2/26/97
Senate Judiciary Committee Substitute Adopted 3/19/97

Short Title: Increase Minimum Upset Amount. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE MINIMUM AMOUNT BY WHICH AN UPSET BID ON REAL PROPERTY IN JUDICIAL SALES AND EXECUTION SALES MUST EXCEED THE REPORTED SALE PRICE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-339.25(a) reads as rewritten:

"(a) An upset bid is an advanced, increased or raised bid whereby a person offers to purchase real property theretofore ~~sold,~~ sold for an amount exceeding the reported sale price by ~~ten percent (10%) of the first $1000 thereof plus~~ a minimum of five percent (5%) thereof, ~~of any excess above $1000,~~ but in any event with a minimum increase of ~~$25,~~ seven hundred fifty dollars ($750.00). ~~such increase being deposited in cash, or by certified check or cashier's check satisfactory to the said clerk, with the clerk of the superior court, with whom the report of the sale was filed, within ten days after the filing of such report; such deposit to be made with the clerk of superior court before the expiration of the tenth day, and if the tenth day shall fall upon a Sunday or holiday, or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made on the day following when said office is open for the regular dispatch of its business.~~ An upset bid shall be made by delivering to the clerk of superior court, with whom the report of sale was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the amount of the

upset bid but in no event less than seven hundred fifty dollars ($750.00). The deposit required by this section shall be filed with the clerk of the superior court, with whom the report of sale was filed, by the close of normal business hours on the tenth day after the filing of the report of sale, and if the tenth day shall fall upon a Sunday or legal holiday or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made on the day following when said office is open for the regular dispatch of its business. An upset bid need not be in writing, and the timely deposit with the clerk of the required amount, together with an indication to the clerk as to the sale to which it is applicable, is sufficient to constitute the upset bid, subject to the provisions of subsection (b)."

Section 2. G.S. 1-339.64(a) reads as rewritten:

"(a) An upset bid is an advanced, increased or raised bid whereby a person offers to purchase real property theretofore ~~sold,~~ sold for an amount exceeding the reported sale price by ~~ten percent (10%) of the first $1000 thereof plus~~ a minimum of five percent (5%) thereof, ~~of any excess above $1000,~~ but in any event with a minimum increase of ~~$25,~~ seven hundred fifty dollars ($750.00). ~~such increase being deposited in cash, or by certified check or cashier's check satisfactory to the said clerk, with the clerk of the superior court, with whom the report of the sale was filed, within ten days after the filing of such report; such deposit to be made with the clerk of superior court before the expiration of the tenth day, and if the tenth day shall fall upon a Sunday or holiday, or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made on the day following when said office is open for the regular dispatch of its business.~~ An upset bid shall be made by delivering to the clerk of superior court, with whom the report of sale was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty dollars ($750.00). The deposit required by this section shall be filed with the clerk of the superior court, with whom the report of sale was filed, by the close of normal business hours on the tenth day after the filing of the report of sale, and if the tenth day shall fall upon a Sunday or legal holiday or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made and the upset bid filed on the day following when said office is open for the regular dispatch of its business. An upset bid need not be in writing, and the timely deposit with the clerk of the required amount, together with an indication to the clerk as to the sale to which it is applicable, is sufficient to constitute the upset bid, subject to the provisions of subsection (b)."

Section 3. This act becomes effective January 1, 1998, and applies to judicial sales when the original order of sale was issued on or after that date and to execution sales when the execution was originally issued on or after that date. This act shall not apply to any judicial sale when the original order of sale has been issued prior to the effective date of this act or to any execution sale held pursuant to any execution originally issued prior to the effective date of this act.

North Carolina General Assembly
Legislative Services Office

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(919) 733-7044

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April 17, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **House Bill 202; Increase minimum upset bid amount**

House Bill 202 is before the Committee on the question of whether to concur in the Senate Committee Substitute. The bill was originally heard by the House Judiciary II Committee.

The bill deals with the minimum upset bid amounts in judicial sales and execution sales. Under present law, an upset bid in either type of sale must exceed the sale price by 10% of the first $1,000 plus 5% of amounts over $1,000, with a minimum increase of $25.00. The amendments change the upset bid to a minimum of 5% of the previous sale price but the minimum is increased to $750.00.

The act becomes effective January 1, 1998 and applies to judicial sales when the original order was issued on or after the effective date and to execution sales when the execution was originally issued on or after that date.

The change in the minimum upset bid amount was recommended by the General Statutes Commission.

The difference between the bill as passed by the House and the bill as passed by the Senate is found in the language of the effective date. The Senate added language to help clarify that the amendments to the statutes would only affect sales and executions that traced their origins to a date on or after the effective date.

H202-SMRL-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

see tape minutes NOT in Computer

Thursday, May 22, 1997
10:00 a.m.
1327 Legislative Building

N. Leo Daughtry
Edwin M. "Sandy" Hardy
Co-Chairman

Members Present:

Jerry Braswell	Gene G. Arnold
Daniel T. Blue, Jr.	J. Russell Capps
Debbie Clary	J. Sam Ellis
Milton F. Fitch, Jr.	Lyons Gray
Bobby Ray Hall	Thomas C. Hardaway
George M. Holmes	Robert C. Hunter
John W. Hurley	Margaret M. Jeffus
Larry T. Justus	H.M. Michaux, Jr.
George W. Miller, Jr.	Wilma M. Sherrill

(Rep. Alexander was excused)

The House Committee on JUDICIARY I met at 10:00 a.m. on Thurs., May 22, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry and Edwin M. "Sandy" Hardy presiding.

Committee Counsels Steven Rose and Karen Cochrane-Brown were present to assist the Committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

Chairman Daughtry resumed discussion of the Proposed Committee Substitute to H.B. 665, the CRIME VICTIMS' RIGHTS ACT, and recognized Rep. Eddins to explain the measure.

Committee counsels Steven Rose and Karen Cochrane-Brown prepared and distributed a list of the Class F, G, H and I felonies covered in H.B. 665, a copy of which is attached and made a part of these minutes.

Ralph Knott, Clerk of the Superior Court of Franklin County asked and was recognized to speak on points in the bill, making comparisons to H.B. 217. Mr. Knott asked the committee to examine House Bill 217 and insisted "if you can't waive exemptions, you can't collect a penny."

Rep. Capps moved to amend the P.C.S. on page 2 line 13 to delete "20-138-5B" and replace it with "20-138-5." ***There was no objection to this technical amendment.***

Rep. Capps moved to amend the P.C.S. on page 6, line 25, by inserting the words "under this article" immediately after the word "restitution". ***There was no objection.***

Jim Mills of Fiscal Research was recognized to give updated figures from the on-going drafting of a Fiscal Note to the P.C.S. to H.B. 665.

Rep. Hall moved to amend the bill on page 2, line 19-20 by inserting the following new subdivision between the lines:

"f. Any felony or misdemeanor which fits the definition of domestic violence contained in G.S. 50B-1, including G.S. 14-33, and 14-318.2, as wellas the attempt of any such felony or misdemeanor. These crimes are in addition to the felonies set forth in subdivisions a. through e. of this subsection."; and on page 9, line 40, by deleting the words "thirty dollars ($30.00)" and substituting the words "one hundred dollars ($100.00)"

Thomas Keith, president of the North Carolina Associaiton of District Attorneys was recognized to express approval of the amendment in concept, but in reality would result in expenses in excess of the resourses available in the early stages of the Act's implementation.

There was discussion, but no action, on Mr. Hall's motion before,

The Committee adjourned at 10:50 a.m.

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS:

HOUSE COMMITTEE ON JUDICIARY I

Thursday, May 22, 1997
Room 1327 LB
10:00 a.m.

Representatives N. Leo Daughtry,
Edwin M. "Sandy" Hardy
Co-Chairmen

H.B. 665 CRIME VICTIMS' RIGHTS ACT
Sponsor: Representative Eddins

S. 402 DEBTOR PROTECTION/SIMPLE IRAS
S. 953 CORPORATE REINSTATEMENT
Sponsor: Senator Webster

Adjournment

Joel Raupe (Rep. Hardy)

From: Joel Raupe (Rep. Hardy)
Sent: Thursday, June 05, 1997 4:11 PM
To: Steve Rose (Research); Karen Cochrane-Brown (Research)
Subject: Status HB 665

In answer to your query...

On Tuesday, May 22, J1 considered HB 665 and, on a motion by Rep. Capps, adopted for the purpose of discussion a Proposed Committee Substitute numbered "H665-CSRO-001"

The PCS was subsequently amended on a motion by Rep. Blue (un-numbered)
On page 1, line 18, by deleting the words "or sibling" and substituting the following: "siblings, or grandparents."

On Thursday, May 24, on a motion by Rep. Capps, the Committee amended the PCS on page 2, line 13 to delete "20-138-5B" and replace it with "20-138-5." There was no objection to this technical amendment.
(--- I have no written copy of this amendment)

Also on Thursday, and also on a motion by Rep. Capps, the Committee amended the PCS on page 6, line 25, by inserting the words "under this article" immediately after the word "restitution".
The written amendment is numbered "H665-ARL-004"

After discussion concluded on his motion Thursday, on Tuesday, June 3, the Committee adopted Rep. Hall's amendment numbered "H665-ARO-001"

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 665

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H665-ARO-001

Date_____,1997

Comm. Sub. [Yes]
Amends Title []

Representative Hall

moves to amend the bill on page 2, lines 19-20, by inserting the following new subdivision between the lines:

"f. Any felony or misdemeanor which fits the definition of domestic violence contained in G.S. 50B-1, including G.S. 14-33, and 14-318.2, as well as the attempt of any such felony or misdemeanor. These crimes are in addition to the felonies set forth in subdivisions a. through e. of this subsection. ";

and on page 9, line 40, by deleting the words "thirty dollars ($30.00)" and substituting the words "one hundred dollars ($100.00)"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Representative Jane H. Mosley

THE NEWS & OBSERVER
MONDAY, MAY 26, 1997

Property tax exemption bill goes before Senate

BY WADE RAWLINS
STAFF WRITER

RALEIGH — When the Army bought the 11,000-acre Rockefeller estate to expand Fort Bragg, taxpayers would have paid the $273,000 in local deferred taxes the Rockefellers owed on the land, if a bill pending in the Senate were already law.

And Wake taxpayers would have been obligated for the $8,134 in back taxes owed on land purchased by Wake County government last year. The owners got $2.3 million for the 43 acres on which they had been paying only $91 a year in taxes, because it was classified as forest land.

A bill scheduled for a preliminary Senate vote today would exempt property owners from paying back taxes on property classified as farm or forest land when they sell it under threat of condemnation. The government body, or public utility, buying the land would pay the deferred taxes — in effect, making taxpayers, or ratepayers, bear the cost.

Rep. Debbie Clary, a Shelby Republican who is sponsoring the measure, said the bill promotes fairness. But some tax assessors said the legislation helps a few at the expense of the average taxpayers and would create more inequity in the tax system.

"There have been a number of laws that have been passed that reduced our slice of the pie," said Garrett Alexander, Cumberland County tax administrator. "Our pie keeps getting smaller. The average homeowner is paying substantially more than his share of the taxes each time one of these bills goes through."

Most taxpayers pay property taxes based on the appraised tax value of their property.

But some people reduce their taxes significantly by having their land classified as agriculture or forest land and getting most of the taxes deferred.

For example, 20 acres assessed at a tax value of $80,000 in Wake County has an annual tax bill of $504. The same 20-acre tract when classified as forest has a tax bill of about $28.

Under state law, the landowner must pay full taxes on the property for the current year and three prior years when the land is sold for nonfarm use or is no longer eligible for the deferment.

Clary said her proposed exemption is to help farmers who are being forced to sell parts of their family farms to make way for the U.S. 74 bypass in Cleveland County.

"These are not people who are buying up land and selling it off speculatively," Clary said. "This bill is not about large amounts of money. This bill is about principle and fairness. That is the bottom line."

But tax assessors say the legislation would help taxpayers who have already taken advantage of the existing loophole, while hurting those who have been paying full taxes.

For example, property owners who sell property for highway right of way who aren't using the agricultural tax loophole wouldn't get their tax bills waived. But those who are getting the tax deferment would get another one by having their taxes waived.

"That is a very inequitable situation," Wake Tax Administrator Emmett Curl said. "I would think most people could negotiate where the state could compensate for those expenses that would be incurred because of the taking of the property."

Tax administrators say property owners — even those who sell their property unwillingly — are paid the market price. And if they don't like the price offered by the government, they can appeal.

The N.C. Association of County Commissioners initially opposed the legislation because counties would lose an estimated $3 million to $4 million a year in property taxes. The group dropped its objections, however, after the bill was revised so that the government or utility that condemns the land — essentially the taxpayer or utility ratepayer — pays the back taxes

"We still feel like the taxpayer is ultimately going to pay," said Durham Tax Assessor Charlie Clark, chairman of the legislative committee for the N.C. Association of Tax Collectors and Assessors.

"It's just hard for me to envision when Fort Bragg condemns 11,000 acres of the Rockefeller estate, that the Rockefellers couldn't pay the back taxes," Clark said.

The House overwhelmingly approved the bill two weeks ago. Rep. Chuck Neely, a Raleigh Republican, was one of the few members to question the bill.

"I couldn't see why they should have the benefit of reduced taxes before and then get fair market value for their land and not have to pay taxes like everybody else," Neely said.

Wade Rawlins can be reached at 829-4582 or wrawlins@nando.com

News Observer May 27, 1997

Senate postpones vote on measure to allow property tax exemptions

THE ASSOCIATED PRESS

A state Senate vote was postponed Monday on a bill that supporters say will help farmers who are forced to give up land for development.

Opponents say it is nothing more than a tax loophole for the wealthy, another way to shift more of the tax burden onto the middle class.

The bill exempts property owners from paying back taxes on property classified as farm or forest land when they sell it under threat of condemnation. The government body, or public utility, buying the land would pay the deferred taxes — in effect, making taxpayers, or ratepayers, bear the cost.

It already has passed the state House. Now, it only needs Senate approval and Gov. Jim Hunt's signature to become law.

Rep. Debbie Clary, R-Cleveland, who sponsored the measure, defended it as a fairness issue.

But some tax assessors said the legislation helps a few at the expense of the average taxpayers and would create more inequity. The measure would most certainly benefit some wealthy landowners.

For example, when the Army bought the 11,000-acre Rockefeller estate to expand Fort Bragg, taxpayers would have paid the $273,000 in local deferred taxes.

Some people reduce their taxes by having their land classified as agriculture or forest land and getting most of the taxes deferred.

Under state law, the landowner must pay full taxes on the property for the current year and three prior years when the land is sold for non-farm use or is no longer eligible for the deferment.

Landowners who are getting the tax deferment would get another one by having their taxes waived.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 665 (PCS)

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H665-ARL-006 (PCS)

Date_____,1997

Comm. Sub. [YES]
Amends Title [YES]

moves to amend the bill on page 1, line 2, by rewriting that line to read:
"AN ACT TO CREATE THE CRIME VICTIMS' RIGHTS ACT AND TO CHANGE THE ORDER OF PRIORITY FOR DISBURSEMENT OF FUNDS IN A CRIMINAL CASE.";
and

on page 10, lines 25 through 28, by rewriting those lines to read:

"Section 2. The provisions of Article 45 of Subchapter VIII of Chapter 15A of the General Statutes are supplemental to the provisions of Article 101 of Subchapter XVI of Chapter 15A of the General Statutes as enacted in Section 1 of this act. If there is any conflict between the provisions of Article 45 and Article 101, the provisions of Article 101 shall control.

Section 3. G.S. 7A-304(d) reads as rewritten:

'(d) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

(1) Sums in restitution prorated among the persons entitled thereto;
~~(1)~~ (2) Costs due the county;
~~(2)~~ (3) Costs due the city;
~~(3)~~ (4) Fines to the county school fund;
~~(4) Sums in restitution prorated among the persons entitled thereto;~~
(5) Costs due the State;
(6) Attorney's fees.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 665 (PCS)

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H665-ARL-006 (PCS)

Sums in restitution received by the clerk of superior court shall be disbursed when:

(1) Complete restitution has been received; or

(2) When, in the opinion of the clerk, additional payments in restriction will not be collected; or

(3) Upon the request of the person or persons entitled thereto; and

(4) In any event, at least once each calendar year.'

Section 4. This act becomes effective July 1, 1997 and applies to crimes committed on or after that date.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 665 (PCS)

AMENDMENT NO. 2 to PCS
(to be filled in by
Principal Clerk)

H665-ARL-004 (PCS)

Date ,1997

Comm. Sub. [YES]
Amends Title []

1 moves to amend the bill on page 6, line 25,
2 by inserting the words "under this Article" immediately after the
3 word "restitution".
4

SIGNED _____ CAPPS
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

JUDICIARY I 5/22/97 10AM

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Laura DeVine	CCPS
2.	Lato Rubbra	CJPC
3.	David Treasy	Secretary of State
4.	Carol Hartley	Office of Gov
5.	Kim Smith	NCLM
6.	John Madden	Sentencing Commission
7.	Ricky Herring	Parole Commission
8.	Rose Marie White Hearn	NC Victim Assistance Network
9.	David Ferrell	Hafer, McNamara, Caldwell, McElroy & Cutler, PA
10.	Alyson Grine	ACLU
11.	Stephanie Gibbs	Charlotte Observer
22.	[illegible]	NCAJ
23.	PETER GILCHRIST	District Attorney - Mecklenburg
24.	Thomas D Haigwood	District Attorney - Pitt
25.	Debra Ross	ACLU
26.	Richard Wilms	NCMBA
27.	Peg Dorer	NCCDA
28.	Roslyn Savitt	NC Coalition Against Domestic Violence
29.	Jim Kentt	NC Conf of Dist. Attys.
30.	Tom Lock	Dist Atty - 11th Dist.
31.	Colon Willoughby	Dist Atty - 10th Dist

32.		
33.		
34.		Gen. Fed. Couns.
35.		NCAG
36.		NCATL
37.		
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HOUSE COMMITTEE ON JUDICIARY I

1 tape

Tuesday, May 27, 1997
Room 1327 LB ✓
10:00 a.m.

Representatives N. Leo Daughtry,
Edwin M. "Sandy" Hardy
Co-Chairmen

H.B. 665 CRIME VICTIMS' RIGHTS ACT
Sponsor: Representative Eddins

S. 430 INDUSTRIAL HYGIENISTS
Sponsor: Senator Odom

S. 402 DEBTOR PROTECTION/SIMPLE IRAS
S. 953 CORPORATE REINSTATEMENT
Sponsor: Senator Webster

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 430
Judiciary Committee Substitute Adopted 4/28/97 may 27

Short Title: Industrial Hygienists. (Public)

Sponsors:

Referred to:

March 19, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TITLE PROTECTION FOR THE PROFESSION OF INDUSTRIAL HYGIENISTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 33.

"Industrial Hygiene.

"**§ 90-515. Definitions.**

The following definitions apply in this Article:

(1) 'American Board of Industrial Hygiene'. -- A nonprofit corporation incorporated in 1960 in Pennsylvania to improve the practice of the profession of Industrial Hygiene by certifying individuals who meet its education and experience standards and who pass its examination.

(2) 'Certified Industrial Hygienist (CIH)'. -- A person who has met the education, experience, and examination requirements established by the American Board of Industrial Hygiene for a Certified Industrial Hygienist (CIH).

(3) 'Industrial Hygiene'. -- The applied science devoted to the anticipation, evaluation, and control of contaminants and stressors that may cause sickness, impaired health and well-being, or

significant discomfort and inefficiency among workers and the general public.

(4) 'Industrial Hygienist'. -- A person who, through special studies and training in chemistry, physics, biology, and related sciences, has acquired competence in industrial hygiene. The special studies and training must have been sufficient to confer competence in the: (i) anticipation and recognition of environmental contaminants and stressors to which workers and other members of the public could be exposed in industrial operations, office buildings, homes, and the general community; (ii) assessment of the likely effects on the health and well-being of individuals exposed to these contaminants and stressors; (iii) quantification of levels of human exposure to these contaminants and stressors through scientific measurement techniques; and (iv) designation of methods to eliminate or to control these contaminants and stressors, or to reduce the level of human exposure to them.

(5) 'Industrial Hygienist in Training (IHIT)'. -- A person who has met the education, experience, and examination requirements established by the American Board of Industrial Hygiene for an Industrial Hygienist in Training (IHIT).

"**§ 90-516. Unlawful acts.**

(a) No person shall practice or offer to practice as a Certified Industrial Hygienist, use any advertisement, business card, or letterhead or make any other verbal or written communication that the person is a Certified Industrial Hygienist or acquiesce in such a representation unless that person is certified by the American Board of Industrial Hygiene.

(b) No person shall practice or offer to practice as an Industrial Hygienist in Training, use any advertisement, business card, or letterhead or make any other verbal or written communication that the person is an Industrial Hygienist in Training or acquiesce in such a representation unless that person is certified by the American Board of Industrial Hygiene.

(c) A violation of this Article shall be punished as a Class 2 misdemeanor.

(d) Any person, including the Attorney General, may apply to the superior court for injunctive relief to restrain a person who has violated this Article from continuing these illegal practices. The court may grant injunctive relief regardless of whether criminal prosecution or other action has been or may be instituted as a result of the violation. In the court's consideration of the issue of whether to grant or continue an injunction sought under this subsection, a showing of conduct in violation of the terms of this Article shall be sufficient to meet any requirement of general North Carolina injunction law for irreparable harm.

(e) The venue for actions brought under this Article is the superior court of any county in which the illegal or unlawful acts are alleged to have been committed or in the county where the defendant resides.

(f) Nothing in this Article shall be construed as authorizing a person certified in accordance with this Article to engage in the practice of engineering, nor to restrict or otherwise affect the rights of any person licensed to practice engineering under Chapter 89C of the General Statutes; provided, however, that no person shall use the title 'Certified Industrial Hygienist' unless the person has complied with the provisions of this Article."

Section 2. This act becomes effective December 1, 1997, and applies to violations which occur on or after that date.

VISITOR REGISTRATION SHEET

Judiciary I — 5-27-97

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	R. Paul Wilms	NCMSA
2.	[illegible]	NC Hosp
3.	[illegible]	CSC
4.	[illegible]	Pet's
5.	[illegible]	VA's
6.	[illegible]	VA's
7.	Roslyn Savitt	NC Coalition Against DV
8.	David Ferrell	Hyer, McNamara, Caldwell, McElroy & Cutler, PA
9.	A.A. Adams	Victim Advocate
10.	Donna Loyd	NC-VAN
11.	Rosy White-Hearn	NC Victim Assistance Network
22.	Jon Lorch	DA - 11th Dist.
23.	Ray Locke	DA - 13th District
24.	Tom Haigwood	DA - 3A
25.	Tom Keith	DA-21
26.	Peg Dorer	NCCDA
27.	[illegible]	DOL
28.	Bill David	DOR
29.	Jack Stewart	CCPS
30.	Laura DeVane	CCPS
31.	Otis Carter	Carter & Assoc

~~32.~~	~~Bernard Alle~~	SOS
33.	[illegible]	ACCSI
34.	~~[illegible]~~	PCS
35.	~~[illegible]~~	ADC
36.	~~Suzanne~~ Jones	Representative Esposito's Intern
37.	Laura Hartsell	MCIC
38.		
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NORTH CAROLINA HOUSE *of* REPRESENTATIVES

COMMITTEE ON JUDICIARY I

Thursday, May 29, 1997 X no tape
Room 1327 LB
10:00 a.m.

Representatives N. Leo Daughtry,
Edwin M. "Sandy" Hardy
Co-Chairmen

S 320 NURSES' TRAINING
S 393 FAIL COMM. SERVICE/REVOKE LICENSE
Sponsor: Senator Rand

S 376 CAMPUS LAW ENFORCEMENT
Sponsor: Senator Warren

S 561 CAMPUS POLICE/CONCEALED HANDGUNS
Sponsor: Senator Odom

S 885 NOTICE OF EXECUTION
Sponsor: Senator Gulley

Adjournment

North Carolina General Assembly
Legislative Services Office

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June 2, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel
O. Walker Reagan, Staff Attorney

RE: **SENATE BILL 320 - NURSES' TRAINING -** Senator Rand

Senate Bill 320 amends the law to allow a licensed nurse who has successfully completed a training program approved by the North Carolina Board of Nursing to conduct medical examinations and collect evidence from victims of rape and sexual offenses, and would allow these nurses to be paid directly for these services by insurance companies and the Victims Assistance Program.

Section 1 of the bill authorizes the education and training of licensed nurses in skills, procedures and techniques for conducting medical examinations of and collecting evidence from victims of rape and sexual offenses in accordance with standards established by the Board. Entities desiring to establish an approved program must apply to the Board and meet the standards established by the Board.

Section 2 provides that a licensed nurse who has successfully completed an approved training course established under section 1 of the bill is not consider to be practicing nursing without a license when conducting medical examinations or procedures for collecting evidence from victims of rape or sexual offenses.

Section 3 amends the insurance law to permit a licensed nurse who has been trained in accordance with Section 1 of the bill to be paid directly by the insurance company for performing exams and procedures as provided for under this bill.

Section 4 amends the Victims of Rape and Sexual Offense Assistance Act to permit direct payment to nurses from the Victims Assistance Fund for services performed as permitted by this bill.

The bill is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

North Carolina General Assembly
Legislative Services Office

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June 2, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel
O. Walker Reagan, Staff Attorney

RE: **SENATE BILL 376 - CAMPUS LAW ENFORCEMENT** - Senator Warren

Senate Bill 376 amends the statutes authorizing the Boards of Trustees of the constituent institutions of the University of North Carolina to establish campus law enforcement agencies by extending this authority to any teaching hospital affiliated with, but not part of, any constituent institution.

The officers of these law enforcement agencies would have to comply with the requirements of the Criminal Justice and Training Standards Commission for law enforcement officers, would be sworn law enforcement officers, and would have the powers, while on the property of the institution, of law enforcement officers generally, including the power of arrest.

The bill also authorizes these campus police forces for teaching hospitals to enter into joint agreements with municipal law enforcement agencies and county sheriffs.

This bill will become effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

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May 29, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **Senate Bill 393; Revocation of license for failure to complete community service or failure to pay child support**

Senate Bill 393 makes the following amendments to Chapters 20 and 143B regarding performance of community service and revocation of a drivers license for failure to perform community service and failure to pay child support.

Section 1 of the bill amends G.S. 20-179.4, which deals with community service as an alternative punishment for certain convictions of impaired driving. G.S. 20-179.4 requires the Department of Crime Control and Public Safety to conduct community service alternative punishment programs for persons convicted of impaired driving who are found to be subject to Level Three, Level Four, or Level Five punishment under G.S. 20-179. Persons found guilty of impaired driving at those levels must be sentenced to a term of imprisonment but the term of imprisonment must be suspended if the court imposes certain conditions, including performing community service. The amendments to G.S. 20-179.4 remove the requirement that the community service coordinator appointed by the Secretary of Crime Control and Public Safety must be appointed in consultation with and subject to the approval of the Chief District Court Judge in the district. In addition, the amendment provides that a revocation of a limited driving privilege due to a failure to meet community service requirements shall remain in force until the community service requirement has been met. Under present law, the provision providing for the revocation of limited driving privileges for failure to perform community service does not provide for the restoration of the limited driving privilege if the community service requirement is later met.

Section 2 of the bill amends G.S. 143B-475.1. G.S. 143B-475.1 provides the Department of Crime Control and Public Safety may conduct deferred prosecution, community service

restitution, and volunteer programs for youthful and adult offenders. Under present law, the coordinator of the program for the district court district is appointed by the Secretary of Crime Control and Public Safety in consultation with and subject to the approval of the Chief District Court Judge of the district. The amendment removes the requirement that the appointment be made in consultation with and subject to the approval of the District Court Judge. It should be noted that under the provisions of G.S. 143B-475.1(c) the Secretary is permitted to designate the same person as coordinator under this section and under G.S. 20-179.4.

Section 3 of the bill amends G.S. 20-17(b). G.S. 20-17(b) provides that the Division of Motor Vehicles is to ensure that no drivers license is issued or renewed to a person who is delinquent in child support payments provided that the court has issued a revocation order. The amendment adds a requirement that the Division revoke the drivers license of any person who has willfully failed to complete court ordered community service and the court has issued a revocation order. The revocation continues until the Division receives certification from the Clerk of Court that the court ordered community service has been completed.

The act becomes effective October 1, 1997 and applies to persons hired or persons notified of a hearing to determine failure to perform community service on or after that date.

S393-SMRL-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S561-PHCSRL-001
PROPOSED HOUSE COMMITTEE SUBSTITUTE
SENATE BILL 561
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Company Police/Concealed Handguns. (Public)

Sponsors:

Referred to: Judiciary.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO REMEDY THE INADVERTENT EXCLUSION OF DULY SWORN AND COMMISSIONED COMPANY POLICE OFFICERS FROM THE CONCEALED HANDGUN STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 74E-6(c) reads as rewritten:

"(c) All Company Police. -- Company police officers, while in the performance of their duties of employment, have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on any of the following:

(1) Real property owned by or in the possession and control of their employer.

(2) Real property owned by or in the possession and control of a person who has contracted with the employer to provide on-site company police security personnel services for the property.

(3) Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivisions (1) or (2) of this subsection.

Company police officers shall have, if duly authorized by the superior officer in charge, the authority to carry concealed weapons pursuant to and in conformity with G.S. 14-269(b)(5)."

Section 2. This act is effective when it becomes law.

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June 3, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **SENATE BILL 561 - CAMPUS POLICE CARRY CONCEALED HANDGUNS OFF-DUTY.**

Senate Bill 561 would specifically authorize campus police officers to carry concealed weapons while off-duty when authorized by their superior officer in accordance with the standard procedures applicable to other law enforcement officers.

Campus police officers are company police officers who are employed by a constituent institution of The University of North Carolina or any private college or university that is licensed or exempt from licensure as set forth in G.S. 116-15. These officers are required to be sworn, certified by the Criminal Justice Training Standards Commission, and have the same powers as municipal and county police officers on the institutions property, including the power of arrest.

G.S. 14-269(b)(5) permits a sworn law-enforcement officer, when off-duty, to carry a concealed weapon if written regulations authorizing the carrying of concealed weapons has been filed with the clerk of court by the superior officer in charge and the regulations prohibit carrying the weapon while the officer is consuming or under the influence of alcoholic beverages. However, G.S. 74E-6(g) provides that the authority granted to company policy under Chapter 74E is limited to that which is specified in that chapter.

This bill would be effective when it becomes law.

S561-SMRL-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

for failure to meet the requirements of or comply with this Chapter or a rule adopted under this Chapter, in accordance with Article 3 of Chapter 150B of the General Statutes.

(6) To appear in the name of the Company Police Program and apply to the courts having jurisdiction for injunctions to prevent a violation of this Chapter or a rule adopted under this Chapter.

(7) To delegate the authority to administer this Chapter.

(8) To require that the Criminal Justice Standards Division provide administrative support staff for the Company Police Program.

(9) To adopt rules needed to implement this Chapter, in accordance with Chapter 150B of the General Statutes. (1871-2, c. 138, ss. 51, 52; Code, ss. 1988, 1989; Rev., ss. 2605, 2606; 1907, c. 128, s. 1; C.S., s. 3484; 1923, c. 23; 1933, c. 61; 1943, c. 676, ss. 1, 4; 1947, c. 390; 1963, c. 1165, s. 2; 1965, cc. 297, 581; 1977, c. 148, s. 4; 1991 (Reg. Sess., 1992), c. 1043, s. 1.)

CASE NOTES

A railroad policeman appointed pursuant to former § 60-83 was prima facie a public officer, but the question of whether a particular act was done as an employee of the railroad company or as a public officer was a question to be determined from the nature of the act, whether it related to vindication and enforcement of public justice or whether it was in the scope of duties owed to the company by reason of employment. Tate v. Southern Ry., 205 N.C. 51, 169 S.E. 816 (1933) (decided under former § 60-83).

§ 74E-5. Records.

(a) The Attorney General is the legal custodian of all books, papers, documents, or other records and property of the Company Police Program.

(b) Any papers, documents, or other records that become the property of the Company Police Program and are placed in a company police officer's personnel file maintained by the Attorney General are subject to the same restrictions concerning disclosure as set forth in Chapters 126, 153A, and 160A of the General Statutes for other personnel records.

(c) Notwithstanding the provisions of subsection (b), the Attorney General may disclose the contents of any records maintained under the authority of this Chapter to the Criminal Justice Education and Training Standards Commission, the Sheriff's Education and Training Standards Commission, or any other criminal justice agency for certification or employment purposes. (1991 (Reg. Sess., 1992), c. 1043, s. 1.)

§ 74E-6. Oaths, powers, and authority of company police officers.

(a) Requirements. — An individual who is commissioned as a company police officer must take the oath of office required of a law enforcement officer before the individual assumes the duties of a company police officer. The person in each company police agency

who is responsible for the agency's company police officers must be commissioned as a company police officer.

(b) Categories. — The following three distinct classifications of company police officers are established:

(1) Campus Police Officers — Those company police officers who are employed by any college or university that is a constituent institution of The University of North Carolina or any private college or university that is licensed or exempted from licensure as prescribed by G.S. 116-15.

(2) Railroad Police Officers — Those company police officers who are employed by a certified rail carrier and commissioned as company police officers under this Chapter.

(3) Special Police Officers — All company police officers not designated as a campus police officer or railroad police officer.

(c) All Company Police. — Company police officers, while in the performance of their duties of employment, have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on any of the following:

(1) Real property owned by or in the possession and control of their employer.

(2) Real property owned by or in the possession and control of a person who has contracted with the employer to provide on-site company police security personnel services for the property.

(3) Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivisions (1) or (2) of this subsection.

(d) Campus Police. — Campus police officers have the powers contained in subsection (c) of this section and also have the powers in that subsection upon that portion of any public road or highway passing through or immediately adjoining the property described in that subsection, wherever located. The board of trustees of any college or university that qualifies as a campus police agency pursuant to this Chapter may enter into a mutual aid agreement with the governing board of a municipality or, with the consent of the county sheriff, a county to the same extent as a municipal police department pursuant to Chapter 160A.

(e) Railroad Police. — Railroad police officers have the powers contained in subsection (c) and also have the powers and authority granted by federal law or by a regulation promulgated by the United States Secretary of Transportation. Notwithstanding any of the provisions of this Chapter, the limitations on the power to make arrests contained in subsection (c) above, shall not be applicable to railroad police officers commissioned by the Attorney General pursuant to the authority of this Chapter.

(f) Campus Option. — Notwithstanding any of the provisions of this Chapter, the Board of Trustees of any constituent institution of The University of North Carolina may elect to have its officers certified under Chapter 17C or Chapter 116 of the General Statutes rather than requesting certification as a company police agency and company police commission pursuant to the provisions of this Chapter.

(g) Exclusive Authority. — Notwithstanding any other provision of law, the authority granted to company police officers shall be

limited to the provisions of this Chapter. (1871-2, c. 138, s. 53; Code, s. 1990; Rev., s. 2607; 1907, c. 128, s. 2; c. 462; c. 470, ss. 3, 4; C.S., ss. 3483, 3485; 1933, c. 134, s. 8; 1941, c. 97, s. 5; 1943, c. 676, s. 2; 1959, c. 124, s. 1; 1963, c. 1165, s. 2; 1965, c. 872; 1969, c. 844, s. 8; 1977, c. 148, s. 4; 1981, c. 884, s. 4; 1987, c. 469; 1989, c. 518, s. 1; 1991 (Reg. Sess., 1992), c. 1043, s. 1.)

OPINIONS OF ATTORNEY GENERAL

Jurisdiction of Company or Special Police to Make Arrests Off Campus Grounds. — Special policemen appointed pursuant to former Chapter 74A have territorial limits placed upon their power to arrest as set forth in this section. See opinion of Attorney General to Mr. William S. Mason, Jr., Business Manager, Pembroke State University, 40 N.C.A.G. 164 (1970), issued under former Chapter 74A.

§ 74E-7. Badges, uniforms, weapons, and vehicles.

Company police agencies shall be responsible for ensuring that all employees, whether or not commissioned, comply with the provisions of this Chapter and the rules adopted under this Chapter, including those provisions pertaining to the wearing of badges and uniforms, the carrying of weapons, and the operation of vehicles. (1871-2, c. 138, s. 54; Code, s. 1991; Rev., s. 2608; C.S., s. 3486; 1963, c. 1165, s. 2; 1991 (Reg. Sess., 1992), c. 1043, s. 1.)

§ 74E-8. Minimum standards for company police officers.

Applicants for commission as a company police officer and a commissioned company police officer must meet and maintain the same minimum preemployment and in-service standards as are required for State law enforcement officers by the North Carolina Criminal Justice Education and Training Standards Commission, and must meet and maintain any other preemployment and in-service requirements set by the Attorney General. (1991 (Reg. Sess., 1992), c. 1043, s. 1.)

§ 74E-9. Compensation of company police officers.

The compensation of a company police officer shall be paid by the company police agency for which the officer is commissioned, as may be agreed on between them. (1871-2, c. 138, s. 55; Code, s. 1992; Rev., s. 2609; C.S., s. 3487; 1963, c. 1165, s. 2; 1991 (Reg. Sess., 1992), c. 1043, s. 1.)

§ 74E-10. Expiration, renewal, and termination of agency certification or officer commission.

(a) Agency. — Unless sooner suspended or revoked by the Attorney General, a company police agency's certification expires on June 30 following the date it is issued. A company police agency may renew the certification upon payment of the appropriate fee and compliance with this Chapter and the rules adopted under this Chapter. An entity whose company police agency's certification was

ARTICLE 34.

Custodial Institutions.

§ 14-268. Violation made misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, s. 162, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

SUBCHAPTER IX. OFFENSES AGAINST THE PUBLIC PEACE.

ARTICLE 35.

Offenses Against the Public Peace.

§ 14-269. Carrying concealed weapons.

(a) It shall be unlawful for any person willfully and intentionally to carry concealed about his person any bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles, razor, shurikin, stun gun, or other deadly weapon of like kind, except when the person is on the person's own premises.

(a1) It shall be unlawful for any person willfully and intentionally to carry concealed about his person any pistol or gun except in the following circumstances:

(1) The person is on the person's own premises.

(2) The deadly weapon is a handgun, and the person has a concealed handgun permit issued in accordance with Article 54B of this Chapter.

(b) This prohibition shall not apply to the following persons:

(1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;

(2) Civil officers of the United States while in the discharge of their official duties;

(3) Officers and soldiers of the militia and the national guard when called into actual service;

(4) Officers of the State, or of any county, city, or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties;

(5) Sworn law-enforcement officers, when off-duty, if:

a. Written regulations authorizing the carrying of concealed weapons have been filed with the clerk of superior court in the county where the law-enforcement unit is located by the sheriff or chief of police or other superior officer in charge; and

b. Such regulations specifically prohibit the carrying of concealed weapons while the officer is consuming or under the influence of alcoholic beverages.

(b1) It is a defense to a prosecution under this section that:

(1) The weapon was not a firearm;

(2) The defendant was engaged in, or on the way to or from, an activity in which he legitimately used the weapon;

(3) The defendant possessed the weapon for that legitimate use; and

(4) The defendant did not use or attempt to use the weapon for an illegal purpose.

The burden of proving this defense is on the defendant.

(c) Any person violating the provisions of subsection (a) of this section shall be guilty of a Class 2 misdemeanor. Any person violating the provisions of subsection (a1) of this section shall be guilty of a Class 2 misdemeanor for the first offense. A second or subsequent offense is punishable as a Class I felony.

(d) This section does not apply to an ordinary pocket knife carried in a closed position. As used in this section, "ordinary pocket knife" means a small knife, designed for carrying in a pocket or purse, that has its cutting edge and point entirely enclosed by its handle, and that may not be opened by a throwing, explosive, or spring action. (Code, s. 1005; Rev., s. 3708; 1917, c. 76; 1919, c. 197, s. 8; C.S., s. 4410; 1923, c. 57; Ex. Sess. 1924, c. 30; 1929, cc. 51, 224; 1947, c. 459; 1949, c. 1217; 1959, c. 1073, s. 1; 1965, c. 954, s. 1; 1969, c. 1224, s. 7; 1977, c. 616; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 86; 1985, c. 432, ss. 1-3; 1993, c. 539, s. 163; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 398, s. 2.)

Editor's Note. — Session Laws 1993, c. 539, s. 163, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1995 amendment, effective December 1, 1995, and applicable to offenses committed on or after that date, in subsection (a) deleted "except when on his own premises" preceding "willfully and intentionally", deleted "pistol, gun" following "stun gun", added "except when the person is on the person's own premises", and deleted the second and third sentences regarding ordinary pocket knives; added subsection (a1); in subdivision (b)(5) deleted "Full-time" preceding "Sworn", and deleted "in the jurisdiction where they are assigned" following "off-duty"; in subsection (c) substituted "subsection (a) of this section" for "this section" in the first sentence, and added the second and third sentences; and added subsection (d).

CASE NOTES

I. General Consideration.
IV. Illustrative Cases.

I. GENERAL CONSIDERATION.

Cited in State v. McGirt, 122 N.C. App. 237, 468 S.E.2d 833 (1996).

IV. ILLUSTRATIVE CASES.

Sitting on Firearm. — Where officer approached the defendant's car and, using his flashlight, looked into the interior, viewed the empty holster next to the defendant, asked the defendant where his gun was and was told by the defendant that the defendant was sitting on the gun, the officer then had probable cause to arrest the defendant for carrying a concealed weapon. State v. Brooks, 337 N.C. 132, 446 S.E.2d 579 (1994).

North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

Tuesday, June 3, 1997
10:00 a.m.
1327 Legislative Building

N. Leo Daughtry
Edwin M. Hardy
Co-Chairmen

Members present

Martha Alexander	Gene Arnold
Daniel Blue	Jerry Braswell
J. Russell Capps	Debbie Clary
J. Sam Ellis	Theresa Esposito
Milton Fitch	Robert Hunter
John W. Hurley	Margaret M. Jeffus
Larry T. Justus	H.M. Michaux, Jr.
George W. Miller, Jr.	Wilma Sherrill
Gregg Thompson	

The House Committee on JUDICIARY I met at 10:00 a.m. on Tuesday, June 3, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry presiding.

Committee counsels Steven Rose and Karen Cochrane-Brown were present to assist the committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

House Pages Jeremy Franklin of Wake County and Eric Dial of Wayne County were present to assist the committee/

The Chairman announced the appointment of Rep. Sherrill to the subcommittee on House Bill 665, which also includes Reps. Miller (Chairman), Hall, Ellis and Thompson.

The Chairman recognized Rep. Hardy for the purpose of explaining the Senate Bill 376, CAMPUS LAW ENFORCEMENT.

Committee Counsel Karen Cochrane-Brown prepared a MEMORANDUM on S.B. 376, which was distributed, a copy of which is attached and made a part of these minutes.

On a motion by Rep. Hurley, the committee approved the bill favorably without objection.

Sen. Rand was recognized to explain S.B. 320, NURSES' TRAINING

Counsel Cochrane-Brown prepared a MEMORANDUM on S.B. 320, which was distributed, a copy of which is attached and made a part of the minutes.

Rep. Fitch moved to report the bill favorably. There was no objection.

Sen. Rand was further recognized to explain Senate Bill 393, REVOCATION OF LICENSE FOR FAILURE TO COMPLETE COMMUNITY SERVICE OR FAILURE TO PAY CHILD SUPPORT.

Committee Counsel Steven Rose prepared a MEMORANDUM on S.B. 393, which was distributed, a copy of which is attached and made a part of these minutes.

Rep. Hunter moved the Committee report the bill favorably. There was no objection.

Rep. Thompson was recognized to explain Senate Bill 561, COMPANY POLICE/CONCEALED HANDGUNS.

Committee Counsel Steven Rose prepared a MEMORANDUM on S.B. 561, which was distributed, a copy of which is attached and made a part of these minutes.

On a motion by Rep. Sherrill, the committee accepted, for the purpose of discussion, a Proposed Committee Substitute to S.B. 561.

On a motion by Rep. Ellis, the Committee voted to give the Proposed Committee Substitute to S.B. 561 a favorable report, unfavorable to the original bill.

The Committee Adjourned at 10:40 a.m.

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS

NORTH CAROLINA HOUSE *of* REPRESENTATIVES

COMMITTEE ON JUDICIARY I

Tuesday, June 3, 1997
Room 1327 LB
10:00 a.m.

Representatives N. Leo Daughtry,
Edwin M. "Sandy" Hardy
Co-Chairmen

H.B. 665 CRIME VICTIMS' RIGHTS ACT
Sponsor: Representative Eddins

S 320 NURSES' TRAINING
S 393 FAIL COMM. SERVICE/REVOKE LICENSE
Sponsor: Senator Rand

S 376 CAMPUS LAW ENFORCEMENT
Sponsor: Senator Warren

S 561 CAMPUS POLICE/CONCEALED HANDGUNS
Sponsor: Senator Odom

S 885 NOTICE OF EXECUTION
Sponsor: Senator Gulley

Adjournment

North Carolina House of Representatives
JUDICIARY I COMMITTEE

Roll Call

Alexander
Arnold
Blue
Braswell
Capps
Clary
Crawford
(Daughtry)
Ellis
Esposito
Fitch
Gray
Hall
Hardaway
Hardy
Holmes
Hunter
Hurley
Jeffus
Justus
Micheux
Miller
Morgan
Sherrill
Thompson

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 665 (PCS)

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H665-ARL-004 (PCS)

Date_____,1997

Comm. Sub. [YES]
Amends Title []

1 moves to amend the bill on page 6, line 25,
2 by inserting the words "under this Article" immediately after the
3 word "restitution".
4

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 665

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H665-ARO-001

Date 5/23/97 ,1997

Comm. Sub. [Yes]
Amends Title []

Representative Hall

moves to amend the bill on page 2, lines 19-20, by inserting the following new subdivision between the lines:

"f. Any felony or misdemeanor which fits the definition of domestic violence contained in G.S. 50B-1, including G.S. 14-33, and 14-318.2, as well as the attempt of any such felony or misdemeanor. These crimes are in addition to the felonies set forth in subdivisions a. through e. of this subsection. ";

and on page 9, line 40, by deleting the words "thirty dollars ($30.00)" and substituting the words "one hundred dollars ($100.00)"

SIGNED Bobby Ray Hall
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 376

Short Title: Campus Law Enforcement. (Public)

Sponsors: Senator Warren.

Referred to: Judiciary.

March 12, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE TEACHING HOSPITALS AFFILIATED WITH CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA TO ESTABLISH CAMPUS LAW ENFORCEMENT AGENCIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116-40.5 reads as rewritten:

"**§ 116-40.5. Campus law enforcement agencies.**

(a) The Board of Trustees of any constituent institution of The University of North ~~Carolina~~ Carolina, or of any teaching hospital affiliated with but not part of any constituent institution of The University of North Carolina, may establish a campus law enforcement agency and employ campus police officers. Such officers shall meet the requirements of Chapter 17C of the General Statutes, shall take the oath of office prescribed by Article VI, Section 7 of the Constitution, and shall have all the powers of law enforcement officers generally. The territorial jurisdiction of a campus police officer shall include all property owned or leased to the institution employing him and that portion of any public road or highway passing through such property and immediately adjoining it, wherever located.

(b) The Board of Trustees of any constituent institution of The University of North Carolina, or of any teaching hospital affiliated with but not part of any constituent institution of The University of North Carolina, having established a campus law enforcement agency pursuant to subsection (a) of this section, may enter into joint agreements with the governing board of any municipality to extend the law enforcement authority of campus police officers into any or all of the municipality's

jurisdiction and to determine the circumstances in which this extension of authority may be granted.

(c) The Board of Trustees of any constituent institution of The University of North Carolina, or of any teaching hospital affiliated with but not part of any constituent institution of The University of North Carolina, having established a campus law enforcement agency pursuant to subsection (a) of this section, may enter into joint agreements with the governing board of any county, and with the consent of the sheriff, to extend the law enforcement authority of campus police officers into any or all of the county's jurisdiction and to determine the circumstances in which this extension of authority may be granted."

Section 2. This act is effective when it becomes law.

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June 2, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel
O. Walker Reagan, Staff Attorney

RE: **SENATE BILL 376 - CAMPUS LAW ENFORCEMENT -** Senator Warren

Senate Bill 376 amends the statutes authorizing the Boards of Trustees of the constituent institutions of the University of North Carolina to establish campus law enforcement agencies by extending this authority to any teaching hospital affiliated with, but not part of, any constituent institution.

The officers of these law enforcement agencies would have to comply with the requirements of the Criminal Justice and Training Standards Commission for law enforcement officers, would be sworn law enforcement officers, and would have the powers, while on the property of the institution, of law enforcement officers generally, including the power of arrest.

The bill also authorizes these campus police forces for teaching hospitals to enter into joint agreements with municipal law enforcement agencies and county sheriffs.

This bill will become effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 320
Judiciary Committee Substitute Adopted 4/14/97

Short Title: Nurses' Training. (Public)

Sponsors:

Referred to:

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ESTABLISHMENT OF PROGRAMS TO TRAIN LICENSED NURSES TO CONDUCT MEDICAL EXAMINATIONS OF VICTIMS OF SEXUAL OFFENSES, TO CONDUCT MEDICAL PROCEDURES TO COLLECT EVIDENCE FROM THE VICTIMS, AND TO ALLOW DIRECT PAYMENT TO NURSES WHO PROVIDE THIS SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-171.38 reads as rewritten:

"**§ 90-171.38. Standards for nursing programs.**

(a) A nursing program may be operated under the authority of a general hospital, or an approved post-secondary educational institution. The Board shall establish, revise, or repeal standards for nursing programs. These standards shall specify program requirements, curricula, faculty, students, facilities, resources, administration, and describe the approval process. Any institution desiring to establish a nursing program shall apply to the Board and submit satisfactory evidence that it will meet the standards prescribed by the Board. Those standards shall be designed to ensure that graduates of those programs have the education necessary to safely and competently practice nursing. The Board shall encourage the continued operation of all present programs that meet the standards approved by the Board.

(b) Any individual, organization, association, corporation, or institution may establish a program for the purpose of training or educating any nurse licensed under G.S. 90-171.30, 90-171.32, or 90-171.33 in the skills, procedures, and techniques necessary to conduct medical examinations of, and the medical procedures to collect

evidence from, the victims of first-degree rape as defined in G.S. 14-27.2, second-degree rape as defined in G.S. 14-27.3, statutory rape as defined in G.S. 14-27.7A, first-degree sexual offense as defined in G.S. 14-27.4, second-degree sexual offense as defined in G.S. 14-27.5 or attempted first-degree or second-degree rape or attempted first-degree or second-degree sexual offense as defined in G.S. 14-27.6. The Board shall establish, revise, or repeal standards for any such program. Any individual, organization, association, corporation, or institution which desires to establish a program under this subsection shall apply to the Board and submit satisfactory evidence that it will meet the standards prescribed by the Board."

Section 2. G.S. 90-171.44 reads as rewritten:

"**§ 90-171.44. Prohibited acts.**

It shall be a violation of this Article, and subject to action under G.S. 90-171.37, for any person to:

(1) Sell, fraudulently obtain, or fraudulently furnish any nursing diploma or aid or abet ~~therein;~~ therein.

(2) Practice nursing under cover of any fraudulently obtained ~~license;~~ license.

(3) Practice nursing without a ~~license;~~ license. This subdivision shall not be construed to prohibit any licensed nurse who has successfully completed a program established under G.S. 90-171.38(b) from conducting medical examinations of, or procedures to collect evidence from, the victims of offenses described in that subsection.

(4) Conduct a nursing program or a refresher course for activation of a license, that is not approved by the ~~Board; or~~ Board.

(5) Employ unlicensed persons to practice nursing."

Section 3. G.S. 58-50-25 reads as rewritten:

"**§ 58-50-25. Nurses' services.**

(a) No agency, institution or physician providing a service for which payment or reimbursement is required to be made under a policy governed by Articles 1 through 64 of this Chapter shall be denied such payment or reimbursement on account of the fact that such services were rendered through a registered nurse acting under authority of rules and regulations adopted by the North Carolina Medical Board and the Board of Nursing pursuant to G.S. 90-6 and 90-171.23.

(b) Nothing herein shall be construed to authorize contracting with or making payments directly to any nurse not otherwise permitted. A licensed nurse who has successfully completed a program established under G.S. 90-171.38(b) may receive direct payment for conducting medical examinations or medical procedures described in that subsection if the payment is in lieu of any payment which would have otherwise been permitted."

Section 4. G.S. 143B-480.2 reads as rewritten:

"**§ 143B-480.2. Victim assistance.**

(a) Only victims who have reported the following crimes are eligible for assistance under this Program: first-degree rape as defined in G.S. 14-27.2, second-degree rape

as defined in G.S. 14-27.3, first-degree sexual offense as defined in G.S. 14-27.4, second-degree sexual offense as defined in G.S. 14-27.5, or attempted first-degree or second-degree rape or attempted first-degree or second-degree sexual offense as defined in G.S. 14-27.6. Assistance is limited to immediate and short-term medical expenses, ambulance services, and mental health services provided by a professional licensed or certified by the State to provide such services, not to exceed five hundred dollars ($500.00) incurred by the victim for the medical examination, medical procedures to collect evidence, or counseling treatment which follow the attack, or ambulance services from the place of the attack to a place where medical treatment is provided.

(b) With the exception of assistance authorized under subsection (e) of this section, ~~Assistance~~ assistance for expenses authorized under this section is to be paid directly to any hospital, ambulance service, attending physicians, or mental health professionals providing counseling, upon the filing of proper forms.

(c) Assistance shall not be awarded unless the rape, attempted rape, sexual offense, or attempted sexual offense was reported to a law-enforcement officer within 72 hours after its occurrence or the Secretary finds there was good cause for the failure to report within that time.

(d) Upon an adverse determination by the Secretary on a claim for medical expenses, a victim is entitled to judicial review of that decision. The person seeking review shall file a petition in the Superior Court of Wake County.

(e) In lieu of any payment which may otherwise have been made under subsection (b), assistance for expenses authorized under this section may be paid directly to any licensed nurse who has successfully completed a program approved under G.S. 90-171.38(b). The Secretary shall adopt rules to facilitate the payments authorized under this subsection and to encourage, whenever practical, the use of nurses trained under G.S. 90-171.38(b) to conduct medical examinations and procedures."

Section 5. This act is effective when it becomes law.

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June 2, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel
O. Walker Reagan, Staff Attorney

RE: **SENATE BILL 320 - NURSES' TRAINING -** Senator Rand

Senate Bill 320 amends the law to allow a licensed nurse who has successfully completed a training program approved by the North Carolina Board of Nursing to conduct medical examinations and collect evidence from victims of rape and sexual offenses, and would allow these nurses to be paid directly for these services by insurance companies and the Victims Assistance Program.

Section 1 of the bill authorizes the education and training of licensed nurses in skills, procedures and techniques for conducting medical examinations of and collecting evidence from victims of rape and sexual offenses in accordance with standards established by the Board. Entities desiring to establish an approved program must apply to the Board and meet the standards established by the Board.

Section 2 provides that a licensed nurse who has successfully completed an approved training course established under section 1 of the bill is not consider to be practicing nursing without a license when conducting medical examinations or procedures for collecting evidence from victims of rape or sexual offenses.

Section 3 amends the insurance law to permit a licensed nurse who has been trained in accordance with Section 1 of the bill to be paid directly by the insurance company for performing exams and procedures as provided for under this bill.

Section 4 amends the Victims of Rape and Sexual Offense Assistance Act to permit direct payment to nurses from the Victims Assistance Fund for services performed as permitted by this bill.

The bill is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Company police officers shall have, if duly authorized by the superior officer in charge, the authority to carry concealed weapons pursuant to and in conformity with G.S. 14-269(b)(5)."

Section 2. This act is effective when it becomes law.

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June 3, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **SENATE BILL 561 - CAMPUS POLICE CARRY CONCEALED HANDGUNS OFF-DUTY.**

Senate Bill 561 would specifically authorize campus police officers to carry concealed weapons while off-duty when authorized by their superior officer in accordance with the standard procedures applicable to other law enforcement officers.

Campus police officers are company police officers who are employed by a constituent institution of The University of North Carolina or any private college or university that is licensed or exempt from licensure as set forth in G.S. 116-15. These officers are required to be sworn, certified by the Criminal Justice Training Standards Commission, and have the same powers as municipal and county police officers on the institutions property, including the power of arrest.

G.S. 14-269(b)(5) permits a sworn law-enforcement officer, when off-duty, to carry a concealed weapon if written regulations authorizing the carrying of concealed weapons has been filed with the clerk of court by the superior officer in charge and the regulations prohibit carrying the weapon while the officer is consuming or under the influence of alcoholic beverages. However, G.S. 74E-6(g) provides that the authority granted to company policy under Chapter 74E is limited to that which is specified in that chapter.

This bill would be effective when it becomes law.

S561-SMRL-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

for failure to meet the requirements of or comply with this Chapter or a rule adopted under this Chapter, in accordance with Article 3 of Chapter 150B of the General Statutes.

(6) To appear in the name of the Company Police Program and apply to the courts having jurisdiction for injunctions to prevent a violation of this Chapter or a rule adopted under this Chapter.

(7) To delegate the authority to administer this Chapter.

(8) To require that the Criminal Justice Standards Division provide administrative support staff for the Company Police Program.

(9) To adopt rules needed to implement this Chapter, in accordance with Chapter 150B of the General Statutes. (1871-2, c. 138, ss. 51, 52; Code, ss. 1988, 1989; Rev., ss. 2605, 2606; 1907, c. 128, s. 1; C.S., s. 3484; 1923, c. 23; 1933, c. 61; 1943, c. 676, ss. 1, 4; 1947, c. 390; 1963, c. 1165, s. 2; 1965, cc. 297, 581; 1977, c. 148, s. 4; 1991 (Reg. Sess., 1992), c. 1043, s. 1.)

CASE NOTES

A railroad policeman appointed pursuant to former § 60-83 was prima facie a public officer, but the question of whether a particular act was done as an employee of the railroad company or as a public officer was a question to be determined from the nature of the act, whether it related to vindication and enforcement of public justice or whether it was in the scope of duties owed to the company by reason of employment. Tate v. Southern Ry., 205 N.C. 51, 169 S.E. 816 (1933) (decided under former § 60-83).

§ 74E-5. Records.

(a) The Attorney General is the legal custodian of all books, papers, documents, or other records and property of the Company Police Program.

(b) Any papers, documents, or other records that become the property of the Company Police Program and are placed in a company police officer's personnel file maintained by the Attorney General are subject to the same restrictions concerning disclosure as set forth in Chapters 126, 153A, and 160A of the General Statutes for other personnel records.

(c) Notwithstanding the provisions of subsection (b), the Attorney General may disclose the contents of any records maintained under the authority of this Chapter to the Criminal Justice Education and Training Standards Commission, the Sheriff's Education and Training Standards Commission, or any other criminal justice agency for certification or employment purposes. (1991 (Reg. Sess., 1992), c. 1043, s. 1.)

§ 74E-6. Oaths, powers, and authority of company police officers.

(a) Requirements. — An individual who is commissioned as a company police officer must take the oath of office required of a law enforcement officer before the individual assumes the duties of a company police officer. The person in each company police agency

who is responsible for the agency's company police officers must be commissioned as a company police officer.

(b) Categories. — The following three distinct classifications of company police officers are established:

(1) Campus Police Officers — Those company police officers who are employed by any college or university that is a constituent institution of The University of North Carolina or any private college or university that is licensed or exempted from licensure as prescribed by G.S. 116-15.

(2) Railroad Police Officers — Those company police officers who are employed by a certified rail carrier and commissioned as company police officers under this Chapter.

(3) Special Police Officers — All company police officers not designated as a campus police officer or railroad police officer.

(c) All Company Police. — Company police officers, while in the performance of their duties of employment, have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on any of the following:

(1) Real property owned by or in the possession and control of their employer.

(2) Real property owned by or in the possession and control of a person who has contracted with the employer to provide on-site company police security personnel services for the property.

(3) Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivisions (1) or (2) of this subsection.

(d) Campus Police. — Campus police officers have the powers contained in subsection (c) of this section and also have the powers in that subsection upon that portion of any public road or highway passing through or immediately adjoining the property described in that subsection, wherever located. The board of trustees of any college or university that qualifies as a campus police agency pursuant to this Chapter may enter into a mutual aid agreement with the governing board of a municipality or, with the consent of the county sheriff, a county to the same extent as a municipal police department pursuant to Chapter 160A.

(e) Railroad Police. — Railroad police officers have the powers contained in subsection (c) and also have the powers and authority granted by federal law or by a regulation promulgated by the United States Secretary of Transportation. Notwithstanding any of the provisions of this Chapter, the limitations on the power to make arrests contained in subsection (c) above, shall not be applicable to railroad police officers commissioned by the Attorney General pursuant to the authority of this Chapter.

(f) Campus Option. — Notwithstanding any of the provisions of this Chapter, the Board of Trustees of any constituent institution of The University of North Carolina may elect to have its officers certified under Chapter 17C or Chapter 116 of the General Statutes rather than requesting certification as a company police agency and company police commission pursuant to the provisions of this Chapter.

(g) Exclusive Authority. — Notwithstanding any other provision of law, the authority granted to company police officers shall be

limited to the provisions of this Chapter. (1871-2, c. 138, s. 53; Code, s. 1990; Rev., s. 2607; 1907, c. 128, s. 2; c. 462; c. 470, ss. 3, 4; C.S., ss. 3483, 3485; 1933, c. 134, s. 8; 1941, c. 97, s. 5; 1943, c. 676, s. 2; 1959, c. 124, s. 1; 1963, c. 1165, s. 2; 1965, c. 872; 1969, c. 844, s. 8; 1977, c. 148, s. 4; 1981, c. 884, s. 4; 1987, c. 469; 1989, c. 518, s. 1; 1991 (Reg. Sess., 1992), c. 1043, s. 1.)

OPINIONS OF ATTORNEY GENERAL

Jurisdiction of Company or Special Police to Make Arrests Off Campus Grounds. — Special policemen appointed pursuant to former Chapter 74A have territorial limits placed upon their power to arrest as set forth in this section. See opinion of Attorney General to Mr. William S. Mason, Jr., Business Manager, Pembroke State University, 40 N.C.A.G. 164 (1970), issued under former Chapter 74A.

§ 74E-7. Badges, uniforms, weapons, and vehicles.

Company police agencies shall be responsible for ensuring that all employees, whether or not commissioned, comply with the provisions of this Chapter and the rules adopted under this Chapter, including those provisions pertaining to the wearing of badges and uniforms, the carrying of weapons, and the operation of vehicles. (1871-2, c. 138, s. 54; Code, s. 1991; Rev., s. 2608; C.S., s. 3486; 1963, c. 1165, s. 2; 1991 (Reg. Sess., 1992), c. 1043, s. 1.)

§ 74E-8. Minimum standards for company police officers.

Applicants for commission as a company police officer and a commissioned company police officer must meet and maintain the same minimum preemployment and in-service standards as are required for State law enforcement officers by the North Carolina Criminal Justice Education and Training Standards Commission, and must meet and maintain any other preemployment and in-service requirements set by the Attorney General. (1991 (Reg. Sess., 1992), c. 1043, s. 1.)

§ 74E-9. Compensation of company police officers.

The compensation of a company police officer shall be paid by the company police agency for which the officer is commissioned, as may be agreed on between them. (1871-2, c. 138, s. 55; Code, s. 1992; Rev., s. 2609; C.S., s. 3487; 1963, c. 1165, s. 2; 1991 (Reg. Sess., 1992), c. 1043, s. 1.)

§ 74E-10. Expiration, renewal, and termination of agency certification or officer commission.

(a) Agency. — Unless sooner suspended or revoked by the Attorney General, a company police agency's certification expires on June 30 following the date it is issued. A company police agency may renew the certification upon payment of the appropriate fee and compliance with this Chapter and the rules adopted under this Chapter. An entity whose company police agency's certification was

ARTICLE 34.

Custodial Institutions.

§ 14-268. Violation made misdemeanor.

Editor's Note. — Session Laws 1993, c. 539, s. 162, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

SUBCHAPTER IX. OFFENSES AGAINST THE PUBLIC PEACE.

ARTICLE 35.

Offenses Against the Public Peace.

§ 14-269. Carrying concealed weapons.

(a) It shall be unlawful for any person willfully and intentionally to carry concealed about his person any bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles, razor, shurikin, stun gun, or other deadly weapon of like kind, except when the person is on the person's own premises.

(a1) It shall be unlawful for any person willfully and intentionally to carry concealed about his person any pistol or gun except in the following circumstances:

(1) The person is on the person's own premises.

(2) The deadly weapon is a handgun, and the person has a concealed handgun permit issued in accordance with Article 54B of this Chapter.

(b) This prohibition shall not apply to the following persons:

(1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;

(2) Civil officers of the United States while in the discharge of their official duties;

(3) Officers and soldiers of the militia and the national guard when called into actual service;

(4) Officers of the State, or of any county, city, or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties;

(5) Sworn law-enforcement officers, when off-duty, if:

a. Written regulations authorizing the carrying of concealed weapons have been filed with the clerk of superior court in the county where the law-enforcement unit is located by the sheriff or chief of police or other superior officer in charge; and

b. Such regulations specifically prohibit the carrying of concealed weapons while the officer is consuming or under the influence of alcoholic beverages.

(b1) It is a defense to a prosecution under this section that:

(1) The weapon was not a firearm;

(2) The defendant was engaged in, or on the way to or from, an activity in which he legitimately used the weapon;

(3) The defendant possessed the weapon for that legitimate use; and

(4) The defendant did not use or attempt to use the weapon for an illegal purpose.

The burden of proving this defense is on the defendant.

(c) Any person violating the provisions of subsection (a) of this section shall be guilty of a Class 2 misdemeanor. Any person violating the provisions of subsection (a1) of this section shall be guilty of a Class 2 misdemeanor for the first offense. A second or subsequent offense is punishable as a Class I felony.

(d) This section does not apply to an ordinary pocket knife carried in a closed position. As used in this section, "ordinary pocket knife" means a small knife, designed for carrying in a pocket or purse, that has its cutting edge and point entirely enclosed by its handle, and that may not be opened by a throwing, explosive, or spring action. (Code, s. 1005; Rev., s. 3708; 1917, c. 76; 1919, c. 197, s. 8; C.S., s. 4410; 1923, c. 57; Ex. Sess. 1924, c. 30; 1929, cc. 51, 224; 1947, c. 459; 1949, c. 1217; 1959, c. 1073, s. 1; 1965, c. 954, s. 1; 1969, c. 1224, s. 7; 1977, c. 616; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 86; 1985, c. 432, ss. 1-3; 1993, c. 539, s. 163; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 398, s. 2.)

Editor's Note. — Session Laws 1993, c. 539, s. 163, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1995 amendment, effective December 1, 1995, and applicable to offenses committed on or after that date, in subsection (a) deleted "except when on his own premises" preceding "willfully and intentionally", deleted "pistol, gun" following "stun gun", added "except when the person is on the person's own premises", and deleted the second and third sentences regarding ordinary pocket knives; added subsection (a1); in subdivision (b)(5) deleted "Full-time" preceding "Sworn", and deleted "in the jurisdiction where they are assigned" following "off-duty"; in subsection (c) substituted "subsection (a) of this section" for "this section" in the first sentence, and added the second and third sentences; and added subsection (d).

CASE NOTES

I. General Consideration.
IV. Illustrative Cases.

I. GENERAL CONSIDERATION.

Cited in State v. McGirt, 122 N.C. App. 237, 468 S.E.2d 833 (1996).

IV. ILLUSTRATIVE CASES.

Sitting on Firearm. — Where officer approached the defendant's car and, using his flashlight, looked into the interior, viewed the empty holster next to the defendant, asked the defendant where his gun was and was told by the defendant that the defendant was sitting on the gun, the officer then had probable cause to arrest the defendant for carrying a concealed weapon. State v. Brooks, 337 N.C. 132, 446 S.E.2d 579 (1994).

Filed
J-I
7-7-97 ?

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hardy and Daughtry** for the Committee on **JUDICIARY I.**

☒ House Committee Substitute #1
SB 561 A BILL TO BE ENTITLED AN ACT TO REMEDY THE INADVERTENT EXCLUSION OF DULY SWORN AND COMMISSIONED COMPANY POLICE OFFICERS FROM THE CONCEALED HANDGUN STATUTES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to House committee substitute bill (# 2), ☒ which changes the title, unfavorable as to House Committee Substitute Bill # 1).

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar. (PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

4/24/97

LIC BILL

#1

Proposed House Committee Substitute For
S.B. 561 CHAP. _____

964

A BILL TO BE ENTITLED

AN ACT TO REMEDY THE INADVERTENT EXCLUSION OF DULY SWORN AND COMMISSIONED COMPANY POLICE OFFICERS FROM THE CONCEALED HANDGUN STATUTES.

Introduced by Senator(s) Odom

Principal Clerk's Use Only

Committee on Judiciary I
ority being present, having considered
ll, [redacted] mend that it do pass.
Rep. Daughtry and Hardy
For the Committee

House
FAVORABLE TO COMM. SUB.
UNFAVORABLE TO BILL
TITLE CHANGE
[redacted]
JUN 4 1997
AND PLACED ON
CALENDAR FOR
3rd
6/16/97

POSTPONED
UNTIL 6/26/97

JUN 16 1997

ON MOTION OF
Daughtry
WITHDRAWN FROM
Calendar 6/26/97

JUN 19 1997
RECOMMITTED TO
Judiciary I

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

PCS #2 favorable

S D

SENATE BILL 561
House Committee Substitute Favorable 6/4/97
Proposed House Committee Substitute S561-PCS6700 #2

Short Title: Company Police/Concealed Handguns. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO REMEDY THE INADVERTENT EXCLUSION OF DULY SWORN AND COMMISSIONED COMPANY POLICE OFFICERS FROM THE CONCEALED HANDGUN STATUTES, TO EXEMPT ACTIVE OR RETIRED COMPANY POLICE OFFICERS FROM THE TRAINING REQUIRED TO QUALIFY FOR A CONCEALED HANDGUN PERMIT IF THE OFFICER APPLIES FOR THE PERMIT WITHIN TWO YEARS OF RETIREMENT, AND TO CLARIFY THE MENTAL HEALTH REQUIREMENTS FOR A CONCEALED HANDGUN PERMIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 74E-6(c) reads as rewritten:

"(c) All Company Police. -- Company police officers, while in the performance of their duties of employment, have the same powers as municipal and county police officers to make arrests for both felonies and misdemeanors and to charge for infractions on any of the following:

(1) Real property owned by or in the possession and control of their employer.

(2) Real property owned by or in the possession and control of a person who has contracted with the employer to provide on-site company police security personnel services for the property.

(3) Any other real property while in continuous and immediate pursuit of a person for an offense committed upon property described in subdivisions (1) or (2) of this subsection.

Company police officers shall have, if duly authorized by the superior officer in charge, the authority to carry concealed weapons pursuant to and in conformity with G.S. 14-269(b)(5)."

Section 2. If House Bill 433 of the 1997 General Assembly is enacted into law, then G.S. 14-415.10(4) reads as rewritten:

"(4) Qualified former sworn law enforcement officer. -- An individual who retired from service as a law enforcement officer with a ~~local or State~~ local, State, or company police agency in North Carolina, other than for reasons of mental disability, who has been retired as a sworn law enforcement officer two years or less from the date of the permit application, and who satisfies all of the following:

a. Immediately before retirement, the individual was a qualified law enforcement officer with a ~~local or State~~ local, State, or company police agency in North Carolina.

b. The individual has a nonforfeitable right to benefits under the retirement plan of the local, State, or company police agency as a law enforcement ~~officer.~~ officer or has 20 or more aggregate years of law enforcement service and has retired from a company police agency that does not have a retirement plan.

c. The individual is not prohibited by State or federal law from receiving a firearm."

Section 3. If House Bill 433 of the 1997 General Assembly is enacted into law, then G.S. 14-415.10(5) reads as rewritten:

"(5) Qualified sworn law enforcement officer. -- A law enforcement officer employed by a ~~local or State~~ local, State, or company police agency in North Carolina who satisfies all of the following:

a. The individual is authorized by the agency to carry a handgun in the course of duty.

b. The individual is not the subject of a disciplinary action by the agency that prevents the carrying of a handgun.

c. The individual meets the requirements established by the agency regarding handguns."

Section 4. G.S. 14-415.12(b)(6) reads as rewritten:

"(6) Is currently, or has been previously adjudicated by a court or administratively determined by a governmental agency whose decisions are subject to judicial review to be, lacking mental capacity or mentally ill. Receipt of previous consultative services or outpatient treatment alone shall not disqualify an applicant under this subdivision."

Section 5. Sections 2 and 3 of this act become effective December 1, 1997. The remainder of this act is effective when it becomes law, and Section 4 applies to applications made before, on, or after the effective date.

VISITOR REGISTRATION SHEET

Judiciary I 6/3/97 10 am

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Philip Ron	DOS
2.	Howard Lee	NCDOT
3.	Ralph Scott	CSC
4.	Roslyn Sawitt	NC Coalition Against DV
5.	Howard Kramer	N.C. Bd of Nursing
6.	A.A. Adams	N.C. VAN
7.	Tom Hedgwood	DA - Guenville
8.	Mary Lowry	Conf. of DA's
9.	JOEL K. Butler	Pitt County Mem. Hosp
10.	Bill Young	Pitt County Mem Hosp
11.	Alton Richardson	Pitt County Mem. Hospital
22.	Jane B Gray	DOJ
23.	Drew Cook	Legislative Intern
24.	W. Gene Coley	N.C. VAN
25.	Joseph T. Price	N.C. VAN
26.	LAO Rupert	CJPC
27.	Tom McDowell	NCAICU
28.	Eric Zogry	Sentencing Commission
29.		
30.	Kim Smith	NCLM
31.	Tracy Herring	Parole Commission

32.	Jim BARNARD	GRNC
33.	G Fichtelberger	CCPS
34.	Laura DeVos	CCPS
35.	Joe Stewart	CCPS
36.	[illegible]	AOC
37.	Laura Donnelly	AOC
38.	Hal Miller	NCACOT
39.	Evelyn Starnes	NCHA
40.		
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NORTH CAROLINA HOUSE *of* REPRESENTATIVES

COMMITTEE ON JUDICIARY I

Thursday, June 5, 1997 no tape
Room 1327 LB
10:00 a.m.

Representatives N. Leo Daughtry,
Edwin M. "Sandy" Hardy
Co-Chairmen

S. 402 DEBTOR PROTECTION/SIMPLE IRAS
Sponsor: Senator Webster

S. 861 DISPENSING OPTICIANS
Sponsor: Senator Lee

S. 875 REVISE RECORDS LAWS-2
Sponsor: Senator Kerr

S. 885 NOTICE OF EXECUTION
Sponsor: Senator Gulley

S. 919 UNLAWFUL TELECOMMUNICATIONS
Sponsor: Senator Odom

Adjournment

North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

1 tape

Tuesday, June 10, 1997
10:00 a.m.
1327 Legislative Building

N. Leo Daughtry
Edwin M. Hardy
Co-Chairmen

Members present

Martha Alexander	Gene Arnold
Debbie Clary	James Crawford
J. Sam Ellis	Theresa Esposito
Milton Fitch	Bobby Ray Hall
Thomas Hardaway	George M. Holmes
Robert Hunter	John W. Hurley
Margaret M. Jeffus	Larry T. Justus
H.M. Michaux, Jr.	George W. Miller, Jr.
Wilma Sherrill	Gregg Thompson

The House Committee on JUDICIARY I met at 10:00 a.m. on Tuesday, June 10, 1997 in Room 1327 of the Legislative Building with Chairman Edwin M. "Sandy" Hardy presiding.

Committee counsels Steven Rose and Karen Cochrane-Brown were present to assist the committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

House Pages Elizabeth Hackney of Guilford County and Laura Gupton of Wake County were present to assist the committee/

The Chairman recognized Sen. Lee for the purpose of explaining the Senate Finance Committee Substitute to Senate Bill 861, DISPENSING OPTICIANS.

Committee Counsel Karen Cochrane-Brown prepared a MEMORANDUM on S.B. 861, which was distributed and a copy of which is attached and made a part of these minutes.

Rep. Fitch confirmed that the bill would, if favorably reported, be re-referred to the Committee on FINANCE.

Rep. Hall moved to give the bill a favorable report, re-referred to the Committee on FINANCE. There was no objection.

Sen. Dalton was recognized to explain Senate Bill 910, which was displaced temporarily.

Sen. Kerr was recognized to explain the Senate Finance Committee Substitute to Senate Bill 875, REVISE RECORDS LAWS-2. Sen. Kerr indicated a "Senate" Committee substitute had been prepared by "staff" for the Committee to accept for the purpose of discussion. He corrected himself and indicated that the Committee was being asked to approve first for discussion a Proposed "House" Committee Substitute. Further, a copy of an incorrectly labeled Proposed Committee Substitute "S875-CSLT-1" should have been labeled "S875-CSLT-1 (HCS), (a copy of which is attached and made a part of these minutes) and, on a motion by Rep. Sherrill, the Committee accepted for the purpose of discussion a "Proposed House Committee Substitute to Senate Finance Committee Substitute to Senate Bill 875." Sen. Kerr indicated he had, in addition a technical amendment.

According to Senator Kerr, technical changes in the Proposed House Committee Substitute to S.B. 875 were prepared under the direction of interested parties including Bill Campbell of the Institute of Government, and made no substantive changes to a MEMORANDUM of explanation prepared by Counsel Karen Cochrane-Brown, a copy of which is attached and made a part of these minutes.

Rep. Hall asked if the bill "mandated" counties to hire additional personnel.

There was some question regarding the need to qualify any personnel designated under the provisions of the bill.

Rep. Holmes asked if Sen. Kerr would accept an amendment to language on page 8, changing the word "shall" to "may."

Rep. Hurley moved the Proposed House Committee Substitute to S.B. 875 be reported favorably and re-referred to FINANCE.

Rep. Fitch moved to adjourn prior to a ruling on the results of the voice vote taken on Rep. Hurley's motion. Rep. Capps subsequently indicated he still had questions on the bill he was satisfied could be raised in his capacity as a member of the FINANCE Committee. The Chairman subsequently recognized Sen. Dalton to explain S.B. 910, and Rep. Ellis moved to accept a proposed technical amendment to the bill to which Sen. Dalton indicated he had no objection.

Rep. Holmes asked if there had been a ruling on the result of the voice vote taken on Rep. Hurley's motion to accept favorably the Proposed House Committee Substitute to S.B. 875. Rep. Michaux indicated he had heard no announcement. The Chair announced the result of that vote had been favorable to Rep. Hurley's motion.

Rep. Fitch called for a division on the motion.

The Chairman called for a show of hands on Rep. Hurley's motion. The Chairman ruled that the motion was not agreed to. Rep. Michaux asked for the count, disputing the result. Rep. Fitch moved the Committee adjourn. The Chairman called again for a show of hands on, to recount the Committee's vote on Rep. Hurley's original motion.

The motion was not agreed to.

The Committee adjourned at 10:55 a.m.

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS

NORTH CAROLINA HOUSE *of* REPRESENTATIVES

COMMITTEE ON JUDICIARY I

Tuesday, June 10, 1997 ✓
Room 1327 LB
10:00 a.m.

Representatives N. Leo Daughtry,
Edwin M. "Sandy" Hardy
Co-Chairmen

H.B. 665 CRIME VICTIMS' RIGHTS ACT
Sponsor: Rep. Eddins

S. 402 DEBTOR PROTECTION/SIMPLE IRAS
Sponsor: Senator Webster

S. 861 DISPENSING OPTICIANS
Sponsor: Senator Lee

S. 875 REVISE RECORDS LAWS-2
Sponsor: Senator Kerr

S. 885 NOTICE OF EXECUTION
Sponsor: Senator Gulley

S. 910 CHANGE LIMITATIONS FOR OFFICIAL BONDS
Sponsor: Senator Dalton

S. 919 UNLAWFUL TELECOMMUNICATIONS
Sponsor: Senator Odom

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 861
Finance Committee Substitute Adopted 5/12/97

Short Title: Dispensing Opticians. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE DISPENSING OPTICIANS ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-237 reads as rewritten:

"**§ 90-237. Qualifications for dispensing opticians.**

In order to be issued a license as a registered licensed optician by the North Carolina State Board of Opticians, the applicant:

(1) Shall not have violated this Article or the rules of the ~~Board;~~ Board.

(2) Shall be at least 18 years of age and a high school graduate or ~~equivalent;~~ equivalent.

(2a) Shall be of good moral character.

(3) Shall have passed an examination conducted by the Board to determine his or her fitness to engage in the business of a dispensing ~~optician; and~~ optician.

(4) Shall have completed a six-month internship by working full time under the supervision of a licensed optician, ~~optometrist~~ optometrist, or physician trained in ophthalmology, in order to demonstrate proficiency in the areas of measurement of the face, and fitting and adjusting glasses and frames to the face, lens recognition, lens design, and prescription interpretation."

Section 2. G.S. 90-241 reads as rewritten:

"**§ 90-241. Waiver of written examination requirements.**

(a) The Board shall grant a license without examination to any applicant ~~who holds a currently valid license as a dispensing optician issued by another state, is in good standing in such other state, has engaged in practice in such other state as a licensee for four years immediately preceding the application in this State, is at least 18 years of age, and has not violated this Article or the rules of the Board.~~ who:

(1) Is at least 18 years of age.

(2) Is of good moral character.

(3) Holds a license in good standing as a dispensing optician in another state.

(4) Has engaged in the practice of opticianry in the other state for four years immediately preceding the application to the Board.

(5) Has not violated this Article or the rules of the Board.

(b) The Board ~~will~~ shall grant admission to the next examination and grant license upon attainment of a passing score on the examination to ~~persons from other states who are not licensed but who have worked~~ a person who has worked, in a state that does not license opticians, in opticianry for four years immediately preceding the application to the Board performing tasks and taking the curriculum equivalent to the North Carolina apprenticeship, and who ~~meet~~ meets the requirements of ~~G.S. 90-237, subsections (1), (2) and (3).~~ G.S. 90-237(1) through (3).

(c) Any person desiring to secure a license under this section shall make application therefor in the manner and form prescribed by the rules ~~and regulations~~ of the Board and shall pay the fee prescribed in G.S. 90-246.

~~(d) Upon receipt of the application described in subsection (c) above, the Board may issue a temporary license to engage in opticianry in this State. Persons issued a temporary license under this subsection may engage in opticianry in this State for not more than 60 days while awaiting a final decision on licensure by the Board. The Board shall make a final decision on licensure under this subsection not later than 60 days after receipt of the initial application. If the Board does not approve licensure under this subsection, the applicant, if operating under a temporary license, shall immediately surrender it to the Board and cease the practice of opticianry in this State.~~"

Section 3. G.S. 90-244(b) reads as rewritten:

"(b) A license issued by the Board automatically expires on the first day of January of each year. A license ~~may~~ shall be reinstated without penalty ~~during the month~~ from January 1 through January 15 immediately following ~~expiration. After the end of the month,~~ expiration. After January 15, a license ~~may~~ shall be reinstated by payment of the renewal fee and a penalty of ~~five dollars ($5.00) per month not to exceed the license fee itself.~~ fifty dollars ($50.00). Licenses ~~which~~ that remain expired two years or more ~~may~~ shall not be reinstated."

Section 4. G.S. 90-246 reads as rewritten:

"**§ 90-246. Fees.**

In order to provide the means of administering and enforcing the provisions of this Article and the other duties of the North Carolina State Board of Opticians, the

Board is hereby authorized to charge and collect fees established by its rules ~~and regulations~~ not to exceed the following:

(1)	Each examination	~~$125.00~~	$200.00
(2)	Each initial license	~~$25.00~~	$ 50.00
(3)	Each renewal of license	~~60.00~~	$100.00
(4)	Each license issued to a practitioner of another state to practice in this State	~~$100.00~~	$200.00
(5)	Each registration of an optical place of business	~~$25.00~~	$ 50.00
(6)	Each application for registration as an opticianry apprentice or intern, and renewals thereof	$25.00	
~~(7)~~	~~Temporary license issued pursuant to G.S. 90-241(d)~~	~~$25.00.~~	
(8)	Each registration of a training establishment	$ 25.00	
(9)	Each license verification	$ 10.00.	

Section 5. G.S. 90-249 reads as rewritten:

"**§ 90-249. Powers of the Board.**

(a) The Board shall have the power to make ~~rules and regulations,~~ rules, not inconsistent with this Article and the laws of the State of North Carolina, with respect to the following areas of the business of opticianry in North Carolina:

(1) Misrepresentation to the ~~public;~~ public.
(2) Baiting or deceptive ~~advertising;~~ advertising.
(3) Continuing education of ~~licensees;~~ licensees.
(4) Location of registrants in the ~~State;~~ State.
(5) Registration of established optical places of business, ~~provided~~ but no rule restricting type or location of a business may be ~~enacted;~~ enacted.
(6) Requiring photographs for purposes of identification of persons subject to this ~~Article;~~ Article.
(7) Content of licensure examination and ~~reexamination;~~ reexamination.
(8) Revocation, suspension, and reinstatement of ~~license and reprimands;~~ licenses, probation, and reprimands of licensees, and other penalties.
(9) Fees within the limits of ~~G.S. 90-246;~~ G.S. 90-246.
(10) Accreditation of schools of ~~opticianry;~~ opticianry.
(11) Registration and training of apprentices and ~~interns;~~ interns.
(12) ~~License without examination and issuance of temporary license.~~ Licenses and examinations pursuant to G.S. 90-241.

~~(b) The Board shall have the power to revoke, suspend or issue a reprimand with regard to any license granted by it under this Article for misconduct, gross~~

~~negligence, incompetence, or violation of this Article or the rules of the Board promulgated hereunder. It shall be grounds for revocation of a license to advertise in any manner which conveys or intends to convey the impression to the public that the eyes are examined by persons licensed under this Article. Other than as expressly provided in this Article, the Board shall neither adopt nor enforce any rule, regulation or policy which prohibits advertising.~~

~~(c) Any person whose license has been revoked for any cause may, after the expiration of 90 days, and within two years from the date of revocation, apply to the Board to have the same reinstated, and upon a showing satisfactory to the Board, the license may be restored to such person.~~

~~(d) The procedure for revocation and suspension of a license or refusal to grant license or permission to sit for the examination shall be in accordance with the provisions of Chapter 150B of the General Statutes.~~"

Section 6. Article 17 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-249.1. Disciplinary actions.**

(a) The Board may suspend, revoke, or refuse to issue, renew, or reinstate any license for any of the following:

(1) Offering to practice or practicing as a dispensing optician without a license.

(2) Aiding or abetting an unlicensed person in offering to practice or practicing as a dispensing optician.

(3) Selling, transferring, or assigning a license.

(4) Engaging in fraud or misrepresentation to obtain or renew a license.

(5) Engaging in false or misleading advertising.

(6) Advertising in any manner that conveys or intends to convey the impression that eyes are examined by persons licensed under this Article or optical places of business registered under this Article.

(7) Engaging in malpractice, unethical conduct, fraud, deceit, gross negligence, incompetence, or gross misconduct.

(8) Being convicted of a crime involving fraud or moral turpitude.

(9) Violating any provision of this Article or the rules adopted by the Board.

(b) In addition or as an alternative to taking any of the actions permitted in subsection (a) of this section, the Board may assess a licensee a civil penalty of not more than one thousand dollars ($1,000) for the violation of any section of this Article. In any case in which the Board is authorized to take any of the actions permitted in subsection (a) of this section, the Board may instead accept an offer in compromise of the charges whereby the accused licensee shall pay to the Board a civil penalty of not more than one thousand dollars ($1,000). All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred.

(c) In determining the amount of a civil penalty, the Board may consider:

(1) The degree and extent of harm caused by the violation to public health and safety or the potential for harm.
(2) The duration and gravity of the violation.
(3) Whether the violation was willful or reflects a continuing pattern.
(4) Whether the violation involved elements of fraud or deception.
(5) Prior disciplinary actions against the licensee.
(6) Whether and to what extent the licensee profited from the violation.

(d) Any person, including the Board and its staff, may file a complaint with the Board alleging that a licensee committed acts in violation of subsection (a) of this section. The Board may, without holding a hearing, dismiss the complaint as unfounded or trivial. Any hearings held pursuant to this section shall be conducted in accordance with Chapter 150B of the General Statutes."

Section 7. G.S. 90-238 reads as rewritten:

"**§ 90-238. North Carolina State Board of Opticians created; appointment and qualification of members.**

~~There is hereby created a~~ The North Carolina State Board of Opticians ~~whose duty it shall be~~ is created. The Board's duty is to carry out the purposes and enforce the provisions of this Article. The Board shall consist of seven members appointed by the Governor as follows:

(1) Five licensed dispensing opticians, each of whom shall serve three-year terms;
(2) Two residents of North Carolina who are not licensed as dispensing opticians, physicians, or optometrists, who shall serve three-year terms.

Each member of the Board shall serve until ~~his~~ the member's successor is appointed and ~~qualifies; provided that no~~ qualifies. No person shall serve on this Board for more than two complete consecutive terms. ~~Each~~ Before beginning office, each member of the ~~Board, before entering upon his duties,~~ Board shall take all oaths prescribed for other State officers in the manner provided by law, which oaths shall be filed in the office of the Secretary of State. The ~~Governor, at his option,~~ Governor may remove any member of the Board for good cause shown, may appoint members to fill unexpired terms, and must make optician appointments from a list of three nominees for each vacancy submitted by the Board as a result of an election conducted by the Board ~~in May of~~ each year and open to all licensees."

Section 8. This act is effective when it becomes law.

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June 10, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel

RE: **Senate Bill 861 - Dispensing Opticians. (2d Edition)**

Senate Bill 861 makes several changes to Article 17 of Chapter 90 of the General Statutes relating to Dispensing Opticians.

Section 1 of the bill amends the provision relating to qualifications of dispensing opticians to include the requirement that an applicant be of good moral character. Section 2 revises the provision relating to licensing of opticians without examination to add the requirement of good moral character, and to delete the Board's authorization for granting temporary licenses.

Section 3 increases the renewal fee from $5.00 to $50.00. Section 4 increases several fees related to licensure and adds a $25.00 fee for registration of a training establishment and a $10.00 fee for license verification.

Section 5 revises the provision relating to the powers of the Board and section 6 creates a new section relating to disciplinary actions. Actions for which an optician can be disciplined include engaging in false or misleading advertising and conviction of a crime involving moral turpitude, among other things. The new provision also allows the Board to impose a civil penalty on licensees of up to $1,000 for violation of the Article. As required by the Constitution, these penalties are to be remitted to the school fund of the county in which the violation occurred. Finally, section 7 makes technical changes to the provision relating to the creation, appointment and qualification of members of the State Board.

This act becomes effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

DISPENSING OPTICIANS

SENATE BILL 861

INTRODUCED BY

SENATOR HOWARD LEE

THIS BILL AMENDS THE LAWS OF NORTH CAROLINA RELATING TO DISPENSING OPTICIANS BY UPDATING SOME PROVISIONS, MAKING TECHNICAL CORRECTIONS, REORGANIZING DISCIPLINARY RULES AND PROCEDURES, PROVIDING FOR ORDERLY RENEWAL OF LICENSES, AND ADJUSTING CERTAIN FEES TO REFLECT THE NEED FOR ENFORCEMENT OF RULES AND TECHNICAL SUPPORT.

(1) Requirements are added for licensees to be of good moral character.

(2) Technical corrections are made in several sections.

(3) The requirements for out-of-state applicants are changed to provide the same essentials as in-state applicants are required to observe.

(4) Temporary license provisions are deleted because none have been issued and the Licensing Board prefers a policy of issuing only permanent licenses.

(5) A grace period is provided for the renewal of licenses and a penalty is imposed in the amount of $50 for failure to renew on a timely basis.

(6) Fees are increases to fund technical support for licensees and provide funds to offset increased expenses in test administration and work load.

(7) Disciplinary procedures are provided for certain infractions and violations of the rules required by the General Statutes and the Board. The issue of false advertising is also covered to protect consumers and balance competition.

(8) A civil penalty is provided for serious violations.

(9) The date of the election and recommendation of Board Members is changed to provide convenient elections during annual events.

(Provided by The North Carolina Opticians Association)

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June 9, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **Senate Bill 875 - Revise Records Laws-2. (3d Edition)**

Senate Bill 875 makes several changes concerning the recordation of plats, birth certificates, and death certificates at the register of deeds office.

The bill requires the board of commissioners of each county to designate one or more persons as a plat Review Officer and requires certain plats to be reviewed and certified by this officer before they can be recorded. The Review Officer can be an existing local government employee. The person appointed must, if reasonably feasible, be certified as a property mapper. All plats must be approved by this officer before they can be recorded except plats of existing parcels that do not involve street changes, plats of existing man-made or natural features, and control surveys. The bill also deletes the notary requirement for surveyor certificates on plats.

Current law requires each plat to have a certificate by the surveyor who prepared the plat and requires the certificate to be notarized. The bill retains the requirement of the certificate but deletes the requirement that the certificate be notarized. Under the bill, all plats required to be reviewed by the Review Officer must have the certificate of the review officer.

Other changes included in the bill are an increase in the fee for recording a plat from $19 to $21, and deletion of the requirement that a plat have an original signature and seal of a surveyor in order to be recorded. The bill also allows the register of deeds to remove birth and death records of persons who were born or died in counties other than the county in which the register of deeds office is located. It authorizes the Legislative research Commission to study the procedures for land title registration and make recommendations on improving these procedures.

Finally, the bill makes the following clarifying and technical changes: it authorizes the register of deeds to return an original plat once the plat has been copied; it corrects a cross-reference to the State Office where grid system coordinates are filed; and it gives a local public

utility the opportunity to comment on water and sewer systems in a subdivision plat before the plat is approved.

Sections 1 through 10 of the act become effective October 1, 1997. The remainder of this act is effective when it becomes law. The removal and destruction by a register of deeds of any out-of-county birth certificates prior to the effective date of this act is valid.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 875
State Government, Local Government, and Personnel Committee Substitute Adopted 4/24/97
Finance Committee Substitute #2 Adopted 5/22/97
Proposed Committee Substitute S875-CSLT-1 (HCS)
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Revise Records Laws-2. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE PROCEDURES FOR RECORDING MAPS AND PLATS, TO REVISE THE LAW GOVERNING THE DISPOSITION OF CERTAIN BIRTH AND DEATH CERTIFICATES, AND TO ESTABLISH A STUDY OF LAND TITLE REGISTRATION PROCEDURES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 39-32.3 reads as rewritten:

"**§ 39-32.3. Recordation of plat showing control corners.**

Upon designating a control corner and affixing a permanent marker, said person, firm or corporation shall cause to be filed in the office of the register of deeds of the county in which the real estate development is located a map or plat showing the location of the control corner or corners and permanent marker or markers with adequate and sufficient description to enable a surveyor to locate such control corner or marker. ~~The register of deeds shall not accept for registration or record any map or plat of a real estate subdivision or development made after July 1, 1947, unless the location of such control corner or corners is shown thereon.~~ No map or plat of a real estate subdivision or development made after July 1, 1947, shall be certified for

recording pursuant to G.S 47-30.2 unless the location of control corners is shown thereon."

Section 2. G.S. 47-30 reads as rewritten:

"**§ 47-30. Plats and subdivisions; mapping requirements.**

(a) Size Requirements. -- All land plats presented to the register of deeds for recording in the registry of a county in North Carolina after September 30, 1991, having an outside marginal size of either 18 inches by 24 inches, 21 inches by 30 inches, or 24 inches by 36 inches, and having a minimum one and one-half inch border on the left side and a minimum one-half inch border on the other sides shall be deemed to meet the size requirements for recording under this section. Where size of land areas, or suitable scale to assure legibility require, plats may be placed on two or more sheets with appropriate match lines. Counties may specify either:

(1) Only 18 inches by 24 inches;

(2) A combination of 18 inches by 24 inches and 21 inches by 30 inches;

(3) A combination of 18 inches by 24 inches and 24 inches by 36 inches; or

(4) A combination of all three sizes.

Provided, that all registers of deeds where specific sizes other than the combination of all three sizes have been specified, shall be required to submit said size specifications to the North Carolina Association of Registers of Deeds for inclusion on a master list of all such counties. The list shall be available in each register of deeds office by October 1, 1991. For purposes of this section, the terms 'plat' and 'map' are synonymous.

(b) Plats to Be Reproducible. -- Each plat presented for recording shall be a reproducible plat, either original ink on polyester film (mylar), or a reproduced drawing, transparent and archival (as defined by the American National Standards Institute), and submitted in this form. The recorded plat must be such that the public may obtain legible copies. A direct or photographic copy of each recorded plat shall be placed in the plat book or plat file maintained for that purpose and properly indexed for use. In those counties in which the register has made a security copy of the plat from which legible copies can be made, the original may be returned to the person indicated on the plat.

(c) Information Contained in Title of Plat. -- The title of each plat shall contain the following information: property designation, name of owner (the name of owner shall be shown for indexing purposes only and is not to be construed as title certification), location to include township, county and state, the date or dates the survey was made; scale or scale ratio in words or figures and bar graph; name and address of surveyor or firm preparing the plat.

(d) Certificate; Form. -- There shall appear on each plat a certificate by the person under whose supervision ~~such~~ the survey or ~~such~~ plat was made, stating the origin of the information shown on the plat, including recorded deed and plat references shown thereon. The ratio of precision before any adjustments

must be shown. Any lines on the plat that were not actually surveyed must be clearly indicated and a statement included revealing the source of information. ~~The execution of such certificate shall be acknowledged before any officer authorized to take acknowledgments by the registered land surveyor preparing the plat. All plats to be recorded shall be probated as required by law for the registration of deeds.~~ Where a plat consists of more than one sheet, only one sheet must contain the certification and all other sheets must be signed and sealed.

The certificate required above shall include the source of information for the survey and data indicating the ratio of precision of the survey before adjustments and shall be in substantially the following form:

'I, ..., certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book ....., page ....., etc.) (other); that the boundaries not surveyed are clearly indicated as drawn from information found in Book ....., page .....; that the ratio of precision as calculated is 1:.....; that this plat was prepared in accordance with G.S. 47-30 as amended. Witness my original signature, registration number and seal this ..... day of ....., A.D., 19.....

Seal or Stamp

.....

Surveyor

Registration Number'

~~The certificate of the Notary shall read as follows:~~

~~"North Carolina,~~

~~.....County.~~

~~I, a Notary Public of the County and State aforesaid, certify that....., a registered land surveyor, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this..... day of ....., 19.....~~

~~Seal or Stamp~~

~~Notary Public.....~~

~~My Commission expires~~

Nothing in this requirement shall prevent the recording of a map that was prepared in accordance with a previous version of G.S. 47-30 as amended, properly signed, and notarized under the statutes applicable at the time of the signing of the map. However, it shall be the responsibility of the person presenting the map to prove that the map was so prepared.

(e) Method of Computation. -- An accurate method of computation shall be used to determine the acreage and ratio of precision shown on the plat. Area by estimation is not acceptable nor is area by planimeter, area by scale, or area copied from another source, except in the case of tracts containing inaccessible sections or areas. In such case the surveyor may make use of aerial photographs or other appropriate aids to determine the acreage of ~~such~~ any inaccessible areas when ~~such~~ the areas are bounded by natural and visible monuments. In such case the methods used must be stated on the plat and all accessible areas of the tract shall remain subject to all applicable standards of this section.

(f) Plat to Contain Specific Information. -- Every plat shall contain the following specific information:

(1) An accurately positioned north arrow coordinated with any bearings shown on the plat. Indication shall be made as to whether the north index is true, magnetic, North Carolina grid ('NAD 83' or 'NAD 27'), or is referenced to old deed or plat bearings. If the north index is magnetic or referenced to old deed or plat bearings, the date and the source (if known) ~~such~~ the index was originally determined shall be clearly indicated.

(2) The azimuth or course and distance of every property line surveyed shall be shown. Distances shall be in feet or meters and decimals thereof. The number of decimal places shall be appropriate to the class of survey required.

(3) All plat distances shall be by horizontal or grid measurements. All lines shown on the plat shall be correctly plotted to the scale shown. Enlargement of portions of a plat are acceptable in the interest of clarity, where shown as inserts. Where the North Carolina grid system is used the grid factor shall be shown on the face of the plat. If grid distances are used, it must be shown on the plat.

(4) Where a boundary is formed by a curved line, the following data must be given: actual survey data from the point of curvature to the point of tangency shall be shown as standard curve data, or as a traverse of bearings and distances around the curve. If standard curve data is used the bearing and distance of the long chord (from point of curvature to point of tangency) must be shown on the plat.

(5) Where a subdivision of land is set out on the plat, all streets and lots shall be accurately plotted with dimension lines indicating widths and all other information pertinent to reestablishing all lines in the field. This shall include bearings and distances sufficient to form a continuous closure of the entire perimeter.

(6) Where control corners have been established in compliance with G.S. 39-32.1, 39-32.2, 39-32.3, and 39-32.4, as amended, the location and pertinent information as required in the reference statute shall be plotted on the plat. All other corners which are marked by monument or natural object shall be so identified on all plats, and where practical all corners of adjacent owners along the boundary lines of the subject tract which are marked by monument or natural object shall be shown.

(7) The names of adjacent landowners, or lot, block, parcel, subdivision designations or other legal reference where applicable, shall be shown where they could be determined by the surveyor.

(8) All visible and apparent rights-of-way, watercourses, utilities, roadways, and other such improvements shall be accurately located where crossing or forming any boundary line of the property shown.

(9) Where the plat is the result of a survey, one or more corners shall, by a system of azimuths or courses and distances, be accurately tied to and coordinated with a horizontal control monument of some United States or State Agency survey system, such as the North Carolina Geodetic Survey where ~~such~~ the monument is within 2,000 feet of the subject property. Where the North Carolina Grid System coordinates of ~~said~~ the monument are on file in the North Carolina ~~Department of Environment, Health, and Natural Resources,~~ Office of State Planning, the coordinates of both the referenced corner and the monuments used shall be shown in X (easting) and Y (northing) coordinates on the plat. The coordinates shall be identified as based on 'NAD 83,' indicating North American Datum of 1983, or as 'NAD 27,' indicating North American Datum of 1927. The tie lines to the monuments shall also be sufficient to establish true north or grid north bearings for the plat if the monuments exist in pairs. Within a previously recorded subdivision that has been tied to grid control, control monuments within the subdivision may be used in lieu of additional ties to grid control. Within a previously recorded subdivision that has not been tied to grid control, if horizontal control monuments are available within 2,000 feet, the above requirements shall be met; but in the interest of bearing consistency with previously recorded plats, existing bearing control should be used where practical. In the absence of Grid Control, other appropriate natural monuments or landmarks shall be used. In all cases, the tie

lines shall be sufficient to accurately reproduce the subject lands from the control or reference points used.

(10) A vicinity map (location map) shall appear on the plat.

(11) Notwithstanding any other provision contained in this section, it is the duty of the surveyor, by a certificate on the face of the plat, to certify to one of the following:

a. That the survey creates a subdivision of land within the area of a county or municipality that has an ordinance that regulates parcels of land;

b. That the survey is located in ~~such~~ a portion of a county or municipality that is unregulated as to an ordinance that regulates parcels of land;

c. Any one of the following:

1. That the survey is of an existing parcel or parcels of ~~land;~~ land and does not include a new street or change in an existing street;

2. That the survey is of an existing building or other structure, or natural feature, such as watercourse; or

3. That the survey is a control survey.

d. That the survey is of another category, such as the recombination of existing parcels, a court-ordered survey, or other exception to the definition of subdivision;

e. That the information available to the surveyor is such that the surveyor is unable to make a determination to the best of ~~his or her~~ the surveyor's professional ability as to provisions contained in (a) through (d) above.

However, if the plat contains the certificate of a surveyor as stated in a., d., or e. above, then the plat shall have, in addition to said surveyor's certificate, a certification of approval, or no approval required, as may be required by local ordinance from the appropriate government authority before the plat is presented for recordation. If the plat contains the certificate of a surveyor as stated in b. or c. above, nothing shall prevent the recordation of the plat if all other provisions have been met.

(g) Recording of Plat. -- ~~For purposes of recording, the register of deeds shall not be responsible for:~~ In certifying a plat for recording pursuant to G.S. 47-30.2, the Review Officer shall not be responsible for reviewing or certifying as to any of the following requirements of this section:

(1) ~~The provisions of subsection (b),~~ Subsection (b) of this section as to ~~archival;~~ archival.

~~(2) The provisions of subsection (d), except for the notary certificate;~~

(3) ~~The provisions of subsection (e); or~~ Subsection (e) of this section.

(4) ~~The provisions of subdivisions (2) through (9) of subsection (f).~~ Subdivisions (1) through (10) of subsection (f) of this section.

A plat, when certified pursuant to G.S. 47-30.2 ~~proven and probated as provided herein for deeds and other conveyances, when~~ and presented for recording, shall be recorded in the plat book or plat file and when so recorded shall be duly indexed. Reference in any instrument hereafter executed to the record of any plat herein authorized shall have the same effect as if the description of the lands as indicated on the record of the plat were set out in the instrument.

(h) Nothing in this section shall be deemed to prevent the filing of any plat prepared by a registered land surveyor but not recorded prior to the death of the registered land surveyor. However, it is the responsibility of the person presenting the map to the Review Officer pursuant to G.S. 47-30.2 to prove that the plat was so prepared. For preservation these plats may be filed without signature, notary acknowledgement or probate, in a special plat file.

(i) Nothing in this section shall be deemed to invalidate any instrument or the title thereby conveyed making reference to any recorded plat.

(j) The provisions of this section shall not apply to boundary plats of areas annexed by municipalities nor to plats of municipal boundaries, whether or not required by law to be recorded.

(k) The provisions of this section shall apply to all counties in North Carolina. ~~Where local law is in conflict with this section, the provisions in this section shall apply. Failure of a plat to conform in all requirements of this statute shall be sufficient grounds for the register of deeds to refuse to accept the plat for recordation.~~

(l) The provisions of this section shall not apply to the registration of highway right-of-way plans provided for in G.S. 136-19.4 nor to registration of roadway corridor official maps provided in Article 2E of Chapter 136.

(m) Except as provided in subsection (n), any map submitted for inclusion on the public record, whether submitted alone or attached to a deed or other instrument, shall be prepared by a registered land surveyor. Such a map shall either (i) have an original personal signature and original seal as approved by the North Carolina State Board of Registration for Professional Engineers and Land Surveyors or (ii) be a copy of a map, already on file in the public record, that is certified by the custodian of the public record to be a true and accurate copy of a map bearing an original personal signature and original seal. The presence of the original personal signature and seal shall constitute a certification that the map conforms to the standards of practice for land

surveying in North Carolina, as defined in the rules of the North Carolina State Board of Registration for Professional Engineers and Land Surveyors.

(n) A map that does not meet the requirements of subsection (m) of this section may be attached to a deed or other instrument submitted for inclusion in the public record only for illustrative purposes and only if the map is conspicuously labelled, 'THIS MAP IS NOT A CERTIFIED SURVEY AND NO RELIANCE MAY BE PLACED IN ITS ACCURACY.'"

Section 3. Article 2 of Chapter 47 of the General Statutes is amended by adding a new section to read:

"**§ 47-30.2. Review Officer.**

(a) The board of commissioners of each county shall, by resolution, designate by name one or more persons experienced in mapping or land records management as a Review Officer to review each map and plat required to be submitted for review before the map or plat is presented to the register of deeds for recording. Each person designated a Review Officer shall, if reasonably feasible, be certified as a property mapper pursuant to G.S. 147-54.4. A resolution designating a Review Officer shall be recorded in the county registry and indexed on the grantor index in the name of the Review Officer.

(b) The Review Officer shall review expeditiously each map or plat required to be submitted to the Officer before the map or plat is presented to the register of deeds for recording. The Review Officer shall certify the map or plat if it complies with all statutory requirements for recording.

Except as provided in subsection (c) of this section, the register of deeds shall not accept for recording any map or plat required to be submitted to the Review Officer unless the map or plat has the certification of the Review Officer affixed to it. A certification shall be in substantially the following form:

State of North Carolina
County of

I, ..., Review Officer of ..... County, certify that the map or plat to which this certification is affixed meets all statutory requirements for recording.

.....
Review Officer

Date

(c) A map or plat must be presented to the Review Officer unless the certificate required by G.S. 47-30(f)(11) shows that the map or plat is a survey within the meaning of G.S. 47-30(f)(11)c."

Section 4. G.S. 136-102.6(d) reads as rewritten:

"(d) The right-of-way and construction plans for such public streets in residential subdivisions, including plans for street drainage, shall be submitted to the Division of Highways for review and approval, prior to the recording of the subdivision plat in the office of the register of deeds. The plat or map required by this section shall not be recorded by the register of deeds without a certification pursuant to G.S. 47-30.2 and, if determined to be necessary by the Review Officer, a certificate of approval by the Division of Highways of the plans for the public street as being in accordance with the minimum standards of the Board of Transportation for acceptance of the subdivision street on the State highway system for maintenance. The Review Officer shall not certify a map or plat subject to this section unless the new streets or changes in existing streets are designated either public or private. The certificate of approval shall not be deemed an acceptance of the dedication of ~~such~~ the streets on the subdivision plat or map. Final acceptance by the Division of Highways of ~~such~~ the public streets and placing them on the State highway system for maintenance shall be conclusive proof that the streets have been constructed according to the minimum standards of the Board of Transportation."

Section 5. G.S. 153A-321 reads as rewritten:

"**§ 153A-321. Planning agency.**

A county may by ordinance create or designate one or more agencies to perform the following duties:

(1) Make studies of the county and surrounding areas;
(2) Determine objectives to be sought in the development of the study area;
(3) Prepare and adopt plans for achieving these objectives;
(4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
(5) Advise the board of commissioners concerning the use and amendment of means for carrying out plans;
(6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the board of commissioners may direct;
(7) Perform any other related duties that the board of commissioners may direct.

An agency created or designated pursuant to this section may include but shall not be limited to one or more of the ~~following, with any staff that the board of commissioners considers appropriate:~~ following:

(1) A planning board or commission of any size (with not ~~less~~ fewer than three members) or composition considered appropriate, organized in any manner considered appropriate;

(2) A joint planning board created by two or more local governments according to the procedures and provisions of Chapter 160A, Article 20, Part 1."

Section 6. G.S. 153A-332 reads as rewritten:

"**§ 153A-332. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.**

A subdivision ordinance adopted pursuant to this Part shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat before its registration.

The ordinance shall provide that the following agencies be given an opportunity to make recommendations concerning an individual subdivision plat before the plat is approved:

(1) The district highway engineer as to proposed State streets, State highways, and related drainage systems;

(2) The county health director or local public utility, as appropriate, as to proposed water or sewerage systems;

(3) Any other agency or official designated by the board of commissioners.

The ordinance may provide that final approval of each individual subdivision plat is to be given by:

(1) The board of commissioners,

(2) The board of commissioners on recommendation of a planning agency, or

(3) A designated planning agency.

From the effective date of ~~time that~~ a subdivision ordinance that is adopted by the county, ~~filed with the register of deeds of the county,~~ no subdivision plat of land within the county's jurisdiction may be filed or recorded until it has been submitted to and approved by the appropriate board or agency, as specified in the subdivision ordinance, and until this approval is entered in writing on the face of the plat by an authorized representative of the county. ~~the chairman or head of the board or agency.~~ The Review Officer, pursuant to G.S. 47-30.2, shall not certify ~~register of deeds may not file or record a~~ plat of a subdivision of land located within the territorial jurisdiction of the county that has not been approved in accordance with these provisions, and the clerk of superior court may not order or direct the recording of a plat if the recording would be in conflict with this section. ~~The owner of land shown on a subdivision plat submitted for recording, or his authorized agent, shall sign a statement on the plat stating whether any land shown thereon is within the subdivision regulation jurisdiction of the county.~~"

Section 7. G.S. 160A-361 reads as rewritten:

"**§ 160A-361. Planning agency.**

Any city may by ordinance create or designate one or more agencies to perform the following duties:

(1) Make studies of the area within its jurisdiction and surrounding areas;
(2) Determine objectives to be sought in the development of the study area;
(3) Prepare and adopt plans for achieving these objectives;
(4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
(5) Advise the council concerning the use and amendment of means for carrying out plans;
(6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the council may direct;
(7) Perform any other related duties that the council may direct.

An agency created or designated pursuant to this section may include, but shall not be limited to, one or more of the ~~following; with such staff as the council may deem appropriate:~~ following:

(1) A planning board or commission of any size (with not ~~less~~ fewer than three members) or composition deemed appropriate, organized in any manner deemed appropriate;
(2) A joint planning board created by two or more local governments pursuant to Article 20, Part 1, of this Chapter."

Section 8. G.S. 160A-373 reads as rewritten:

"**§ 160A-373. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.**

Any subdivision ordinance adopted pursuant to this Part shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat prior to its registration.

The ordinance may provide that final approval of each individual subdivision plat is to be given by

(1) The city council,
(2) The city council on recommendation of a planning agency, or
(3) A designated planning agency.

From and after the effective date of ~~time that~~ a subdivision ordinance that is adopted by the city, ~~filed with the register of deeds of the county,~~ no subdivision plat of land within the city's jurisdiction shall be filed or recorded until it shall have been submitted to and approved by the council or appropriate agency, as specified in the subdivision ordinance, and until this approval shall have been entered on the face of the plat in writing by ~~the chairman or head of the agency.~~ an authorized representative of the city. The Review Officer, pursuant to G.S. 47-30.2, shall not certify ~~register of deeds shall not file or record~~ a plat of a subdivision of land located within the territorial jurisdiction of a city that has not been approved in accordance with these provisions, nor shall the clerk of superior court order or direct the

recording of a plat if the recording would be in conflict with this section. ~~The owner of land shown on a subdivision plat submitted for recording, or his authorized agent, shall sign a statement on the plat stating whether or not any land shown thereon is within the subdivision regulation jurisdiction of any city.~~"

Section 9. G.S. 161-10(a)(3) reads as rewritten:

"(3) Plats. -- For each original or revised plat recorded ~~nineteen dollars ($19.00)~~ twenty-one dollars ($21.00) per sheet or page; for furnishing a certified copy of a plat three dollars ($3.00)."

Section 10. G.S. 89C-26 is repealed.

Section 11. G.S. 130A-99 reads as rewritten:

"**§ 130A-99. Register of deeds to preserve copies of birth and death records.**

(a) The register of deeds of each county shall file and preserve the copies of birth and death certificates furnished by the local registrar under the provisions of G.S. 130A-97, and shall make and keep a proper index of the certificates. These certificates shall be open to inspection and examination. Copies or abstracts of these certificates shall be provided to any person upon request. Certified copies of these certificates shall be provided only to those persons described in G.S. 130A-93(c).

(b) The register of deeds may remove from the records and destroy copies of birth or death certificates for persons born or dying in counties other than the county in which the office of the register of deeds is located."

Section 12. G.S. 132-3(a) reads as rewritten:

"(a) Prohibition. -- No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with ~~G.S. 121-5,~~ G.S. 121-5 and G.S. 130A-99, without the consent of the Department of Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction only fined not less than ten dollars ($10.00) nor more than five hundred dollars ($500.00)."

Section 13. G.S. 121-5(b) reads as rewritten:

"(b) Destruction of Records Regulated. -- No person may destroy, sell, loan, or otherwise dispose of any public record without the consent of the Department of Cultural ~~Resources.~~ Resources, except as provided in G.S. 130A-99. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, mutilates, or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction only fined at the discretion of the court.

When the custodian of any official State records certifies to the Department of Cultural Resources that such records have no further use or value for official and administrative purposes and when the Department certifies that such records appear to have no further use or value for research or reference, then such records may be destroyed or otherwise disposed of by the agency having custody of them.

When the custodian of any official records of any county, city, municipality, or other subdivision of government certifies to the Department that such records have no further use or value for official business and when the Department certifies that such records appear to have no further use or value for research or reference, then such records may be authorized by the governing body of said county, city, municipality, or other subdivision of government to be destroyed or otherwise disposed of by the agency having custody of them. A record of such certification and authorization shall be entered in the minutes of the governing body granting the authority.

The North Carolina Historical Commission is hereby authorized and empowered to make such orders, rules, and regulations as may be necessary and proper to carry into effect the provisions of this section. When any State, county, municipal, or other governmental records shall have been destroyed or otherwise disposed of in accordance with the procedure authorized in this subsection, any liability that the custodian of such records might incur for such destruction or other disposal shall cease and determine."

Section 14. The Legislative Research Commission may study the procedures for land title registration pursuant to Chapter 43 of the General Statutes and make recommendations regarding revisions to the procedures to improve them. The Commission shall report its findings and recommendations to the 1998 Regular Session of the 1997 General Assembly.

Section 15. Sections 1 through 10 of this act become effective October 1, 1997. The remainder of this act is effective when it becomes law. The removal and destruction by a register of deeds of any out-of-county birth certificates prior to the effective date of this act is valid, and the register of deeds is not in violation of G.S. 121-5 or G.S. 132-3.

June 25

HOUSE BILL 665

Short Title: Crime Victims' Rights Act. (Public)

Sponsors: Representatives Eddins; Aldridge, Arnold, Baddour, Baker, Barbee, Berry, Braswell, Brawley, Buchanan, Cansler, Capps, Clary, Creech, Culp, Davis, Decker, Dockham, Earle, Ellis, Esposito, Gardner, Goodwin, Grady, Gulley, Hall, Hardy, Hiatt, Hightower, Hill, Holmes, Howard, R. Hunter, Ives, Jeffus, Justus, Kiser, McMahan, Miner, Moore, Morgan, Morris, Mosley, Neely, Nichols, Oldham, Rayfield, Redwine, Reynolds, Russell, Saunders, Sexton, Shubert, Sutton, Warwick, Watson, Weatherly, C. Wilson, G. Wilson, Wood, and Yongue.

Referred to: Judiciary I.

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIME VICTIMS' RIGHTS ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 15A of the General Statutes is amended by adding a new Subchapter to read:

"SUBCHAPTER XVI. CRIME VICTIMS' RIGHTS.

"ARTICLE 101.

"Crime Victims' Rights Act.

"**§ 15A-2010. Definitions.**

The following definitions apply in this Article:

(1) Accused. -- A person who has been arrested and charged with committing a crime covered by this Article.

(2) Law enforcement agency. -- The police or sheriff department responsible for investigating a crime covered by this Article.

(3) Next of kin. -- The victim's spouse, children, parents, or siblings. The term does not include such a person, however, if the person caused the victim's injuries or death.

(a) The district attorney's office shall notify the victim that the victim has the right to make an oral or written victim impact statement, which shall be considered by the court or jury, as the case may be, in sentencing the defendant. The notice shall explain that the victim may include in the statement the following:

(1) A description of the nature and extent of any physical, psychological, or emotional injury suffered by the victim as a result of the offense committed by the defendant.

(2) An explanation of any economic or property loss suffered by the victim as a result of the offense committed by the defendant.

(3) An opinion of whether there is a need for restitution and whether the victim has applied for or received compensation under the Crime Victims' Compensation Act.

(4) The victim's recommendation of an appropriate sentence for the defendant.

(b) No victim shall be required to make a victim's impact statement. The court shall not draw any inference or conclusion from a victim's decision not to make a victim's impact statement.

"**§ 15A-2014. Restitution.**

(a) A court shall, in addition to or instead of any penalty authorized by law, require that the defendant make restitution to a victim or the victim's estate for any injuries or damages arising out of the offense committed by the defendant.

(b) The amount the defendant is ordered to pay in restitution may include, if they are a result of the offense committed by the defendant:

(1) The cost of any medical or other professional services and devices or equipment required by the victim.

(2) The cost of physical therapy, occupational therapy, and rehabilitation required by the victim.

(3) Any income loss, after taxes, suffered by the victim.

(4) The cost of any psychological or medical treatment for the victim's next of kin.

(5) The cost of the victim's funeral and any related services.

The court may require that the victim or the victim's estate provide evidence that documents the costs claimed by the victim or the victim's estate under this section. Any such documentation shall be shared with the defendant before the sentencing hearing.

(c) In deciding whether to require that restitution be made, the court shall take into consideration the resources of the defendant, including all real and personal property owned by the defendant and the income derived from the property, the defendant's ability to earn, the defendant's obligation to support dependents, and any other matters that pertain to the defendant's ability to make restitution, but the court is not required to make findings of fact or conclusions of law on these matters when the sentence is imposed. The amount of restitution must be limited to that supported by the record, and the court may order partial restitution when it appears that the

damage or loss caused by the offense is greater than that which the defendant is able to pay.

(d) An order providing for restitution does not abridge the right of a victim or the victim's estate to bring a civil action against the defendant for damages arising out of the offense committed by the defendant, but any amount paid by the defendant under the terms of an order under this section shall be credited against any judgment rendered against the defendant in a civil action. Any amount paid by the defendant shall also be subtracted from any compensation paid by the Crime Victims' Compensation Fund if the compensation is paid after restitution has been made.

(e) The court may order the defendant to make restitution to a person other than the victim, or to any organization, corporation, or association, including the Crime Victims' Compensation Fund that provided assistance to the victim following the commission of the offense by the defendant. Restitution shall be made to the victim or the victim's estate before it is made to any other person, organization, corporation, or association.

(f) The court may require the defendant to make full restitution no later than a certain date or, if the circumstances warrant, may allow the defendant to make restitution in installments over a specified time period.

(g) If the defendant is placed on probation or post-release supervision, or is paroled, any restitution ordered under this Article shall be a condition of probation, supervision, or parole.

(h) If the court does not order restitution, or orders partial restitution, the court shall state on the record the reasons for such a finding.

"**§ 15A-2015. Docketing of order of restitution.**

An order of restitution shall be docketed with the clerk of superior court and may be collected in the same manner as a civil judgment.

"**§ 15A-2016. Posttrial responsibilities.**

(a) Within 30 days after the final proceeding in a case, the district attorney's office shall notify the victim, in writing, of:

(1) The final disposition of the case.

(2) The crimes of which the defendant was convicted.

(3) The defendant's right to appeal, if any.

(b) Upon a defendant's giving notice of appeal to the Court of Appeals or the Supreme Court, the district attorney's office shall forward to the Attorney General's Office the victim's name, address, and phone number. Upon receipt of this information, the Attorney General's Office shall provide the victim with the following:

(1) A clear and concise explanation of how the appellate process works, including information about possible actions that may be taken by the appellate court.

(2) Notice of the date, time, and place of any appellate proceedings involving the defendant. Notice shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the proceedings.

(3) The final disposition of an appeal.

(c) If the defendant has been released on bail pending the outcome of the appeal, the agency that has custody of the defendant shall notify the victim that the defendant has been released.

(d) If the defendant's conviction is overturned and the district attorney's office decides to retry the case or the case is remanded to superior court for a new trial, the victim shall be entitled to the same rights under this Article as if the first trial did not take place.

"§ 15A-2017. Responsibilities of agency with custody of defendant.

The law enforcement agency that has custody of the defendant or the Department of Correction, if it has custody of the defendant, shall notify the victim of:

(1) The earliest date by which the defendant can be released from custody. The calculation of the release date shall be as exact as possible, including earned time and disciplinary credits if the sentence of imprisonment exceeds 90 days. The law enforcement agency or Department of Correction shall be required to provide notice of the defendant's earliest release date only once during the defendant's incarceration.

(2) The defendant's transfer to a minimum security facility and the address of the facility.

(3) The defendant's release or pending release into a community residential program or under extended furlough, or the transfer of the defendant to community status.

(4) Any reduction of the defendant's minimum sentence.

(5) The defendant's escape from custody.

(6) The date of any hearings held by the Parole Commission to consider whether the defendant should be released from custody. Notice should be given not later than 90 days before a hearing is held.

(7) The victim's right to submit a written or oral statement to the Parole Commission before the defendant is released.

(8) The Parole Commission's decision about whether to release or continue the incarceration of a defendant.

(9) The date the defendant is scheduled to be released from the facility. Whenever practical, notice shall be given 60 days before release.

(10) The defendant's death.

"§ 15A-2018. Responsibilities of Department of Adult Probation and Parole.

The Department of Adult Probation and Parole shall notify the victim of:

(1) The date of a hearing to determine whether the defendant's probation should be revoked or extended.

(2) The final disposition of any hearing held in subdivision (1) of this section.

(3) The defendant's leaving the jurisdiction of the court that sentenced the defendant without the permission of the court or the defendant's probation officer.

(4) The capture of a defendant described in subdivision (3) of this section.

(5) The date when the defendant is discharged from probation.

"**§ 15A-2019. Notice of commuted sentence or pardon.**

The Governor shall notify a victim that the Governor is considering commuting the defendant's sentence or pardoning the defendant. The Governor shall also give notice that the victim has the right to present a written statement to be considered by the Governor before the defendant's sentence is commuted or the defendant is pardoned.

"**§ 15A-2020. No money damages.**

This Article does not create a claim for damages against the State, a county, or a municipality, or any of its agencies, instrumentalities, or employees.

"**§ 15A-2021. No ground for relief.**

The failure or inability of any person to provide a right or service under this Article may not be used by a defendant in a criminal case, by an inmate, or by any other accused as a ground for relief in any criminal or civil proceeding.

"**§ 15A-2022. Appointment of guardian.**

When a victim is rendered mentally or physically incompetent, the court shall appoint a guardian to exercise the victim's rights under this Article. The court shall not appoint as guardian a person who was responsible for causing the victim's injuries.

"ARTICLE 102.

"Crime Victims' Rights Fund.

"**§ 15A-2025. Crime Victims' Rights Fund established.**

There is hereby established within the State treasury a special revenue fund to be known as the Crime Victims' Rights Fund (hereinafter Fund). The Fund shall be administered by the Department of Crime Control and Public Safety and shall be used to supplement the budgets of law enforcement agencies and district attorneys' offices that provide services to crime victims as required by the General Statutes. Revenue in the Fund at the end of each fiscal year shall not revert, and interest and other investment income earned by the Fund must be credited to the Fund.

"**§ 15A-2026. Assessments.**

(a) In every criminal case where the defendant is convicted of or enters a plea of guilty or nolo contendere to a felony, a Class 1 or 1A misdemeanor, or to an offense of impaired driving under Chapter 20 of the General Statutes, the court shall order the defendant to pay a sum of thirty dollars ($30.00) to be used to supplement the budgets of law enforcement agencies and district attorneys' offices who provide services to crime victims as required by the General Statutes.

(b) If the court authorizes the payment of fines, costs, restitution, probation oversight fees, or any other obligations of the defendant to be paid in installments, the assessment imposed under this section shall be collected from the first monies

paid by the defendant. The clerk of superior court shall transmit daily all monies collected to the Department of Crime Control and Public Safety for deposit in the Fund.

"**§ 15A-2027. Application for supplemental funds.**

(a) A law enforcement agency or district attorney's office that has a responsibility to provide services to crime victims as required by the General Statutes may apply annually to the Department of Crime Control and Public Safety for supplemental funds. Supplemental funds may not be used to supplant local, State, or federal funds that are available to agencies and district attorneys' offices to provide services to crime victims.

(b) The Department of Crime Control and Public Safety shall establish procedures for screening, recording, and processing applications for supplemental funds. The Department shall prepare and transmit annually to the General Assembly a report of the Department's activities."

Section 2. G.S. 7A-304 is amended by adding a new subdivision to read:

"(7) For the Crime Victims' Rights Fund, the sum of thirty dollars ($30.00) to be remitted to the Department of Crime Control and Public Safety to be administered under the provisions of Article 102 of Chapter 15A of the General Statutes."

Section 3. G.S. 15A-824 through G.S. 15A-827 are repealed.

Section 4. Article 102 as enacted in Section 1 of this act becomes effective January 1, 1998. The remainder of this act is effective when it becomes law.

VISITOR REGISTRATION SHEET

JUDICIARY I

JUNE 10, 1997
10AM

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Russ Talar	N.C. State Bd of Opticians
2.	V L McBride	NCOA
3.	Carolyn Alley	Board of Opticians
4.	Joseph D. Pratt	CSC Franklin St.
5.	Roslyn Savitt	NC Coalition Against Domestic Violence
6.	Peg Dover	NCCDA
7.	Gene Morris	DA 22nd District
8.	Tom Kott	D 21st Dist / NC Coll of Dist Attys
9.	Janie Ramquist	NCSOS
10.	Alan Miles	Bailey & Dixon LLP
11.	David Simmons	ZDA, PA.
22.	A.A. Adams	Victim Advocate
23.	Kim Smith	NCLM
24.	Dan Simon	NCSR
25.	Mike Caputo	NCCBA
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North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

1 tape

Thursday, June 12, 1997
10:00 a.m.
1327 Legislative Building

N. Leo Daughtry
Edwin M. Hardy
Co-Chairmen

Members Present

Martha Alexander	Gene Arnold
Jerry Braswell	J. Russell Capps
James Crawford	Milton Fitch
Bobby Ray Hall	Robert Hunter
John W. Hurley	Margaret M. Jeffus
Larry T. Justus	H.M. Michaux, Jr.
George W. Miller, Jr.	Wilma Sherrill
Gregg Thompson	

The House Committee on JUDICIARY I met at 10:00 a.m. on Thursday, June 12, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry presiding.

Committee counsels Steven Rose and Karen Cochrane-Brown were present to assist the committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

House Pages Nathan Allman and Jonathan Brubaker of Randolph County were present to assist the committee.

Rep. Capps was recognized, having voted with the prevailing side in a vote previously taken on Senate Bill 875, and moved to reconsider the vote.

There was no objection, and Sen. Kerr was recognized to introduce an amended Proposed Committee Substitute to S.B. 875.

On a motion by Rep. Michaux, the Committee voted without objection to give the Proposed Committee Substitute to the Senate Finance Committee Substitute #2 to S.B. 875 a favorable report, unfavorable to the original bill.

Senator Dalton was recognized to explain Senate Bill 910, CHANGE LIMITATIONS FOR OFFICIAL BONDS.

Rep. Sherrill moved to amend S.B. 910, a written copy numbered "S910-ARL-001" is attached and made a part of these minutes. There was no objection.

On a motion by Rep. Hall, the Committee voted without objection to roll the amendment with the bill into a Proposed Committee Substitute to S.B. 910, to give the Proposed Committee Substitute a favorable report, unfavorable to the original bill.

Senator Gulley was recognized to explain Senate Bill 885, NOTICE OF AN EXECUTION OF CAPITAL DEFENDANT.

Rep. Capps moved to give the Senate Committee Substitute to S.B. 885 a favorable report. Rep. Fitch and Rep. Michaux voted against the motion, to which the Committee voted to give a favorable report.

The Committee adjourned at 10:40 a.m.

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS

NORTH CAROLINA HOUSE *of* REPRESENTATIVES

COMMITTEE ON JUDICIARY I

Thursday, June 12, 1997
Room 1327 LB
10:00 a.m.

Representatives N. Leo Daughtry,
Edwin M. "Sandy" Hardy
Co-Chairmen

S. 875 REVISE RECORDS LAWS-2
Sponsor: Senator Kerr

S. 885 NOTICE OF EXECUTION
Sponsor: Senator Gulley

S. 910 CHANGE LIMITATIONS FOR OFFICIAL BONDS
Sponsor: Senator Dalton

S. 919 UNLAWFUL TELECOMMUNICATIONS
Sponsor: Senator Odom

Adjournment

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

W. Robinson, Director
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16 W. Jones Street
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Bill Drafting Division
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Thomas L. Covington, Director
Fiscal Research Division
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Donald W. Fulford, Director
Information Systems Division
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Terrence D. Sullivan, Director
Research Division
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(919) 733-2578

May 29, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **Senate Bill 885; Notice of an execution of capital defendant**

Senate Bill 885 amends G.S. 15-194. G.S. 15-194 provides that the date of execution of a death sentence is set by the Warden of the State Penitentiary and is to be not less than 30 days nor more than 45 days from the date of receiving notification of the completion, or failure to undertake, the post conviction relief actions listed in subdivisions (1) through (6). The statute does not state from whom the notification is to come or that it must be written. The amendment provides that written notification is to come from the Attorney General or the District Attorney who prosecuted the case.

The act is effective when it becomes law.

S885-SMRL-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

[redacted] W. Robinson, Director
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June 9, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **Senate Bill 875 - Revise Records Laws-2. (3d Edition)**

Senate Bill 875 makes several changes concerning the recordation of plats, birth certificates, and death certificates at the register of deeds office.

The bill requires the board of commissioners of each county to designate one or more persons as a plat Review Officer and requires certain plats to be reviewed and certified by this officer before they can be recorded. The Review Officer can be an existing local government employee. The person appointed must, if reasonably feasible, be certified as a property mapper. All plats must be approved by this officer before they can be recorded except plats of existing parcels that do not involve street changes, plats of existing man-made or natural features, and control surveys. The bill also deletes the notary requirement for surveyor certificates on plats.

Current law requires each plat to have a certificate by the surveyor who prepared the plat and requires the certificate to be notarized. The bill retains the requirement of the certificate but deletes the requirement that the certificate be notarized. Under the bill, all plats required to be reviewed by the Review Officer must have the certificate of the review officer.

Other changes included in the bill are an increase in the fee for recording a plat from $19 to $21, and deletion of the requirement that a plat have an original signature and seal of a surveyor in order to be recorded. The bill also allows the register of deeds to remove birth and death records of persons who were born or died in counties other than the county in which the register of deeds office is located. It authorizes the Legislative research Commission to study the procedures for land title registration and make recommendations on improving these procedures.

Finally, the bill makes the following clarifying and technical changes: it authorizes the register of deeds to return an original plat once the plat has been copied; it corrects a cross-reference to the State Office where grid system coordinates are filed; and it gives a local public

Joel Raupe (Rep. Hardy)

From: C Phil Wagoner RLS[SMTP:cpw@SURRY.NET]
Sent: Wednesday, June 11, 1997 10:00 PM
To: Sen. John Kerr; Rep. Leo Daughtry; Rep. Edwin Hardy; Rep. Jerry Braswell; Rep. Martha Alexander; Rep. Gene Arnold; Rep. Dan Blue; Rep. Russell Capps; Rep. Debbie Clary; Rep. Sam Ellis; Rep. Theresa Esposito; Rep. Toby Fitch, Jr.; Rep. Lyons Gray; Rep. Bobby Hall; Rep. Thomas Hardaway; Rep. George Holmes; Rep. Bob Hunter; Rep. Bill Hurley; Rep. Maggie Jeffus; Rep. Larry Justus; Rep. Mickey Michaux, Jr.; Rep. George Miller; Rep. Richard Morgan; Rep. Wilma Sherrill; Rep. Gregg Thompson
Subject: SB 875 Revise Record Laws-2 Proposed Committee Substitute

Dear Representative,

You were first introduced to SB 875 and the proposed committee substitute this past Tuesday morning. This bill has consumed a collective total of a few hundred hours of time by Senator Kerr, the legislative staff, the Institute of Government, the NC Registers of Deeds Association, the NC Planners Association and the North Carolina Society of Surveyors (NCSS), and some other groups not mentioned here. Some of us have been working on parts of this bill for over two (2) years. Some of the issues are complex and others are simpler. Every group that will be affected by this bill has had their input considered. As with any bill, nothing is perfect but this one is now acceptable to the parties involved. I urge you to vote for a favorable report of the committee substitute bill as presented to you on Thursday June 12.

The Review Officer is a point that none of us have a perfect answer for. The attitudes of each of the 100 counties will likely yield 100 opinions. The NCSS believes that the proposed committee substitute will lead to a more efficient process of recording survey plats and will place the responsibility of the correctness of those plats where it belongs - first on the surveyor and then on the review officer. The registers of deeds staff is generally not trained to check for the types of technical details of survey plats that are now required to check by current law. SB 875 will correct a number of problems that have plagued surveyors and the registers of deeds for years.

The NCSS always conducts a number of seminars for the surveyors each time new laws affecting us are passed. This will be no exception. We will prepare these seminars with the advice of the registers of deeds, the Institute of Government, our legal council, our legislative committee, and our land records committee. I will be teaching some of these seminars. I believe that the NCSS will allow the new review officers, registers of deeds, county commissioners, and other interested government officials to attend these seminars at no cost ot them. Our members always pay for these seminars. Such a program will educate those persons affected by this bill in order to have a smooth transition from the old law to the new law.

Once again, I ask you to pass the proposed committee substitute to SB 875. I will be available for any questions you may have.

Thank you very much for your time and consideration in this matter.

C. Phil Wagoner, RLS L-2416 Registered Dec. 1976
P.O. Box 986
Mount Airy, NC 27030

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 875
State Government, Local Government, and Personnel Committee Substitute Adopted 4/24/97
Finance Committee Substitute #2 Adopted 5/22/97
Proposed House Committee Substitute S875-PCS8723

Short Title: Revise Records Laws-2. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE PROCEDURES FOR RECORDING MAPS AND PLATS, TO REVISE THE LAW GOVERNING THE DISPOSITION OF CERTAIN BIRTH AND DEATH CERTIFICATES, AND TO ESTABLISH A STUDY OF LAND TITLE REGISTRATION PROCEDURES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 39-32.3 reads as rewritten:

"**§ 39-32.3. Recordation of plat showing control corners.**

Upon designating a control corner and affixing a permanent marker, said person, firm or corporation shall cause to be filed in the office of the register of deeds of the county in which the real estate development is located a map or plat showing the location of the control corner or corners and permanent marker or markers with adequate and sufficient description to enable a surveyor to locate such control corner or marker. ~~The register of deeds shall not accept for registration or record any map or plat of a real estate subdivision or development made after July 1, 1947, unless the location of such control corner or corners is shown thereon.~~ No map or plat of a real estate subdivision or development made after July 1, 1947, shall be certified for recording pursuant to G.S 47-30.2 unless the location of control corners is shown thereon."

Section 2. G.S. 47-30 reads as rewritten:

"**§ 47-30. Plats and subdivisions; mapping requirements.**

(a) Size Requirements. -- All land plats presented to the register of deeds for recording in the registry of a county in North Carolina after September 30, 1991, having an outside marginal size of either 18 inches by 24 inches, 21 inches by 30 inches, or 24 inches by 36 inches, and having a minimum one and one-half inch border on the left side and a minimum one-half inch border on the other sides shall be deemed to meet the size requirements for recording under this section. Where size of land areas, or suitable scale to assure legibility require, plats may be placed on two or more sheets with appropriate match lines. Counties may specify either:

(1) Only 18 inches by 24 inches;

(2) A combination of 18 inches by 24 inches and 21 inches by 30 inches;

(3) A combination of 18 inches by 24 inches and 24 inches by 36 inches; or

(4) A combination of all three sizes.

Provided, that all registers of deeds where specific sizes other than the combination of all three sizes have been specified, shall be required to submit said size specifications to the North Carolina Association of Registers of Deeds for inclusion on a master list of all such counties. The list shall be available in each register of deeds office by October 1, 1991. For purposes of this section, the terms 'plat' and 'map' are synonymous.

(b) Plats to Be Reproducible. -- Each plat presented for recording shall be a reproducible plat, either original ink on polyester film (mylar), or a reproduced drawing, transparent and archival (as defined by the American National Standards Institute), and submitted in this form. The recorded plat must be such that the public may obtain legible copies. A direct or photographic copy of each recorded plat shall be placed in the plat book or plat file maintained for that purpose and properly indexed for use. In those counties in which the register has made a security copy of the plat from which legible copies can be made, the original may be returned to the person indicated on the plat.

(c) Information Contained in Title of Plat. -- The title of each plat shall contain the following information: property designation, name of owner (the name of owner shall be shown for indexing purposes only and is not to be construed as title certification), location to include township, county and state, the date or dates the survey was made; scale or scale ratio in words or figures and bar graph; name and address of surveyor or firm preparing the plat.

(d) Certificate; Form. -- There shall appear on each plat a certificate by the person under whose supervision ~~such~~ the survey or ~~such~~ plat was made, stating the origin of the information shown on the plat, including recorded deed and plat references shown thereon. The ratio of precision before any adjustments must be shown. Any lines on the plat that were not actually surveyed must be clearly indicated and a statement included revealing the source of information. ~~The execution of such certificate shall be acknowledged before any officer authorized to take acknowledgments by the registered land surveyor preparing the plat. All plats to be recorded shall be probated as required by law for the registration of deeds.~~ Where

a plat consists of more than one sheet, only one sheet must contain the certification and all other sheets must be signed and sealed.

The certificate required above shall include the source of information for the survey and data indicating the ratio of precision of the survey before adjustments and shall be in substantially the following form:

'I, ..., certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book ....., page ....., etc.) (other); that the boundaries not surveyed are clearly indicated as drawn from information found in Book ....., page .....; that the ratio of precision as calculated is 1:.....; that this plat was prepared in accordance with G.S. 47-30 as amended. Witness my original signature, registration number and seal this ..... day of ....., A.D., 19.....

Seal or Stamp

.....

Surveyor

Registration Number'

~~The certificate of the Notary shall read as follows:~~

~~"North Carolina, ...County.~~

~~I, a Notary Public of the County and State aforesaid, certify that....., a registered land surveyor, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this..... day of ....., 19.....~~

~~Seal or Stamp~~

~~Notary Public.....~~

~~My Commission expires~~

Nothing in this requirement shall prevent the recording of a map that was prepared in accordance with a previous version of G.S. 47-30 as amended, properly signed, and notarized under the statutes applicable at the time of the signing of the map. However, it shall be the responsibility of the person presenting the map to prove that the map was so prepared.

(e) Method of Computation. -- An accurate method of computation shall be used to determine the acreage and ratio of precision shown on the plat. Area by estimation is not acceptable nor is area by planimeter, area by scale, or area copied from another source, except in the case of tracts containing inaccessible sections or areas. In such case the surveyor may make use of aerial photographs or other appropriate aids to determine the acreage of ~~such~~ any inaccessible areas when ~~such~~ the areas are bounded by natural and visible monuments. In such case the methods

used must be stated on the plat and all accessible areas of the tract shall remain subject to all applicable standards of this section.

(f) Plat to Contain Specific Information. -- Every plat shall contain the following specific information:

(1) An accurately positioned north arrow coordinated with any bearings shown on the plat. Indication shall be made as to whether the north index is true, magnetic, North Carolina grid ('NAD 83' or 'NAD 27'), or is referenced to old deed or plat bearings. If the north index is magnetic or referenced to old deed or plat bearings, the date and the source (if known) ~~such~~ the index was originally determined shall be clearly indicated.

(2) The azimuth or course and distance of every property line surveyed shall be shown. Distances shall be in feet or meters and decimals thereof. The number of decimal places shall be appropriate to the class of survey required.

(3) All plat distances shall be by horizontal or grid measurements. All lines shown on the plat shall be correctly plotted to the scale shown. Enlargement of portions of a plat are acceptable in the interest of clarity, where shown as inserts. Where the North Carolina grid system is used the grid factor shall be shown on the face of the plat. If grid distances are used, it must be shown on the plat.

(4) Where a boundary is formed by a curved line, the following data must be given: actual survey data from the point of curvature to the point of tangency shall be shown as standard curve data, or as a traverse of bearings and distances around the curve. If standard curve data is used the bearing and distance of the long chord (from point of curvature to point of tangency) must be shown on the plat.

(5) Where a subdivision of land is set out on the plat, all streets and lots shall be accurately plotted with dimension lines indicating widths and all other information pertinent to reestablishing all lines in the field. This shall include bearings and distances sufficient to form a continuous closure of the entire perimeter.

(6) Where control corners have been established in compliance with G.S. 39-32.1, 39-32.2, 39-32.3, and 39-32.4, as amended, the location and pertinent information as required in the reference statute shall be plotted on the plat. All other corners which are marked by monument or natural object shall be so identified on all plats, and where practical all corners of adjacent owners along the boundary lines of the subject tract which are marked by monument or natural object shall be shown.

(7) The names of adjacent landowners, or lot, block, parcel, subdivision designations or other legal reference where applicable, shall be shown where they could be determined by the surveyor.

(8) All visible and apparent rights-of-way, watercourses, utilities, roadways, and other such improvements shall be accurately located where crossing or forming any boundary line of the property shown.

(9) Where the plat is the result of a survey, one or more corners shall, by a system of azimuths or courses and distances, be accurately tied to and coordinated with a horizontal control monument of some United States or State Agency survey system, such as the North Carolina Geodetic Survey where ~~such~~ the monument is within 2,000 feet of the subject property. Where the North Carolina Grid System coordinates of ~~said~~ the monument are on file in the North Carolina ~~Department of Environment, Health, and Natural Resources,~~ Office of State Planning, the coordinates of both the referenced corner and the monuments used shall be shown in X (easting) and Y (northing) coordinates on the plat. The coordinates shall be identified as based on 'NAD 83,' indicating North American Datum of 1983, or as 'NAD 27,' indicating North American Datum of 1927. The tie lines to the monuments shall also be sufficient to establish true north or grid north bearings for the plat if the monuments exist in pairs. Within a previously recorded subdivision that has been tied to grid control, control monuments within the subdivision may be used in lieu of additional ties to grid control. Within a previously recorded subdivision that has not been tied to grid control, if horizontal control monuments are available within 2,000 feet, the above requirements shall be met; but in the interest of bearing consistency with previously recorded plats, existing bearing control should be used where practical. In the absence of Grid Control, other appropriate natural monuments or landmarks shall be used. In all cases, the tie lines shall be sufficient to accurately reproduce the subject lands from the control or reference points used.

(10) A vicinity map (location map) shall appear on the plat.

(11) Notwithstanding any other provision contained in this section, it is the duty of the surveyor, by a certificate on the face of the plat, to certify to one of the following:

a. That the survey creates a subdivision of land within the area of a county or municipality that has an ordinance that regulates parcels of land;

b. That the survey is located in ~~such~~ a portion of a county or municipality that is unregulated as to an ordinance that regulates parcels of land;

c. Any one of the following:

1. That the survey is of an existing parcel or parcels of ~~land;~~ land and does not create a new street or change an existing street;
2. That the survey is of an existing building or other structure, or natural feature, such as a watercourse; or
3. That the survey is a control survey.

d. That the survey is of another category, such as the recombination of existing parcels, a court-ordered survey, or other exception to the definition of subdivision;

e. That the information available to the surveyor is such that the surveyor is unable to make a determination to the best of ~~his or her~~ the surveyor's professional ability as to provisions contained in (a) through (d) above.

However, if the plat contains the certificate of a surveyor as stated in a., d., or e. above, then the plat shall have, in addition to said surveyor's certificate, a certification of approval, or no approval required, as may be required by local ordinance from the appropriate government authority before the plat is presented for recordation. If the plat contains the certificate of a surveyor as stated in b. or c. above, nothing shall prevent the recordation of the plat if all other provisions have been met.

(g) Recording of Plat. -- ~~For purposes of recording, the register of deeds shall not be responsible for:~~ In certifying a plat for recording pursuant to G.S. 47-30.2, the Review Officer shall not be responsible for reviewing or certifying as to any of the following requirements of this section:

(1) ~~The provisions of subsection (b),~~ Subsection (b) of this section as to ~~archival;~~ archival.

~~(2) The provisions of subsection (d), except for the notary certificate;~~

(3) ~~The provisions of subsection (e); or~~ Subsection (e) of this section.

(4) ~~The provisions of subdivisions (2) through (9) of subsection (f).~~ Subdivisions (1) through (10) of subsection (f) of this section.

A plat, when certified pursuant to G.S. 47-30.2 ~~proven and probated as provided herein for deeds and other conveyances, when~~ and presented for recording, shall be recorded in the plat book or plat file and when so recorded shall be duly indexed. Reference in any instrument hereafter executed to the record of any plat herein authorized shall have the same effect as if the description of the lands as indicated on the record of the plat were set out in the instrument.

(h) Nothing in this section shall be deemed to prevent the filing of any plat prepared by a registered land surveyor but not recorded prior to the death of the registered land surveyor. However, it is the responsibility of the person presenting the map to the Review Officer pursuant to G.S. 47-30.2 to prove that the plat was so prepared. For preservation these plats may be filed without signature, notary acknowledgement or probate, in a special plat file.

(i) Nothing in this section shall be deemed to invalidate any instrument or the title thereby conveyed making reference to any recorded plat.

(j) The provisions of this section shall not apply to boundary plats of areas annexed by municipalities nor to plats of municipal boundaries, whether or not required by law to be recorded.

(k) The provisions of this section shall apply to all counties in North Carolina. ~~Where local law is in conflict with this section, the provisions in this section shall apply. Failure of a plat to conform in all requirements of this statute shall be sufficient grounds for the register of deeds to refuse to accept the plat for recordation.~~

(l) The provisions of this section shall not apply to the registration of highway right-of-way plans provided for in G.S. 136-19.4 nor to registration of roadway corridor official maps provided in Article 2E of Chapter 136.

(m) Except as provided in subsection (n), any map submitted for inclusion on the public record, whether submitted alone or attached to a deed or other instrument, shall be prepared by a registered land surveyor. Such a map shall either (i) have an original personal signature and original seal as approved by the North Carolina State Board of Registration for Professional Engineers and Land Surveyors or (ii) be a copy of a map, already on file in the public record, that is certified by the custodian of the public record to be a true and accurate copy of a map bearing an original personal signature and original seal. The presence of the original personal signature and seal shall constitute a certification that the map conforms to the standards of practice for land surveying in North Carolina, as defined in the rules of the North Carolina State Board of Registration for Professional Engineers and Land Surveyors.

(n) A map that does not meet the requirements of subsection (m) of this section may be attached to a deed or other instrument submitted for inclusion in the public record only for illustrative purposes and only if the map is conspicuously labelled, 'THIS MAP IS NOT A CERTIFIED SURVEY AND NO RELIANCE MAY BE PLACED IN ITS ACCURACY.'"

Section 3. Article 2 of Chapter 47 of the General Statutes is amended by adding a new section to read:

"**§ 47-30.2. Review Officer.**

(a) The board of commissioners of each county shall, by resolution, designate by name one or more persons experienced in mapping or land records management as a Review Officer to review each map and plat required to be submitted for review before the map or plat is presented to the register of deeds for recording. Each person designated a Review Officer shall, if reasonably feasible, be certified as a property mapper pursuant to G.S. 147-54.4. A resolution designating a Review Officer shall be recorded in the county registry and indexed on the grantor index in the name of the Review Officer.

(b) The Review Officer shall review expeditiously each map or plat required to be submitted to the Officer before the map or plat is presented to the register of deeds for recording. The Review Officer shall certify the map or plat if it complies with all statutory requirements for recording.

Except as provided in subsection (c) of this section, the register of deeds shall not accept for recording any map or plat required to be submitted to the Review Officer unless the map or plat has the certification of the Review Officer affixed to it. A certification shall be in substantially the following form:

State of North Carolina
County of

I, ..., Review Officer of ..... County, certify that the map or plat to which this certification is affixed meets all statutory requirements for recording.

.....
Review Officer

Date

(c) A map or plat must be presented to the Review Officer unless the certificate required by G.S. 47-30(f)(11) shows that the map or plat is a survey within the meaning of G.S. 47-30(f)(11)b. or c."

Section 4. G.S. 136-102.6(d) reads as rewritten:

"(d) The right-of-way and construction plans for such public streets in residential subdivisions, including plans for street drainage, shall be submitted to the Division of Highways for review and approval, prior to the recording of the subdivision plat in the office of the register of deeds. The plat or map required by this section shall not be recorded by the register of deeds without a certification pursuant to G.S. 47-30.2 and, if determined to be necessary by the Review Officer, a certificate of approval by the Division of Highways of the plans for the public street as being in accordance with the minimum standards of the Board of Transportation for acceptance of the subdivision street on the State highway system for maintenance. The Review Officer shall not certify a map or plat subject to this section unless the new streets or changes in existing streets are designated either public or private. The certificate of approval shall not be deemed an acceptance of the dedication of ~~such~~ the streets on the subdivision plat or map. Final acceptance by the Division of Highways of ~~such~~ the public streets and placing them on the State highway system for maintenance shall be conclusive proof that the streets have been constructed according to the minimum standards of the Board of Transportation."

Section 5. G.S. 153A-321 reads as rewritten:

"**§ 153A-321. Planning agency.**

A county may by ordinance create or designate one or more agencies to perform the following duties:

(1) Make studies of the county and surrounding areas;
(2) Determine objectives to be sought in the development of the study area;
(3) Prepare and adopt plans for achieving these objectives;

(4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
(5) Advise the board of commissioners concerning the use and amendment of means for carrying out plans;
(6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the board of commissioners may direct;
(7) Perform any other related duties that the board of commissioners may direct.

An agency created or designated pursuant to this section may include but shall not be limited to one or more of the ~~following, with any staff that the board of commissioners considers appropriate:~~ following:

(1) A planning board or commission of any size (with not ~~less~~ fewer than three members) or composition considered appropriate, organized in any manner considered appropriate;
(2) A joint planning board created by two or more local governments according to the procedures and provisions of Chapter 160A, Article 20, Part 1."

Section 6. G.S. 153A-332 reads as rewritten:

"**§ 153A-332. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.**

A subdivision ordinance adopted pursuant to this Part shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat before its registration.

The ordinance shall provide that the following agencies be given an opportunity to make recommendations concerning an individual subdivision plat before the plat is approved:

(1) The district highway engineer as to proposed State streets, State highways, and related drainage systems;
(2) The county health director or local public utility, as appropriate, as to proposed water or sewerage systems;
(3) Any other agency or official designated by the board of commissioners.

The ordinance may provide that final approval of each individual subdivision plat is to be given by:

(1) The board of commissioners,
(2) The board of commissioners on recommendation of a planning agency, or
(3) A designated planning agency.

From the effective date of ~~time that~~ a subdivision ordinance that is adopted by the county, ~~filed with the register of deeds of the county,~~ no subdivision plat of land within the county's jurisdiction may be filed or recorded until it has been submitted to and approved by the appropriate board or agency, as specified in the subdivision

ordinance, and until this approval is entered in writing on the face of the plat by an authorized representative of the county. ~~the chairman or head of the board or agency.~~ The Review Officer, pursuant to G.S. 47-30.2, shall not certify ~~register of deeds may not file or record~~ a plat of a subdivision of land located within the territorial jurisdiction of the county that has not been approved in accordance with these provisions, and the clerk of superior court may not order or direct the recording of a plat if the recording would be in conflict with this section. ~~The owner of land shown on a subdivision plat submitted for recording, or his authorized agent, shall sign a statement on the plat stating whether any land shown thereon is within the subdivision regulation jurisdiction of the county.~~"

Section 7. G.S. 160A-361 reads as rewritten:

"**§ 160A-361. Planning agency.**

Any city may by ordinance create or designate one or more agencies to perform the following duties:

(1) Make studies of the area within its jurisdiction and surrounding areas;

(2) Determine objectives to be sought in the development of the study area;

(3) Prepare and adopt plans for achieving these objectives;

(4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;

(5) Advise the council concerning the use and amendment of means for carrying out plans;

(6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the council may direct;

(7) Perform any other related duties that the council may direct.

An agency created or designated pursuant to this section may include, but shall not be limited to, one or more of the ~~following; with such staff as the council may deem appropriate:~~ following:

(1) A planning board or commission of any size (with not ~~less~~ fewer than three members) or composition deemed appropriate, organized in any manner deemed appropriate;

(2) A joint planning board created by two or more local governments pursuant to Article 20, Part 1, of this Chapter."

Section 8. G.S. 160A-373 reads as rewritten:

"**§ 160A-373. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner.**

Any subdivision ordinance adopted pursuant to this Part shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat prior to its registration.

The ordinance may provide that final approval of each individual subdivision plat is to be given by

(1) The city council,

(2) The city council on recommendation of a planning agency, or
(3) A designated planning agency.

From and after the effective date of ~~time that~~ a subdivision ordinance that is adopted by the city, ~~filed with the register of deeds of the county,~~ no subdivision plat of land within the city's jurisdiction shall be filed or recorded until it shall have been submitted to and approved by the council or appropriate agency, as specified in the subdivision ordinance, and until this approval shall have been entered on the face of the plat in writing by ~~the chairman or head of the agency.~~ an authorized representative of the city. The Review Officer, pursuant to G.S. 47-30.2, shall not certify ~~register of deeds shall not file or record~~ a plat of a subdivision of land located within the territorial jurisdiction of a city that has not been approved in accordance with these provisions, nor shall the clerk of superior court order or direct the recording of a plat if the recording would be in conflict with this section. ~~The owner of land shown on a subdivision plat submitted for recording, or his authorized agent, shall sign a statement on the plat stating whether or not any land shown thereon is within the subdivision regulation jurisdiction of any city.~~"

Section 9. G.S. 161-10(a)(3) reads as rewritten:

"(3) Plats. -- For each original or revised plat recorded ~~nineteen dollars ($19.00)~~ twenty-one dollars ($21.00) per sheet or page; for furnishing a certified copy of a plat three dollars ($3.00)."

Section 10. G.S. 89C-26 is repealed.

Section 11. G.S. 130A-99 reads as rewritten:

"**§ 130A-99. Register of deeds to preserve copies of birth and death records.**

(a) The register of deeds of each county shall file and preserve the copies of birth and death certificates furnished by the local registrar under the provisions of G.S. 130A-97, and shall make and keep a proper index of the certificates. These certificates shall be open to inspection and examination. Copies or abstracts of these certificates shall be provided to any person upon request. Certified copies of these certificates shall be provided only to those persons described in G.S. 130A-93(c).

(b) The register of deeds may remove from the records and destroy copies of birth or death certificates for persons born or dying in counties other than the county in which the office of the register of deeds is located."

Section 12. G.S. 132-3(a) reads as rewritten:

"(a) Prohibition. -- No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with ~~G.S. 121-5,~~ G.S. 121-5 and G.S. 130A-99, without the consent of the Department of Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction only fined not less than ten dollars ($10.00) nor more than five hundred dollars ($500.00)."

Section 13. G.S. 121-5(b) reads as rewritten:

"(b) Destruction of Records Regulated. -- No person may destroy, sell, loan, or otherwise dispose of any public record without the consent of the Department of Cultural ~~Resources.~~ Resources, except as provided in G.S. 130A-99. Whoever

unlawfully removes a public record from the office where it is usually kept, or alters, mutilates, or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction only fined at the discretion of the court.

When the custodian of any official State records certifies to the Department of Cultural Resources that such records have no further use or value for official and administrative purposes and when the Department certifies that such records appear to have no further use or value for research or reference, then such records may be destroyed or otherwise disposed of by the agency having custody of them.

When the custodian of any official records of any county, city, municipality, or other subdivision of government certifies to the Department that such records have no further use or value for official business and when the Department certifies that such records appear to have no further use or value for research or reference, then such records may be authorized by the governing body of said county, city, municipality, or other subdivision of government to be destroyed or otherwise disposed of by the agency having custody of them. A record of such certification and authorization shall be entered in the minutes of the governing body granting the authority.

The North Carolina Historical Commission is hereby authorized and empowered to make such orders, rules, and regulations as may be necessary and proper to carry into effect the provisions of this section. When any State, county, municipal, or other governmental records shall have been destroyed or otherwise disposed of in accordance with the procedure authorized in this subsection, any liability that the custodian of such records might incur for such destruction or other disposal shall cease and determine."

Section 14. The Legislative Research Commission may study the procedures for land title registration pursuant to Chapter 43 of the General Statutes and make recommendations regarding revisions to the procedures to improve them. The Commission shall report its findings and recommendations to the 1998 Regular Session of the 1997 General Assembly.

Section 15. Sections 1 through 10 of this act become effective October 1, 1997. The remainder of this act is effective when it becomes law. The removal and destruction by a register of deeds of any out-of-county birth certificates prior to the effective date of this act is valid, and the register of deeds is not in violation of G.S. 121-5 or G.S. 132-3.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 910

Short Title: Change Limitations for Official Bonds. (Public)

Sponsors: Senators Dalton, Kerr; Clark, Warren, and Weinstein.

Referred to: Judiciary.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE STATUTE OF LIMITATIONS FOR ACTIONS ON OFFICIAL BONDS FROM SIX YEARS TO THREE YEARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-50(a)(1) is repealed.

Section 2. G.S. 1-52 reads as rewritten:

"**§ 1-52. Three years.**

Within three years an action --

(1) Upon a contract, obligation or liability arising out of a contract, express or implied, except those mentioned in the preceding sections or in G.S. 1-53(1).

(1a) Upon the official bond of a public officer.

(2) Upon a liability created by statute, either state or federal, unless some other time is mentioned in the statute creating it.

(3) For trespass upon real property. When the trespass is a continuing one, the action shall be commenced within three years from the original trespass, and not thereafter.

(4) For taking, detaining, converting or injuring any goods or chattels, including action for their specific recovery.

(5) For criminal conversation, or for any other injury to the person or rights of another, not arising on contract and not hereafter enumerated.

(6) Against the sureties of any executor, administrator, collector or guardian on the official bond of their principal; within three years after the breach thereof complained of.

(7) Against bail; within three years after judgment against the principal; but bail may discharge himself by a surrender of the principal, at any time before final judgment against the bail.

(8) For fees due to a clerk, sheriff or other officer, by the judgment of a court; within three years from the rendition of the judgment, or the issuing of the last execution thereon.

(9) For relief on the ground of fraud or mistake; the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

(10) Repealed by Session Laws 1977, c. 886, s. 1.

(11) For the recovery of any amount under and by virtue of the provisions of the Fair Labor Standards Act of 1938 and amendments thereto, said act being an act of Congress.

(12) Upon a claim for loss covered by an insurance policy which is subject to the three-year limitation contained in lines 158 through 161 of the Standard Fire Insurance Policy for North Carolina, G.S. 58-44-15(c).

(13) Against a public officer, for a trespass, under color of his office.

(14) An action under Chapter 75B of the General Statutes, the action in regard to a continuing violation accrues at the time of the latest violation.

(15) For the recovery of taxes paid as provided in G.S. 105-267 and G.S. 105-381.

(16) Unless otherwise provided by statute, for personal injury or physical damage to claimant's property, the cause of action, except in causes of actions referred to in G.S. 1-15(c), shall not accrue until bodily harm to the claimant or physical damage to his property becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs. Provided that no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action.

(17) Against a public utility, electric or telephone membership corporation, or a municipality for damages or for compensation for right-of-way or use of any lands for a utility service line or lines to serve one or more customers or members unless an inverse condemnation action or proceeding is commenced within three years after the utility service line has been constructed or by October 1, 1984, whichever is later.

(18) Against any registered land surveyor as defined in G.S. 89C-3(9) or any person acting under his supervision and control for physical

damage or economic or monetary loss due to negligence or a deficiency in the performance of surveying or platting as defined in G.S. 1-47(6)."

Section 3. This act becomes effective October 1, 1997, and applies to actions occurring on or after that date. This act shall not affect litigation or actions pending on October 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 910

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S910-ARL-001

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

Representative

moves to amend the bill on page 3, line 5, by deleting the word "occurring" and substituting the word "arising".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

JUDICIARY I 6/12/97

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Gwynn Rouse	Lenoir Co Register of Deeds
2.	Ann Shaw	Randolph Co. Register of Deeds
3.	Judy Gibson	Mecklenburg Co. Register of Deeds
4.	C. Phil Wagoner	NC Society of Surveyors
5.	VLM McBride	WCDA
6.	Philip Crain	AG's office
7.	Archie W Case Jr	Case Electric INC
8.	Alan Miles	Bailey & Dixon LLP
9.	Catherine Davis	Electricities of NC
10.	STAN WILLIAMS	ST. HMO ASSN
11.	TINA Meehan	U+K
22.	John Policastro	Lawrence Bailey & Assoc.
23.	Nancy Bradley	NCCBI
24.	Don Beason	The Capitol Group
25.	Ann Holm	NCAPA
26.	Jane D. Gray	DOJ
27.	Cam Cover	BP MIdL
28.		
29.		
30.		
31.		

North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

1 tape

Tuesday, June 17, 1997
11:50 a.m.
(15 minutes after the completion of the House session)
1327 Legislative Building

N. Leo Daughtry
Edwin M. Hardy
Co-Chairmen

Members Present

Martha Alexander	**J. Russell Capps**
Bobby Ray Hall	**John W. Hurley**
Margaret M. Jeffus	**Larry T. Justus**
H.M. Michaux, Jr	

The House Committee on JUDICIARY I met at 11:50 a.m. on Tuesday, June 17, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry presiding.

Committee counsels Steven Rose and Karen Cochrane-Brown were present to assist the committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

There being some question as to the clarity of language in Senate Bill 625, SPEEDING ON SCHOOL GROUNDS, to which a favorable report was given by the Committee on May 12, the House subsequently re-referred the bill to the Committee on May 14. Senator Page and staff presented to the Committee a Proposed Committee Substitute.

Counsel Karen Cochrane-Brown presented an amendment suggested by Rep. McMahan, with no objection by Senator Page. Rep. Hall sent up a perfecting amendment to the suggested amendment, which was a greed to, and on a motion by Rep. Capps, the amendment suggested by Rep. McMahan, as amended, was agreed to.

On a motion by Rep. Hall, the amendment was rolled into a new Proposed Committee Substitute and given a favorable report, unfavorable to the original bill.

The Chairman recognized Sen. Rand for the purpose of explaining S.B. 897, AMEND ELEC. SURVEILLANCE LAW.

Counsel Steven Rose prepared a MEMORANDUM on Senate Bill 897, and a copy of the *General Statutes* relating to the definitions of *Electronic Surveillance*, which was distributed and made a part of these minutes.

On a motion by Rep. Hurley, and without objection, the Committee accepted an amendment entitled S897-ARL-001, a copy of which is attached and made a part of these minutes.

Rep. Daughtry moved that the amendment be rolled into a Proposed Committee Substitute and given a favorable report, unfavorable to the original bill. There was no objection.

The House having re-referred the bill to the Committee on June 11, subsequent to the Committee having given it a favorable report on June 3, Sen. Rand was recognized again for the purpose of explaining Senate Bill 320, NURSES' TRAINING.

On a motion by Rep. Justus, the Proposed Committee Substitute was amended, and, on a motion by Rep. Justus, S. 320 was given a favorable report as to committee substitute bill (# 2), X which changes the title, unfavorable as to committee substitute bill (# 1).

The Committee adjourned at 12:30 p.m.

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS

NORTH CAROLINA HOUSE *of* REPRESENTATIVES

COMMITTEE ON JUDICIARY I

Tuesday, June 17, 1997 ✓ 1 tape
Room 1327 LB
9:00 a.m. ?

Representatives N. Leo Daughtry,
Edwin M. "Sandy" Hardy
Co-Chairmen

S. 320 NURSES' TRAINING
Sponsor: Senator Rand

S. 625 SPEEDING ON SCHOOL GROUNDS
Sponsor: Senator Page

S. 897 AMEND ELEC. SURVEILLANCE LAW
Sponsor: Senator Rand

S. 919 UNLAWFUL TELECOMMUNICATIONS
Sponsor: Senator Odom

S. 943 MEDICADE FALSE CLAIMS ACT
Sponsor: Senator Rand

Adjournment

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 625

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S625-ARO-001

Date_____,1997

Comm. Sub. [YES]
Amends Title [YES]
Second Edition

moves to amend the bill on page 1, line 3, by rewriting the line to read:

"GROUNDS AN INFRACTION AND TO INCREASE THE PENALTY FOR SPEEDING IN A SCHOOL ZONE.";

and on page 1, lines 17-18, by inserting the following new section between the lines:

"Section 1.1. G.S. 20-141.1 reads as rewritten:

'§20-141.1. Speed limits in school zones.

The Board of Transportation or local authorities within their respective jurisdictions may, by ordinance, set speed limits lower than those designated in G.S. 20-141 for areas adjacent to or near a public, private or parochial school. Limits set pursuant to this section shall become effective when signs are erected giving notice of the school zone, the authorized speed limit, and the days and hours when the lower limit is effective, or by erecting signs giving notice of the school zone, the authorized speed limit and which indicate the days and hours the lower limit is effective by an electronic flasher operated with a time clock. Limits set pursuant to this section may be enforced only on days when school is in session, and no speed limit below 20 miles per hour may be set under the authority of this

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 625

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S625-ARO-001 Page 2 of __

section. A person who drives a motor vehicle in a school zone at a speed greater than the speed limit set and posted under this section is responsible for an infraction and is required to pay a penalty of one hundred dollars ($100.00).'"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 625
Transportation Committee Substitute Adopted 4/24/97
House Committee Substitute Favorable 5/12/97
Proposed House Committee Substitute S625-PCS6693

Short Title: Speeding on School Grounds. (Public)

Sponsors:

Referred to:

April 1, 1997

AN ACT TO MAKE SPEEDING IN EXCESS OF THE POSTED SPEED ON SCHOOL GROUNDS AN INFRACTION AND TO INCREASE THE PENALTY FOR SPEEDING IN A SCHOOL ZONE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-141 is amended by adding a new subsection to read:

"(e1) Local authorities may authorize, by ordinance, lower speed limits than those set in subsection (b) of this section on school property. If the lower speed limit is being set on the grounds of a public school, the local school administrative unit must request or consent to the lower speed limit. If the lower speed limit is being set on the grounds of a private school, the governing body of the school must request or consent to the lower speed limit. Speed limits established pursuant to this subsection may not exceed 15 miles per hour and shall be effective when appropriate signs giving notice of the speed limit are erected upon affected property."

Section 1.1. G.S. 20-141.1 reads as rewritten:

"**§ 20-141.1. Speed limits in school zones.**

The Board of Transportation or local authorities within their respective jurisdictions may, by ordinance, set speed limits lower than those designated in G.S. 20-141 for areas adjacent to or near a public, private or parochial school. Limits set pursuant to this section shall become effective when signs are erected giving notice of the school zone, the authorized speed limit, and the days and hours when the lower limit is effective, or by erecting signs giving notice of the school zone, the authorized

speed limit and which indicate the days and hours the lower limit is effective by an electronic flasher operated with a time clock. Limits set pursuant to this section may be enforced only on days when school is in session, and no speed limit below 20 miles per hour may be set under the authority of this section. A person who drives a motor vehicle in a school zone at a speed greater than the speed limit set and posted under this section is responsible for an infraction and is required to pay a penalty of twenty-five dollars ($25.00)."

Section 2. This act is effective when it becomes law.

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June 16, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **Senate Bill 897; Amendments to electronic surveillance law**

Senate Bill 897 makes various amendments to Article 16 of Chapter 15A, the Electronic Surveillance Act.

Article 16 allows for the interception of electronic communications for specific investigatory purposes and requires the Attorney General to apply for the order. The application is made to a judicial review panel composed of judges assigned by the Chief Justice of the North Carolina Supreme Court. As presently written, the application may only be made by the Attorney General and the panel may only be appointed by the Chief Justice. The amendments would allow the Attorney General's designee to make the application and would allow the Chief Justice to designate an Associate Justice of the Supreme Court to appoint the panel.

Other amendments are made to the definitions of "wire communication," and to the terminology used to describe the telephone records which may be the subject of a subpoena issued under the Article.

Section 3 of the bill amends G.S. 15A-294. G.S. 15A-294 requires that the persons subject to the surveillance order receive notification from the issuing judicial panel not later than 90 days after the filing of the application for the order or the termination of the period of the order, including notice of the entry of the order or the application, the date of the entry and the period for which interception is authorized, and the fact that communications were or were not intercepted. The amendment adds a new subsection (d1) providing that the notification may be delayed if the judicial review panel has probable cause to believe that notification would substantially jeopardize the success of the electronic surveillance or criminal investigation.

The act is effective when it becomes law and applies to applications filed on or after that date.

S897-SMRL-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

ARTICLE 16.

Electronic Surveillance.

§ 15A-286. Definitions.

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

(1) "Aggrieved person" means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed.

(2) "Attorney General" means the Attorney General of the State of North Carolina, unless otherwise specified.

(3) "Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

(4) "Chapter 119 of the United States Code" means Chapter 119 of Part I of Title 18, United States Code, being Public Law 90-351, the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Electronic Communications Privacy Act of 1986.

(5) "Communications common carrier" shall have the same meaning which is given the term "common carrier" by section 153(h) of Title 47 of the United States Code.

(6) "Contents" when used with respect to any wire, oral, or electronic communication means and includes any information concerning the substance, purport, or meaning of that communication.

(7) "Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, oral, or electronic communication other than:

a. Any telephone or telegraph instrument, equipment, or facility, or any component thereof:

1. Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by the subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or

2. Being used by a provider of wire or electronic communication service in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of the officer's duties.

b. A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

(8) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects interstate or foreign commerce but does not include:

a. Any wire or oral communication;

b. Any communication made through a tone-only paging device; or

c. Any communication from a tracking device (as defined in section 3117 of Title 18 of the United States Code).

(9) "Electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications.

(10) "Electronic communication system" means any wire, radio, electronic, magnetic, photooptical, or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the storage of such communications.

(11) "Electronic surveillance" means the interception of wire, oral, or electronic communications as provided by this Article.

(12) "Electronic storage" means:

a. Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

b. Any storage of such communication by an electronic communication service for the purposes of backup protection of the communication.

(13) "Intercept" means the aural or other acquisition of the contents of any wire, oral, or electronic communication through the use of any electronic, mechanical, or other device.

(14) "Investigative or law enforcement officer" means any officer of the State of North Carolina or any political subdivision thereof, who is empowered by the laws of this State to conduct investigations of or to make arrests for offenses enumerated in G.S. 15A-290, and any attorney authorized by the laws of this State to prosecute or participate in the prosecution of those offenses, including the Attorney General of North Carolina.

(15) "Judge" means any judge of the trial divisions of the General Court of Justice.

(16) "Judicial review panel" means a three-judge body, composed of such judges as may be assigned by the Chief Justice of the Supreme Court of North Carolina, which shall review applications for electronic surveillance orders and may issue orders valid throughout the State authorizing such surveillance as provided by this Article, and which shall submit a report of its decision to the Chief Justice.

(17) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but the term does not include any electronic communication.

(18) "Person" means any employee or agent of the United States or any state or any political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation.

(19) "Readily accessible to the general public" means, with respect to a radio communication, that the communication is not:

a. Scrambled or encrypted;

b. Transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of the communication;

c. Carried on a subcarrier or other signal subsidiary to a radio transmission;

d. Transmitted over a communications system provided by a common carrier, unless the communication is a tone-only paging system communication; or

e. Transmitted on frequencies allocated under Part 25, Subpart D, E, or F or Part 94 of the Rules of the Federal Communications Commission as provided by 18 U.S.C. § 2510(16)(E).

(20) "User" means any person or entity who:

a. Uses an electronic communications service; and

b. Is duly authorized by the provider of the service to engage in the use.

(21) "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce and the term includes any electronic storage of such communication, but the term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit. (1995, c. 407, s. 1.)

Editor's Note. — Session Laws 1995, c. 407, s. 3, made this Article effective December 1, 1995.

§ 15A-287. Interception and disclosure of wire, oral, or electronic communications prohibited.

(a) Except as otherwise specifically provided in this Article, a person is guilty of a Class H felony if, without the consent of at least one party to the communication, the person:

(1) Willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication.

(2) Willfully uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:

a. The device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communications; or

b. The device transmits communications by radio, or interferes with the transmission of such communications.

(3) Willfully discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through violation of this Article; or

(4) Willfully uses, or endeavors to use, the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this Article.

(b) It is not unlawful under this Article for any person to:

(1) Intercept or access an electronic communication made through an electronic communication system that is configured so that the electronic communication is readily accessible to the general public;

(2) Intercept any radio communication which is transmitted:

a. For use by the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

b. By any governmental, law enforcement, civil defense, private land mobile, or public safety communication system, including police and fire, readily available to the general public;

c. By a station operating on any authorized band within the bands allocated to the amateur, citizens band, or general mobile radio services; or

d. By any marine or aeronautical communication system; or

(3) Intercept any communication in a manner otherwise allowed by Chapter 119 of the United States Code.

(c) It is not unlawful under this Article for an operator of a switchboard, or an officer, employee, or agent of a provider of electronic communication service, whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of employment while engaged in any activity that is a necessary incident to the rendition of his or her service or to the protection of the rights or property of the provider of that service, provided that a provider of wire or electronic communication service may not utilize service observing or random monitoring except for mechanical or service quality control checks.

(d) It is not unlawful under this Article for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of Chapter 5 of Title 47 of the United States Code, to intercept a wire or electronic communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(e) Any person who, as a result of the person's official position or employment, has obtained knowledge of the contents of any wire, oral, or electronic communication lawfully intercepted pursuant to an electronic surveillance order or of the pendency or existence of or implementation of an electronic surveillance order who shall knowingly and willfully disclose such information for the purpose of hindering or thwarting any investigation or prosecution relating to the subject matter of the electronic surveillance order, except as is necessary for the proper and lawful performance of the duties of his position or employment or as shall be required or allowed by law, shall be guilty of a Class G felony.

(f) Any person who shall, knowingly or with gross negligence, divulge the existence of or contents of any electronic surveillance order in a way likely to hinder or thwart any investigation or prosecution relating to the subject matter of the electronic surveil-

lance order or anyone who shall, knowingly or with gross negligence, release the contents of any wire, oral, or electronic communication intercepted under an electronic surveillance order, except as is necessary for the proper and lawful performance of the duties of his position or employment or as is required or allowed by law, shall be guilty of a Class 1 misdemeanor.

(g) Any public officer who shall violate subsection (a) or (d) of this section or who shall knowingly violate subsection (e) of this section shall be removed from any public office he may hold and shall thereafter be ineligible to hold any public office, whether elective or appointed. (1995, c. 407, s. 1.)

§ 15A-288. Manufacture, distribution, possession, and advertising of wire, oral, or electronic communication intercepting devices prohibited.

(a) Except as otherwise specifically provided in this Article, a person is guilty of a Class H felony if the person:

(1) Manufactures, assembles, possesses, purchases, or sells any electronic, mechanical, or other device, knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications; or

(2) Places in any newspaper, magazine, handbill, or other publication, any advertisement of:

a. Any electronic, mechanical, or other device knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications; or

b. Any other electronic, mechanical, or other device where the advertisement promotes the use of the device for the purpose of the surreptitious interception of wire, oral, or electronic communications.

(b) It is not unlawful under this section for the following persons to manufacture, assemble, possess, purchase, or sell any electronic, mechanical, or other device, knowing or having reason to know that the design of the device renders it primarily useful for the purpose of the surreptitious interception of wire, oral, or electronic communications:

(1) A communications common carrier or an officer, agent, or employee of, or a person under contract with, a communications common carrier, acting in the normal course of the communications common carrier's business, or

(2) An officer, agent, or employee of, or a person under contract with, the State, acting in the course of the activities of the State, and with the written authorization of the Attorney General.

(c) An officer, agent, or employee of, or a person whose normal and customary business is to design, manufacture, assemble, advertise and sell electronic, mechanical and other devices primarily useful for the purpose of the surreptitious interceptions of wire, oral, or electronic communications, exclusively for and restricted to State and federal investigative or law enforcement agencies and departments. (1995, c. 407, s. 1.)

§ 15A-289. Confiscation of wire, oral, or electronic communication interception devices.

Any electronic, mechanical, or other device used, sent, carried, manufactured, assembled, possessed, sold, or advertised in violation of G.S. 15A-288 may be seized and forfeited to this State. (1995, c. 407, s. 1.)

§ 15A-290. Offenses for which orders for electronic surveillance may be granted.

(a) Orders authorizing or approving the interception of wire, oral, or electronic communications may be granted, subject to the provisions of this Article and Chapter 119 of the United States Code, when the interception:

(1) May provide or has provided evidence of the commission of, or any conspiracy to commit:
   a. Any of the drug-trafficking violations listed in G.S. 90-95(h); or
   b. A continuing criminal enterprise in violation of G.S. 90-95.1.
(2) May expedite the apprehension of persons indicted for the commission of, or any conspiracy to commit, an offense listed in subdivision (1) of this subsection.

(b) Orders authorizing or approving the interception of wire, oral, or electronic communications may be granted, subject to the provisions of this Article and Chapter 119 of the United States Code, when the interception may provide, or has provided, evidence of any offense that involves the commission of, or any conspiracy to commit, murder, kidnapping, hostage taking, robbery, extortion, bribery, rape, or any sexual offense, or when the interception may expedite the apprehension of persons indicted for the commission of these offenses.

(c) Orders authorizing or approving the interception of wire, oral, or electronic communications may be granted, subject to the provisions of this Article and Chapter 119 of the United States Code, when the interception may provide, or has provided, evidence of any of the following offenses, or any conspiracy to commit these offenses, or when the interception may expedite the apprehension of persons indicted for the commission of these offenses:

(1) Any felony offense against a minor, including any violation of G.S. 14-27.7 (Intercourse and sexual offenses with certain victims; consent no defense), G.S. 14-41 (Abduction of children), G.S. 14-190.16 (First degree sexual exploitation of a minor), G.S. 14-190.17 (Second degree sexual exploitation of a minor), G.S. 14-190.18 (Promoting prostitution of a minor), G.S. 14-190.19 (Participating in prostitution of a minor), or G.S. 14-202.1 (Taking indecent liberties with children).
(2) Any felony obstruction of a criminal investigation, including any violation of G.S. 14-221.1 (Altering, destroying, or stealing evidence of criminal conduct).
(3) Any felony offense involving interference with, or harassment or intimidation of, jurors or witnesses, including any violation of G.S. 14-225.2 or G.S. 14-226.
(4) Any felony offense involving assault or threats against any executive or legislative officer in violation of Article 5A of

Chapter 14 of the General Statutes or assault with a firearm or other deadly weapon upon governmental officers or employees in violation of G.S. 14-34.2.

(5) Any offense involving the manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of weapons of mass death or destruction in violation of G.S. 14- 288.8 or the adulteration or misbranding of food, drugs, cosmetics, etc., with the intent to cause serious injury in violation of G.S. 14-34.4.

(d) When an investigative or law enforcement officer, while engaged in intercepting wire, oral, or electronic communications in the manner authorized, intercepts wire, electronic, or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in G.S. 15A-294(a) and (b). Such contents and any evidence derived therefrom may be used in accordance with G.S. 15A-294(c) when authorized or approved by a judicial review panel where the panel finds, on subsequent application made as soon as practicable, that the contents were otherwise intercepted in accordance with this Article or Chapter 119 of the United States Code.

(e) No otherwise privileged wire, oral, or electronic communication intercepted in accordance with, or in violation of, the provisions of this Article or Chapter 119 of the United States Code, shall lose its privileged character. (1995, c. 407, s. 1.)

§ 15A-291. Application for electronic surveillance order; judicial review panel.

(a) The Attorney General may, pursuant to the provisions of section 2516(2) of Chapter 119 of the United States Code, apply to a judicial review panel for an order authorizing or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offenses as to which the application is made, and for such offenses and causes as are enumerated in G.S. 15A-290. A judicial review panel shall be composed of such judges as may be assigned by the Chief Justice of the Supreme Court of North Carolina, which shall review applications for electronic surveillance orders and may issue orders valid throughout the State authorizing such surveillance as provided by this Article, and which shall submit a report of its decision to the Chief Justice. A judicial review panel may be appointed by the Chief Justice pursuant to the Attorney General's written notification of his intent to apply for an electronic surveillance order.

(b) A judicial review panel is hereby authorized to grant orders valid throughout the State for the interception of wire, oral, or electronic communications. Applications for such orders may be made by the Attorney General and by no other person. The Attorney General, in applying for such orders, and a judicial review panel in granting such orders, shall comply with all procedural requirements of section 2518 of Chapter 119 of the United States Code. The Attorney General may make emergency applications as provided by section 2518 of Chapter 119 of the United States Code. In applying section 2518 the word "judge" in that section shall be construed to refer to the judicial review panel, unless the context otherwise

indicates. The judicial review panel may stipulate any special conditions it feels necessary to assure compliance with the terms of this act.

(c) No judge who sits as a member of a judicial review panel shall preside at any trial or proceeding resulting from or in any manner related to information gained pursuant to a lawful electronic surveillance order issued by that panel.

(d) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication must be made in writing upon oath or affirmation to the judicial review panel. Each application must include the following information:

(1) The identity of the office requesting the application;

(2) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including:

a. Details as to the particular offense that has been, or is being committed;

b. A particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

c. A particular description of the type of communications sought to be intercepted; and

d. The identity of the person, if known, committing the offense and whose communications are to be intercepted;

(3) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(4) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter must be added;

(5) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making adjudication, made to a judicial review panel for authorization to intercept, or for approval of interceptions of wire, oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by that judicial review panel on each such application; and

(6) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(e) Before acting on the application, the judicial review panel may examine on oath the person requesting the application or any other person who may possess pertinent information, but information other than that contained in the affidavit may not be considered by the panel in determining whether probable cause exists for the issuance of the order unless the information is either recorded or contemporaneously summarized in the record or on the face of the order by the panel. (1995, c. 407, s. 1.)

§ 15A-292. Request for application for electronic surveillance order.

(a) The head of any municipal, county, or State law enforcement agency or any district attorney may submit a written request to the Attorney General that the Attorney General apply to a judicial review panel for an electronic surveillance order to be executed within the requesting agency's jurisdiction. The written requests shall be on a form approved by the Attorney General and shall provide sufficient information to form the basis for an application for an electronic surveillance order. The head of a law enforcement agency shall also submit a copy of the request to the district attorney, who shall review the request and forward it to the Attorney General along with any comments he may wish to include. The Attorney General is authorized to review the request and decide whether it is appropriate to submit an application to a judicial review panel for an electronic surveillance order. If a request for an application is deemed inappropriate, the Attorney General shall send a signed, written statement to the person submitting the request, and to the district attorney, summarizing the reasons for failing to make an application. If the Attorney General decides to submit an application to a judicial review panel, he shall so notify the requesting agency head, the district attorney, and the head of the local law enforcement agency which has the primary responsibility for enforcing the criminal laws in the location in which it is anticipated the majority of the surveillance will take place, if not the same as the requesting agency head, unless the Attorney General has probable cause to believe that the latter notifications should substantially jeopardize the success of the surveillance or the investigation in general. If a judicial review panel grants an electronic surveillance order, a copy of such order shall be sent to the requesting agency head and the district attorney, and a summary of the order shall be sent to the head of the local law enforcement agency with primary responsibility for enforcing the criminal laws in the jurisdiction where the majority of the surveillance will take place, if not the same as the requesting agency head, unless the judicial review panel finds probable cause to believe that the latter notifications would substantially jeopardize the success of the surveillance or the investigation.

(b) This Article does not limit the authority of the Attorney General to apply for electronic surveillance orders independent of, or contrary to, the requests of law enforcement agency heads, nor does it limit the discretion of the Attorney General in determining whether an application is appropriate under any given circumstances.

(c) The Chief Justice of the North Carolina Supreme Court shall receive a report concerning each decision of a judicial review panel. (1995, c. 407, s. 1.)

§ 15A-293. Issuance of order for electronic surveillance; procedures for implementation.

(a) Upon application by the Attorney General, a judicial review panel may enter an ex parte order, as requested or as modified, authorizing the interception of wire, oral, or electronic communications, if the panel determines on the basis of the facts submitted by the applicant that:

(1) There is probable cause for belief that an individual is

committing, has committed, or is about to commit an offense set out in G.S. 15A-290;

(2) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

(3) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; and

(4) There is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by the individual described in subdivision (1) of this subsection.

(b) Each order authorizing the interception of any wire, oral, or electronic communications must specify:

(1) The identity of the person, if known, whose communications are to be intercepted;

(2) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted, and the means by which such interceptions may be made;

(3) A particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates;

(4) The identity of the agency authorized to intercept the communications and of the person requesting the application; and

(5) The period of time during which such interception is authorized, including a statement as to whether or not the interception automatically terminates when the described communication has been first obtained.

(c) No order entered under this Article may authorize the interception of any wire, oral, or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days. Extensions of an order may be granted, but only upon application for an extension made in accordance with G.S. 15A-291 and the panel making the findings required by subsection (a) of this section. The period of extension may be no longer than the panel determines to be necessary to achieve the purpose for which it was granted and in no event for longer than 15 days. Every order and extension thereof must contain a provision that the authorization to intercept be executed as soon as practicable, be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this Article, and terminate upon attainment of the authorized objective, or in any event in 30 days or 15 days, as is appropriate.

(d) Whenever an order authorizing interception is entered pursuant to this Article, the order may require reports to be made to the issuing judicial review panel showing that progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports must be made at such intervals as the panel may require.

(1) The contents of any wire, oral, or electronic communication intercepted by any means authorized by this Article must be recorded on tape, wire, or electronic or other comparable device. The recording of the contents of any wire, electronic, or oral communication under this subsection must be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, the recordings must be made available to the judicial review panel and sealed under its direction. Custody of the recordings is wherever the panel orders. They may not be destroyed except upon an order of the issuing panel and in any event must be kept for 10 years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of G.S. 15A-294(a) and (b) for investigations. The contents of any wire, oral, or electronic communication or evidence derived therefrom may not be disclosed or used under G.S. 15A-294(c) unless they have been kept sealed.

(2) Applications made and orders granted under this Article must be sealed by the panel. Custody of the applications and orders may be disclosed only upon a showing of good cause before the issuing panel and may not be destroyed except on its order and in any event must be kept for 10 years.

(3) Any violation of the provisions of this subsection may be punished as for contempt.

(e) The State Bureau of Investigation shall own or control and may operate any equipment used to implement electronic surveillance orders issued by a judicial review panel and may operate or use, in implementing any electronic surveillance order, electronic surveillance equipment in which a local government or any of its agencies has a property interest.

(f) The Attorney General shall establish procedures for the use of electronic surveillance equipment in assisting local law enforcement agencies implementing electronic surveillance orders. The Attorney General shall supervise such assistance given to local law enforcement agencies and is authorized to conduct statewide training sessions for investigative and law enforcement officers regarding this Article. (1995, c. 407, s. 1.)

§ 15A-294. Authorization for disclosure and use of intercepted wire, oral, or electronic communications.

(a) Any investigative or law enforcement officer who, by any means authorized by this Article or Chapter 119 of the United States Code, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(b) Any investigative or law enforcement officer, who by any means authorized by this Article or Chapter 119 of the United States Code, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may use

such contents to the extent such use is appropriate to the proper performance of the officers' official duties.

(c) Any person who has received, by any means authorized by this Article or Chapter 119 of the United States Code, any information concerning a wire, oral, or electronic communication, or evidence derived therefrom, intercepted in accordance with the provisions of this Article, may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any proceeding in any court or before any grand jury in this State, or in any court of the United States or of any state, or in any federal or state grand jury proceeding.

(d) Within a reasonable time, but no later than 90 days after the filing of an application for an order or the termination of the period of an order or the extensions thereof, the issuing judicial review panel must cause to be served on the persons named in the order or the application and such other parties as the panel in its discretion may determine, an inventory that includes notice of:

(1) The fact of the entry of the order or the application;
(2) The date of the entry and the period of the authorized interception; and
(3) The fact that during the period wire, oral, or electronic communications were or were not intercepted.

(e) The issuing judicial review panel, upon the filing of a motion, may in its discretion, make available to such person or his counsel for inspection, such portions of the intercepted communications, applications, and orders as the panel determines to be required by law or in the interest of justice.

(f) The contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, may not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in any court of this State unless each party, not less than 20 working days before the trial, hearing, or other proceeding, has been furnished with a copy of the order and accompanying application, under which the interception was authorized.

(g) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of this State, or a political subdivision thereof, may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, on the grounds that:

(1) The communication was unlawfully intercepted;
(2) The order of authorization under which it was intercepted is insufficient on its face; or
(3) The interception was not made in conformity with the order of authorization.

Such motion must be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of this motion. If the motion is granted, the contents of the intercepted wire, oral, or electronic communication, or evidence derived therefrom, must be treated as having been obtained in violation of this Article.

(h) In addition to any other right to appeal, the State may appeal:

(1) From an order granting a motion to suppress made under subdivision (1) of this subsection, if the district attorney certifies to the judge granting the motion that the appeal is not taken for purposes of delay. The appeal must be taken

within 30 days after the date the order of suppression was entered and must be prosecuted as are other interlocutory appeals; or

(2) From an order denying an application for an order of authorization, and the appeal may be made ex parte and must be considered in camera and in preference to all other pending appeals. (1995, c. 407, s. 1.)

§ 15A-295. Reports concerning intercepted wire, oral, or electronic communications.

In January of each year, the Attorney General of this State must report to the Administrative Office of the United States Court the information required to be filed by section 2519 of Title 18 of the United States Code, as heretofore or hereafter amended, and file a copy of the report with the Administrative Office of the Courts of North Carolina. (1995, c. 407, s. 1.)

§ 15A-296. Recovery of civil damages authorized.

(a) Any person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of this Article, has a civil cause of action against any person who intercepts, discloses, uses, or procures any other person to intercept, disclose, or use such communications, and is entitled to recover from any other person:

(1) Actual damages, but not less than liquidated damages, computed at the rate of one hundred dollars ($100.00) a day for each day of violation or one thousand dollars ($1,000), whichever is higher;

(2) Punitive damages; and

(3) A reasonable attorneys' fee and other litigation costs reasonably incurred.

(b) Good faith reliance on a court order or on a representation made by the Attorney General or a district attorney is a complete defense to any civil or criminal action brought under this Article. (1995, c. 407, s. 1.)

§ 15A-297. Conformity to provisions of federal law.

It is the intent of this Article to conform the requirements of all interceptions of wire, oral, or electronic communications conducted by investigative or law enforcement officers in this State to provisions of Chapter 119 of the United States Code, except where the context indicates a purpose to provide safeguards even more protective of individual privacy and constitutional rights. (1995, c. 407, s. 1.)

§ 15A-298. Subpoena authority.

Pursuant to rules issued by the Attorney General, the Director of the State Bureau of Investigation or his designee may issue an administrative subpoena to a communications common carrier or an electronic communications service to compel production of business records if the records:

(1) Disclose information concerning telephone toll billing

records or subscriber information; and

(2) Are material to an active criminal investigation being conducted by the State Bureau of Investigation. (1995, c. 407, s. 1.)

§§ 15A-299, 15A-300: Reserved for future codification purposes.

SUBCHAPTER III. CRIMINAL PROCESS.

ARTICLE 17.

Criminal Process.

§ 15A-301. Criminal process generally.

(a) Formal Requirements. —

(1) A record of each criminal process issued in the trial division of the General Court of Justice must be maintained in the office of the clerk.

(2) Criminal process, other than a citation, must be signed and dated by the justice, judge, magistrate, or clerk who issues it. The citation must be signed and dated by the law-enforcement officer who issues it.

(b) To Whom Directed. — Warrants for arrest and orders for arrest must be directed to a particular officer, a class of officers, or a combination thereof, having authority and territorial jurisdiction to execute the process. A criminal summons must be directed to the person summoned to appear and must be delivered to and may be served by any law-enforcement officer having authority and territorial jurisdiction to make an arrest for the offense charged, except that in those instances where the defendant is called into a law-enforcement agency to receive a summons, any employee so designated by the agency's chief executive officer may serve a criminal summons at the agency's office. The citation must be directed to the person cited to appear.

(c) Service. —

(1) A law-enforcement officer or other employee designated as provided in subsection (b) receiving criminal process for service or execution must note thereon the date of its receipt. Upon execution or service, a copy of the process must be delivered to the person arrested or served.

(2) A corporation may be served with criminal summons as provided in G.S. 15A-773.

(d) Return. —

(1) The officer or other employee designated as provided in subsection (b) who serves or executes criminal process must enter the date of the service or execution on the process and return it to the clerk of court in the county in which issued.

(2) If criminal process is not served or executed within a number of days indicated below, it must be returned to the clerk of court in the county in which it was issued, with a reason for the failure of service or execution noted thereon.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 897

AMENDMENT NO._____,_____
(to be filled in by
Principal Clerk)

S897-ARL-001

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

moves to amend the bill on page 3, between lines 27 and 28, by inserting a new section to read:

"Section 2.1. G.S. 15A-293(a) reads as rewritten:

'(a) Upon application by the Attorney ~~General,~~ General pursuant to the procedures in G.S. 15A-291, a judicial review panel may enter an ex parte order, as requested or as modified, authorizing the interception of wire, oral, or electronic communications, if the panel determines on the basis of the facts submitted by the applicant that:

(1) There is probable cause for belief that an individual is committing, has committed, or is about to commit an offense set out in G.S. 15A-290;

(2) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

(3) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; and

(4) There is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 897

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S897-ARL-001

with the commission of such offense, or are leased to, listed in the name of, or commonly used by the individual described in subdivision (1) of this subsection.'".

SIGNED Bill Hurley
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 897
Proposed Committee Substitute S897-PCS8731

Short Title: Amend Elec. Surveillance Law. (Public)

Sponsors:

Referred to:

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE ELECTRONIC SURVEILLANCE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-286(21) reads as rewritten:

"(21) 'Wire communication' means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce and the term includes any electronic storage of such ~~communication, but the term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.~~ communication."

Section 2. G.S. 15A-291 reads as rewritten:

"**§ 15A-291. Application for electronic surveillance order; judicial review panel.**

(a) The Attorney General or the Attorney General's designee may, pursuant to the provisions of section 2516(2) of Chapter 119 of the United States Code, apply to a judicial review panel for an order authorizing or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers

having responsibility for the investigation of the offenses as to which the application is made, and for such offenses and causes as are enumerated in G.S. 15A-290. A judicial review panel shall be composed of such judges as may be assigned by the Chief Justice of the Supreme Court of North ~~Carolina,~~ Carolina or an Associate Justice acting as the Chief Justice's designee, which shall review applications for electronic surveillance orders and may issue orders valid throughout the State authorizing such surveillance as provided by this Article, and which shall submit a report of its decision to the Chief Justice. A judicial review panel may be appointed by the Chief Justice or an Associate Justice acting as the Chief Justice's designee ~~pursuant to the Attorney General's written notification~~ upon the notification of the Attorney General's Office of ~~his~~ the intent to apply for an electronic surveillance order.

(b) A judicial review panel is hereby authorized to grant orders valid throughout the State for the interception of wire, oral, or electronic communications. Applications for such orders may be made by the Attorney General or the Attorney General's designee. ~~and by no other person.~~ The Attorney ~~General,~~ General or the Attorney General's designee in applying for such orders, and a judicial review panel in granting such orders, shall comply with all procedural requirements of section 2518 of Chapter 119 of the United States Code. The Attorney General or the Attorney General's designee may make emergency applications as provided by section 2518 of Chapter 119 of the United States Code. In applying section 2518 the word "judge" in that section shall be construed to refer to the judicial review panel, unless the context otherwise indicates. The judicial review panel may stipulate any special conditions it feels necessary to assure compliance with the terms of this act.

(c) No judge who sits as a member of a judicial review panel shall preside at any trial or proceeding resulting from or in any manner related to information gained pursuant to a lawful electronic surveillance order issued by that panel.

(d) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication must be made in writing upon oath or affirmation to the judicial review panel. Each application must include the following information:

(1) The identity of the office requesting the application;

(2) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including:

a. Details as to the particular offense that has been, or is being committed;

b. A particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

c. A particular description of the type of communications sought to be intercepted; and

d. The identity of the person, if known, committing the offense and whose communications are to be intercepted;

(3) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(4) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter must be added;

(5) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making adjudication, made to a judicial review panel for authorization to intercept, or for approval of interceptions of wire, oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by that judicial review panel on each such application; and

(6) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(e) Before acting on the application, the judicial review panel may examine on oath the person requesting the application or any other person who may possess pertinent information, but information other than that contained in the affidavit may not be considered by the panel in determining whether probable cause exists for the issuance of the order unless the information is either recorded or contemporaneously summarized in the record or on the face of the order by the panel."

Section 2.1. G.S. 15A-293(a) reads as rewritten:

"(a) Upon application by the Attorney ~~General,~~ General pursuant to the procedures in G.S. 15A-291, a judicial review panel may enter an ex parte order, as requested or as modified, authorizing the interception of wire, oral, or electronic communications, if the panel determines on the basis of the facts submitted by the applicant that:

(1) There is probable cause for belief that an individual is committing, has committed, or is about to commit an offense set out in G.S. 15A-290;

(2) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception;

(3) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; and

(4) There is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in

connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by the individual described in subdivision (1) of this subsection."

Section 3. G.S. 15A-294 is amended by adding a new subsection to read:

"(d1) The notification required pursuant to G.S. 15A-294(d) may be delayed if the judicial review panel has probable cause to believe that notification would substantially jeopardize the success of an electronic surveillance or a criminal investigation. Delay of notification shall be only by order of the judicial review panel. The period of delay shall be designated by the judicial review panel and may be extended from time to time until the jeopardy to the electronic surveillance or the criminal investigation dissipates."

Section 4. G.S. 15A-298 reads as rewritten:

"**§ 15A-298. Subpoena authority.**

Pursuant to rules issued by the Attorney General, the Director of the State Bureau of Investigation or ~~his~~ the Director's designee may issue an administrative subpoena to a communications common carrier or an electronic communications service to compel production of business records if the records:

(1) Disclose information concerning local or long-distance ~~telephone~~ toll ~~billing~~ records or subscriber information; and

(2) Are material to an active criminal investigation being conducted by the State Bureau of Investigation."

Section 5. This act is effective when it becomes law and applies to all applications filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 320
Judiciary Committee Substitute Adopted 4/14/97

Short Title: Nurses' Training. (Public)

Sponsors:

Referred to:

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ESTABLISHMENT OF PROGRAMS TO TRAIN LICENSED NURSES TO CONDUCT MEDICAL EXAMINATIONS OF VICTIMS OF SEXUAL OFFENSES, TO CONDUCT MEDICAL PROCEDURES TO COLLECT EVIDENCE FROM THE VICTIMS, AND TO ALLOW DIRECT PAYMENT TO NURSES WHO PROVIDE THIS SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-171.38 reads as rewritten:

"**§ 90-171.38. Standards for nursing programs.**

(a) A nursing program may be operated under the authority of a general hospital, or an approved post-secondary educational institution. The Board shall establish, revise, or repeal standards for nursing programs. These standards shall specify program requirements, curricula, faculty, students, facilities, resources, administration, and describe the approval process. Any institution desiring to establish a nursing program shall apply to the Board and submit satisfactory evidence that it will meet the standards prescribed by the Board. Those standards shall be designed to ensure that graduates of those programs have the education necessary to safely and competently practice nursing. The Board shall encourage the continued operation of all present programs that meet the standards approved by the Board.

(b) Any individual, organization, association, corporation, or institution may establish a program for the purpose of training or educating any nurse licensed under G.S. 90-171.30, 90-171.32, or 90-171.33 in the skills, procedures, and techniques necessary to conduct medical examinations of, and the medical procedures to collect

evidence from, the victims of first-degree rape as defined in G.S. 14-27.2, second-degree rape as defined in G.S. 14-27.3, statutory rape as defined in G.S. 14-27.7A, first-degree sexual offense as defined in G.S. 14-27.4, second-degree sexual offense as defined in G.S. 14-27.5 or attempted first-degree or second-degree rape or attempted first-degree or second-degree sexual offense as defined in G.S. 14-27.6. The Board shall establish, revise, or repeal standards for any such program. Any individual, organization, association, corporation, or institution which desires to establish a program under this subsection shall apply to the Board and submit satisfactory evidence that it will meet the standards prescribed by the Board."

Section 2. G.S. 90-171.44 reads as rewritten:

"§ 90-171.44. Prohibited acts.

It shall be a violation of this Article, and subject to action under G.S. 90-171.37, for any person to:

(1) Sell, fraudulently obtain, or fraudulently furnish any nursing diploma or aid or abet ~~therein;~~ therein.

(2) Practice nursing under cover of any fraudulently obtained ~~license;~~ license.

(3) Practice nursing without a ~~license;~~ license. This subdivision shall not be construed to prohibit any licensed nurse who has successfully completed a program established under G.S. 90-171.38(b) from conducting medical examinations of, or procedures to collect evidence from, the victims of offenses described in that subsection.

(4) Conduct a nursing program or a refresher course for activation of a license, that is not approved by the ~~Board; or~~ Board.

(5) Employ unlicensed persons to practice nursing."

Section 3. G.S. 58-50-25 reads as rewritten:

"§ 58-50-25. Nurses' services.

(a) No agency, institution or physician providing a service for which payment or reimbursement is required to be made under a policy governed by Articles 1 through 64 of this Chapter shall be denied such payment or reimbursement on account of the fact that such services were rendered through a registered nurse acting under authority of rules and regulations adopted by the North Carolina Medical Board and the Board of Nursing pursuant to G.S. 90-6 and 90-171.23.

(b) Nothing herein shall be construed to authorize contracting with or making payments directly to any nurse not otherwise permitted. A licensed nurse who has successfully completed a program established under G.S. 90-171.38(b) may receive direct payment for conducting medical examinations or medical procedures described in that subsection if the payment is in lieu of any payment which would have otherwise been permitted."

Section 4. G.S. 143B-480.2 reads as rewritten:

"§ 143B-480.2. Victim assistance.

(a) Only victims who have reported the following crimes are eligible for assistance under this Program: first-degree rape as defined in G.S. 14-27.2, second-degree rape

as defined in G.S. 14-27.3, first-degree sexual offense as defined in G.S. 14-27.4, second-degree sexual offense as defined in G.S. 14-27.5, or attempted first-degree or second-degree rape or attempted first-degree or second-degree sexual offense as defined in G.S. 14-27.6. Assistance is limited to immediate and short-term medical expenses, ambulance services, and mental health services provided by a professional licensed or certified by the State to provide such services, not to exceed five hundred dollars ($500.00) incurred by the victim for the medical examination, medical procedures to collect evidence, or counseling treatment which follow the attack, or ambulance services from the place of the attack to a place where medical treatment is provided.

(b) With the exception of assistance authorized under subsection (e) of this section, ~~Assistance~~ assistance for expenses authorized under this section is to be paid directly to any hospital, ambulance service, attending physicians, or mental health professionals providing counseling, upon the filing of proper forms.

(c) Assistance shall not be awarded unless the rape, attempted rape, sexual offense, or attempted sexual offense was reported to a law-enforcement officer within 72 hours after its occurrence or the Secretary finds there was good cause for the failure to report within that time.

(d) Upon an adverse determination by the Secretary on a claim for medical expenses, a victim is entitled to judicial review of that decision. The person seeking review shall file a petition in the Superior Court of Wake County.

(e) In lieu of any payment which may otherwise have been made under subsection (b), assistance for expenses authorized under this section may be paid directly to any licensed nurse who has successfully completed a program approved under G.S. 90-171.38(b). The Secretary shall adopt rules to facilitate the payments authorized under this subsection and to encourage, whenever practical, the use of nurses trained under G.S. 90-171.38(b) to conduct medical examinations and procedures."

Section 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 320
Judiciary Committee Substitute Adopted 4/14/97
Proposed House Committee Substitute S320-PCSA763

Short Title: Nurses' Training. (Public)

Sponsors:

Referred to:

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ESTABLISHMENT OF PROGRAMS TO TRAIN LICENSED REGISTERED NURSES TO CONDUCT MEDICAL EXAMINATIONS OF VICTIMS OF SEXUAL OFFENSES, TO CONDUCT MEDICAL PROCEDURES TO COLLECT EVIDENCE FROM THE VICTIMS, AND TO ALLOW DIRECT PAYMENT TO NURSES WHO PROVIDE THIS SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-171.38 reads as rewritten:

"**§ 90-171.38. Standards for nursing programs.**

(a) A nursing program may be operated under the authority of a general hospital, or an approved post-secondary educational institution. The Board shall establish, revise, or repeal standards for nursing programs. These standards shall specify program requirements, curricula, faculty, students, facilities, resources, administration, and describe the approval process. Any institution desiring to establish a nursing program shall apply to the Board and submit satisfactory evidence that it will meet the standards prescribed by the Board. Those standards shall be designed to ensure that graduates of those programs have the education necessary to safely and competently practice nursing. The Board shall encourage the continued operation of all present programs that meet the standards approved by the Board.

(b) Any individual, organization, association, corporation, or institution may establish a program for the purpose of training or educating any registered nurse

licensed under G.S. 90-171.30, 90-171.32, or 90-171.33 in the skills, procedures, and techniques necessary to conduct medical examinations of, and the medical procedures to collect evidence from, the victims of first-degree rape as defined in G.S. 14-27.2, second-degree rape as defined in G.S. 14-27.3, statutory rape as defined in G.S. 14-27.7A, first-degree sexual offense as defined in G.S. 14-27.4, second-degree sexual offense as defined in G.S. 14-27.5 or attempted first-degree or second-degree rape or attempted first-degree or second-degree sexual offense as defined in G.S. 14-27.6. The Board shall establish, revise, or repeal standards for any such program. Any individual, organization, association, corporation, or institution which desires to establish a program under this subsection shall apply to the Board and submit satisfactory evidence that it will meet the standards prescribed by the Board."

Section 2. G.S. 90-171.44 reads as rewritten:

"**§ 90-171.44. Prohibited acts.**

It shall be a violation of this Article, and subject to action under G.S. 90-171.37, for any person to:

(1) Sell, fraudulently obtain, or fraudulently furnish any nursing diploma or aid or abet ~~therein;~~ therein.

(2) Practice nursing under cover of any fraudulently obtained ~~license;~~ license.

(3) Practice nursing without a ~~license;~~ license. This subdivision shall not be construed to prohibit any licensed registered nurse who has successfully completed a program established under G.S. 90-171.38(b) from conducting medical examinations of, or procedures to collect evidence from, the victims of offenses described in that subsection.

(4) Conduct a nursing program or a refresher course for activation of a license, that is not approved by the ~~Board; or~~ Board.

(5) Employ unlicensed persons to practice nursing."

Section 3. G.S. 58-50-25 reads as rewritten:

"**§ 58-50-25. Nurses' services.**

(a) No agency, institution or physician providing a service for which payment or reimbursement is required to be made under a policy governed by Articles 1 through 64 of this Chapter shall be denied such payment or reimbursement on account of the fact that such services were rendered through a registered nurse acting under authority of rules and regulations adopted by the North Carolina Medical Board and the Board of Nursing pursuant to G.S. 90-6 and 90-171.23.

(b) Nothing herein shall be construed to authorize contracting with or making payments directly to any nurse not otherwise permitted. A licensed registered nurse who has successfully completed a program established under G.S. 90-171.38(b) may receive direct payment for conducting medical examinations or medical procedures described in that subsection if the payment is in lieu of any payment which would have otherwise been permitted."

Section 4. G.S. 143B-480.2 reads as rewritten:

"**§ 143B-480.2. Victim assistance.**

(a) Only victims who have reported the following crimes are eligible for assistance under this Program: first-degree rape as defined in G.S. 14-27.2, second-degree rape as defined in G.S. 14-27.3, first-degree sexual offense as defined in G.S. 14-27.4, second-degree sexual offense as defined in G.S. 14-27.5, or attempted first-degree or second-degree rape or attempted first-degree or second-degree sexual offense as defined in G.S. 14-27.6. Assistance is limited to immediate and short-term medical expenses, ambulance services, and mental health services provided by a professional licensed or certified by the State to provide such services, not to exceed five hundred dollars ($500.00) incurred by the victim for the medical examination, medical procedures to collect evidence, or counseling treatment which follow the attack, or ambulance services from the place of the attack to a place where medical treatment is provided.

(b) With the exception of assistance authorized under subsection (e) of this section, ~~Assistance~~ assistance for expenses authorized under this section is to be paid directly to any hospital, ambulance service, attending physicians, or mental health professionals providing counseling, upon the filing of proper forms.

(c) Assistance shall not be awarded unless the rape, attempted rape, sexual offense, or attempted sexual offense was reported to a law-enforcement officer within 72 hours after its occurrence or the Secretary finds there was good cause for the failure to report within that time.

(d) Upon an adverse determination by the Secretary on a claim for medical expenses, a victim is entitled to judicial review of that decision. The person seeking review shall file a petition in the Superior Court of Wake County.

(e) In lieu of any payment which may otherwise have been made under subsection (b), assistance for expenses authorized under this section may be paid directly to any licensed registered nurse who has successfully completed a program approved under G.S. 90-171.38(b). The Secretary shall adopt rules to facilitate the payments authorized under this subsection and to encourage, whenever practical, the use of nurses trained under G.S. 90-171.38(b) to conduct medical examinations and procedures."

Section 5. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

June 18

S 2

SENATE BILL 625
Transportation Committee Substitute Adopted 4/24/97

Short Title: Speeding on School Grounds. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE SPEEDING IN EXCESS OF THE POSTED SPEED ON SCHOOL GROUNDS AN INFRACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-141 is amended by adding a new subsection to read:

"(e1) Local authorities, in their respective jurisdictions, upon the request of, and with the approval of, a local school administrative unit for public schools and the governing body of a private school, may authorize by ordinance lower speeds than those set out in subsection (b) of this section, not to exceed 15 miles per hour, on all school property. Speed limits set pursuant to this subsection shall be effective when appropriate signs giving notice of the speed limits are erected upon the affected property. For the purposes of this subsection, affected private school property shall be a 'public vehicular area' as defined in G.S. 20-4.01(32)."

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 625
Transportation Committee Substitute Adopted 4/24/97
Proposed House Committee Substitute
S625-CSRO-001
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Speeding on School Grounds. (Public)

Sponsors:

Referred to:

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE SPEEDING IN EXCESS OF THE POSTED SPEED ON SCHOOL GROUNDS AN INFRACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-141 is amended by adding a new subsection to read:

"(e1) Local authorities, in their respective jurisdictions, upon the request of, and with the approval of, a local school administrative unit for public schools or the governing body of a private school, may authorize by ordinance lower speeds than those set out in subsection (b) of this section, not to exceed 15 miles per hour, on all school property. Speed limits set pursuant to this subsection shall be effective when appropriate signs giving notice of the speed limits are erected upon the affected property."

Section 2. This act is effective when it becomes law.

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May 7, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **Senate Bill 625 - Speeding on School Grounds.**

Senate Bill 625 adds a new subsection to G.S. 20-141 which authorizes cities and counties to set lower speed limits on school property, when requested to do so by or with the approval of the local school administrative unit for public schools and the governing body for private schools. The lower limits must be set by ordinance, may not exceed 15 miles per hour, and are only effective when appropriate signs giving notice of the lower speed limit have been erected on the property. Violation of this provision is an infraction, punishable by a penalty of up to $100.

This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

JUDICIARY II 6/17/97 12pm

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Tommy Worth	CHS
2.	Kim Smith	NCLM
3.	Laura Hartsell	NCIC
4.	Evelyn Hawthorne	NC HHS
5.	David Simmons	20A, PA
6.	Susan Valcourt	NWI
7.	Bev Kirkman	NWI
8.	LEIGHTON PRYOR	27A, PA
9.	Roslyn Sawyer	NC Coalition Against DV
10.		
11.		
22.		
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29.		
30.		
31.		

North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

(15 minutes after the completion of the House session)
Thursday, June 19, 1997 / tape

1327 Legislative Building

N. Leo Daughtry
Edwin M. Hardy
Co-Chairmen

Members Present

Martha Alexander	**Daniel Blue**
J. Russell Capps	**Debbie Clary**
Theresa Esposito	**J. Sam Ellis**
Milton Fitch	**Bobby Ray Hall**
John W. Hurley	**Margaret M. Jeffus**
Larry T. Justus	**H.M. Michaux, Jr.**
Wilma Sherill	**Gregg Thompson**

The House Committee on JUDICIARY I met on Tuesday, June 17, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry presiding.

Committee counsels Steven Rose and Karen Cochrane-Brown were present to assist the committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

Rep. Dickson was recognized to explain Senate Bill 521, DOC PILOT/SEXUAL ASSAULT PROGRAM.

On a motion by Rep. Capps, and without objection, S.B. 521 was given a favorable report.

The Chairman announced that the Subcommittee on House Bill 665 would be prepared to report to the Committee at the next regular meeting. There

being persons present who had travel to speak, the chairman recognized several who wished to be heard regarding the measure.

The Committee Adjourned at 12:30 p.m.

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 4

SENATE BILL 521
Second Edition Engrossed 4/29/97
Appropriations Committee Substitute Adopted 6/4/97
Fourth Edition Engrossed 6/5/97

Short Title: DOC Pilot/Sexual Assault Program. (Public)

Sponsors:

Referred to:

March 26, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH PILOT PROGRAMS ON SEXUAL ASSAULT FOR INMATES AND EMPLOYEES OF THE DEPARTMENT OF CORRECTION.

The General Assembly of North Carolina enacts:

Section 1. The Department of Correction shall establish pilot programs on sexual assault for inmates at three units of the State prison system. The Department shall select units with greater than average levels of inmate violence for participation in these pilot programs.

Section 2. Each pilot program shall operate as follows:

(1) The Department shall provide, as part of every inmate's orientation, a program on sexual assault, with a goal to complete that program within seven days of commitment to the Department of Correction. The program shall provide inmates with at least the following information:

a. An accurate presentation pertaining to sexual assault violence;

b. Information on preventing and reducing the risk of sexual assault;

c. Information on available counseling for victims of sexual assault; and

d. The procedure for victims of sexual assault to request counseling.

(2) The Department shall provide sexual assault counseling on-site at the prison unit to any prisoner requesting it. Counselors shall be granted reasonable access to Department of Correction institutions and prisoners for the purpose of providing confidential sexual assault counseling.

(3) Unless the Director of the Division of Prisons finds a particular item to be unsuitable, the Department shall allow the distribution of materials on sexual assault and rape trauma syndrome developed or sponsored by community rape crisis centers or nonprofit organizations with expertise in sexual assault. Any such material provided to a correctional institution shall be made available to inmates in places where they may make use of them privately and without attracting undue attention, such as in the library, law library, medical clinic, recreation hall, mental health offices, and educational lobby areas.

(4) The Department shall post notices of the availability of any community-based rape crisis counselors who are willing to provide confidential counseling. Communications between prisoners and rape crisis counselors are confidential. The Department shall cooperate with community rape crisis centers seeking to identify and provide counseling to former inmates who were the victims of sexual assault.

(5) The Department shall collect statistical data of all known, reported, or suspected incidents of sexual aggression or sexually motivated violence occurring at units participating in the pilot programs. The Department shall compile this data on a quarterly and annual basis.

(6) The Department shall develop and implement employee training on the identification and prevention of sexual assault among inmates, in coordination with the Department's employee basic training program. The training shall be provided to new employees at orientation and shall also be part of annual employee training.

(7) The Department shall evaluate and classify each prisoner with respect to the probable risk of sexual assault. When feasible, incoming inmates shall be handled separately until this classification is made. The classification shall be prominently displayed in the inmate's confidential file, and the Department shall consider the prisoner's classification when making housing assignments.

(8) The Department shall also rate prisoners as potential sexual assault offenders based upon (i) criminal history; (ii) incidents occurring

during confinement; and (iii) reports of incidents that the Department determines to be credible. The Department shall take the prisoners' potential for sexual assault into consideration when making housing assignments.

(9) The Department shall ensure that prisoners rated vulnerable or highly vulnerable to sexual assault and prisoners rated as potential assaulters are not housed in the same cell or room holding four or fewer inmates or placed in the showers at the same time to the extent that it is practicable. Any exceptions to this policy shall be reported to the Secretary within three days.

Section 3. The Department may use funds available to the Department for the 1997-98 fiscal year to implement the pilot programs established in this act.

Section 4. The Department of Correction shall report by May 1, 1998, to the Joint Legislative Corrections Oversight Committee, the Chairs of the Senate and House Appropriations Committees and the Senate and House Appropriations Subcommittees on Justice and Public Safety on the effectiveness of the pilot programs established in this act and on the advisability of establishing additional programs at other prison units. The report shall include information on:

(1) The percentage of inmate orientation programs on sexual assault completed within seven days of commitment; and

(2) The Department's success in segregating prisoners rated vulnerable to sexual assault from prisoners rated as potential assaulters.

Section 5. This act becomes effective July 1, 1997.

VISITOR REGISTRATION SHEET

Judiciary I June 18 1997

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Roslyn Sawyer	NC Coalition Against Dom. Violence
2.	Joseph D. Knott	CSC Franklin Co.
3.	Gary Welch	DA's Office 17-A
4.	Kristy Wilson	N.C. Van Member
5.	Harlie J. Wilson	
6.	Mary S. Graham	Dist Atty's office V/W asst.
7.	Jo B. McCants	AOC
8.	Dawn M. Carpenter	Probation/Parole Victim Services Wake Cty
9.	Dee L. Carlton	Adult Probation/Parole, Victim Services
10.	Ethel W. Crisp	Durham (Lone)
11.	Vassie Gould	Albemarle Hopeline - Lee Co. Advocate
12.	Lou Smith	New Hanover Cty. - Victim Homicide
13.	Gayle Klutz	Brunswick County - Homicide
14.	Pamela Wescott	Brunswick County - Victim Homicide
15.	Ann Skinner	Victim Services - Henderson Cty. Sheriff's Dept.
16.	Martha Hord	Victim Homicide
17.	Joan Holloman	Domestic Violence Shelter My Sisters' House
18.	Emma L Cates	Victim Homicide
19.	Linda Rick	Victim of Homicide
20.	Linda Jones	Rocky Mt Police Dept.
21.	Helen Garrett-Coltrane	Albemarle Hopeline - D.V. Shelter

32.	NEIGHBOR PORTER	ZDA, PA
33.	Monica Hayes	Asst. DA - Buncombe Co.
34.	Anna S. Lett	Intern, Buncombe Co. DA's Office
35.	RON BROWN	Asheville Police Dept Victim Services Coordinator
36.	Sherry Stewart	DA's Office, Victim-Witness Asst., Brunswick Cty
37.	Birdie Funk	NC-VAN Bd member
38.	Jewell Mikula	Rape Crisis Volunteers of Cumberland County
39.	Garland W Walker	Greenville Police Dept Family Services Unit
40.	Connie Elks	Greenville Police Dept Family Services Unit
41.	Rosemary M. Haddock	Pitt County Sheriff, Greenville, NC Victim Advocate
42.	Inez Vaughan	Rougemont, NC, Victim
43.	Kenny Vaughan	326 Bowen RD. Victim Rougemont, NC 27572 person Ct.
44.	Bill Scoggin	NCBA
45.	John Ky Gallaher	N.C. VAN
46.	John Poliquin	Lawrence Bentley & Assoc.
47.	Don Miller	NC Shadow NC law Enf Officers
48.	Eddie Caldwell	CCPS
49.	Laura DeVivo	Victim Advocate
50.	A.A. Adams	NCCDA
51	Reg Dover	

North Carolina HOUSE *of* REPRESENTATIVES
Committee on JUDICIARY I

1 tape
minutes are not
in Computer

Tuesday, June 24, 1997 ✓
11:35 am
(Scheduled to begin fifteen minutes after the House ended session, which began at 10:00 a.m.)

N. Leo Daughtry
Edwin M. "Sandy" Hardy
Chairmen

Members present

Martha Alexander	**Jerry Braswell**
J. Russell Capps	**Robert C. Hunter**
John W. Hurley	**Margaret Jeffus**
Larry T. Justus	**H.M. Michaux, Jr.**
George Miller	**Wilma T. Sherrill**
Gregg Thompson	

The House Committee on JUDICIARY I met fifteen minutes after the end of the House's morning session on Tuesday, June 24, 1997, in room 1327 of the Legislative Building; N. Leo Daughtry and Edwin M. "Sandy" Hardy, presiding.

Committee counsel Steven Rose and Karen Cochrane-Brown were present to assist the committee. Visitor registration sheets were distributed and are attached and made a part of these minutes.

The Committee resumed deliberation of House Bill 665, CRIME VICTIM'S ACT, and the subcommittee on that measure chaired by Rep. Miller reported in the form of a proposed committee substitute which was introduced by counsel Rose. The subcommittee took into account the history of the committee's consideration of this measure which, in the form of a synopsis prepared for the committee by the clerk, is attached and made a part of these minutes.

On a motion by Rep. Capps, the committee accepted, for the purpose of discussion, the Proposed Committee Substitute to H.B. 665, presented in the form of a document entitled "H665-CSRO-008," a copy of which is attached and made a part of these minutes.

Counsel Cochrane-Brown prepared a MEMORANDUM on the Proposed Committee Substitute to H.R. 665 which was distributed and a copy of which is atached and made a part of these minutes.

On a motion by Rep. Miller, the committee gave the Proposed Committee Substitute to H.B. 665 a favorable report, unfavorable to the original bill, with the recommendation that the measure be re-referred to the Committee on FINANCE.

Rep. Hurley was recognized for the purpose of explaining House Bill 476, VITAL RECORDS ACCESS/AB. Rep. Hurley moved that the Committee concur with the Senate Finance Committee Substitute to H.B. 476, adopted previously on June 11.

There was no objection.

The Committee adjourned at 12:20 p.m.

CRIME VICTIMS RIGHTS FUND

HB 665 Committee Substitute (5-20-97)

1. Proposed Crime Victims Rights Fund in HB 665 would assess $30 fee on **all offenders convicted of felonies, Class 1 of A1 misdemeanors, and Chapter 20 impaired driving offenses**. AOC estimates that **160,700** defendants were convicted of these offenses in 1996 (only a small percentage were felons). If each of **160,700** convicted offenders were assessed $30 dollars, the theoretical amount of revenue collected at 100% would be **$4,821,000**. However collection rates are unpredictable and likely to be much lower than 100%. **50% would be $2,410,500.** (Michigan has had a collection rate of **44%** -- in N.C. amount would be **$2,121,240**)

Other Options

1. **Current House 665 Committee Substitute at $100 --** if the 160,700 convicted defendants in HB 665 were assessed $100 instead of $30, theoretical amount of revenue would be:

a.	$16,070,000	100%	(not possible)
b.	8,035,000	50%	
c.	7,070,800	44%	
d.	5,303,100	33%	

2. **Proposed Amendment by Rep. Hall** (5/22/97) The section of this amendment relating to the Crime Victims Fund would increase the $30 fee in HB 665 to $100 for all offenders convicted of committing or attempting to commit felonies and misdemeanors that relate to domestic violence as defined in 50B -1. Specific statues identified are G.S. 14 -33 (various misdemeanor assaults) and G.S. 14-318.2 (Class 1 misdemeanor child abuse). All offenses in these two statutes are already covered by the assessment portion of the HB 665 Committee Substitute (Class 1

and A1) except class 2 misdemeanors in G.S. 14-33. (a) simple assault; simple assault and battery; and simple affray. So the only clear revenue addition to the current bill for assessment purposes would be the Class 2 assaults in G.S. 14-33 (a). – 9,617 offenders convicted in 1996 plus the 160,700 convicted defendants in HB 665 = 170,317. Potential revenue at $100 is:

a.	$17,031,700	100%	(not possible)
b.	8,515,850	50%	
c.	7,493,948	44%	
d.	5,620,461	33%	

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May 20, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose & Karen Cochrane-Brown, Committee Counsel**

RE: **Proposed Committee Substitute for House Bill 665; Crime Victims' Rights Act and Fund**

The proposed committee substitute for House Bill 665 creates Articles 101 and 102 of Chapter 15A, the Crime Victims' Rights Act and the Crime Victims' Rights Fund. The bill implements the provisions of Section 37 of Article I of the North Carolina Constitution, which provides for basic rights for victims of crime. It was passed by the 1995 General Assembly and approved by the voters.

Section 1 of the bill establishes Articles 101 and 102 of Chapter 15A and adds the following sections to the General Statutes:

G.S. 15A-2010, which provides definitions to be used in the Crime Victims' Rights Act. Under the description of the term "victim" the crimes to which this Article are applicable are set out. These include Class A, B1, B2, C, D, and E felonies. The crimes also include certain Class

F, G, H, and I felonies, most of which involve acts where physical harm to a victim is involved. Some, however, involve crimes against property, such as second degree burglary and second degree arson, and still others involve crimes of exploitation, such as second and third degree sexual exploitation of minors.

G.S. 15A-2011 sets out the responsibilities of law enforcement agencies. Within 24 hours after identifying a victim covered by this Article, the law enforcement agency within whose territorial jurisdiction the criminal act occurred must provide the victim with information concerning availability of medical services, availability of crime victims' compensation funds under Chapter 15B of the General Statutes, the address and telephone number of the district attorney's office responsible for prosecution, and the name and telephone number of a law enforcement agency employee whom the victim may contact if the victim is not notified of an arrest in the case within 6 months after report of the crime. Within 24 hours after arrest of a person believed to have committed a crime covered by this Article, the law enforcement agency must inform the victim of the accused's opportunity for pretrial release and provide the victim with the name and telephone number of a law enforcement agency employee whom the victim may contact to find out whether the accused has been released. Within 24 hours after detention of an accused, and no later than 5 days after arrest if the accused is not previously detained, the law enforcement agency must forward to the district attorney's office the crime victim's name, address, date of birth, social security number, race, sex, and telephone number.

G.S. 15A-2012 sets out the responsibilities of the district attorney's office. Within 21 days after arrest of an accused, but not less than 24 hours before the first scheduled probable cause

hearing, the district attorney must provide the victim with a pamphlet or other written material explaining the victims rights under this Article, including the right to confer with the prosecutor, the responsibilities of the law enforcement agency and the district attorney's office, the victim's eligibility for compensation under the Crime Victims' Compensation Act and the deadline to file a claim, steps generally taken in the prosecution of a felony case, suggestions on what the victim should do if threatened or intimidated by an accused, and the name and telephone number of a victim and witness assistant in the district attorney's office. The district attorney will provide a form on which the victim can indicate whether he or she wishes further notice of trial proceedings. The victim has the right to be present at every court proceeding where the accused has the right to be present, the victim must be notified of the date, time and location of these proceedings and, where practical, secure waiting areas must be provided for the victim during court proceedings. When a victim is to be called as a witness in a court proceeding, the court is required to make every effort to permit the fullest attendance possible by the victim in the proceeding. This last provision may impact **Rule 615 of the North Carolina Rules of Evidence** which grants discretion to the trial court on the question of sequestration of witnesses. The district attorney, prior to disposition of the case, must afford the victim the opportunity to consult with the district attorney and make known the victim's views on dismissal, plea bargaining, sentencing, and pretrial diversion programs.

G.S. 15A-2013 grants victims the right to make a victim impact statement, which must be considered by the court or jury, as applicable, when the sentencing of the defendant is considered. The statement may include a description of the harm and losses suffered by the victim, a request for restitution and whether compensation has been applied for or received under

the Crime Victims' Compensation Act. The victim impact statement is not required and no inference may be drawn from a victim's decision not to make one. The district attorney's office must notify the victim of the victim's rights under this section.

G. S. 15A-2014 directs the court to require a defendant to make restitution to a victim or victim's estate for injuries or damages to the victim. Restitution may include medical or other professional services, various types of rehabilitation therapy, loss of income, psychological or medical treatment for a victim's next of kin, and the cost of funeral and related expenses. In reaching a decision on restitution, the court must take into consideration the resources of the defendant and the defendant's earning ability, together with the defendant's support obligations, and any other matters pertaining to the defendants ability to make restitution. The court is not required to make findings of fact or conclusions of law with regard to these considerations, but the amount of restitution is limited to that which is supported by the record. The court may order partial restitution if that is all that is within the ability of the defendant to pay. Restitution does not limit the victim's rights with regard to bringing a civil action against the defendant, but any amount already paid by the defendant under a restitution order must be credited against any civil judgment. The court may order that restitution be paid to a person other than the victim if that third party provided assistance to the victim following commission of the offense. However, restitution must be made to the victim or his estate before it is made to any other party. The court is given flexibility with regard to the time when restitution is to be paid, but if a defendant is placed on probation or post-release supervision, or is paroled, restitution must be a condition of probation, supervision, or parole. If the court does not order restitution, or if restitution is partial, the court must state the reasons on the record.

G.S. 15A-2015 provides that an order of restitution is docketed with the clerk of superior court and may be collected like a civil judgment.

G.S. 15A-2016 provides that within 30 days after completion of the trial phase of the case, the district attorney must notify the victim of final disposition of the case, crimes of which the defendant was convicted, and the defendant's right to appeal. If the defendant appeals, the district attorney must forward the victim information to the Attorney General who must provide the victim with information on the appellate process, notification of appellate proceedings, and final disposition of appeal. If a defendant is released on bail pending appeal, the agency with custody must notify the victim of the release. If the conviction is overturned and there is a retrial, the victim is entitled to the same rights he had during the first trial. The Administrative Office of the Courts is required to maintain a repository relating to victims for use by agencies charged with responsibilities under the provisions of this Article.

G.S. 15A-2017 sets out the responsibilities of the agency that has custody of the defendant after conviction. The agency must notify the victim of the projected date of parole eligibility or release from custody. Notice must also be provided of the defendant's parole eligibility date on an annual basis. In addition, the victim must be notified of the defendant's transfer to a minimum security facility and the location of the facility, and that this could lead to the defendant's participation in community based programs such as work release or supervised leave. The victim must be notified if the defendant escapes and if the defendant is recaptured. The victim must be notified of the date of any Parole Commission hearings to consider the defendant's release from

custody and has the right to submit a written or oral statement to the Parole Commission before the defendant is released, and the victim must be notified about the Parole Commission's decision on release or continued incarceration. The victim must be notified prior to the defendant's release from an incarceration facility, and the victim must be notified of the defendant's death.

G.S. 15A-2018 deals with responsibilities of the Division of Adult Probation and Parole. The victim must be notified of the defendant's supervision requirements, hearings on revocation or other alterations of the defendant's supervision and the disposition of such hearings, any restitution modifications, movement of the defendant into or out of electronic monitoring and intensive supervision conditions, escape from supervision and subsequent capture, the date of the defendant's termination or discharge from supervision, and the defendant's death.

G.S. 15A-2019 deals with commutation and pardon proceedings by the Governor's Clemency Office. The Office must notify the victim and give the victim the right to present a written statement for consideration by the Office. The victim must also be given notification of the decision and an opportunity to respond to that decision.

G.S. 15A-2020 provides that this legislation does not create a claim for damages against the State, any local government, any agency, or any employee of those entities.

G.S. 15A-2021 provides that failure or inability of a person to provide a right or service under this Article may not be used by any defendant or inmate as grounds for relief in any criminal or civil proceedings.

G.S. 15A-2022 provides for the court to appoint a guardian for a victim who is mentally or physically incompetent, or who is a minor, and that guardian will exercise the victim's rights under this Article.

G.S. 15A-2025 is the first section of Article 102, the Crime Victims' Rights Fund. This provision creates a fund to be administered by the Department of Crime Control and Public Safety and to be used to supplement the budgets of law enforcement agencies, district attorneys' offices, and other agencies that provide victim services. This is a nonreverting fund.

G.S. 15A-2026 provides that in criminal cases where a defendant is convicted of or pleads guilty to a felony or a Class 1 or 1A misdemeanor or to an offense of impaired driving, the defendant is required to pay a $30 fee to be used to supplement the law enforcement and district attorney budgets for services to crime victims. Where the court authorizes a defendant is to make payments of fines, costs, and other fees in installments, the $30 fee is collected in the first installments.

G.S. 15A-2027 provides that law enforcement agencies and district attorneys' offices may apply on an annual basis to the Department of Crime Control and Public Safety for funds to provide services to crime victims. The Department will establish procedures for dealing with

these applications and must annually report to the General Assembly concerning its activities in that area.

Section 2 of the bill repeals G.S. 15A-824 through 15A-827, the current provisions providing for the rights of victims of crimes.

The act is effective January 1, 1998, and applies to crimes committed on or after that date.

H665-SMRL-001

N.C. App. 474, 328 S.E.2d 895 (1985); Coastal Neuro-Psychiatric Assocs. v. Onslow Mem. Hosp., 795 F.2d 340 (4th Cir. 1986); Jetstream Aero Servs., Inc. v. New Hanover County, 672 F. Supp. 879 (E.D.N.C. 1987); Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 677 F. Supp. 847 (W.D.N.C. 1988).

Sec. 35. Recurrence to fundamental principles.

Legal Periodicals. — For an essay, "On the Significance of Constitutional Spirit," see 70 N.C.L. Rev. 1803 (1992).

CASE NOTES

Quoted in Treants Enters., Inc. v. Onslow County, 83 N.C. App. 345, 350 S.E.2d 365 (1986); Corum v. University of N.C. ex rel. Bd. of Governors, 330 N.C. 761, 413 S.E.2d 276, reh'g denied, 331 N.C. 558, 418 S.E.2d 664, cert. denied, 506 U.S. 985, 113 S. Ct. 493, 121 L. Ed. 2d 431 (1992).

Cited in State v. Avery, 315 N.C. 1, 337 S.E.2d 786 (1985); Corum v. University of N.C., 97 N.C. App. 527, 389 S.E.2d 596 (1990); Boesche v. Raleigh-Durham Airport Auth., 111 N.C. App. 149, 432 S.E.2d 137 (1993).

Sec. 36. Other rights of the people.

CASE NOTES

Cited in Boesche v. Raleigh-Durham Airport Auth., 111 N.C. App. 149, 432 S.E.2d 137 (1993).

Sec. 37. (Effective upon certification of approval) Rights of victims of crime.

(1) *Basic rights.* Victims of crime, as prescribed by law, shall be entitled to the following basic rights:

(a) The right as prescribed by law to be informed of and to be present at court proceedings of the accused.

(b) The right to be heard at sentencing of the accused in a manner prescribed by law, and at other times as prescribed by law or deemed appropriate by the court.

(c) The right as prescribed by law to receive restitution.

(d) The right as prescribed by law to be given information about the crime, how the criminal justice system works, the rights of victims, and the availability of services for victims.

(e) The right as prescribed by law to receive information about the conviction or final disposition and sentence of the accused.

(f) The right as prescribed by law to receive notification of escape, release, proposed parole or pardon of the accused, or notice of a reprieve or commutation of the accused's sentence.

(g) The right as prescribed by law to present their views and concerns to the Governor or agency considering any action that could result in the release of the accused, prior to such action becoming effective.

(h) The right as prescribed by law to confer with the prosecution.

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Section 1. L

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Laws 1985, c. 768, s. 11
the primary election

(2) *No money damages; other enforcement.* Nothing in this section shall be construed as creating a claim for money damages against the State, a county, a municipality, or any of the agencies, instrumentalities, or employees thereof. The General Assembly may provide for other remedies to ensure adequate enforcement of this section.

(3) *No ground for relief in criminal case.* The failure or inability of any person to provide a right or service provided under this section may not be used by a defendant in a criminal case, an inmate, or any other accused as a ground for relief in any trial, appeal, postconviction litigation, habeas corpus, civil action, or any similar criminal or civil proceeding. (1995, c. 438, s. 1.)

Editor's Note. — Session Laws 1995, c. 438, s. 2, provides that this proposed new section be submitted to the qualified voters of the State at the general election to be held in November 1996 under the laws then governing elections in the State, and that ballots, voting systems, or both may be used which shall be conducted, in accordance with Chapter 163 of the General Statutes.

Session Laws 1995, c. 438, s. 3, makes this section effective upon certification of approval by the State Board of elections to the Secretary of State.

ARTICLE II

LEGISLATIVE

Section 1. Legislative power.

CASE NOTES

The Power to Zone, etc. — Power to zone real property is vested in the General Assembly by this section. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Discretion to Determine Whether Commissioners Should Be Elected or Appointed. — Discretion provided by § 156-81(a) and (i) to the clerks of superior court to determine whether drainage commissioners should be elected or appointed is an unconstitutional delegation of legislative powers. Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

Cited in State v. Gravette, 327 N.C. 114, 393 S.E.2d 856 (1990).

OPINIONS OF ATTORNEY GENERAL

Delay of Rules by Review Commission. — An act vesting in the Administrative Rules Review Commission (ARRC), a commission appointed by the General Assembly, the power to delay indefinitely the effective date of duly adopted agency rules which it deems in excess of statutory authority would likely be held to violate this section by vesting the ARRC with judicial powers reserved to the court and with supreme legislative powers reserved to the General Assembly. See opinion of Attorney General to Henson P. Barnes, President Pro Tempore, Senate, — N.C.A.G. — (February 25, 1991).

Sec. 2. Number of Senators.

Defeated Amendment Proposals. —

An amendment proposed by Session Laws 1985, c. 768, s. 11, and defeated at the primary election held on May 6, 1986, would have added "Except that there shall be no election in 1988, and elections shall be conducted in 1989 and biennially thereafter" at the end of the section.

COMMENTARY

Subdivisions (a) and (b) of this rule are identical to Fed. R. Evid. 614(a) and (b).

Subdivision (a) authorizes the court to call witnesses and is consistent with North Carolina practice. See *Brandis on North Carolina Evidence* § 37 (1982).

Subdivision (b) authorizes the court to examine witnesses, whether called by itself or by a party, and is consistent with North Carolina practice. *Id.*

It is anticipated that the court will exercise its authority to call or interrogate a witness only in extraordinary circumstances.

The court may not in calling or interrogating a witness do so in a manner as to suggest an opinion as to the weight of the evidence or the credibility of the witness in violation of G.S. 15A-1222 or G.S. 1A-1, Rule 51(a). *Id.*

Subdivision (c) differs from Fed. R. Evid. 614(c) by providing for an automatic objection to the calling or interrogation of witnesses by the court. Subdivision (c) is consistent with N. C. Civ. Pro. Rule 46(a)(3) which provides that no objections are necessary with respect to questions propounded to a witness by the court.

CASE NOTES

Clarification of Testimony. — The court may question a witness for the purpose of clarifying the witness' testimony and for promoting a better understanding of it. Such examination must be conducted with care and in a manner which avoids prejudice to either party. State v. Chandler, 100 N.C. App. 706, 398 S.E.2d 337 (1990).

The court properly uses its authority under subsection (b) of this rule when it questions witnesses in order to clarify ambiguous testimony and to enable the court to rule on the admissibility of certain evidence and exhibits. State v. Quick, 329 N.C. 1, 405 S.E.2d 179 (1991).

When Judge's Question Constitutes Expression of Opinion. — A trial judge's question, propounded for the purpose of clarification, is an expression of opinion only if a jury reasonably could infer that the question intimated an opinion as to a factual issue, the witness' credibility or the defendant's guilt. State v. Ramey, 318 N.C. 457, 349 S.E.2d 566 (1986).

Applied in State v. Hill, 105 N.C. App. 489, 414 S.E.2d 73 (1992).

Cited in State v. Bright, 320 N.C. 491, 358 S.E.2d 498 (1987).

Rule 615. Exclusion of witnesses.

At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party that is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of his cause, or (4) a person whose presence is determined by the court to be in the interest of justice. (1983, c. 701, s. 1.)

COMMENTARY

This rule is similar to Fed. R. Evid. 615 except that the word "shall" in the first sentence has been changed to "*may* order witnesses excluded," and the phrase "a person whose presence is determined by the court to be in the interest of justice" has been added as a fourth exception.

The use of "*may* order witnesses excluded" rather than "shall," as in the federal rule, is intended to preserve discretion in the trial judge, allowing him to take into account such things as the physical setting of the trial. However, the practice should be to sequester witnesses on request of either party unless

ARTICLE 43.

Uniform Act to Secure Attendance of Witnesses from without a State in Criminal Proceedings.

§ 15A-812. Summoning witness in this State to testify in another state.

CASE NOTES

Evidence Insufficient to Show Witness Not a Material Witness. — Where the trial court failed to make findings of fact or conclusions of law, there was insufficient competent evidence to support the trial court's order finding that individual sought to be subpoenaed from out-of-state was not a material witness and that enforcement of the subpoena duces tecum would cause an undue hardship to her. In re McKinny, — N.C. App. —, 462 S.E.2d 530 (1995).

§ 15A-813. Witness from another state summoned to testify in this State.

CASE NOTES

Cited in State v. Bowie, 340 N.C. 199, 456 S.E.2d 771 (1995).

ARTICLE 45.

Fair Treatment for Victims and Witnesses.

§ 15A-824. Definitions.

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

(1) "Crime" means a serious misdemeanor as determined in the sole discretion of the district attorney, any felony, or any act committed by a juvenile that, if committed by a competent adult, would constitute a felony.

(2) "Family member" means a spouse, child, parent or legal guardian, or the closest living relative.

(3) "Victim" means a person against whom there is probable cause to believe a crime has been committed.

(4) "Witness" means a person who has been or is expected to be summoned to testify for the prosecution in a criminal action concerning a felony, or who by reason of having relevant information is subject to being called or is likely to be called as a witness for the prosecution in such an action, whether or not an action or proceeding has been commenced. (1985 (Reg. Sess., 1986), c. 998, s. 1; 1989, c. 596, s. 1.)

§ 15A-825. Treatment due victims and witnesses.

To the extent reasonably possible and subject to available resources, the employees of law-enforcement agencies, the prosecutorial system, the judicial system, and the correctional system should make a reasonable effort to assure that each victim and witness within their jurisdiction:

(1) Is provided information regarding immediate medical assistance when needed and is not detained for an unreasonable length of time before having such assistance administered.

(2) Is provided information about available protection from harm and threats of harm arising out of cooperation with law-enforcement prosecution efforts, and receives such protection.

(2a) Is provided information that testimony as to one's home address is not relevant in every case, and that the victim or witness may request the district attorney to raise an objection should he/she deem it appropriate to this line of questioning in the case at hand.

(3) Has any stolen or other personal property expeditiously returned by law-enforcement agencies when it is no longer needed as evidence, and its return would not impede an investigation or prosecution of the case. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property whose ownership is disputed, should be photographed and returned to the owner within a reasonable period of time of being recovered by law-enforcement officials.

(4) Is provided appropriate employer intercession services to seek the employer's cooperation with the criminal justice system and minimize the employee's loss of pay and other benefits resulting from such cooperation whenever possible.

(5) Is provided, whenever practical, a secure waiting area during court proceedings that does not place the victim or witness in close proximity to defendants and families or friends of defendants.

(6) Is informed of the procedures to be followed to apply for and receive any appropriate witness fees or victim compensation.

(6a) Is informed of the right to be present throughout the entire trial of the defendant, subject to the right of the court to sequester witnesses.

(7) Is given the opportunity to be present during the final disposition of the case or is informed of the final disposition of the case, if he has requested to be present or be informed.

(8) Is notified, whenever possible, that a court proceeding to which he has been subpoenaed will not occur as scheduled.

(9) Has a victim impact statement prepared for consideration by the court.

(9a) Prior to trial, is provided information about plea bargaining procedures and is told that the district attorney may recommend a plea bargain to the court.

(10) Is informed that civil remedies may be available and that statutes of limitation apply in civil cases.

(11) Upon the victim's written request, is notified before a proceeding is held at which the release of the offender from custody is considered, if the crime for which the offender was placed in custody is a Class G or more serious felony.

(12) Upon the victim's written request, is notified if the offender escapes from custody or is released from custody, if the crime for which the offender was placed in custody is a Class G or more serious felony.

(13) Has family members of a homicide victim offered all the guarantees in this section, except those in subdivision (1).

Nothing in this section shall be construed to create a cause of action for failure to comply with its requirements. (1985 (Reg. Sess., 1986), c. 998, s. 1; 1989, c. 596, s. 2.)

Legal Periodicals. — For comment, "Repairing the Breach and Reconciling the Discordant: Mediation in the Criminal Justice System," see 72 N.C.L. Rev. 1479 (1994).

CASE NOTES

Use of Victim Impact Statements at Sentencing Hearings. — Victim impact statements may be used at sentencing hearings, except in capital cases. State v. Phillips, 325 N.C. 222, 381 S.E.2d 325 (1989).

Victim's or Witness' View of Evidence Has No Proper Place in Impact Statement. — What a victim or a witness thinks the evidence in a case shows or what the defendant's punishment should be is not an effect of crime, but advocacy, and such thoughts have no place in a proper impact statement, but holding that statements by victim's sisters on Victim Impact Statement forms as to the sentence which they believed defendant should receive were harmless under the circumstances. State v. Jackson, 91 N.C. App. 124, 370 S.E.2d 687 (1988).

Introduction of Victim Impact Statements Not Prejudicial. — Where court found no aggravating factor based on evidence adduced by victim impact statements introduced at defendant's sentencing hearing, defendant was shown the statements at the hearings and objected to their admission but did not move for a continuance to seek evidence in rebuttal or to issue subpoenas for the persons who made the statements, and the matters contained in the statements had been brought to the court's attention during the actual trial, defendant failed to show how he was prejudiced by introduction of the statements. State v. Phillips, 325 N.C. 222, 381 S.E.2d 325 (1989).

SUBCHAPTER IX. PRETRIAL PROCEDURE.

ARTICLE 48.

Discovery in the Superior Court.

§ 15A-901. Application of Article.

CASE NOTES

Court's Power to Compel Disclosure Regarding Post-Trial Motion. — The judiciary must and does have the inherent power to compel disclosure of relevant facts regarding a post-trial motion and may order such disclosure prior to a hearing on such motion. State v. Taylor, 327 N.C. 147, 393 S.E.2d 801 (1990).

Criminal Investigatory Reports. — Plaintiff was precluded by this Article from obtaining copies of recordings which were unquestionably gathered by a city police department in the course of a criminal investigation and were part of the State's file in a pending criminal action. Piedmont Publishing Co. v. City

The trial courts should exercise extreme caution in conducting in camera hearings and insure that all information received by the court relating to punishment is made known to the defendant and his counsel and that he be given the opportunity to explain or refute it. State v. Midyette, — N.C. App. —, 360 S.E.2d 507 (1987).

Opportunity for Defendant to Refute Victim's Statement. — A new sentencing hearing is required when a judge conducts an in camera victim input session and pronounces judgment without the defendant having an opportunity to refute any of the matters urged by the victim's statement. State v. Midyette, — N.C. App. —, 360 S.E.2d 507 (1987).

§ 15A-826. Victim and witness assistants.

Victim and witness assistants are responsible for coordinating efforts within the law-enforcement and judicial systems to assure that each victim and witness is treated in accordance with this Article. (1985 (Reg. Sess., 1986), c. 998, s. 1.)

§ 15A-827. Scope.

This Article does not create any civil or criminal liability on the part of the State of North Carolina or any criminal justice agency, employee, or volunteer. (1985 (Reg. Sess., 1986), c. 998, s. 1.)

§§ 15A-828 to 15A-849: Reserved for future codification purposes.

OFFICIAL COMMENTARY

The General Assembly deleted proposed provisions relating to depositions and reserved this Article for future codification. The deletion leaves present deposition law unchanged.

ARTICLE 46.

§§ 15A-850 to 15A-875: Reserved for future codification purposes.

ARTICLE 47.

§§ 15A-876 to 15A-900: Reserved for future codification purposes.

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May 22, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose and Karen Cochrane-Brown, Committee Counsel**

RE: **House Bill 665; Victims' Rights Act - Class F, G, H and I felonies covered in the act.**

The following is a list of the Class F, G, H and I felonies covered in House Bill 665. Any of these felonies committed against a person would bring them under the definition of victim for the purposes of the requirements of the act.

CLASS F FELONIES

G.S. 14-16.6(b)	**Assault on legislative and executive officers using a deadly weapon.**
G.S. 14-16.6(c)	**Assault on legislative and executive officers with or without a deadly weapon inflicting serious bodily injury.**
G.S. 14-18	**Involuntary manslaughter.**
G.S. 14-32.1(e)	**Aggravated assault or aggravated assault and battery on a handicapped person.**
G.S. 14-32.2(b)(3)	**Physical abuse of patient in health care or residential care facility, intentional or culpably negligent, causing serious bodily injury or death.**
G.S. 14-32.3(a)	**Abuse of disabled or elder adult in domestic setting resulting in serious injury.**
G.S. 14-32.4	**Assault inflicting serious bodily injury.**
G.S. 14-34.2	**Assault with firearm or other deadly weapon on state of local government employee, company police officer, or campus police officer while victim is on duty.**
G.S. 14-34.6(c)	**Assault on emergency medical workers, using a firearm.**

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

G.S. 14-41	Abduction of child at least four years younger than abductor.
G.S. 14-43.2	Involuntary servitude.
G.S. 14-43.3	Unlawful restraint and transport of another.
G.S. 14-190.17	Second degree sexual exploitation of a minor.
G.S. 14-190.19	Patronizing a prostitute who is a minor.
G.S. 14-202.1	Taking indecent liberties with children-victim under sixteen years old and perpetrator sixteen years or more and at least five years older than victim.
G.S. 14-288.9	Assault on emergency personnel with dangerous weapon or substance.

CLASS G FELONIES

G.S. 14-32.3(b)	Neglect of disabled or elder adult in domestic setting resulting in serious injury
G.S. 14-51	Second degree burglary (dwelling unoccupied).
G.S. 14-58	Second degree arson (dwelling unoccupied)
G.S. 14-87.1	Common-law robbery (no firearm or dangerous weapon).
G.S. 20-138.5	Habitual impaired driving.
G.S. 20- 141.4	Felony death by vehicle (impaired driving involved).

CLASS H FELONIES

G.S. 32.3(a)	Abuse by caretaker of disabled or elder adult in domestic setting resulting in injury.
G.S. 14-32.3(c)	Exploitation by caretaker of disabled or elder adult in domestic setting resulting in loss exceeding $1,000.
G.S. 14-33.2	Habitual misdemeanor assault.

CLASS I FELONIES

G.S. 14-32.3(b)	Neglect by caretaker of disabled or elder adult in domestic setting resulting in injury.
G.S. 14-34.6(b)	Assault on emergency medical person inflicting bodily injury or using a deadly weapon other than a firearm.
G.S. 14-190.17A	Third degree sexual exploitation of a minor.
G.S. 14-277.3	Second or subsequent conviction for stalking within five years of prior conviction.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 665

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H665-ARO-001

Page 1 of __

Date_____,1997

Comm. Sub. [Yes]
Amends Title []

Representative Hall

moves to amend the bill on page 2, lines 19-20, by inserting the following new subdivision between the lines:

"f. Any felony or misdemeanor which fits the definition of domestic violence contained in G.S. 50B-1, including G.S. 14-33, and 14-318.2, as well as the attempt of any such felony or misdemeanor. These crimes are in addition to the felonies set forth in subdivisions a. through e. of this subsection. ";

and on page 9, line 40, by deleting the words "thirty dollars ($30.00)" and substituting the words "one hundred dollars ($100.00)"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 665 (PCS)

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H665-ARL-007 (PCS)

Date_____,1997

Comm. Sub. [YES]
Amends Title [YES]

Hunter

moves to amend the bill on page 1, line 2, by rewriting that line to read:
"AN ACT TO CREATE THE CRIME VICTIMS' RIGHTS ACT, TO ALLOW THE ENFORCEMENT OF ORDERS FOR RESTITUTION IN CRIMINAL CASES IN THE SAME MANNER AS CIVIL JUDGMENTS, TO CREATE AN EXCEPTION TO THE STATUTORY EXEMPTIONS FOR EXECUTION OF RESTITUTION JUDGMENTS, AND TO CHANGE THE ORDER OF PRIORITY FOR DISBURSEMENT OF FUNDS IN CRIMINAL CASES."; and

on page 10, between lines 26 and 27, by inserting the following language:

"Section 2.1. G.S. 15A-1343(d) reads as rewritten:

'(d) Restitution as a Condition of Probation. -- As a condition of probation, a defendant may be required to make restitution or reparation to an aggrieved party or parties who shall be named by the court for the damage or loss caused by the defendant arising out of the offense or offenses committed by the defendant. When restitution or reparation is a condition imposed, the court shall hold a hearing to determine the amount of restitution or reparation due the aggrieved party or parties. The court shall take into consideration the resources of the defendant, including all real and personal property owned by the defendant and the income derived from such property, his ability to earn, his obligation to support dependents, and such other matters as shall pertain to his ability to make restitution or reparation, but the court is not required to make findings of fact or conclusions of law on these matters when the sentence is imposed. The amount must be limited to that supported by the record, and the court may order partial restitution or reparation when it appears that the damage or loss caused by the

offense or offenses is greater than that which the defendant is able to pay. An order providing for restitution or reparation, as a condition of supervised or unsupervised probation, except an order resulting from a worthless check, may be enforced in the same manner as a civil judgment as provided in this subsection. Upon a finding that restitution in a sum certain remains due and payable, and that the defendant's probation should be terminated or revoked, the judge presiding at the probation termination or revocation hearing shall order that a judgment be docketed pursuant to G.S. 1-233, et seq., in the county of the original conviction as of the date of notification to the clerk in that county. The clerk shall add to the amount of the judgment to be docketed amounts equal to the standard fees for docketing, copying, certification, and mailing, as appropriate, and shall collect any other fees or charges incurred as in the enforcement of other civil judgments. The clerk shall notify the victim by first-class mail at the victim's last known address of the docketing of the judgment and provide the victim with a certified copy of the order directing entry of the civil judgment. A civil judgment under this section shall be reduced by any payments made by the defendant pursuant to the criminal case, including payments made pursuant to work release privileges. An order providing for restitution or reparation shall in no way abridge the right of any aggrieved party to bring a civil action against the defendant for money damages arising out of the offense or offenses committed by the defendant, but any amount paid by the defendant under the terms of an order or judgment as provided herein shall be credited against any judgment rendered against the defendant in such civil action. As used herein, 'restitution' shall mean (i) compensation for damage or loss as could ordinarily be recovered by an aggrieved party in a civil action, and (ii) reimbursement to the State for the total amount of a judgment authorized by G.S. 7A-455(b). As used herein, 'reparation' shall include but not be limited to the performing of community services, volunteer work, or doing such other acts or things as shall aid the defendant in his rehabilitation. As used herein 'aggrieved party' includes individuals, firms, corporations, associations, other organizations and government agencies, whether federal, State or local, including the Crime Victims Compensation Fund established by G.S. 15B-23. Provided, that no government agency shall benefit by way of restitution except for particular damage or loss to it over and

above its normal operating costs and except that the State may receive restitution for the total amount of a judgment authorized by G.S. 7A-455(b). A government agency may benefit by way of reparation even though the agency was not a party to the crime provided that when reparation is ordered, community service work shall be rendered only after approval has been granted by the owner or person in charge of the property or premises where the work will be done. Provided further, that no third party shall benefit by way of restitution or reparation as a result of the liability of that third party to pay indemnity to an aggrieved party for the damage or loss caused by the defendant, but the liability of a third party to pay indemnity to an aggrieved party or any payment of indemnity actually made by a third party to an aggrieved party does not prohibit or limit in any way the power of the court to require the defendant to make complete and full restitution or reparation to the aggrieved party for the total amount of the damage or loss caused by the defendant. Restitution or reparation measures are ancillary remedies to promote rehabilitation of criminal offenders, to provide for compensation to victims of crime, and to reimburse the Crime Victims Compensation Fund established by G.S. 15B-23, and shall not be construed to be a fine or other punishment as provided for in the Constitution and laws of this State.'

Section 2.2. G.S. 148-57.1 is amended by adding a new subsection (b1) to read:

'(b1) If the Post-Release Supervision and Parole Commission imposes restitution as a condition of parole or post-release supervision, the Commission shall notify the sentencing court of the restitution including the amount of restitution. The sentencing court shall order the clerk of court in the county of conviction to docket a civil judgment pursuant to G.S. 1-233, et seq., in the amount of restitution. The clerk shall add to the amount of the judgment to be docketed amounts equal to the standard fees for docketing, copying, certification, and mailing, as appropriate, and shall collect any other fees or charges incurred as in the enforcement of other civil judgments. The clerk shall notify the victim by first-class mail at the victim's last known address of the docketing of the judgment and provide the victim with a certified copy of the order directing entry of the civil judgment. An order providing for a civil judgment under this subsection shall in no way abridge the right of any aggrieved party to bring a civil action

against the defendant for money damages arising out of the offense or offenses committed by the defendant, but any amount paid by the defendant under the terms of a civil judgment as provided herein shall be credited against any judgment rendered against the defendant in such civil action.'

Section 2.3. G.S. 1C-1601(e) reads as rewritten:

'(e) Exceptions. -- The exemptions provided in this Article are inapplicable to claims

(1) Of the United States or its agencies as provided by federal law;

(2) Of the State or its subdivisions for taxes, appeara bonds or fiduciary bonds;

(3) Of lien by a laborer for work done and performed for the person claiming the exemption, but only as to the specific property affected;

(4) Of lien by a mechanic for work done on the premises, but only as to the specific property affected;

(5) For payment of obligations contracted for the purchase of the specific real property affected;

(6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 6;

(7) For contractual security interests in the specific property affected; provided, that the exemptions shall apply to the debtor's household goods notwithstanding any contract for a nonpossessory, nonpurchase money security interest in any such goods;

(8) For statutory liens, on the specific property affected, other than judicial liens;

(9) For child support, alimony or distributive award order pursuant to Chapter 50 of the General ~~Statutes.~~ Statutes;

(10) For criminal restitution orders docketed as civil judgments pursuant to G.S. 15A-1343(d), G.S. 15A-2015, and G.S. 148-57.1.'

Section 2.4. G.S. 7A-304(d) reads as rewritten:

'(d) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 665 (PCS)

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

(1) Sums in restitution prorated among the persons entitled thereto;
~~(1)~~(2) Costs due the county;
~~(2)~~(3) Costs due the city;
~~(3)~~(4) Fines to the county school fund;
~~(4) Sums in restitution prorated among the persons entitled thereto;~~
(5) Costs due the State;
(6) Attorney's fees.

Sums in restitution received by the clerk of superior court shall be disbursed when:

(1) Complete restitution has been received; or
(2) When, in the opinion of the clerk, additional payments in restitution will not be collected; or
(3) Upon the request of the person or persons entitled thereto; and
(4) In any event, at least once each calendar year.'".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 665
Proposed Committee Substitute
H665-CSRO-001
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Crime Victims' Rights Act. (Public)

Sponsors:

Referred to:

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIME VICTIMS' RIGHTS ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 15A of the General Statutes is amended by adding a new Subchapter to read:

"SUBCHAPTER XVI. CRIME VICTIMS' RIGHTS.

"ARTICLE 101.

"Crime Victims' Rights Act.

"§ 15A-2010. Definitions.

The following definitions apply in this Article:

(1) Accused. -- A person who has been arrested and charged with committing a crime covered by this Article.

(2) Law enforcement agency. -- The law enforecement agency within whose territorial jurisdiction the criminal act occurred.

(3) Next of kin. -- The victim's spouse, children, parents, or siblings. The term does not include the accused unless the charges are dismissed or the person is found not guilty.

(4) Victim. -- A person against whom there is probable cause to believe one of the following crimes was committed:

a. A Class A, B1, B2, C, D, or E felony.

b. A Class F felony if it is a violation of one of the following: G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.2; 14-43.3; 14-190.17; 14-190.19; 14-202.1; or 14-288.9.

c. A Class G felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; 20-138.5(b); or 20-141.4.

d. A Class H felony if it is a violation of one of the following: G.S. 14-32.3(a); 14-32.3(c); or 14-33.2.

e. A Class I felony if it is a violation of one of the following: G.S. 14-277.3; 14-32.3(b); 14-34.6(b); or 14-190.17A.

If the victim is deceased, then the next of kin, in the order set forth in the definition contained in this section, is entitled to the victim's rights under this Article, except for the rights contained in G.S. 15A-2014. An individual entitled to exercise the victim's rights as a member of the class of next of kin may designate anyone in the class to act on behalf of the class.

"**§ 15A-2011. Responsibilities of law enforcement agency.**

(a) Within 24 hours after identifying a victim covered by this Article, the law enforcement agency shall provide the victim with the following information:

(1) The availability of medical services, if needed.

(2) The availability of crime victims' compensation funds under Chapter 15B of the General Statutes and the address and telephone number of the agency responsible for dispensing the funds.

(3) The address and telephone number of the district attorney's office that will be responsible for prosecuting the victim's case.

(4) The name and telephone number of a law enforcement agency employee whom the victim may contact if the victim has not been notified of an arrest in the

victim's case within six months after the crime was reported to the law enforcement agency.

(b) Within 24 hours after the arrest of a person believed to have committed a crime covered by this Article, the law enforcement agency shall:

(1) Inform the victim of the accused's opportunity for pretrial release.

(2) Provide the victim with the name and telephone number of a law enforcement agency employee whom the victim may contact to find out whether the accused has been released from custody.

(c) Within 24 hours after an accused has been detained and no later than five days after the accused has been arrested if the accused is not detained, the law enforcement agency shall forward to the district attorney's office that will be responsible for prosecuting the case the victim's name, address, date of birth, social security number, race, sex, and telephone number.

"**§ 15A-2012. Responsibilities of the district attorney's office.**

(a) Within 21 days after the arrest of the accused, but not less than 24 hours before the accused's first scheduled probable cause hearing, the district attorney's office shall provide to the victim a pamphlet or other written material that explains in a clear and concise manner the following:

(1) The victim's rights under this Article, including the right to confer with the attorney prosecuting the case about the disposition of the case.

(2) The responsibilities of the law enforcement agency and the district attorney's office under this Article.

(3) The victim's eligibility for compensation under the Crime Victims' Compensation Act and the date by which the victim must file a claim for compensation.

(4) The steps generally taken by the district attorney's office when prosecuting a felony case.

(5) Suggestions on what the victim should do if threatened or intimidated by the accused or someone acting on the accused's behalf.

(6) The name and telephone number of a victim and witness assistant in the district attorney's office whom the victim may contact for further information.

(b) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the district

attorney's office, indicate whether the victim wishes to receive any further notices of trial proceedings involving the accused. If the victim elects to receive further notices, the victim shall be responsible for notifying the district attorney's office or any other department or agency that has a responsibility under this Article of any changes in the victim's address and telephone number.

(c) A victim has the right to be present at every court proceeding at which the accused has the right to be present. The district attorney's office shall notify a victim of the date, time, and place of these proceedings. All notices required to be given by the district attorney's office shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the court proceeding.

(d) Whenever practical, the district attorney's office shall provide a secure waiting area during court proceedings that does not place the victim in close proximity to the defendant or the defendant's family.

(e) When the victim is to be called as a witness in a court proceeding, the court shall make every effort to permit the fullest attendance possible by the victim in the proceedings.

(f) Prior to the disposition of the case, the district attorney's office shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of the case, including the victim's views about dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.

"§ 15A-2013. Victim impact statement.

(a) A victim has the right to make an oral or written victim's impact statement, which shall be considered by the court or jury, as the case may be, in sentencing the defendant. The statement may include the following:

(1) A description of the nature and extent of any physical, psychological, or emotional injury suffered by the victim as a result of the offense committed by the defendant.

(2) An explanation of any economic or property loss suffered by the victim as a result of the offense committed by the defendant.

(3) A request for restitution and an indication of whether the victim has applied for or received compensation under the Crime Victims' Compensation Act.

(b) No victim shall be required to make a victim's impact statement. The court shall not draw any inference or conclusion from a victim's decision not to make a victim's impact statement.

(c) The district attorney's office shall notify the victim of the victim's rights under this section.

"§ 15A-2014. Restitution.

(a) A court shall, in addition to any penalty authorized by law, require that the defendant make restitution to a victim or the victim's estate for any injuries or damages arising out of the offense committed by the defendant.

(b) The amount the defendant is ordered to pay in restitution may include the following, if it is a result of the offense committed by the defendant:

(1) The cost of any medical or other professional services and devices or equipment required by the victim.

(2) The cost of physical therapy, occupational therapy, and rehabilitation required by the victim.

(3) Any income loss, after taxes, suffered by the victim.

(4) The cost of any psychological or medical treatment for the victim's next of kin.

(5) The cost of the victim's funeral and any related services.

The court may require that the victim or the victim's estate provide evidence that documents the costs claimed by the victim or the victim's estate under this section. Any such documentation shall be shared with the defendant before the sentencing hearing.

(c) In deciding whether to require that restitution be made, the court shall take into consideration the resources of the defendant, including all real and personal property owned by the defendant and the income derived from the property, the defendant's ability to earn, the defendant's obligation to support dependents, and any other matters that pertain to the defendant's ability to make restitution, but the court is not required to make findings of fact or conclusions of law on these matters. The amount of restitution must be limited to that supported by the record, and the court may order partial restitution when it appears that the damage or loss caused by the offense is greater than that which the defendant is able to pay.

(d) An order providing for restitution does not abridge the right of a victim or the victim's estate to bring a civil action against the defendant for damages arising out of the offense

committed by the defendant, but any amount paid by the defendant under the terms of an order under this section shall be credited against any judgment rendered against the defendant in a civil action.

(e) The court may order the defendant to make restitution to a person other than the victim, or to any organization, corporation, or association, including the Crime Victims' Compensation Fund that provided assistance to the victim following the commission of the offense by the defendant. Restitution shall be made to the victim or the victim's estate before it is made to any other person, organization, corporation, or association.

(f) The court may require the defendant to make full restitution no later than a certain date or, if the circumstances warrant, may allow the defendant to make restitution in installments over a specified time period.

(g) If the defendant is placed on probation or post-release supervision, or is paroled, any restitution ordered under this Article shall be a condition of probation, supervision, or parole.

(h) If the court does not order restitution, or orders partial restitution, the court shall state on the record the reasons for such an order.

"§ 15A-2015. Docketing of order of restitution.

An order of restitution shall be docketed with the clerk of superior court and may be collected in the same manner as a civil judgment.

"§ 15A-2016. Posttrial responsibilities.

(a) Within 30 days after the final proceeding of the trial phase of the case, the district attorney's office shall notify the victim, in writing, of:

(1) The final disposition of the case.

(2) The crimes of which the defendant was convicted.

(3) The defendant's right to appeal, if any.

(b) Upon a defendant's giving notice of appeal to the Court of Appeals or the Supreme Court, the district attorney's office shall forward to the Attorney General's Office the victim's name, address, and telephone number. Upon receipt of this information, and thereafter as the circumstances require, the Attorney General's Office shall provide the victim with the following:

(1) A clear and concise explanation of how the appellate process works, including information about possible actions that may be taken by the appellate court.

(2) Notice of the date, time, and place of any appellate proceedings involving the defendant. Notice shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the proceedings.

(3) The final disposition of an appeal.

(c) If the defendant has been released on bail pending the outcome of the appeal, the agency that has custody of the defendant shall notify the victim that the defendant has been released.

(d) If the defendant's conviction is overturned and the district attorney's office decides to retry the case or the case is remanded to superior court for a new trial, the victim shall be entitled to the same rights under this Article as if the first trial did not take place.

(e) The Administrative Office of the Courts shall maintain a repository relating to victims identity, address and other appropriate information for use by agencies charged with responsibilities under this Article.

"**§ 15A-2017. Responsibilities of agency with custody of defendant.**

The State or local agency that has custody of the defendant shall notify the victim of:

(1) The projected date by which the defendant can become parole eligible or be released from custody. The calculation of the release date shall be as exact as possible, including earned time and disciplinary credits if the sentence of imprisonment exceeds 90 days. The agency with custody or the Post Release Supervision and Parole Commission shall be required to provide notice of the defendant's earliest parole eligibility date upon receipt of the defendant and annually thereafter.

(2) An inmate's assignment to a minimum custody unit and the address of the unit. This notification shall include notice that the inmate's minimum custody status may lead to the inmate's participation in one or more community based programs such as work release or supervised leaves in the community.

(3) The victim's right to submit any concerns to the agency with custody and the procedure for submitting such concerns.

(4) The defendant's escape from custody.
(5) The defendant's capture.
(6) The date of any review held by the Post Release Supervision and Parole Commission to consider whether the defendant should be released from custody. Notice should be given not later than 90 days before a review is held.
(7) The victim's right to submit a written or oral statement to the Post Release Supervision and Parole Commission before the defendant is released.
(8) The Post Release Supervision and Parole Commission's decision about whether to release or continue the incarceration of a defendant.
(9) The date the defendant is scheduled to be released from the facility. Whenever practical, notice shall be given 60 days before release.
(10) The defendant's death.

"**§ 15A-2018. Responsibilities of Division of Adult Probation and Parole.**

The Division of Adult Probation and Parole shall notify the victim of:

(1) The defendant's supervision requirements and any special conditions.
(2) The date of a hearing to determine whether the defendant's supervision should be revoked, continued with or without modifications or terminated.
(3) The final disposition of any hearing referred to in subdivision (2) of this section.
(4) Any restitution modification.
(5) The defendant's movement into or out of the special condition of house arrest with electronic monitoring and the level of intensive supervision.
(6) The defendant absconding supervision.
(7) The capture of a defendant described in subdivision (6) of this section.
(8) The date when the defendant is terminated or discharged.
(9) The defendant's death.

"**§ 15A-2019. Notice of commuted sentence or pardon.**

The Governor's Clemency Office shall notify a victim when it is considering commuting the defendant's sentence or pardoning the defendant. The Governor's Clemency Office shall also give notice that the victim has the right to present a written statement to

be considered by the Office before the defendant's sentence is commuted or the defendant is pardoned. The Governor's Clemency Office shall notify the victim of its decision. Notice shall be given in a manner that is reasonable calculated to allow for a timely response to the commutation or pardon decision.

"§ 15A-2020. No money damages.

This Article does not create a claim for damages against the State, a county, or a municipality, or any of its agencies, instrumentalities, or employees.

"§ 15A-2021. No ground for relief.

The failure or inability of any person to provide a right or service under this Article may not be used by a defendant in a criminal case, by an inmate, or by any other accused as a ground for relief in any criminal or civil proceeding.

"§ 15A-2022. Appointment of guardian.

When a victim is rendered mentally or physically incompetent, or when the victim is a minor, the court shall appoint a guardian to exercise the victim's rights under this Article. The court shall not appoint as guardian a person who is accused of causing the victim's injuries.

"ARTICLE 102.

"Crime Victims' Rights Fund.

"§ 15A-2025. Crime Victims' Rights Fund established.

There is hereby established within the State treasury a special revenue fund to be known as the Crime Victims' Rights Fund (hereinafter Fund). The Fund shall be administered by the Department of Crime Control and Public Safety and shall be used to supplement the budgets of law enforcement agencies, district attorneys' offices, and other agencies given responsibilities under this Article that provide services to crime victims as required by the General Statutes. Revenue in the Fund at the end of each fiscal year shall not revert, and interest and other investment income earned by the Fund must be credited to the Fund.

"§ 15A-2026. Assessments.

(a) In every criminal case where the defendant is convicted of or enters a plea of guilty or nolo contendere to a felony, a Class 1 or 1A misdemeanor, or to an offense of impaired driving under Chapter 20 of the General Statutes, the court shall order the defendant to pay the sum of thirty dollars ($30.00) to be used to supplement the budgets of law enforcement agencies, district attorneys' offices, and other agencies that provide services to crime victims as required by the General Statutes.

Such sum shall be in addition to any costs, fines, or penalties imposed.

(b) If the court authorizes the payment of fines, costs, restitution, probation oversight fees, or any other obligations of the defendant to be paid in installments, the assessment imposed under this section shall be collected from the first monies paid by the defendant. The clerk of superior court shall transmit daily all monies collected pursuant to this Article to the Department of Crime Control and Public Safety for deposit in the Fund.

"**§ 15A-2027. Application for supplemental funds.**

(a) A law enforcement agency, district attorney's office, or other agency that has a responsibility to provide services to crime victims as required by the General Statutes may apply annually to the Department of Crime Control and Public Safety for supplemental funds. Such funds shall be used to supplement local, State, or federal funds that are available to agencies and district attorneys' offices to provide services to crime victims.

(b) The Department of Crime Control and Public Safety shall establish procedures for screening, recording, and processing applications for supplemental funds. The Department shall prepare and transmit annually to the General Assembly a report of the Department's activities."

Section 2. G.S. 15A-824 through G.S. 15A-827 are repealed.

Section 3. This act becomes effective January 1, 1998, and applies to crimes committed on or after that date.

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May 20, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose & Karen Cochrane-Brown, Committee Counsel**

RE: **Proposed Committee Substitute for House Bill 665; Crime Victims' Rights Act and Fund**

The proposed committee substitute for House Bill 665 creates Articles 101 and 102 of Chapter 15A, the Crime Victims' Rights Act and the Crime Victims' Rights Fund. The bill implements the provisions of Section 37 of Article I of the North Carolina Constitution, which provides for basic rights for victims of crime. It was passed by the 1995 General Assembly and approved by the voters.

Section 1 of the bill establishes Articles 101 and 102 of Chapter 15A and adds the following sections to the General Statutes:

G.S. 15A-2010, which provides definitions to be used in the Crime Victims' Rights Act. Under the description of the term "victim" the crimes to which this Article are applicable are set out. These include Class A, B1, B2, C, D, and E felonies. The crimes also include certain Class

F, G, H, and I felonies, most of which involve acts where physical harm to a victim is involved. Some, however, involve crimes against property, such as second degree burglary and second degree arson, and still others involve crimes of exploitation, such as second and third degree sexual exploitation of minors.

G.S. 15A-2011 sets out the responsibilities of law enforcement agencies. Within 24 hours after identifying a victim covered by this Article, the law enforcement agency within whose territorial jurisdiction the criminal act occurred must provide the victim with information concerning availability of medical services, availability of crime victims' compensation funds under Chapter 15B of the General Statutes, the address and telephone number of the district attorney's office responsible for prosecution, and the name and telephone number of a law enforcement agency employee whom the victim may contact if the victim is not notified of an arrest in the case within 6 months after report of the crime. Within 24 hours after arrest of a person believed to have committed a crime covered by this Article, the law enforcement agency must inform the victim of the accused's opportunity for pretrial release and provide the victim with the name and telephone number of a law enforcement agency employee whom the victim may contact to find out whether the accused has been released. Within 24 hours after detention of an accused, and no later than 5 days after arrest if the accused is not previously detained, the law enforcement agency must forward to the district attorney's office the crime victim's name, address, date of birth, social security number, race, sex, and telephone number.

G.S. 15A-2012 sets out the responsibilities of the district attorney's office. Within 21 days after arrest of an accused, but not less than 24 hours before the first scheduled probable cause

hearing, the district attorney must provide the victim with a pamphlet or other written material explaining the victims rights under this Article, including the right to confer with the prosecutor, the responsibilities of the law enforcement agency and the district attorney's office, the victim's eligibility for compensation under the Crime Victims' Compensation Act and the deadline to file a claim, steps generally taken in the prosecution of a felony case, suggestions on what the victim should do if threatened or intimidated by an accused, and the name and telephone number of a victim and witness assistant in the district attorney's office. The district attorney will provide a form on which the victim can indicate whether he or she wishes further notice of trial proceedings. The victim has the right to be present at every court proceeding where the accused has the right to be present, the victim must be notified of the date, time and location of these proceedings and, where practical, secure waiting areas must be provided for the victim during court proceedings. When a victim is to be called as a witness in a court proceeding, the court is required to make every effort to permit the fullest attendance possible by the victim in the proceeding. This last provision may impact **Rule 615 of the North Carolina Rules of Evidence** which grants discretion to the trial court on the question of sequestration of witnesses. The district attorney, prior to disposition of the case, must afford the victim the opportunity to consult with the district attorney and make known the victim's views on dismissal, plea bargaining, sentencing, and pretrial diversion programs.

G.S. 15A-2013 grants victims the right to make a victim impact statement, which must be considered by the court or jury, as applicable, when the sentencing of the defendant is considered. The statement may include a description of the harm and losses suffered by the victim, a request for restitution and whether compensation has been applied for or received under

the Crime Victims' Compensation Act. The victim impact statement is not required and no inference may be drawn from a victim's decision not to make one. The district attorney's office must notify the victim of the victim's rights under this section.

G. S. 15A-2014 directs the court to require a defendant to make restitution to a victim or victim's estate for injuries or damages to the victim. Restitution may include medical or other professional services, various types of rehabilitation therapy, loss of income, psychological or medical treatment for a victim's next of kin, and the cost of funeral and related expenses. In reaching a decision on restitution, the court must take into consideration the resources of the defendant and the defendant's earning ability, together with the defendant's support obligations, and any other matters pertaining to the defendants ability to make restitution. The court is not required to make findings of fact or conclusions of law with regard to these considerations, but the amount of restitution is limited to that which is supported by the record. The court may order partial restitution if that is all that is within the ability of the defendant to pay. Restitution does not limit the victim's rights with regard to bringing a civil action against the defendant, but any amount already paid by the defendant under a restitution order must be credited against any civil judgment. The court may order that restitution be paid to a person other than the victim if that third party provided assistance to the victim following commission of the offense. However, restitution must be made to the victim or his estate before it is made to any other party. The court is given flexibility with regard to the time when restitution is to be paid, but if a defendant is placed on probation or post-release supervision, or is paroled, restitution must be a condition of probation, supervision, or parole. If the court does not order restitution, or if restitution is partial, the court must state the reasons on the record.

G.S. 15A-2015 provides that an order of restitution is docketed with the clerk of superior court and may be collected like a civil judgment.

G.S. 15A-2016 provides that within 30 days after completion of the trial phase of the case, the district attorney must notify the victim of final disposition of the case, crimes of which the defendant was convicted, and the defendant's right to appeal. If the defendant appeals, the district attorney must forward the victim information to the Attorney General who must provide the victim with information on the appellate process, notification of appellate proceedings, and final disposition of appeal. If a defendant is released on bail pending appeal, the agency with custody must notify the victim of the release. If the conviction is overturned and there is a retrial, the victim is entitled to the same rights he had during the first trial. The Administrative Office of the Courts is required to maintain a repository relating to victims for use by agencies charged with responsibilities under the provisions of this Article.

G.S. 15A-2017 sets out the responsibilities of the agency that has custody of the defendant after conviction. The agency must notify the victim of the projected date of parole eligibility or release from custody. Notice must also be provided of the defendant's parole eligibility date on an annual basis. In addition, the victim must be notified of the defendant's transfer to a minimum security facility and the location of the facility, and that this could lead to the defendant's participation in community based programs such as work release or supervised leave. The victim must be notified if the defendant escapes and if the defendant is recaptured. The victim must be notified of the date of any Parole Commission hearings to consider the defendant's release from

custody and has the right to submit a written or oral statement to the Parole Commission before the defendant is released, and the victim must be notified about the Parole Commission's decision on release or continued incarceration. The victim must be notified prior to the defendant's release from an incarceration facility, and the victim must be notified of the defendant's death.

G.S. 15A-2018 deals with responsibilities of the Division of Adult Probation and Parole. The victim must be notified of the defendant's supervision requirements, hearings on revocation or other alterations of the defendant's supervision and the disposition of such hearings, any restitution modifications, movement of the defendant into or out of electronic monitoring and intensive supervision conditions, escape from supervision and subsequent capture, the date of the defendant's termination or discharge from supervision, and the defendant's death.

G.S. 15A-2019 deals with commutation and pardon proceedings by the Governor's Clemency Office. The Office must notify the victim and give the victim the right to present a written statement for consideration by the Office. The victim must also be given notification of the decision and an opportunity to respond to that decision.

G.S. 15A-2020 provides that this legislation does not create a claim for damages against the State, any local government, any agency, or any employee of those entities.

G.S. 15A-2021 provides that failure or inability of a person to provide a right or service under this Article may not be used by any defendant or inmate as grounds for relief in any criminal or civil proceedings.

G.S. 15A-2022 provides for the court to appoint a guardian for a victim who is mentally or physically incompetent, or who is a minor, and that guardian will exercise the victim's rights under this Article.

G.S. 15A-2025 is the first section of Article 102, the Crime Victims' Rights Fund. This provision creates a fund to be administered by the Department of Crime Control and Public Safety and to be used to supplement the budgets of law enforcement agencies, district attorneys' offices, and other agencies that provide victim services. This is a nonreverting fund.

G.S. 15A-2026 provides that in criminal cases where a defendant is convicted of or pleads guilty to a felony or a Class 1 or 1A misdemeanor or to an offense of impaired driving, the defendant is required to pay a $30 fee to be used to supplement the law enforcement and district attorney budgets for services to crime victims. Where the court authorizes a defendant is to make payments of fines, costs, and other fees in installments, the $30 fee is collected in the first installments.

G.S. 15A-2027 provides that law enforcement agencies and district attorneys' offices may apply on an annual basis to the Department of Crime Control and Public Safety for funds to provide services to crime victims. The Department will establish procedures for dealing with

these applications and must annually report to the General Assembly concerning its activities in that area.

Section 2 of the bill repeals G.S. 15A-824 through 15A-827, the current provisions providing for the rights of victims of crimes.

The act is effective January 1, 1998, and applies to crimes committed on or after that date.

H665-SMRL-001

N.C. App. 474, 328 S.E.2d 895 (1985); Coastal Neuro-Psychiatric Assocs. v. Onslow Mem. Hosp., 795 F.2d 340 (4th Cir. 1986); Jetstream Aero Servs., Inc. v. New Hanover County, 672 F. Supp. 879 (E.D.N.C. 1987); Empire Distribs. of N.C., Inc. v. Schieffelin & Co., 677 F. Supp. 847 (W.D.N.C. 1988).

Sec. 35. Recurrence to fundamental principles.

Legal Periodicals. — For an essay, "On the Significance of Constitutional Spirit," see 70 N.C.L. Rev. 1803 (1992).

CASE NOTES

Quoted in Treants Enters., Inc. v. Onslow County, 83 N.C. App. 345, 350 S.E.2d 365 (1986); Corum v. University of N.C. ex rel. Bd. of Governors, 330 N.C. 761, 413 S.E.2d 276, reh'g denied, 331 N.C. 558, 418 S.E.2d 664, cert. denied, 506 U.S. 985, 113 S. Ct. 493, 121 L. Ed. 2d 431 (1992).

Cited in State v. Avery, 315 N.C. 1, 337 S.E.2d 786 (1985); Corum v. University of N.C., 97 N.C. App. 527, 389 S.E.2d 596 (1990); Boesche v. Raleigh-Durham Airport Auth., 111 N.C. App. 149, 432 S.E.2d 137 (1993).

Sec. 36. Other rights of the people.

CASE NOTES

Cited in Boesche v. Raleigh-Durham Airport Auth., 111 N.C. App. 149, 432 S.E.2d 137 (1993).

Sec. 37. (Effective upon certification of approval) Rights of victims of crime.

(1) *Basic rights.* Victims of crime, as prescribed by law, shall be entitled to the following basic rights:

(a) The right as prescribed by law to be informed of and to be present at court proceedings of the accused.

(b) The right to be heard at sentencing of the accused in a manner prescribed by law, and at other times as prescribed by law or deemed appropriate by the court.

(c) The right as prescribed by law to receive restitution.

(d) The right as prescribed by law to be given information about the crime, how the criminal justice system works, the rights of victims, and the availability of services for victims.

(e) The right as prescribed by law to receive information about the conviction or final disposition and sentence of the accused.

(f) The right as prescribed by law to receive notification of escape, release, proposed parole or pardon of the accused, or notice of a reprieve or commutation of the accused's sentence.

(g) The right as prescribed by law to present their views and concerns to the Governor or agency considering any action that could result in the release of the accused, prior to such action becoming effective.

(h) The right as prescribed by law to confer with the prosecution.

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Supplement

(2) *No money damages; other enforcement.* Nothing in this section shall be construed as creating a claim for money damages against the State, a county, a municipality, or any of the agencies, instrumentalities, or employees thereof. The General Assembly may provide for other remedies to ensure adequate enforcement of this section.

(3) *No ground for relief in criminal case.* The failure or inability of any person to provide a right or service provided under this section may not be used by a defendant in a criminal case, an inmate, or any other accused as a ground for relief in any trial, appeal, postconviction litigation, habeas corpus, civil action, or any similar criminal or civil proceeding. (1995, c. 438, s. 1.)

Editor's Note. — Session Laws 1995, c. 438, s. 2, provides that this proposed new section be submitted to the qualified voters of the State at the general election to be held in November 1996 under the laws then governing elections in the State, and that ballots, voting systems, or both may be used which shall be conducted, in accordance with Chapter 163 of the General Statutes.

Session Laws 1995, c. 438, s. 3, makes this section effective upon certification of approval by the State Board of elections to the Secretary of State.

ARTICLE II

LEGISLATIVE

Section 1. Legislative power.

CASE NOTES

The Power to Zone, etc. — Power to zone real property is vested in the General Assembly by this section. Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988).

Discretion to Determine Whether Commissioners Should Be Elected or Appointed. — Discretion provided by § 156-81(a) and (i) to the clerks of superior court to determine whether drainage commissioners should be elected or appointed is an unconstitutional delegation of legislative powers. Northampton County Drainage Dist. Number One v. Bailey, 326 N.C. 742, 392 S.E.2d 352 (1990).

Cited in State v. Gravette, 327 N.C. 114, 393 S.E.2d 856 (1990).

OPINIONS OF ATTORNEY GENERAL

Delay of Rules by Review Commission. — An act vesting in the Administrative Rules Review Commission (ARRC), a commission appointed by the General Assembly, the power to delay indefinitely the effective date of duly adopted agency rules which it deems in excess of statutory authority would likely be held to violate this section by vesting the ARRC with judicial powers reserved to the court and with supreme legislative powers reserved to the General Assembly. See opinion of Attorney General to Henson P. Barnes, President Pro Tempore, Senate, — N.C.A.G. — (February 25, 1991).

Sec. 2. Number of Senators.

Defeated Amendment Proposals. —

An amendment proposed by Session Laws 1985, c. 768, s. 11, and defeated at the primary election held on May 6, 1986, would have added "Except that there shall be no election in 1988, and elections shall be conducted in 1989 and biennially thereafter" at the end of the section.

COMMENTARY

Subdivisions (a) and (b) of this rule are identical to Fed. R. Evid. 614(a) and (b).

Subdivision (a) authorizes the court to call witnesses and is consistent with North Carolina practice. See *Brandis on North Carolina Evidence* § 37 (1982).

Subdivision (b) authorizes the court to examine witnesses, whether called by itself or by a party, and is consistent with North Carolina practice. *Id.*

It is anticipated that the court will exercise its authority to call or interrogate a witness only in extraordinary circumstances.

The court may not in calling or interrogating a witness do so in a manner as to suggest an opinion as to the weight of the evidence or the credibility of the witness in violation of G.S. 15A-1222 or G.S. 1A-1, Rule 51(a). *Id.*

Subdivision (c) differs from Fed. R. Evid. 614(c) by providing for an automatic objection to the calling or interrogation of witnesses by the court. Subdivision (c) is consistent with N. C. Civ. Pro. Rule 46(a)(3) which provides that no objections are necessary with respect to questions propounded to a witness by the court.

CASE NOTES

Clarification of Testimony. — The court may question a witness for the purpose of clarifying the witness' testimony and for promoting a better understanding of it. Such examination must be conducted with care and in a manner which avoids prejudice to either party. State v. Chandler, 100 N.C. App. 706, 398 S.E.2d 337 (1990).

The court properly uses its authority under subsection (b) of this rule when it questions witnesses in order to clarify ambiguous testimony and to enable the court to rule on the admissibility of certain evidence and exhibits. State v. Quick, 329 N.C. 1, 405 S.E.2d 179 (1991).

When Judge's Question Constitutes Expression of Opinion. — A trial judge's question, propounded for the purpose of clarification, is an expression of opinion only if a jury reasonably could infer that the question intimated an opinion as to a factual issue, the witness' credibility or the defendant's guilt. State v. Ramey, 318 N.C. 457, 349 S.E.2d 566 (1986).

Applied in State v. Hill, 105 N.C. App. 489, 414 S.E.2d 73 (1992).

Cited in State v. Bright, 320 N.C. 491, 358 S.E.2d 498 (1987).

Rule 615. Exclusion of witnesses.

At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party that is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of his cause, or (4) a person whose presence is determined by the court to be in the interest of justice. (1983, c. 701, s. 1.)

COMMENTARY

This rule is similar to Fed. R. Evid. 615 except that the word "shall" in the first sentence has been changed to "*may* order witnesses excluded," and the phrase "a person whose presence is determined by the court to be in the interest of justice" has been added as a fourth exception.

The use of "*may* order witnesses excluded" rather than "shall," as in the federal rule, is intended to preserve discretion in the trial judge, allowing him to take into account such things as the physical setting of the trial. However, the practice should be to sequester witnesses on request of either party unless

ARTICLE 43.

Uniform Act to Secure Attendance of Witnesses from without a State in Criminal Proceedings.

§ 15A-812. Summoning witness in this State to testify in another state.

CASE NOTES

Evidence Insufficient to Show Witness Not a Material Witness. — Where the trial court failed to make findings of fact or conclusions of law, there was insufficient competent evidence to support the trial court's order finding that individual sought to be subpoenaed from out-of-state was not a material witness and that enforcement of the subpoena duces tecum would cause an undue hardship to her. In re McKinny, — N.C. App. —, 462 S.E.2d 530 (1995).

§ 15A-813. Witness from another state summoned to testify in this State.

CASE NOTES

Cited in State v. Bowie, 340 N.C. 199, 456 S.E.2d 771 (1995).

ARTICLE 45.

Fair Treatment for Victims and Witnesses.

§ 15A-824. Definitions.

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

(1) "Crime" means a serious misdemeanor as determined in the sole discretion of the district attorney, any felony, or any act committed by a juvenile that, if committed by a competent adult, would constitute a felony.

(2) "Family member" means a spouse, child, parent or legal guardian, or the closest living relative.

(3) "Victim" means a person against whom there is probable cause to believe a crime has been committed.

(4) "Witness" means a person who has been or is expected to be summoned to testify for the prosecution in a criminal action concerning a felony, or who by reason of having relevant information is subject to being called or is likely to be called as a witness for the prosecution in such an action, whether or not an action or proceeding has been commenced. (1985 (Reg. Sess., 1986), c. 998, s. 1; 1989, c. 596, s. 1.)

§ 15A-825. Treatment due victims and witnesses.

To the extent reasonably possible and subject to available resources, the employees of law-enforcement agencies, the prosecutorial system, the judicial system, and the correctional system should make a reasonable effort to assure that each victim and witness within their jurisdiction:

(1) Is provided information regarding immediate medical assistance when needed and is not detained for an unreasonable length of time before having such assistance administered.

(2) Is provided information about available protection from harm and threats of harm arising out of cooperation with law-enforcement prosecution efforts, and receives such protection.

(2a) Is provided information that testimony as to one's home address is not relevant in every case, and that the victim or witness may request the district attorney to raise an objection should he/she deem it appropriate to this line of questioning in the case at hand.

(3) Has any stolen or other personal property expeditiously returned by law-enforcement agencies when it is no longer needed as evidence, and its return would not impede an investigation or prosecution of the case. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property whose ownership is disputed, should be photographed and returned to the owner within a reasonable period of time of being recovered by law-enforcement officials.

(4) Is provided appropriate employer intercession services to seek the employer's cooperation with the criminal justice system and minimize the employee's loss of pay and other benefits resulting from such cooperation whenever possible.

(5) Is provided, whenever practical, a secure waiting area during court proceedings that does not place the victim or witness in close proximity to defendants and families or friends of defendants.

(6) Is informed of the procedures to be followed to apply for and receive any appropriate witness fees or victim compensation.

(6a) Is informed of the right to be present throughout the entire trial of the defendant, subject to the right of the court to sequester witnesses.

(7) Is given the opportunity to be present during the final disposition of the case or is informed of the final disposition of the case, if he has requested to be present or be informed.

(8) Is notified, whenever possible, that a court proceeding to which he has been subpoenaed will not occur as scheduled.

(9) Has a victim impact statement prepared for consideration by the court.

(9a) Prior to trial, is provided information about plea bargaining procedures and is told that the district attorney may recommend a plea bargain to the court.

(10) Is informed that civil remedies may be available and that statutes of limitation apply in civil cases.

(11) Upon the victim's written request, is notified before a proceeding is held at which the release of the offender from custody is considered, if the crime for which the offender was placed in custody is a Class G or more serious felony.

(12) Upon the victim's written request, is notified if the offender escapes from custody or is released from custody, if the crime for which the offender was placed in custody is a Class G or more serious felony.

(13) Has family members of a homicide victim offered all the guarantees in this section, except those in subdivision (1).

Nothing in this section shall be construed to create a cause of action for failure to comply with its requirements. (1985 (Reg. Sess., 1986), c. 998, s. 1; 1989, c. 596, s. 2.)

Legal Periodicals. — For comment, "Repairing the Breach and Reconciling the Discordant: Mediation in the Criminal Justice System," see 72 N.C.L. Rev. 1479 (1994).

CASE NOTES

Use of Victim Impact Statements at Sentencing Hearings. — Victim impact statements may be used at sentencing hearings, except in capital cases. State v. Phillips, 325 N.C. 222, 381 S.E.2d 325 (1989).

Victim's or Witness' View of Evidence Has No Proper Place in Impact Statement. — What a victim or a witness thinks the evidence in a case shows or what the defendant's punishment should be is not an effect of crime, but advocacy, and such thoughts have no place in a proper impact statement, but holding that statements by victim's sisters on Victim Impact Statement forms as to the sentence which they believed defendant should receive were harmless under the circumstances. State v. Jackson, 91 N.C. App. 124, 370 S.E.2d 687 (1988).

Introduction of Victim Impact Statements Not Prejudicial. — Where court found no aggravating factor based on evidence adduced by victim impact statements introduced at defendant's sentencing hearing, defendant was shown the statements at the hearings and objected to their admission but did not move for a continuance to seek evidence in rebuttal or to issue subpoenas for the persons who made the statements, and the matters contained in the statements had been brought to the court's attention during the actual trial, defendant failed to show how he was prejudiced by introduction of the statements. State v. Phillips, 325 N.C. 222, 381 S.E.2d 325 (1989).

SUBCHAPTER IX. PRETRIAL PROCEDURE.

ARTICLE 48.

Discovery in the Superior Court.

§ 15A-901. Application of Article.

CASE NOTES

Court's Power to Compel Disclosure Regarding Post-Trial Motion. — The judiciary must and does have the inherent power to compel disclosure of relevant facts regarding a post-trial motion and may order such disclosure prior to a hearing on such motion. State v. Taylor, 327 N.C. 147, 393 S.E.2d 801 (1990).

Criminal Investigatory Reports. — Plaintiff was precluded by this Article from obtaining copies of recordings which were unquestionably gathered by a city police department in the course of a criminal investigation and were part of the State's file in a pending criminal action. Piedmont Publishing Co. v. City

The trial courts should exercise extreme caution in conducting in camera hearings and insure that all information received by the court relating to punishment is made known to the defendant and his counsel and that he be given the opportunity to explain or refute it. State v. Midyette, — N.C. App. —, 360 S.E.2d 507 (1987).

Opportunity for Defendant to Refute Victim's Statement. — A new sentencing hearing is required when a judge conducts an in camera victim input session and pronounces judgment without the defendant having an opportunity to refute any of the matters urged by the victim's statement. State v. Midyette, — N.C. App. —, 360 S.E.2d 507 (1987).

§ 15A-826. Victim and witness assistants.

Victim and witness assistants are responsible for coordinating efforts within the law-enforcement and judicial systems to assure that each victim and witness is treated in accordance with this Article. (1985 (Reg. Sess., 1986), c. 998, s. 1.)

§ 15A-827. Scope.

This Article does not create any civil or criminal liability on the part of the State of North Carolina or any criminal justice agency, employee, or volunteer. (1985 (Reg. Sess., 1986), c. 998, s. 1.)

§§ 15A-828 to 15A-849: Reserved for future codification purposes.

OFFICIAL COMMENTARY

The General Assembly deleted proposed provisions relating to depositions and reserved this Article for future codification. The deletion leaves present deposition law unchanged.

ARTICLE 46.

§§ 15A-850 to 15A-875: Reserved for future codification purposes.

ARTICLE 47.

§§ 15A-876 to 15A-900: Reserved for future codification purposes.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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H665-CSRO-008
PROPOSED COMMITTEE SUBSTITUTE FOR
HOUSE BILL 665
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.
23-JUN-97 22:21:23

Short Title: Crime Victims' Rights Act. (Public)

Sponsors:

Referred to:

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIME VICTIMS' RIGHTS ACT, TO ASSIST VICTIMS OF DOMESTIC VIOLENCE, TO ALLOW THE ENFORCEMENT OF ORDERS FOR RESTITUTION IN CRIMINAL CASES IN THE SAME MANNER AS CIVIL JUDGMENTS, TO CREATE AN EXCEPTION TO THE STATUTORY EXEMPTIONS FOR EXECUTION OF RESTITUTION JUDGMENTS, AND TO CHANGE THE ORDER OF PRIORITY FOR DISBURSEMENT OF FUNDS IN CRIMINAL CASES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 15A of the General Statutes is amended by adding a new Subchapter to read:

"SUBCHAPTER XVI. CRIME VICTIMS' RIGHTS.

"ARTICLE 101.

"Crime Victims' Rights Act.

"**§ 15A-2010. Definitions.**

(a) The following definitions apply in this Article:

(1) Accused. -- A person who has been arrested and charged with committing a crime covered by this Article.

(2) Law enforcement agency. -- Law enforcement agency includes the following:

a. Arresting law enforcement agency. -- The law enforcement agency that makes the arrest of an accused.
b. Custodial agency. -- The agency that has legal custody of an accused or defendant arising from a charge or conviction of a crime covered by this Article, including but not limited to local jails or detention facilities, regional jails or detention facilities, or the Department of Correction.
c. Investigating law enforcement agency. -- The law enforcement agency with primary responsibility for investigating the crime committed against the victim.

(3) Next of kin. -- The victim's spouse, children, parents, siblings, or grandparents. The term does not include the accused unless the charges are dismissed or the person is found not guilty.

(4) Victim. -- A person against whom there is probable cause to believe one of the following crimes was committed:
a. A Class A, B1, B2, C, D, or E felony.
b. A Class F felony if it is a violation of one of the following: G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.2; 14-43.3; 14-190.17; 14-190.19; 14-202.1; or 14-288.9.
c. A Class G felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; 20-138.5; or 20-141.4.
d. A Class H felony if it is a violation of one of the following: G.S. 14-32.3(a); 14-32.3(c); or 14-33.2.
e. A Class I felony if it is a violation of one of the following: G.S. 14-277.3; 14-32.3(b); 14-34.6(b); or 14-190.17A.
f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.

(b) If the victim is deceased, then the next of kin, in the order set forth in the definition contained in this section, is entitled to the victim's rights under this Article, except for the rights contained in G.S. 15A-2014. An individual entitled to

exercise the victim's rights as a member of the class of next of kin may designate anyone in the class to act on behalf of the class.

"§ 15A-2011. Responsibilities of law enforcement agency.

(a) Within 24 hours after identifying a victim covered by this Article, the investigating law enforcement agency shall provide the victim with the following information:

(1) The availability of medical services, if needed.

(2) The availability of crime victims' compensation funds under Chapter 15B of the General Statutes and the address and telephone number of the agency responsible for dispensing the funds.

(3) The address and telephone number of the district attorney's office that will be responsible for prosecuting the victim's case.

(4) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact if the victim has not been notified of an arrest in the victim's case within six months after the crime was reported to the law enforcement agency.

(5) Information about an accused's opportunity for pretrial release.

(6) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact to find out whether the accused has been released from custody.

(b) Within 24 hours after receiving notification from the arresting law enforcement agency that the accused has been arrested, the investigating law enforcement agency shall forward to the district attorney's office that will be responsible for prosecuting the case the victim's name, address, date of birth, social security number, race, sex, and telephone number, unless the victim refuses to disclose any or all of the information, in which case, the investigating law enforcement agency shall so inform the district attorney's office.

(c) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the investigating law enforcement agency, indicate whether the victim wishes to receive any further notices from the investigating law enforcement agency. If the victim elects to receive further notices, the victim shall be responsible for notifying the investigating law enforcement agency of any changes in the victim's name, address, and telephone number.

(d) Within 24 hours after the arrest of a person believed to have committed a crime covered by this Article, the arresting law enforcement agency shall inform the investigating law enforcement agency of the arrest. Within 24 hours of being notified of the arrest, the investigating law enforcement agency shall notify the victim of the arrest.

"§ 15A-2012. Responsibilities of the district attorney's office.

(a) Within 21 days after the arrest of the accused, but not less than 24 hours before the accused's first scheduled probable cause hearing, the district attorney's office shall provide to the victim a pamphlet or other written material that explains in a clear and concise manner the following:

(1) The victim's rights under this Article, including the right to confer with the attorney prosecuting the case about the disposition of the case and the right to provide a victim impact statement.

(2) The responsibilities of the district attorney's office under this Article.

(3) The victim's eligibility for compensation under the Crime Victims' Compensation Act and the deadlines by which the victim must file a claim for compensation.

(4) The steps generally taken by the district attorney's office when prosecuting a felony case.

(5) Suggestions on what the victim should do if threatened or intimidated by the accused or someone acting on the accused's behalf.

(6) The name and telephone number of a victim and witness assistant in the district attorney's office whom the victim may contact for further information.

(b) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the district attorney's office, indicate whether the victim wishes to receive notices of some, all or none of the trial and posttrial proceedings involving the accused. If the victim elects to receive notices, the victim shall be responsible for notifying the district attorney's office or any other department or agency that has a responsibility under this Article of any changes in the victim's address and telephone number. The victim may alter the request for notification, at any time, by notifying the district attorney's office and completing the form provided by the district attorney's office.

(c) The district attorney's office shall notify a victim of the date, time, and place of all trial court proceedings of the type which the victim has elected to receive notice. All notices required to be given by the district attorney's office shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the court proceeding.

(d) Whenever practical, the district attorney's office shall provide a secure waiting area during court proceedings that does not place the victim in close proximity to the defendant or the defendant's family.

(e) When the victim is to be called as a witness in a court proceeding, the court shall make every effort to permit the fullest attendance possible by the victim in the proceedings.

(f) Prior to the disposition of the case, the district attorney's office shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of the case, including the victim's views about dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.

(g) At the sentencing hearing, the prosecuting attorney shall submit to the court a copy of a form containing the identifying information set forth in G.S. 15A-2011(b) about any victim electing to receive further notices under this Article. The form shall be included with the final judgment and commitment transmitted to the Department of Correction or other agency receiving custody of the defendant, and shall be maintained by the custodial agency as a confidential file.

"§ 15A-2013. Evidence of victim impact.

(a) A victim has the right to offer evidence of the impact of the crime, which shall be considered by the court or jury, as the case may be, in sentencing the defendant. The evidence may include the following:

(1) A description of the nature and extent of any physical, psychological, or emotional injury suffered by the victim as a result of the offense committed by the defendant.

(2) An explanation of any economic or property loss suffered by the victim as a result of the offense committed by the defendant.

(3) A request for restitution and an indication of whether the victim has applied for or received compensation under the Crime Victims' Compensation Act.

(b) No victim shall be required to offer evidence of the impact of the crime. No inference or conclusion shall be drawn from a victim's decision not to offer evidence of the impact of the crime.

"§ 15A-2014. Restitution.

(a) A court shall, in addition to any penalty authorized by law, require that the defendant make restitution to a victim or the victim's estate for any injuries or damages arising out of the offense committed by the defendant. In determining the amount of restitution, the court shall consider the following:

(1) The cost of any medical or other professional services and devices or equipment required by the victim.

(2) The cost of physical therapy, occupational therapy, and rehabilitation required by the victim.

(3) Any income loss, after taxes, suffered by the victim.

(4) The cost of any psychological or medical treatment for the victim's next of kin.

(5) The cost of the victim's funeral and any related services.

(6) Any other injuries or damages arising out of the offence committed by the defendant.

(b) The court may require that the victim or the victim's estate provide evidence that documents the costs claimed by the victim or the victim's estate under this section. Any such documentation shall be shared with the defendant before the sentencing hearing.

(c) In determining the amount of restitution to be made, the court shall take into consideration the resources of the defendant, including all real and personal property owned by the defendant and the income derived from the property, the defendant's ability to earn, the defendant's obligation to support dependents, and any other matters that pertain to the defendant's ability to make restitution, but the court is not required to make findings of fact or conclusions of law on these matters. The amount of restitution must be limited to that supported by the record, and the court may order partial restitution when it appears that the damage or loss caused by the offense is greater than that which the defendant is able to pay.

(d) An order providing for restitution does not abridge the right of a victim or the victim's estate to bring a civil action against the defendant for damages arising out of the offense committed by the defendant.

(e) The court may order the defendant to make restitution to a person other than the victim, or to any organization, corporation, or association, including the Crime Victims' Compensation Fund that provided assistance to the victim following the commission of the offense by the defendant. Restitution shall be made to the victim or the victim's estate before it is made to any other person, organization, corporation, or association.

(f) The court may require the defendant to make full restitution no later than a certain date or, if the circumstances warrant, may allow the defendant to make restitution in installments over a specified time period.

(g) If the defendant is placed on probation or post-release supervision, any restitution ordered under this Article shall be a condition of probation or post-release supervision.

(h) If the court orders partial restitution, the court shall state on the record the reasons for such an order.

"**§ 15A-2015. Enforcement of order for restitution.**

(a) An order for restitution under this Article may be enforced in the same manner as a civil judgment, subject to the provisions of this section.

(b) The order for restitution under this Article shall be docketed and indexed in the county of the original conviction in the same manner as a civil judgment. The order for restitution may be collected in the same manner as a civil judgment unless the order to pay restitution is a condition of probation. If the order to pay restitution is a condition of probation, the judgment may only be collected in accordance with subsection (c) of this section.

(c) If the defendant is ordered to pay restitution as a condition of probation, the docketed judgment may not be collected until the date of notification to the clerk of superior court in the county of the original conviction that the judge presiding at the probation termination or revocation hearing has made a finding that restitution in a sum certain remains due and payable, that the defendant's probation has been terminated or revoked, and that the remaining balance of restitution owing may be collected by execution on the judgment. The clerk shall then enter upon the judgment docket the amount that remains due and payable on the judgment, together with amounts equal to the standard fees for docketing, copying, certifying, and mailing, as appropriate, and shall notify the victim by first-class mail at the victim's last known address that the judgment may be executed upon, together with the amount of the judgment. Until the clerk

receives notification of termination or revocation of probation and the amount that remains due and payable on the order of restitution, the clerk shall not be required to update the judgment docket to reflect partial payments on the order of restitution as a condition of probation.

(d) An appeal of the conviction upon which the order of restitution is based shall stay execution on the judgment until the appeal is completed. If the conviction is overturned, the judgment shall be removed from the judgment docket.

"**§ 15A-2016. Posttrial responsibilities.**

(a) Within 30 days after the final proceeding of the trial phase of the case, the district attorney's office shall notify the victim, in writing, of:

(1) The final disposition of the case.

(2) The crimes of which the defendant was convicted.

(3) The defendant's right to appeal, if any.

(b) Upon a defendant's giving notice of appeal to the Court of Appeals or the Supreme Court, the district attorney's office shall forward to the Attorney General's Office the victim's name, address, and telephone number. Upon receipt of this information, and thereafter as the circumstances require, the Attorney General's Office shall provide the victim with the following:

(1) A clear and concise explanation of how the appellate process works, including information about possible actions that may be taken by the appellate court.

(2) Notice of the date, time, and place of any appellate proceedings involving the defendant. Notice shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the proceedings.

(3) The final disposition of an appeal.

(c) If the defendant has been released on bail pending the outcome of the appeal, the agency that has custody of the defendant shall notify the investigating law enforcement agency, and the investigating law enforcement agency shall notify the victim that the defendant has been released.

(d) If the defendant's conviction is overturned, and the district attorney's office decides to retry the case or the case is remanded to superior court for a new trial, the victim shall be entitled to the same rights under this Article as if the first trial did not take place.

(e) The Administrative Office of the Courts shall maintain a repository relating to victims' identity, address, and other

appropriate information for use by agencies charged with responsibilities under this Article.

"§ 15A-2017. Responsibilities of agency with custody of defendant.

The Department of Correction shall notify the victim of:

(1) The projected date by which the defendant can be released from custody. The calculation of the release date shall be as exact as possible, including earned time and disciplinary credits if the sentence of imprisonment exceeds 90 days.

(2) An inmate's assignment to a minimum custody unit and the address of the unit. This notification shall include notice that the inmate's minimum custody status may lead to the inmate's participation in one or more community-based programs such as work release or supervised leaves in the community.

(3) The victim's right to submit any concerns to the agency with custody and the procedure for submitting such concerns.

(4) The defendant's escape from custody.

(5) The defendant's capture.

(6) The date the defendant is scheduled to be released from the facility. Whenever practical, notice shall be given 60 days before release.

(7) The defendant's death.

"§ 15A-2018. Responsibilities of Division of Adult Probation and Parole.

The Division of Adult Probation and Parole shall notify the victim of:

(1) The defendant's regular conditions of probation or post-release supervision, special or added conditions, supervision requirements, and any subsequent changes.

(2) The date of a hearing to determine whether the defendant's supervision should be revoked, continued with or without modifications, or terminated.

(3) The final disposition of any hearing referred to in subdivision (2) of this section.

(4) Any restitution modification.

(5) The defendant's movement into or out of any intermediate sanction as defined in G.S. 15A-1340.11(6).

(6) The defendant absconding supervision.
(7) The capture of a defendant described in subdivision (6) of this section.
(8) The date when the defendant is terminated or discharged.
(9) The defendant's death.

"§ 15A-2019. Notice of commuted sentence or pardon.

The Governor's Clemency Office shall notify a victim when it is considering commuting the defendant's sentence or pardoning the defendant. The Governor's Clemency Office shall also give notice that the victim has the right to present a written statement to be considered by the Office before the defendant's sentence is commuted, or the defendant is pardoned. The Governor's Clemency Office shall notify the victim of its decision. Notice shall be given in a manner that is reasonably calculated to allow for a timely response to the commutation or pardon decision.

"§ 15A-2020. No money damages.

This Article does not create a claim for damages against the State, a county, or a municipality, or any of its agencies, instrumentalities, officers, or employees.

"§ 15A-2021. No ground for relief.

The failure or inability of any person to provide a right or service under this Article may not be used by a defendant in a criminal case, by an inmate, or by any other accused as a ground for relief in any criminal or civil proceeding.

"§ 15A-2022. Incompetent victim's rights exercised.

When a victim is rendered mentally or physically incompetent or when the victim is a minor, the victim's rights under this Article, other than the rights provided by G.S. 15A-2014 and 15A-2015, may be exercised by the victim's next of kin.

"ARTICLE 102.

"Crime Victims' Rights Fund.

"§ 15A-2025. Crime Victims' Rights Fund established.

There is hereby established within the State treasury a special revenue fund to be known as the Crime Victims' Rights Fund (hereinafter Fund). The Fund shall be administered by the Department of Crime Control and Public Safety and shall be used to supplement the budgets of law enforcement agencies, district attorneys' offices, and other agencies given responsibilities under Article 101 of this Chapter that provide services to crime victims as required by the General Statutes. Revenue in the Fund at the end of each fiscal year shall not revert, and interest and other investment income earned by the Fund must be credited to the Fund.

"§ 15A-2026. Assessments.

(a) In every criminal case where the defendant is convicted of or enters a plea of guilty or nolo contendere to a felony, a Class 1 or 1A misdemeanor, or to an offense of impaired driving under Chapter 20 of the General Statutes, the court shall order the defendant to pay the sum of thirty dollars ($30.00) to be used to supplement the budgets of law enforcement agencies, district attorneys' offices, and other agencies that provide services to crime victims as required by the general statutes. Such sum shall be in addition to any costs, fines, or penalties imposed.

(b) If the court authorizes the payment of fines, costs, restitution, probation oversight fees, or any other obligations of the defendant to be paid in installments, the assessment imposed under this section shall be collected from the first monies paid by the defendant. The clerk of superior court shall transmit daily all monies collected pursuant to this Article to the Department of Crime Control and Public Safety for deposit in the Fund.

"§ 15A-2027. Application for supplemental funds.

(a) A law enforcement agency, district attorney's office, or other agency that has a responsibility to provide services to crime victims as required by the general statutes may apply annually to the Department of Crime Control and Public Safety for supplemental funds. Such funds shall be used to supplement local, State, or federal funds that are available to agencies and district attorneys' offices to provide services to crime victims.

(b) The Department of Crime Control and Public Safety shall establish procedures for screening, recording, and processing applications for supplemental funds. The Department shall prepare and transmit annually to the General Assembly a report of the Department's activities."

Section 2. The provisions of Article 45 of Subchapter VIII of Chapter 15A of the General Statutes are supplemental to the provisions of Article 101 of Subchapter XVI of Chapter 15A of the General Statutes as enacted in Section 1 of this act. If there is any conflict between the provisions of Article 45 and Article 101, the provisions of Article 101 shall control.

Section 2.1. G.S. 1C-1601(e) reads as rewritten:

"(e) Exceptions. -- The exemptions provided in this Article are inapplicable to claims

(1) Of the United States or its agencies as provided by federal law;

(2) Of the State or its subdivisions for taxes, appearance bonds or fiduciary bonds;
(3) Of lien by a laborer for work done and performed for the person claiming the exemption, but only as to the specific property affected;
(4) Of lien by a mechanic for work done on the premises, but only as to the specific property affected;
(5) For payment of obligations contracted for the purchase of the specific real property affected;
(6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 6;
(7) For contractual security interests in the specific property affected; provided, that the exemptions shall apply to the debtor's household goods notwithstanding any contract for a nonpossessory, nonpurchase money security interest in any such goods;
(8) For statutory liens, on the specific property affected, other than judicial liens;
(9) For child support, alimony or distributive award order pursuant to Chapter 50 of the General ~~Statutes.~~ Statutes;
(10) For criminal restitution orders docketed as civil judgments pursuant to G.S. 15A-2015."

Section 2.2. G.S. 7A-304(d) reads as rewritten:

"(d) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

(1) Sums in restitution prorated among the persons entitled thereto;
~~(1)~~(2) Costs due the county;
~~(2)~~(3) Costs due the city;
~~(3)~~(4) Fines to the county school fund;
~~(4) Sums in restitution prorated among the persons entitled thereto;~~
(5) Costs due the State;
(6) Attorney's fees.

Sums in restitution received by the clerk of superior court shall be disbursed when:

(1) Complete restitution has been received; or

(2) When, in the opinion of the clerk, additional payments in restitution will not be collected; or

(3) Upon the request of the person or persons entitled thereto; and

(4) In any event, at least once each calendar year."

Section 2.3. Article 45 of Subchapter VIII of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-828 Assistance to victims of domestic violence.

In the allocation of resources to persons the district attorney determines are victims of serious misdemeanors, the district attorney shall, to the extent possible, provide the services listed in G.S. 15A-825 to victims of domestic violence misdemeanors that could involve the infliction of serious bodily injury."

Section 2.4. The North Carolina Conference of District Attorneys will coordinate a study of the incidence of domestic violence and identify the felonies and misdemeanors that may be categorized as domestic violence. The study will include participation by the seven prosecutorial districts that are currently receiving funds from the Violence Against Women Act, administered through the Governor's Crime Commission. The study will also include participation of other prosecutorial districts which volunteer their participation in providing necessary information. The Conference will recommend a statutory definition of domestic violence crimes that will be sufficiently clear so that it can be used by law enforcement officers and prosecutors to determine eligibility of victims of these crimes for victims' assistance services. The Conference shall also recommend whether any crimes that are currently misdemeanors should be reclassified as felonies when committed as crimes of domestic violence. The Conference will report the findings of its study and its recommendations to the 1998 Session of the 1997 General Assembly on or before its convening date."

Section 2.5. The Post-Release Supervision and Parole Commission shall compile a report of the notification services it has provided under of G.S. 15A-825(11), and pursuant to a letter from Governor Hunt to the Chair of the North Carolina Parole Commission dated October 13, 1993. The report shall include information on notification services provided through December 31, 1997. The report shall be delivered to the 1998 Session of the 1997 General Assembly on or before its convening date.

Section 3. Sections 2.4 and 2.5 of this act are effective when they become law. Article 102 of Chapter 15A of the General Statutes, as enacted by this act, becomes effective August 1, 1997 and applies to offenses committed on or after that date. The remainder of this act becomes effective January 1, 1998, and applies to offenses committed on or after that date.

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June 24, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose & Karen Cochrane-Brown, Committee Counsel**

RE: **Subcommittee's Proposed Committee Substitute for House Bill 665; Crime Victims' Rights Act and Fund**

The proposed committee substitute for House Bill 665 creates Articles 101 and 102 of Chapter 15A, the Crime Victims' Rights Act and the Crime Victims' Rights Fund. The bill implements the provisions of Section 37 of Article I of the North Carolina Constitution, which provides for basic rights for victims of crime. The constitutional amendment was passed by the 1995 General Assembly and approved by the voters.

Section 1 of the bill establishes Articles 101 and 102 of Chapter 15A and adds the following sections to the General Statutes:

G.S. 15A-2010, which provides definitions to be used in the Crime Victims' Rights Act. The description of the term "victim" sets out the crimes which are applicable under this Article. These include Class A, B1, B2, C, D, and E felonies. The covered crimes also include certain Class F, G, H, and I felonies, most of which involve acts where physical harm to a victim is involved. Some, however, involve crimes against property, such as second degree burglary and

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second degree arson, and still others involve crimes of exploitation, such as second and third degree sexual exploitation of minors. **The Subcommittee deleted felonies and misdemeanors fitting the definition of domestic violence, as well as certain specific crimes often found in domestic violence situations. (A provision allowing district attorneys to emphasize services to victims of domestic violence was added elsewhere in the bill.) The Subcommittee added an attempt of any covered felony if the attempt is punishable as a felony. The Subcommittee also changed the definition of law enforcement agency by breaking it down as arresting, custodial, and investigating agencies.**

G.S. 15A-2011 sets out the responsibilities of law enforcement agencies. Within 24 hours after identifying a victim covered by this Article, the investigating law enforcement agency must provide the victim with information concerning availability of medical services, availability of crime victims' compensation funds under Chapter 15B of the General Statutes, the address and telephone number of the district attorney's office responsible for prosecution, the name and telephone number of a law enforcement agency employee whom the victim may contact if the victim is not notified of an arrest in the case within 6 months after report of the crime, information about an accused's opportunity for pretrial release, and the name and telephone number of a law enforcement agency employee whom the victim may contact to find out whether the accused has been released. Within 24 hours after receiving notification from the arresting agency of the arrest, the investigating agency must forward to the district attorney specific information to help the district attorney identify and contact the victim. If the victim refuses to disclose any or all of the information, the investigating agency will inform the district attorney. The arresting law enforcement agency must inform the investigating law enforcement agency of the arrest within 24 hours. The investigating agency must inform the victim of the arrest within

24 hours of receiving information from the arresting agency. **The Subcommittee rewrote parts of this section. The information given to the victim by the law enforcement agency was previously broken into two separate delivery periods. Now it will all be delivered to the victim within 24 hours after the victim is identified. A specific requirement that the victim be notified of the arrest has been added. A provision has also been added requiring the victim to indicate to the investigating law enforcement agency whether or not the victim wishes to receive further notices from the investigating agency.**

G.S. 15A-2012 sets out the responsibilities of the district attorney's office. Within 21 days after arrest of an accused, but not less than 24 hours before the first scheduled probable cause hearing, the district attorney must provide the victim with a pamphlet or other written material explaining the victim's rights under this Article, including the right to confer with the prosecutor, the responsibilities of the district attorney's office, the victim's eligibility for compensation under the Crime Victims' Compensation Act and the deadline to file a claim, steps generally taken in the prosecution of a felony case, suggestions on what the victim should do if threatened or intimidated by an accused, and the name and telephone number of a victim and witness assistant in the district attorney's office. The district attorney will provide a form on which the victim can indicate whether he or she wishes further notice of some or all of the trial proceedings. The victim must be notified of the date, time and location of these proceedings and, where practical, secure waiting areas must be provided for the victim during court proceedings. When a victim is to be called as a witness in a court proceeding, the court is required to make every effort to permit the fullest attendance possible by the victim in the proceeding. This last provision may impact **Rule 615 of the North Carolina Rules of Evidence** which grants discretion to the trial court on the question of sequestration of witnesses. The district attorney, prior to disposition of

the case, must afford the victim the opportunity to consult with the district attorney and make known the victim's views on dismissal, plea bargaining, sentencing, and pretrial diversion programs. **The Subcommittee added provisions allowing the victim to elect the trial and post-trial proceedings of which he wishes to be informed. A new subsection (g) was added requiring the prosecuting attorney to submit a copy of the victim identification information to the court at the sentencing hearing so that it can accompany the commitment papers to the Department of Correction or other custodial agency. This information will be confidential. The requirement that the prosecutor explain the responsibilities of law enforcement was removed because of the information provided earlier by law enforcement.**

G.S. 15A-2013 grants victims the right to offer victim impact evidence, to be considered by the court or jury, as applicable, when the sentencing of the defendant is considered. The evidence may include a description of the harm and losses suffered by the victim, a request for restitution, and whether compensation has been applied for or received under the Crime Victims' Compensation Act. The victim impact evidence is not required and no inference may be drawn from a victim's decision not to offer it. **This section originally referred to a victim impact statement, but this was changed by the Subcommittee to refer to evidence. The provision that the district attorney's office notify the victim of the victim's rights under this section was moved to an earlier point in the proceedings and is now found in G.S. 15A-2012(a)(1).**

G. S. 15A-2014 directs the court to require a defendant to make restitution to a victim or victim's estate for injuries or damages to the victim. The court shall consider medical or other professional services, various types of rehabilitation therapy, loss of income, psychological or medical treatment for a victim's next of kin, the cost of funeral and related expenses, and other damages to the victim. **The reference to other damages was added by the Subcommittee.** In

reaching a decision on the amount of restitution, the court must take into consideration the resources of the defendant and the defendant's earning ability, together with the defendant's support obligations, and any other matters pertaining to the defendants ability to make restitution. The court is not required to make findings of fact or conclusions of law with regard to these considerations, but the amount of restitution is limited to that which is supported by the record. The court may order partial restitution if that is all that is within the ability of the defendant to pay. Restitution does not limit the victim's rights with regard to bringing a civil action against the defendant. **The provision that any amount already paid by the defendant under a restitution order must be credited against any civil judgment was removed by the Subcommittee.** The court may order that restitution be paid to a person other than the victim if that third party provided assistance to the victim following commission of the offense. However, restitution must be made to the victim or his estate before it is made to any other party. The court is given flexibility with regard to the time when restitution is to be paid, but if a defendant is placed on probation or post-release supervision, restitution must be a condition of probation or post-release supervision.. If restitution is partial, the court must state the reasons on the record. **The Subcommittee removed language stating that the court could order no restitution, leaving the option for less than full restitution.**

G.S. 15A-2015 was substantially rewritten by the Subcommittee. Previously, the provision provided that an order of restitution be docketed with the Clerk of Superior Court and could be collected like any other civil judgment. The new provision contains the same language, but goes on to specify that an order for restitution is to be docketed and indexed in the county of the original conviction. It can then be collected like any other civil judgment unless it is a condition of probation. If the order for restitution is a condition of

probation, the judgment can only be executed upon when the court terminates or revokes probation and notifies the clerk. This notification includes the amount remaining due on the order of restitution. Until the clerk receives this notification, the clerk is not required to note partial payments of the order of restitution as a condition of probation on the judgment docket. This section also provides that if a conviction is appealed, execution on the judgment based upon the order of restitution is stayed until the appeal is completed. If the conviction is overturned, the judgment is removed from the judgment docket.

G.S. 15A-2016 provides that within 30 days after completion of the trial phase of the case, the district attorney must notify the victim of final disposition of the case, crimes of which the defendant was convicted, and the defendant's right to appeal. If the defendant appeals, the district attorney must forward the victim information to the Attorney General who must provide the victim with information on the appellate process, notification of appellate proceedings, and final disposition of appeal. If a defendant is released on bail pending appeal, the victim must be notified. If the conviction is overturned and there is a retrial, the victim is entitled to the same rights he had during the first trial. The Administrative Office of the Courts is required to maintain a repository relating to victims for use by agencies charged with responsibilities under the provisions of this Article.

G.S. 15A-2017 sets out the responsibilities of the Department of Correction after conviction. The agency must notify the victim of the projected date of release from custody. In addition, the victim must be notified of the defendant's transfer to a minimum security facility and the location of the facility, and that this could lead to the defendant's participation in community based programs such as work release or supervised leave. The victim must be notified if the defendant escapes and if the defendant is recaptured. The victim must be notified prior to the

defendant's release from an incarceration facility, and the victim must be notified of the defendant's death. **The Subcommittee removed references to parole proceedings as this will not apply to those prisoners covered by the bill.**

G.S. 15A-2018 deals with responsibilities of the Division of Adult Probation and Parole. The victim must be notified of the defendant's supervision requirements, hearings on revocation or other alterations of the defendant's supervision and the disposition of such hearings, any restitution modifications, movement of the defendant into or out various intermediate sanctions, escape from supervision and subsequent capture, the date of the defendant's termination or discharge from supervision, and the defendant's death. **The Subcommittee made stylistic and clarifying changes.**

G.S. 15A-2019 deals with commutation and pardon proceedings by the Governor's Clemency Office. The Office must notify the victim and give the victim the right to present a written statement for consideration by the Office. The victim must also be given notification of the decision and an opportunity to respond to that decision.

G.S. 15A-2020 provides that this legislation does not create a claim for damages against the State, any local government, any agency, or any employee of those entities. (Similar to constitutional provision.)

G.S. 15A-2021 provides that failure or inability of a person to provide a right or service under this Article may not be used by any defendant or inmate as grounds for relief in any criminal or civil proceedings. (Similar to constitutional provision.)

G.S. 15A-2022 provides for the next of kin of a victim who is mentally or physically incompetent, or who is a minor, to receive the victim's rights under this Article, except the rights

to restitution. Restitution will require a parent or guardian. **The Subcommittee rewrote this section to eliminate a formal guardianship except where restitution is involved.**

G.S. 15A-2025 is the first section of Article 102, the Crime Victims' Rights Fund. This provision creates a fund to be administered by the Department of Crime Control and Public Safety and to be used to supplement the budgets of law enforcement agencies, district attorneys' offices, and other agencies that provide victim services. This is a nonreverting fund.

G.S. 15A-2026 provides that in criminal cases where a defendant is convicted of or pleads guilty to a felony or a Class 1 or 1A misdemeanor or to an offense of impaired driving, the defendant is required to pay a $30 fee to be used to supplement the law enforcement and district attorney budgets for services to crime victims. Where the court authorizes a defendant is to make payments of fines, costs, and other fees in installments, the $30 fee is collected in the first installments. **The Subcommittee reduced the fee from $100 to $30. The Subcommittee discussed the constitutionality of this provision, as it relates to Section 7 of Article IX of the North Carolina Constitution, and requested the Committee Staff to seek an opinion from the Attorney General.**

G.S. 15A-2027 provides that law enforcement agencies and district attorneys' offices may apply on an annual basis to the Department of Crime Control and Public Safety for funds to provide services to crime victims. The Department will establish procedures for dealing with these applications and must annually report to the General Assembly concerning its activities in that area.

Section 2 of the Subcommittee's proposed committee substitute eliminates the repeal of Article 45 of Chapter 15A, the current statutes dealing with treatment of victims and witnesses. Instead, Section 2 now provides that the provisions of this bill will be

supplemental to Article 45, with any conflict between the provisions of Article 45 and new Article 101 being resolved in favor of Article 101.

Section 2.1 of the bill was added by the Subcommittee. It amends G.S. 1C-1601(e) which deals with the items that are not exempt from judgment execution. The amendment adds orders for criminal restitution docketed as civil judgments under Article 101.

Section 2.2 of the Subcommittee's committee substitute amends G.S.. 7A-304(d). The amendment changes the order in which funds received in criminal cases are disbursed. Presently sums received in restitution are fourth in line. The amendment moves them to first in line.

Section 2.3 of the Subcommittee's committee substitute amends Article 45 of Chapter 15A to authorize the district attorney to provide victim services to the extent possible to victims of domestic violence misdemeanors involving serious bodily injury.

Section 2.4 of the Subcommittee's committee substitute requires a study by the North Carolina Conference of District Attorneys to identify the extent of domestic violence crimes, to recommend a definition of domestic violence crimes, and to recommend whether any domestic violence misdemeanors should be raised to felonies. The report will be to the 1998 Session.

Section 2.5 of the Subcommittee's committee substitute requires a report from the Post-Release Supervision and Parole Commission on the notices to victims it provides under G.S. 15A-825(11) and pursuant to Governor Hunt's letter to the Chair of the North Carolina Parole Commission, dated October 13, 1993. The report is to the 1998 Session.

Section 3 of the bill contains the effective dates. The two sections requiring reports are effective when they become law. The Subcommittee's committee substitute makes the

provisions of Article 102 effective August 1, 1997. The remainder of the act is effective January 1, 1998 as in the original proposed committee substitute.

H665-SMRL-002

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 665
Proposed Committee Substitute H665-PCS6286

Short Title: Crime Victims' Rights Act. (Public)

Sponsors:

Referred to:

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIME VICTIMS' RIGHTS ACT, TO ASSIST VICTIMS OF DOMESTIC VIOLENCE, TO ALLOW THE ENFORCEMENT OF ORDERS FOR RESTITUTION IN CRIMINAL CASES IN THE SAME MANNER AS CIVIL JUDGMENTS, TO CREATE AN EXCEPTION TO THE STATUTORY EXEMPTIONS FOR EXECUTION OF RESTITUTION JUDGMENTS, AND TO CHANGE THE ORDER OF PRIORITY FOR DISBURSEMENT OF FUNDS IN CRIMINAL CASES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 15A of the General Statutes is amended by adding a new Subchapter to read:

"SUBCHAPTER XVI. CRIME VICTIMS' RIGHTS.

"ARTICLE 101.

"Crime Victims' Rights Act.

"**§ 15A-2010. Definitions.**

(a) The following definitions apply in this Article:

(1) Accused. -- A person who has been arrested and charged with committing a crime covered by this Article.

(2) Law enforcement agency. -- Law enforcement agency includes the following:

a. Arresting law enforcement agency. -- The law enforcement agency that makes the arrest of an accused.

b. Custodial agency. -- The agency that has legal custody of an accused or defendant arising from a charge or conviction of a crime covered by this Article including, but not limited to, local jails or detention facilities, regional jails or detention facilities, or the Department of Correction.

c. Investigating law enforcement agency. -- The law enforcement agency with primary responsibility for investigating the crime committed against the victim.

(3) Next of kin. -- The victim's spouse, children, parents, siblings, or grandparents. The term does not include the accused unless the charges are dismissed or the person is found not guilty.

(4) Victim. -- A person against whom there is probable cause to believe one of the following crimes was committed:

a. A Class A, B1, B2, C, D, or E felony.

b. A Class F felony if it is a violation of one of the following: G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.2; 14-43.3; 14-190.17; 14-190.19; 14-202.1; or 14-288.9.

c. A Class G felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; 20-138.5; or 20-141.4.

d. A Class H felony if it is a violation of one of the following: G.S. 14-32.3(a); 14-32.3(c); or 14-33.2.

e. A Class I felony if it is a violation of one of the following: G.S. 14-277.3; 14-32.3(b); 14-34.6(b); or 14-190.17A.

f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.

(b) If the victim is deceased, then the next of kin, in the order set forth in the definition contained in this section, is entitled to the victim's rights under this Article, except for the rights contained in G.S. 15A-2014. An individual entitled to exercise the victim's rights as a member of the class of next of kin may designate anyone in the class to act on behalf of the class.

"**§ 15A-2011. Responsibilities of law enforcement agency.**

(a) Within 24 hours after identifying a victim covered by this Article, the investigating law enforcement agency shall provide the victim with the following information:

(1) The availability of medical services, if needed.

(2) The availability of crime victims' compensation funds under Chapter 15B of the General Statutes and the address and telephone number of the agency responsible for dispensing the funds.

(3) The address and telephone number of the district attorney's office that will be responsible for prosecuting the victim's case.

(4) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact if the

victim has not been notified of an arrest in the victim's case within six months after the crime was reported to the law enforcement agency.

(5) Information about an accused's opportunity for pretrial release.

(6) The name and telephone number of an investigating law enforcement agency employee whom the victim may contact to find out whether the accused has been released from custody.

(b) Within 24 hours after receiving notification from the arresting law enforcement agency that the accused has been arrested, the investigating law enforcement agency shall forward to the district attorney's office that will be responsible for prosecuting the case the victim's name, address, date of birth, social security number, race, sex, and telephone number, unless the victim refuses to disclose any or all of the information, in which case, the investigating law enforcement agency shall so inform the district attorney's office.

(c) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the investigating law enforcement agency, indicate whether the victim wishes to receive any further notices from the investigating law enforcement agency. If the victim elects to receive further notices, the victim shall be responsible for notifying the investigating law enforcement agency of any changes in the victim's name, address, and telephone number.

(d) Within 24 hours after the arrest of a person believed to have committed a crime covered by this Article, the arresting law enforcement agency shall inform the investigating law enforcement agency of the arrest. Within 24 hours of being notified of the arrest, the investigating law enforcement agency shall notify the victim of the arrest.

"§ 15A-2012. Responsibilities of the district attorney's office.

(a) Within 21 days after the arrest of the accused, but not less than 24 hours before the accused's first scheduled probable cause hearing, the district attorney's office shall provide to the victim a pamphlet or other written material that explains in a clear and concise manner the following:

(1) The victim's rights under this Article, including the right to confer with the attorney prosecuting the case about the disposition of the case and the right to provide a victim impact statement.

(2) The responsibilities of the district attorney's office under this Article.

(3) The victim's eligibility for compensation under the Crime Victims' Compensation Act and the deadlines by which the victim must file a claim for compensation.

(4) The steps generally taken by the district attorney's office when prosecuting a felony case.

(5) Suggestions on what the victim should do if threatened or intimidated by the accused or someone acting on the accused's behalf.

(6) The name and telephone number of a victim and witness assistant in the district attorney's office whom the victim may contact for further information.

(b) Upon receiving the information in subsection (a) of this section, the victim shall, on a form provided by the district attorney's office, indicate whether the victim wishes to receive notices of some, all, or none of the trial and posttrial proceedings involving the accused. If the victim elects to receive notices, the victim shall be responsible for notifying the district attorney's office or any other department or agency that has a responsibility under this Article of any changes in the victim's address and telephone number. The victim may alter the request for notification at any time by notifying the district attorney's office and completing the form provided by the district attorney's office.

(c) The district attorney's office shall notify a victim of the date, time, and place of all trial court proceedings of the type which the victim has elected to receive notice. All notices required to be given by the district attorney's office shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the court proceeding.

(d) Whenever practical, the district attorney's office shall provide a secure waiting area during court proceedings that does not place the victim in close proximity to the defendant or the defendant's family.

(e) When the victim is to be called as a witness in a court proceeding, the court shall make every effort to permit the fullest attendance possible by the victim in the proceedings.

(f) Prior to the disposition of the case, the district attorney's office shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of the case, including the victim's views about dismissal, plea or negotiations, sentencing, and any pretrial diversion programs.

(g) At the sentencing hearing, the prosecuting attorney shall submit to the court a copy of a form containing the identifying information set forth in G.S. 15A-2011(b) about any victim electing to receive further notices under this Article. The form shall be included with the final judgment and commitment transmitted to the Department of Correction or other agency receiving custody of the defendant and shall be maintained by the custodial agency as a confidential file.

"§ 15A-2013. Evidence of victim impact.

(a) A victim has the right to offer evidence of the impact of the crime, which shall be considered by the court or jury, as the case may be, in sentencing the defendant. The evidence may include the following:

(1) A description of the nature and extent of any physical, psychological, or emotional injury suffered by the victim as a result of the offense committed by the defendant.

(2) An explanation of any economic or property loss suffered by the victim as a result of the offense committed by the defendant.

(3) A request for restitution and an indication of whether the victim has applied for or received compensation under the Crime Victims' Compensation Act.

(b) No victim shall be required to offer evidence of the impact of the crime. No inference or conclusion shall be drawn from a victim's decision not to offer evidence of the impact of the crime.

"**§ 15A-2014. Restitution.**

(a) A court shall, in addition to any penalty authorized by law, require that the defendant make restitution to a victim or the victim's estate for any injuries or damages arising out of the offense committed by the defendant. In determining the amount of restitution, the court shall consider the following:

(1) The cost of any medical or other professional services and devices or equipment required by the victim.

(2) The cost of physical therapy, occupational therapy, and rehabilitation required by the victim.

(3) Any income loss, after taxes, suffered by the victim.

(4) The cost of any psychological or medical treatment for the victim's next of kin.

(5) The cost of the victim's funeral and any related services.

(6) Any other injuries or damages arising out of the offense committed by the defendant.

(b) The court may require that the victim or the victim's estate provide evidence that documents the costs claimed by the victim or the victim's estate under this section. Any such documentation shall be shared with the defendant before the sentencing hearing.

(c) In determining the amount of restitution to be made, the court shall take into consideration the resources of the defendant including all real and personal property owned by the defendant and the income derived from the property, the defendant's ability to earn, the defendant's obligation to support dependents, and any other matters that pertain to the defendant's ability to make restitution, but the court is not required to make findings of fact or conclusions of law on these matters. The amount of restitution must be limited to that supported by the record, and the court may order partial restitution when it appears that the damage or loss caused by the offense is greater than that which the defendant is able to pay.

(d) An order providing for restitution does not abridge the right of a victim or the victim's estate to bring a civil action against the defendant for damages arising out of the offense committed by the defendant.

(e) The court may order the defendant to make restitution to a person other than the victim, or to any organization, corporation, or association, including the Crime Victims' Compensation Fund that provided assistance to the victim following the commission of the offense by the defendant. Restitution shall be made to the victim or the victim's estate before it is made to any other person, organization, corporation, or association.

(f) The court may require the defendant to make full restitution no later than a certain date or, if the circumstances warrant, may allow the defendant to make restitution in installments over a specified time period.

(g) If the defendant is placed on probation or post-release supervision, any restitution ordered under this Article shall be a condition of probation or post-release supervision.

(h) If the court orders partial restitution, the court shall state on the record the reasons for such an order.

"**§ 15A-2015. Enforcement of order for restitution.**

(a) An order for restitution under this Article may be enforced in the same manner as a civil judgment, subject to the provisions of this section.

(b) The order for restitution under this Article shall be docketed and indexed in the county of the original conviction in the same manner as a civil judgment. The order for restitution may be collected in the same manner as a civil judgment unless the order to pay restitution is a condition of probation. If the order to pay restitution is a condition of probation, the judgment may only be collected in accordance with subsection (c) of this section.

(c) If the defendant is ordered to pay restitution as a condition of probation, the docketed judgment may not be collected until the date of notification to the clerk of superior court in the county of the original conviction that the judge presiding at the probation termination or revocation hearing has made a finding that restitution in a sum certain remains due and payable, that the defendant's probation has been terminated or revoked, and that the remaining balance of restitution owing may be collected by execution on the judgment. The clerk shall then enter upon the judgment docket the amount that remains due and payable on the judgment, together with amounts equal to the standard fees for docketing, copying, certifying, and mailing, as appropriate, and shall notify the victim by first-class mail at the victim's last known address that the judgment may be executed upon, together with the amount of the judgment. Until the clerk receives notification of termination or revocation of probation and the amount that remains due and payable on the order of restitution, the clerk shall not be required to update the judgment docket to reflect partial payments on the order of restitution as a condition of probation.

(d) An appeal of the conviction upon which the order of restitution is based shall stay execution on the judgment until the appeal is completed. If the conviction is overturned, the judgment shall be removed from the judgment docket.

"**§ 15A-2016. Posttrial responsibilities.**

(a) Within 30 days after the final proceeding of the trial phase of the case, the district attorney's office shall notify the victim, in writing, of:

(1) The final disposition of the case.

(2) The crimes of which the defendant was convicted.

(3) The defendant's right to appeal, if any.

(b) Upon a defendant's giving notice of appeal to the Court of Appeals or the Supreme Court, the district attorney's office shall forward to the Attorney General's Office the victim's name, address, and telephone number. Upon receipt of this

information, and thereafter as the circumstances require, the Attorney General's Office shall provide the victim with the following:

(1) A clear and concise explanation of how the appellate process works, including information about possible actions that may be taken by the appellate court.

(2) Notice of the date, time, and place of any appellate proceedings involving the defendant. Notice shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the proceedings.

(3) The final disposition of an appeal.

(c) If the defendant has been released on bail pending the outcome of the appeal, the agency that has custody of the defendant shall notify the investigating law enforcement agency, and the investigating law enforcement agency shall notify the victim that the defendant has been released.

(d) If the defendant's conviction is overturned, and the district attorney's office decides to retry the case or the case is remanded to superior court for a new trial, the victim shall be entitled to the same rights under this Article as if the first trial did not take place.

(e) The Administrative Office of the Courts shall maintain a repository relating to victims' identities, addresses, and other appropriate information for use by agencies charged with responsibilities under this Article.

"§ 15A-2017. Responsibilities of agency with custody of defendant.

The Department of Correction shall notify the victim of:

(1) The projected date by which the defendant can be released from custody. The calculation of the release date shall be as exact as possible, including earned time and disciplinary credits if the sentence of imprisonment exceeds 90 days.

(2) An inmate's assignment to a minimum custody unit and the address of the unit. This notification shall include notice that the inmate's minimum custody status may lead to the inmate's participation in one or more community-based programs such as work release or supervised leaves in the community.

(3) The victim's right to submit any concerns to the agency with custody and the procedure for submitting such concerns.

(4) The defendant's escape from custody.

(5) The defendant's capture.

(6) The date the defendant is scheduled to be released from the facility. Whenever practical, notice shall be given 60 days before release.

(7) The defendant's death.

"§ 15A-2018. Responsibilities of Division of Adult Probation and Parole.

The Division of Adult Probation and Parole shall notify the victim of:

(1) The defendant's regular conditions of probation or post-release supervision, special or added conditions, supervision requirements, and any subsequent changes.
(2) The date of a hearing to determine whether the defendant's supervision should be revoked, continued with or without modifications, or terminated.
(3) The final disposition of any hearing referred to in subdivision (2) of this section.
(4) Any restitution modification.
(5) The defendant's movement into or out of any intermediate sanction as defined in G.S. 15A-1340.11(6).
(6) The defendant absconding supervision.
(7) The capture of a defendant described in subdivision (6) of this section.
(8) The date when the defendant is terminated or discharged.
(9) The defendant's death.

"§ 15A-2019. Notice of commuted sentence or pardon.

The Governor's Clemency Office shall notify a victim when it is considering commuting the defendant's sentence or pardoning the defendant. The Governor's Clemency Office shall also give notice that the victim has the right to present a written statement to be considered by the Office before the defendant's sentence is commuted or the defendant is pardoned. The Governor's Clemency Office shall notify the victim of its decision. Notice shall be given in a manner that is reasonably calculated to allow for a timely response to the commutation or pardon decision.

"§ 15A-2020. No money damages.

This Article does not create a claim for damages against the State, a county, or a municipality, or any of its agencies, instrumentalities, officers, or employees.

"§ 15A-2021. No ground for relief.

The failure or inability of any person to provide a right or service under this Article may not be used by a defendant in a criminal case, by an inmate, or by any other accused as a ground for relief in any criminal or civil proceeding.

"§ 15A-2022. Incompetent victim's rights exercised.

When a victim is rendered mentally or physically incompetent or when the victim is a minor, the victim's rights under this Article, other than the rights provided by G.S. 15A-2014 and G.S. 15A-2015, may be exercised by the victim's next of kin.

"ARTICLE 102.

"Crime Victims' Rights Fund.

"§ 15A-2025. Crime Victims' Rights Fund established.

There is hereby established within the State treasury a special revenue fund to be known as the Crime Victims' Rights Fund (hereinafter Fund). The Fund shall be administered by the Department of Crime Control and Public Safety and shall be used to supplement the budgets of law enforcement agencies, district attorneys' offices, and other agencies given responsibilities under Article 101 of this Chapter that provide services to crime victims as required by the General Statutes. Revenue

in the Fund at the end of each fiscal year shall not revert, and interest and other investment income earned by the Fund must be credited to the Fund.

"§ 15A-2026. Assessments.

(a) In every criminal case where the defendant is convicted of or enters a plea of guilty or nolo contendere to a felony, a Class 1 or 1A misdemeanor, or to an offense of impaired driving under Chapter 20 of the General Statutes, the court shall order the defendant to pay the sum of thirty dollars ($30.00) to be used to supplement the budgets of law enforcement agencies, district attorneys' offices, and other agencies that provide services to crime victims as required by the general statutes. Such sum shall be in addition to any costs, fines, or penalties imposed.

(b) If the court authorizes the payment of fines, costs, restitution, probation oversight fees, or any other obligations of the defendant to be paid in installments, the assessment imposed under this section shall be collected from the first monies paid by the defendant. The clerk of superior court shall transmit daily all monies collected pursuant to this Article to the Department of Crime Control and Public Safety for deposit in the Fund.

"§ 15A-2027. Application for supplemental funds.

(a) A law enforcement agency, district attorney's office, or other agency that has a responsibility to provide services to crime victims as required by the general statutes may apply annually to the Department of Crime Control and Public Safety for supplemental funds. Such funds shall be used to supplement local, State, or federal funds that are available to agencies and district attorneys' offices to provide services to crime victims.

(b) The Department of Crime Control and Public Safety shall establish procedures for screening, recording, and processing applications for supplemental funds. The Department shall prepare and transmit annually to the General Assembly a report of the Department's activities."

Section 2. The provisions of Article 45 of Subchapter VIII of Chapter 15A of the General Statutes are supplemental to the provisions of Article 101 of Subchapter XVI of Chapter 15A of the General Statutes as enacted in Section 1 of this act. If there is any conflict between the provisions of Article 45 and Article 101, the provisions of Article 101 shall control.

Section 2.1. G.S. 1C-1601(e) reads as rewritten:

"(e) Exceptions. -- The exemptions provided in this Article are inapplicable to claims

(1) Of the United States or its agencies as provided by federal law;

(2) Of the State or its subdivisions for taxes, appearance bonds or fiduciary bonds;

(3) Of lien by a laborer for work done and performed for the person claiming the exemption, but only as to the specific property affected;

(4) Of lien by a mechanic for work done on the premises, but only as to the specific property affected;

(5) For payment of obligations contracted for the purchase of the specific real property affected;
(6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 6;
(7) For contractual security interests in the specific property affected; provided, that the exemptions shall apply to the debtor's household goods notwithstanding any contract for a nonpossessory, nonpurchase money security interest in any such goods;
(8) For statutory liens, on the specific property affected, other than judicial liens;
(9) For child support, alimony or distributive award order pursuant to Chapter 50 of the General ~~Statutes.~~ Statutes;
(10) For criminal restitution orders docketed as civil judgments pursuant to G.S. 15A-2015."

Section 2.2. G.S. 7A-304(d) reads as rewritten:

"(d) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

(1) Sums in restitution prorated among the persons entitled thereto;
~~(1)~~(2) Costs due the county;
~~(2)~~(3) Costs due the city;
~~(3)~~(4) Fines to the county school fund;
~~(4) Sums in restitution prorated among the persons entitled thereto;~~
(5) Costs due the State;
(6) Attorney's fees.

Sums in restitution received by the clerk of superior court shall be disbursed when:

(1) Complete restitution has been received; or
(2) When, in the opinion of the clerk, additional payments in restitution will not be collected; or
(3) Upon the request of the person or persons entitled thereto; and
(4) In any event, at least once each calendar year."

Section 2.3. Article 45 of Subchapter VIII of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-828. Assistance to victims of domestic violence.**

In the allocation of resources to persons the district attorney determines are victims of serious misdemeanors, the district attorney shall, to the extent possible, provide the services listed in G.S. 15A-825 to victims of domestic violence misdemeanors that could involve the infliction of serious bodily injury."

Section 2.4. The North Carolina Conference of District Attorneys will coordinate a study of the incidence of domestic violence and identify the felonies and misdemeanors that may be categorized as domestic violence. The study will include participation by the seven prosecutorial districts that are currently receiving funds from the Violence Against Women Act, administered through the Governor's Crime

Commission. The study will also include participation of other prosecutorial districts which volunteer their participation in providing necessary information. The Conference will recommend a statutory definition of domestic violence crimes that will be sufficiently clear so that it can be used by law enforcement officers and prosecutors to determine eligibility of victims of these crimes for victims' assistance services. The Conference shall also recommend whether any crimes that are currently misdemeanors should be reclassified as felonies when committed as crimes of domestic violence. The Conference will report the findings of its study and its recommendations to the 1998 Session of the 1997 General Assembly on or before its convening date.

Section 2.5. The Post-Release Supervision and Parole Commission shall compile a report of the notification services it has provided under G.S. 15A-825(11), and pursuant to a letter from Governor Hunt to the Chair of the North Carolina Parole Commission dated October 13, 1993. The report shall include information on notification services provided through December 31, 1997. The report shall be delivered to the 1998 Session of the 1997 General Assembly on or before its convening date.

Section 3. Sections 2.4 and 2.5 of this act are effective when they become law. Article 102 of Chapter 15A of the General Statutes, as enacted by this act, becomes effective August 1, 1997, and applies to offenses committed on or after that date. The remainder of this act becomes effective January 1, 1998, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 4

HOUSE BILL 476
Committee Substitute Favorable 4/23/97
Committee Substitute #2 Favorable 4/30/97
Senate Finance Committee Substitute Adopted 6/11/97

Short Title: Vital Records Access/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE VITAL RECORDS LAWS PERTAINING TO ACCESS TO, COPIES, AND PUBLIC NATURE OF, AND APPLICATION OF AUTHORIZED FEES, FOR VITAL RECORDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-93 reads as rewritten:

"**§ 130A-93. Access to vital records; copies.**

(a) Only the State Registrar shall have access to original vital records and to indices to the original vital records. County offices authorized to issue certificates and the North Carolina State Archives also shall have access to indices to these original vital records, when specifically authorized by the State Registrar.

(b) The following birth data, in any form and on any medium, in the possession of the Department, local health departments, or local register of deeds offices shall not be public records pursuant to Chapter 132 of the General Statutes: the names of children and parents, the addresses of parents (other than county of residence and postal code), and the social security numbers of parents. Access to copies and abstracts of these data shall be provided in accordance with G.S. 130A-99, Chapter 161 of the General Statutes, and this section. All other birth data shall be public records pursuant to Chapter 132 of the General Statutes. All birth records and data are State property and shall be managed only in accordance with official disposition instructions prepared by the Department of Cultural Resources. The application of

this Chapter is subject to the provisions of Article 1 of Chapter 121 of the General Statutes, the North Carolina Archives and History Act. The State Registrar and other officials authorized to issue certified copies of vital records shall provide copies or abstracts of vital records, except those described in subsections (d), (e), (f) and ~~(g),~~ (g) of this section, to any person upon request.

(c) The State Registrar and other officials authorized to issue certified copies of vital records shall provide certified copies of vital records, except those described in subsections (d), (e), (f), and ~~(g),~~ (g) of this section, only to the following:

(1) A person requesting a copy of the person's own vital records or that of the person's spouse, ~~child, parent, brother or sister;~~ sibling, direct ancestor or descendant, or stepparent or stepchild;

(2) A person seeking information for a legal determination of personal or property rights; or

(3) An authorized agent, attorney or legal representative of a person described above.

(c1) A funeral director or funeral service licensee shall be entitled upon request to a certified copy of a death certificate.

(d) Copies, certified copies or abstracts of birth certificates of adopted persons shall be provided in accordance with G.S. 48-9-107.

(e) Copies or abstracts of the health and medical information contained on birth certificates shall be provided only to a person requesting a copy of the health and medical information contained on the person's own birth certificate, a person authorized by that person, or a person who will use the information for medical research purposes. Copies of or abstracts from any computer or microform database which contains individual-specific health or medical birth data, whether the database is maintained by the Department, a local health department, or any other public official, shall be provided only to an individual requesting his or her own data, a person authorized by that individual, or a person who will use the information for medical research purposes. The State Registrar shall adopt rules providing for the use of this information for medical research purposes. The rules shall, at a minimum, require a written description of the proposed use of the data, including protocols for protecting confidentiality of the data.

(f) Copies, certified copies or abstracts of new birth certificates issued to persons in the federal witness protection program shall be provided only to a person requesting a copy of the person's own birth certificate and that person's supervising federal marshall.

(g) No copies, certified copies or abstracts of vital records shall be provided to a person purporting to request copies, certified copies or abstracts of that person's own vital records upon determination that the person whose vital records are being requested is deceased.

(h) A certified copy issued under the provisions of this section shall have the same evidentiary value as the original and shall be prima facie evidence of the facts stated in the document. The State Registrar may appoint agents who shall have the authority to issue certified copies under a facsimile signature of the State Registrar.

These copies shall have the same evidentiary value as those issued by the State Registrar.

(i) Fees for issuing any copy of a vital record or for conducting a search of the files when no copy is made shall be as established in G.S. ~~130A-93.1.~~ 130A-93.1 and G.S. 161-10.

(j) No person shall prepare or issue any certificate which purports to be an official certified copy of a vital record except as authorized in this Article or the rules."

Section 2. G.S. 130A-93.1 reads as rewritten:

"**§ 130A-93.1. Fees for vital records copies or search; automation fund.**

(a) The State Registrar shall collect, process, and utilize fees for services as follows:

(1) A fee not to exceed ten dollars ($10.00) shall be charged for issuing any copy of a vital record or for conducting a routine search of the files for the record when no copy is made. When certificates are issued or searches conducted by local agencies using databases maintained by the State Registrar, the local agency shall charge this fee and shall forward five dollars ($5.00) of this fee to the State Registrar for purposes established in subsection (b) of this section.

(2) A fee not to exceed ten dollars ($10.00) shall be charged in addition to the fee charged under subdivision (1) of this subsection and to all shipping and commercial charges when expedited service is specifically requested.

(2a) The fee for a copy of a computer or microform database shall not exceed the cost to the agency of making and providing the copy.

(3) Except as provided in subsection ~~(b),~~ (b) of this section, fees collected under this subsection shall be used by the Department for public health purposes.

(b) The Vital Records Automation Account is established as a nonreverting account within the Department. Five dollars ($5.00) of each fee collected pursuant to subdivision (a)(1) shall be credited to this Account. The Department shall use the revenue in the Account to fully automate and maintain the vital records system. When funds sufficient to fully automate and maintain the system have accumulated in the Account, fees shall no longer be credited to the Account but shall be used as specified in subdivision ~~(a)(3).~~ (a)(3) of this section."

Section 3. This act is effective when it becomes law.

EXPLANATION OF HOUSE BILL 476:
Vital Records Access (3rd Edition)

TO: Senate Finance Committee
FROM: Cindy Avrette, Committee Counsel
DATE: June 19, 1997
SPONSOR: Representative Hurley
Agency Bill

House Bill 476 makes the following changes to the vital records statutes in anticipation of the automation of the birth registration system:

- Provides that general birth data is a public record.
- Provides that specific birth data, such as the person's name, the parents' names, the addresses of the parents, the social security number of the parents, and health and medical information is not a public record.
- Expands the list of people who may obtain a certified copy of a vital record to include stepparents, stepchildren, and grandparents.
- Allows a funeral director or a funeral service licensee to obtain a certified copy of a death certificate.
- Provides that copies of or abstracts from any computer or microform database which contains individual-specific health or medical birth data may be provided only to the specific individual or a person authorized by that individual to obtain the records and to a person who will use the information for medical research purposes. This provision conforms to the current limitations on who may receive copies or abstracts of the health and medical information contained on birth certificates.
- Imposes the same fee on local agencies using the State database that the State imposes for the database's use. That fee is $10. Five dollars of this fee is credited to the Vital Records Automation Account.
- Authorizes a fee for a copy of a computer or microform database. The fee may not exceed the cost to the agency of making and providing the copy.
- Provides that the revenue in the Vital Records Automation Account may be used to maintain the automated vital records system. Currently, the money in the Account may only be used to automate the system.

Vital records include birth certificates, death certificates, marriage certificates, and the registration of divorces and annulments. The vital records are maintained by the State Registrar. Copies of vital records may be obtained from the State Registrar as well as registers of deeds and local health departments. Currently, the records registered, maintained, and issued by local officials are limited to individual counties.

In 1991, the General Assembly created a nonreverting automation account for the purpose of automating the system of vital records in this State. The electronic system will allow statewide access to vital records, enabling the local officials to issue copies of birth certificates for persons born throughout North Carolina. Full automation is expected to be completed during late 1998. The program will be pilot-tested to allow further development of the program. Statewide access to birth certification data is expected to be available within the next three years. Statewide access to death, marriage, and divorce registration will begin in stages and is expected to be completed within the next 10 years.

The Account derives its revenues from $5 of the fee charged by the State Registrar for issuing a copy of a vital record or for conducting a routine search of the files for a record when no copy is made. This bill requires local agencies using the State Registrar's database to charge the standard $10 fee for searches and to forward $5 of the fee to the State for the Vital Records Automation Account.

As the information contained on vital records becomes more available, there is growing concern about its protection. This bill specifies what information on a vital record is considered a public record. The purpose of this clarification is to prevent a person from using the Public Records Law to obtain computerized birth databases that could easily be used to generate counterfeit copies of birth certificates.

The bill becomes effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 665 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Blue
Sen.)

moves to amend the bill on page 1, line 18

( ) WHICH CHANGES THE TITLE

by deleting the words "or sibling."
and substituting the following:

"siblings, or grandparents"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 665 (PCS)

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H665-ARL-003 (PCS)

Date_____,1997

Comm. Sub. [YES]
Amends Title []

1 moves to amend the bill on page 2, line 13,
2 by deleting "20-138.5(b);" and substituting "20-138.5;".
3

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

JUDICIARY I — JUNE 24, 1997

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Sarah Fieler	DEHNR
2.	ERIC ZOGRY	SENTENCING COMMISSION
3.		
4.	Chris Fitzsimon	Common Sense Foundation
5.	Tracy Hering	Parole Commission
6.		BWWS
7.		
8.	W. GENE COLEY	N.C.V.A.N.
9.	A.A. Adams	Victim Advocate
10.	Johnny Massey	State Capitol Police
11.	Laura Donnelly	AOC
22.	Ray Doxe	DA - 13TH
23.	Eddie Caldwell	NC Sheriffs Assn / NC Law Enf Off Assn
24.		DA 8th
25.		DA 4th
26.		DA 19B
27.		NCCDA
28.	Laura DeFurio	CCPS
29.	Joe Stewart	CCPS
30.		ACLU
31.		

32.	Ann Case	DEHNR
33.	Torrey McLean	DEHNR
34.	Tom Lock	DA. 11th Dist.
35.		ADC
36.		CSC
37.	Tom Keith	DA - 21st Dist
38.	BILL SCOGGIN	NCBA
39.	Roslyn Sawtelle	NC Coalition Against Domestic Violence
40.		~~DOA~~
41.	LASHANDA PARKER	DOA/PA
42.	Jan Ellington	DEHNR
43.		DENR
44.		NOC
45.		WCSR
46.		WCSR
47.	David Fervell	Hoke, McNeill, Caldwell, McElwee, Hicks
48.	Nancy Bradley	NCCBP
49.		
50.		

Joel Raupe (Rep. Hardy)

From: Joel Raupe (Rep. Hardy)
Sent: Thursday, June 05, 1997 4:11 PM
To: Steve Rose (Research); Karen Cochrane-Brown (Research)
Subject: Status HB 665

476.

In answer to your query...

On Tuesday, May 22, J1 considered HB 665 and, on a motion by Rep. Capps, adopted for the purpose of discussion a Proposed Committee Substitute numbered "H665-CSRO-001"

The PCS was subsequently amended on a motion by Rep. Blue (un-numbered)
On page 1, line 18, by deleting the words "or sibling" and substituting the following: "siblings, or grandparents."

On Thursday, May 24, on a motion by Rep. Capps, the Committee amended the PCS on page 2, line 13 to delete "20-138-5B" and replace it with "20-138-5." There was no objection to this technical amendment.
(--- I have no written copy of this amendment)

Also on Thursday, and also on a motion by Rep. Capps, the Committee amended the PCS on page 6, line 25, by inserting the words "under this article" immediately after the word "restitution".
The written amendment is numbered "H665-ARL-004"

After discussion concluded on his motion Thursday, on Tuesday, June 3, the Committee adopted Rep. Hall's amendment numbered "H665-ARO-001"

I more meeting.

North Carolina HOUSE *of* REPRESENTATIVES
Committee on JUDICIARY I

No tape minutes are not in computer

Thursday, June 26, 1997
12:00 NOON
(Scheduled to begin fifteen minutes after the House ended session, which began at 10:00 a.m.)

N. Leo Daughtry
Edwin M. "Sandy" Hardy
Chairmen

Members present

Martha Alexander	**Gene Arnold**
Daniel T. Blue, Jr.	**Jerry Braswell**
J. Sam Ellis	**Milton F. Fitch, Jr.**
Lyons Gray	**Thomas C. Hardaway**
Margaret Jeffus	**Larry T. Justus**
H.M. Michaux, Jr.	**Gregg Thompson**

Without objection, upon the call of the chairmanThe House Committee on JUDICIARY I met during a recess of the House on Thursday, June 26, 1997, in room 1327 of the Legislative Building; N. Leo Daughtry and Edwin M. "Sandy" Hardy, presiding.

Committee counsel Steven Rose and Karen Cochrane-Brown were present to assist the committee. Visitor registration sheets were distributed and are attached and made a part of these minutes.

The Committee met upon a recess of the House to immediately consider the Senate AGRICULTURE/ENVIRONMENT/NATURAL RESOURCES Committee substitute to House Bill 430, PREMISSIBLE SALES AT ZOO/AB.

Rep. Culp was recognized to recommend concurance with the Senate substitute to H.B. 430, which had been lately re-referred to the Committee.

Rep. Thompson moved that the Committee concur with the Senate Committee Substitute to H.B. 430. There was no objection.

Rep. Baddour was recognized for the purpose of explaining the Senate COMMERCE Committee substitute to House Bill 407, UNIFORM FRADULENT TRANSFER ACT.

Counsel Cochrane-Brown prepared a MEMORANDUM on the Senate substitute to H.B. 407, which was distributed, a copy of which is attached and made a part of these minutes.

Rep. Blue made a motion to concur with the Senate committee substitute to H.B. 407. There was no objection.

Senator Shaw was recognized for the purpose of explaining the House Commerce Committee's substitute to Senate Bill 417, HIGHWAY CONTRACT BONDING REQ'MENTS.

The recess of the House having expired, consideration of S.B. 417 was displaced.

The Committee adjourned at 12:35 p.m.

REPRESENTATIVE N. LEO DAUGHTRY

REPRESENTATIVE EDWIN M. HARDY

JOEL C. RAUPE
Committee Clerk

ATTACHMENTS:

Culp #62

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 430
Second Edition Engrossed 5/13/97
Senate Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/23/97

Short Title: Permissible Sales at Zoo/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT THE NORTH CAROLINA ZOOLOGICAL PARK FROM THE UMSTEAD ACT, WHICH PROHIBITS STATE GOVERNMENT FROM ENGAGING IN THE SALE OF GOODS IN COMPETITION WITH CITIZENS OF THE STATE, AND TO PROVIDE FOR THE ADOPTION OF RULES AUTHORIZING SPECIAL-USE PERMITS FOR THE USE OF PYROTECHNICS IN STATE PARKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 66-58(c) is amended by adding a new subdivision to read:

"(18) The leasing of no more than 50 acres within the North Carolina Zoological Park by the Department of Environment, Health, and Natural Resources to the North Carolina Zoological Society for the maintenance or operation, pursuant to a contract or otherwise, of an exhibition center, theater, conference center, and associated restaurants and lodging facilities."

Section 2. G.S. 113-35 is amended by adding a new subsection to read:

"(a1) The Department may adopt rules under which the Secretary may issue a special-use permit authorizing the use of pyrotechnics in State parks in connection with public exhibitions. The rules shall require that experts supervise the use of pyrotechnics and that written authorization for the use of pyrotechnics be obtained from the board of commissioners of the county in which the pyrotechnics are to be

used, as provided in G.S. 14-410. The Secretary may impose any conditions on a permit that the Secretary determines to be necessary to protect public health, safety, and welfare. These conditions include, but are not limited to, a requirement that the permitee execute an indemnification agreement with the Department and obtain general liability insurance covering personal injury and property damage that may result from the use of pyrotechnics with policy limits as determined by the Secretary."

Section 3. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Department of Environment, Health, and Natural Resources may adopt temporary rules to implement the provisions of G.S. 113-35(a1), as enacted by Section 2 of this act.

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 407*
Second Edition Engrossed 4/8/97
Senate Commerce Committee Substitute Adopted 6/11/97

Short Title: Uniform Fraudulent Transfer Act. (Public)

Sponsors:

Referred to:

March 5, 1997

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE CURRENT STATUTES REGARDING FRAUDULENT CONVEYANCES AND TO ADOPT THE UNIFORM FRAUDULENT TRANSFER ACT IN ORDER TO MODERNIZE NORTH CAROLINA LAW AND HARMONIZE OUR LAW ON THIS SUBJECT WITH THOSE STATES THAT HAVE ADOPTED THIS UNIFORM ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 39 of the General Statutes is repealed.

Section 2. Chapter 39 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3A.

"Uniform Fraudulent Transfer Act.

"§ 39-23.1. Definitions.

As used in this Article:

(1) 'Affiliate' means:

a. A person who directly or indirectly owns, controls, or holds with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person who holds the securities,

1. As a fiduciary or agent without sole discretionary power to vote the securities; or

2. Solely to secure a debt, if the person has not exercised the power to vote;

b. A corporation twenty percent (20%) or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds, with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person who holds the securities,

1. As a fiduciary or agent without sole power to vote the securities; or

2. Solely to secure a debt, if the person has not in fact exercised the power to vote;

c. A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

d. A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) 'Asset' means property of a debtor, but the term does not include:

a. Property to the extent it is encumbered by a valid lien;

b. Property to the extent it is generally exempt under nonbankruptcy law; or

c. An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) 'Claim' means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) 'Creditor' means a person who has a claim.

(5) 'Debt' means liability on a claim.

(6) 'Debtor' means a person who is liable on a claim.

(7) 'Insider' includes:

a. If the debtor is an individual,

1. A relative of the debtor or of a general partner of the debtor;

2. A partnership in which the debtor is a general partner;

3. A general partner in a partnership in which the debtor is a general partner; or

4. A corporation of which the debtor is a director, officer, or person in control;

b. If the debtor is a corporation,

1. A director of the debtor;
2. An officer of the debtor;
3. A person in control of the debtor;
4. A partnership in which the debtor is a general partner;
5. A general partner in a partnership in which the debtor is a general partner; or
6. A relative of a general partner, director, officer, or person in control of the debtor;

c. If the debtor is a partnership,
1. A general partner in the debtor;
2. A relative of a general partner in, a general partner of, or a person in control of the debtor;
3. Another partnership in which the debtor is a general partner;
4. A general partner in a partnership in which the debtor is a general partner; or
5. A person in control of the debtor;

d. An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

e. A managing agent of the debtor.

(8) 'Lien' means a charge against or an interest in property to secure payment of a debt or performance of an obligation and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(9) 'Person' means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) 'Property' means anything that may be the subject of ownership.

(11) 'Relative' means an individual related by consanguinity within the third degree as determined in accordance with G.S. 104A-1, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(12) 'Transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(13) 'Valid lien' means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

"**§ 39-23.2. Insolvency.**

(a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

(b) A debtor who is generally not paying the debtor's debts as they become due is presumed to be insolvent.

(c) A partnership is insolvent under subsection (a) of this section if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

(d) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making transfer voidable under this Article.

(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

"**§ 39-23.3. Value.**

(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of G.S. 39-23.4(a)(2) and G.S. 39-23.5, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, nonexclusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

"**§ 39-23.4. Transfers fraudulent as to present and future creditors.**

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) With intent to hinder, delay, or defraud any creditor of the debtor; or

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

a. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

b. Intended to incur, or believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) In determining intent under subdivision (a)(1) of this section, consideration may be given, among other factors, to whether:

(1) The transfer or obligation was to an insider;

(2) The debtor retained possession or control of the property transferred after the transfer;
(3) The transfer or obligation was disclosed or concealed;
(4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
(5) The transfer was of substantially all the debtor's assets;
(6) The debtor absconded;
(7) The debtor removed or concealed assets;
(8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
(9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
(10) The transfer occurred shortly before or shortly after a substantial debt was incurred;
(11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor;
(12) The debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor reasonably should have believed that the debtor would incur debts beyond the debtor's ability to pay as they became due; and
(13) The debtor transferred the assets in the course of legitimate estate or tax planning.

"§ 39-23.5. Transfers fraudulent as to present creditors.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

"§ 39-23.6. When transfer is made or obligation is incurred.

For the purposes of this Article:

(1) A transfer is made:

a. With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the

transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

b. With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this Article that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as provided in subdivision (1) of this section and the transfer is not so perfected before the commencement of an action for relief under this Article, the transfer is deemed made immediately before the commencement of the action.

(3) If applicable law does not permit the transfer to be perfected as provided in subdivision (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred:

a. If oral, when it becomes effective between the parties; or

b. If evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

"§ 39-23.7. Remedies of creditors.

(a) In an action for relief against a transfer or obligation under this Article, a creditor, subject to the limitations in G.S. 39-23.8, may obtain:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by Article 35 of Chapter 1 of the General Statutes;

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure,

a. An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

b. Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

c. Any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

"§ 39-23.8. Defenses, liability, and protection of transferee.

(a) A transfer or obligation is not voidable under G.S. 39-23.4(a)(1) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under G.S. 39-23.7(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) The first transferee of the asset or the person for whose benefit the transfer was made; or

(2) Any subsequent transferee other than a good-faith transferee who took for value or from any subsequent transferee.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment shall be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this Article, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) A lien on or a right to retain any interest in the asset transferred;

(2) Enforcement of any obligation incurred; or

(3) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under G.S. 39-23.4(a)(2) or G.S. 39-23.5 if the transfer results from:

(1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) Enforcement of a security interest in compliance with Article 9 of Chapter 25 of the General Statutes, the Uniform Commercial Code.

(f) A transfer is not voidable under G.S. 39-23.5(b):

(1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(2) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) If made pursuant to a good-faith effort to rehabilitate the debtor, and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

"§ 39-23.9. Extinguishment of cause of action.

A cause of action with respect to a fraudulent or voidable transfer or obligation under this Article is extinguished unless action is brought:

(1) Under G.S. 39-23.4(a)(1), within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) Under G.S. 39-23.4(a)(2) or G.S. 39-23.5(a), within four years after the transfer was made or the obligation was incurred; or

(3) Under G.S. 39-23.5(b), within one year after the transfer was made or the obligation was incurred.

"**§ 39-23.10. Supplementary provisions.**

Unless displaced by the provisions of this Article, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

"**§ 39-23.11. Uniformity of application and construction.**

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Article among states enacting it.

"**§ 39-23.12. Short title.**

This Article may be cited as the Uniform Fraudulent Transfer Act."

Section 3. The Revisor of Statutes shall cause to be printed with this act all relevant portions of the official comments to the Uniform Fraudulent Transfer Act and all explanatory comments of the drafters of this act, as the Revisor deems appropriate.

Section 4. This act is effective October 1, 1997, and applies to all transfers subject to this act made on or after that date.

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June 26, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB

RE: **House Bill 407 - Uniform Fraudulent Transfer Act. (Third Edition)**

House Bill 407 was passed by the House of Representatives on April 8, 1997, and by the Senate on June 12, 1997. The Senate adopted a Committee Substitute which is before the House for concurrence.

The Senate Committee Substitute made several changes to the provision relating to fraudulent transfers as to present and future creditors. It removed the word ***actual*** from the requirement that the transfer be made with intent to defraud, and it added two new factors to the list of factors which may be used to determine intent.

A copy of the summary of the bill which was prepared for the Senate Commerce Committee is attached to this memorandum.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

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May 20, 1997

MEMORANDUM

TO: Senator R. C. Soles, Chair, Senate Commerce Committee

FROM: O. Walker Reagan, Committee Co-Counsel and Tim Hovis, Co-Counsel to the House Judiciary II Committee

RE: **HOUSE BILL 407 - UNIFORM FRAUDULENT TRANSFER ACT -** Representative Baddour.

House Bill 407 would enact the Uniform Fraudulent Transfer Act (UFTA) which was drafted by the National Conference of Commissioners on Uniform State Laws and approved in 1984. Fraudulent transfer laws are intended to prevent people who owe money from transferring their assets to others in order to avoid those assets being available to satisfy the claims of creditor. Such actions to avoid creditors in this manner are also referred to as "defrauding creditors".

The bill would repeal the current fraudulent conveyance law in the State which is a reenactment of English law (Statutes of Elizabeth) dating to 1570 and replace it with the uniform act. Through May, 1996, the uniform act has been adopted in 33 states. The current N.C. law has not been revised or amended since at least 1924.

The bill repeals the current Article 3 of Chapter 39 of the General Statutes and adds a new Article 3A. The new Article begins with a series of definitions to be used in the Act, including separate sections containing definitions of "insolvency" and "value." A debtor is defined as insolvent if the debtor's debts are greater than all the debtor's assets. A debtor is presumed to be insolvent if he or she is not paying debts as the debts become due. "Value" is defined as the transfer of property or the satisfaction of an antecedent debt, but does not include an unperformed promise other than a promise in the ordinary course of the promisor's business. The acquisition of a debtor's interest in property pursuant to a noncollusive foreclosure sale or power of sale pursuant to a mortgage is deemed to be reasonably equivalent value. Under current law, a bid at a foreclosure sale can, depending on the circumstances, be considered to be less than fair value.

UFTA provides that a transfer is fraudulent as to **present and future creditors** if (1) the debtor made the transfer with actual intent to hinder or defraud creditors, or (2) the transfer was made without receiving a reasonably equivalent value and the debtor had unreasonably small remaining assets in relation to the debtor's business, or the debtor believed or should have believed that the debtor would incur debts beyond his or her ability to pay. The Act lists several factors which may be used to determine actual intent to defraud.

UFTA provides that a transfer is fraudulent as to **present creditors only** if the debtor made the transfer without receiving a reasonably equivalent value and the debtor was insolvent at the time of the transfer or became insolvent as a result of the transfer. No intent to hinder or defraud creditors is required. A transfer is also fraudulent as to present creditors if it was made to an insider for an antecedent debt, the debtor was insolvent at the time, and the insider had reasonable cause to believe the debtor was insolvent.

If a transfer is deemed to be fraudulent under the Act, a creditor may avoid the transfer, attach the asset transferred, or apply for an injunction against further transfer of the asset. If a judgment is obtained against the debtor, the creditor may execute on the asset.

The Act provides for defenses and protections for persons who took from the debtor in good faith and for reasonably equivalent value.

Under current law, fraudulent transfers are subject to a three year statute of limitations. The Act provides that a creditor's claim is "extinguished" under this Act if it is not generally brought within four years after the transfer is made. An action resulting from a transfer made by an insolvent debtor to an insider for an antecedent debt is subject to a one year statute of limitation.

The bill becomes effective October 1, 1997 and applies to transfers made on or after that date.

Shaw

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 417
Commerce Committee Substitute Adopted 4/29/97
House Committee Substitute Favorable 5/28/97

Short Title: Highway Contract Bonding Req'ments. (Public)

Sponsors:

Referred to:

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING HIGHWAY SMALL PROJECT BIDDING AND TO PROVIDE AN ALTERNATIVE PROCEDURE FOR RESOLVING STATE CONTRACT DISPUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-28.10 reads as rewritten:

"**§ 136-28.10. Highway Fund and Highway Trust Fund Small Project Bidding.**

(a) Notwithstanding the provisions of G.S. 136-28.4(b), for Highway Fund or Highway Trust Fund projects of ~~three hundred thousand dollars ($300,000)~~ five hundred thousand dollars ($500,000) or less, the Board of Transportation may, after soliciting at least three informal bids in writing from Small Business Enterprises, award contracts to the lowest responsible bidder. The Department of Transportation may identify projects likely to attract increased participation by Small Business Enterprises, and restrict the solicitation and award to those bidders. The Board of Transportation may delegate full authority to award contracts, adopt necessary rules, and administer the provisions of this section to the Secretary of Transportation.

(b) The letting of contracts under this section is not subject to any of the provisions of G.S. 136-28.1 relating to the letting of contracts. The Department may waive the bonding requirements of Chapter 44A of the General Statutes and the licensing requirements of Chapter 87 for contracts awarded under this section.

(c) The Secretary of Transportation shall report quarterly to the Joint Legislative Transportation Oversight Committee on the implementation of this section."

Section 2. G.S. 143-135.3 reads as rewritten:

"**§ 143-135.3. Adjustment and resolution of State ~~board construction~~ contract claim.**

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

(1) Board. -- ~~The word 'board' as used in this section shall mean the State of North Carolina~~ The State or any board, bureau, commission, institution, or other agency of the State, as distinguished from a board or governing body of a subdivision of the State.

(2) Construction contract. -- A contract for any of the following:

a. The construction or repair of buildings and appurtenances thereto, including, utilities, plumbing, heating, electrical, air conditioning, elevator, excavation, grading, paving, roofing, masonry work, tile work, and painting.

b. The construction or repair of airport runways, taxiways and parking aprons, sewer and water mains, power lines, docks, wharves, dams, drainage canals, telephone lines, streets, site preparation, parking areas, and other capital improvement.

c. Architectural, engineering, or other professional services in connection with a contract described in this subdivision.

(3) Contract. -- A contract for goods, services, construction, or repair administered by the Department of Administration.

(4) Contractor. -- A person who submits a bid on or enters into a contract with a board.

~~"A contract for construction or repair work," as used in this section, is defined as any contract for the construction of buildings and appurtenances thereto, including, but not by way of limitation, utilities, plumbing, heating, electrical, air conditioning, elevator, excavation, grading, paving, roofing, masonry work, tile work and painting, and repair work as well as any contract for the construction of airport runways, taxiways and parking aprons, sewer and water mains, power lines, docks, wharves, dams, drainage canals, telephone lines, streets, site preparation, parking areas and other types of construction on which the Department of Administration enters into contracts.~~

~~"Contractor" as used in this section includes any person, firm, association or corporation which has contracted with a State board for architectural, engineering or other professional services in connection with construction or repair work as well as those persons who have contracted to perform such construction or repair work.~~

(b) Uncompleted Construction Contract. -- A contractor who has not completed a construction contract with a board ~~for construction or repair work~~ and who has not received the amount ~~he~~ the contractor claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration for the amount the contractor claims is due. The Director may deny, allow, or compromise the claim, in whole or in part. ~~A~~ The Director's decision is not a final decision of the Department of Administration under

subsection (d) of this section and a claim under this subsection is not a contested case under Chapter 150B of the General Statutes.

(c) Completed Construction Contract. -- A contractor who has completed a construction contract with a board ~~for construction or repair work~~ and who has not received the amount ~~he~~ the contractor claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration for the amount the contractor claims is due. The claim shall be submitted within 60 days after the contractor receives a final statement of the board's disposition of ~~his~~ the contractor's claim and shall state the factual basis for the claim.

The Director shall investigate a submitted claim within 90 days of receiving the claim, or within any longer time period upon which the Director and the contractor agree. The contractor may appear before the Director, either in person or through counsel, to present facts and arguments in support of his claim. The Director may allow, deny, or compromise the claim, in whole or in part. The Director shall give the contractor a written statement of the Director's decision on the contractor's claim.

A contractor who is dissatisfied with the Director's decision on a claim submitted under this subsection may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's written statement of the decision.

~~(c1) A contractor who is dissatisfied with the Director's decision on a claim submitted under subsection (c) of this section may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's written statement of the decision.~~

(d) Alternate Procedure. -- Notwithstanding the provisions of subsection (c) of this section and of Chapter 150B of the General Statutes, in the case of any contract dispute between a board and a contractor, if the contractor and the Department of Administration cannot agree to a resolution through informal procedures, the contractor may, in lieu of filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes, ~~As to any portion of a claim that is denied by the Director, the contractor may, in lieu of the procedures set forth in the preceding subsection of this section,~~ within six months ~~of receipt of the Director's final decision,~~ after a final decision by the Department of Administration, institute a civil action ~~for the sum he claims to be entitled to~~ to determine the contractor's rights, duties, or privileges under the contract by filing a verified complaint and the issuance of a summons in the Superior Court of Wake County or in the superior court of any county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

(e) Incorporation in Contracts. -- The provisions of this section are part of every contract ~~for construction or repair work~~ made by a board and a contractor. A provision in a contract that conflicts with this section is invalid."

Section 3. Section 2 of this act becomes effective January 1, 1998, and applies to contract disputes arising on or after that date. The remainder of this act is effective when it becomes law.

S 417. PUBLIC CONTRACT BONDING REQ'MENTS. *TO ELIMINATE THE BONDING REQUIREMENTS FOR PUBLIC CONTRACTS WITH A VALUE OF ONE MILLION DOLLARS OR LESS.* Amends GS 143-129(b), 143-129(c), and 44A-26(a) as title indicates.
Intro. by Shaw of Cumberland and Ballance.
Ref. to Commerce GS 143, 44A

Daily Bulletin 04/29/97

S 417. HIGHWAY CONTRACT BONDING REQ'MENTS. Intro. 3/18/97. Senate committee substitute makes the following changes to 1st edition. Deletes provisions of original bill and replaces it with *AN ACT TO AMEND THE LAW GOVERNING HIGHWAY SMALL PROJECT BIDDING.* Amends GS 136-28.10 to increase the threshold for exemption from otherwise applicable advertisement requirements and disadvantaged business participation goals for Highway Fund and Highway Trust Fund small project bidding to $500,000 (now, $300,000).

Daily Bulletin 05/28/97

S 417. HIGHWAY CONTRACT BONDING REQ'MENTS. Intro. 4/29/97. House committee substitute makes the following changes to 2nd edition. Rewrites GS 143-135.3 (Adjustment and resolution of State contract claim) to provide that a contractor may file a civil action in lieu of filing a petition for contested case under the APA if an informal resolution cannot be reached after a final decision by the Dep't of Administration on a claim involving a completed construction contract. Specifies that a decision of the State Construction Office Director on a claim under an *uncompleted* construction contract is not a final decision for purposes of the alternative claims procedure. Creates new definitions of construction contract, contract, and contractor and makes technical changes. New provisions become effective for disputes arising after January 1, 1998.

VISITOR REGISTRATION SHEET

JUDICIARY I 6/26/97 12 noon

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.		ACLU
2.		NCAJC
3.	Martha Glass	DOA
4.		NCHRS
5.		EHNR
6.		NCBA
7.		UCKICU
8.	Rob Schofield	NCJCDC
9.	David Simmons	ZDAJOA
10.	James Stem	UTU
11.		
22.		
23.		
24.		
25.		
26.		
27.		
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29.		
30.		
31.		

North Carolina HOUSE *of* REPRESENTATIVES

JUDICIARY I COMMITTEE

(15 minutes after the completion of the House session)
Tuesday, July 1, 1997

no tape

1327 Legislative Building

N. Leo Daughtry
Edwin M. Hardy
Co-Chairmen

Members Present

Gene G. Arnold	**Daniel T. Blue, Jr.**
J. Russell Capps	**J. Sam Ellis**
Milton F. Fitch, Jr.	**Bobby Ray Hall**
John W. Hurley	**Margaret M. Jeffus**
H.M. Michaux, Jr.	**George W. Miller, Jr.**
Wilma M. Sherrill	

(Rep. **Alexander** *was excused)*

The House Committee on JUDICIARY I met on Tuesday, July 1, 1997 in Room 1327 of the Legislative Building with Chairman N. Leo Daughtry and Edwin M. "Sandy" Hardy, presiding.

Committee counsels Steven Rose and Karen Cochrane-Brown were present to assist the committee. Visitor Registration sheets were made available and are attached and made a part of these minutes.

House Pages Nikki Jones, of Edgecombe County, and Catherine Lewis, of Wake County, were present to assist the committee

On a motion by Rep. Capps, and without objection, the committee voted to accept, for the purpose of discussion, a proposed committee substitute to Senate Bill 943, MEDICADE FALSE CLAIMS ACT; a copy of which, entitled "S943-CSRO-001," is attached and made a part of these minutes.

Committee counsel Cochrane-Brown, and staff attorney O. Walker Reagan, prepared a MEMORANDUM regarding the proposed committee substitute to S.B. 943, which was distributed and is attached and made a part of these minutes.

The chairman recognized Deputy Attorney General Jane P. Gray, who deferred to Christopher Brewer of the Medicade Investigations Section of the Attorney General's office, to explain the proposed committee substitute to S.B. 943.

Rep. Blue sent forth an amendment to the proposed committee substitute, on page 6, line 12, removing the words "20 days," and substituting the word "30 days ". There was no objection.

On a motion by Rep. Blue, the committee voted to enroll the amendments into a new Proposed Committee Substitute with a favorable report, unfavorable to the Senate STATE GOVERNMENT, LOCAL GOVERNMENT, and PERSONNEL Committee Substitute previously adopted April 30, 1997.

The Chairman announced that the Subcommittee on House Bill 665 would be prepared to report to the Committee at the next regular meeting. There being persons present who had travel to speak, the chairman recognized several who wished to be heard regarding the measure.

The Committee Adjourned at 12:30 p.m.

REPRESENTATIVE N. LEO DAUGHTRY
Co-Chairman

REPRESENTATIVE EDWIN M. HARDY
Co-Chairman

JACQUELYN A. HAMBY
Committee Clerk

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
(919) 733-7044

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Terrence D. Sullivan, Director
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(919) 733-2578

April 29, 1997

MEMORANDUM

TO: Representative Leo Daughtry, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel KCB
O. Walker Reagan, Staff Attorney

RE: **SENATE BILL 943 - MEDICAID FALSE CLAIM ACT -** Senator Rand

Senate Bill 943 provides a state remedy for the recovery of Medicaid payments made based on false claims. These provisions parallel the false claim recovery provisions of federal law, and will enable the State to retain more of the amount recovered, requiring less to be sent to the federal government. The bill provides for civil remedies and civil penalties.

The new G.S. 108A-70.12(a) makes it unlawful for a provider of medical assistance under the Medical Assistance Program to present false or fraudulent claims for payment or to use a false record or statement to get a false or fraudulent claim paid or approved for payment. Each claim presented or caused to be presented constitutes a separate violation.

G.S. 108A-70.12(b) provides for two levels of civil penalties for violations under this bill. In a normal situation the court shall assess a penalty of between $5000 and $10,000 plus three times the amount of damages the Program sustained. If the provider who violates the law, cooperates in the investigation as set forth in G.S. 108A-70.12(b)(2), the court may assess a penalty of not less than twice the amount of damages sustained. In both cases, in addition to the damages and penalties, the provider shall also pay the cost of the action to recover the penalty or damages, interest on the amount of damages, and the costs of the investigation.

G.S. 108A-70.13 sets forth the investigative authority of the Attorney General and the statute of limitations on claims under this act. A civil action must be brought within six years of the violation or three years after the date facts became known or should have been known to the official of the State charged with the responsibility to act in these matters, but in no event more than 10 years after the date the violation is committed., whichever occurs last. A guilty or nolo contendere plea or a guilty verdict to

a criminal charge estops a defendant from denying the essential elements to a civil action arising from the same transaction.

G.S. 108A-70.14 gives the Attorney General the authority to compel evidence as part of a civil investigation through both sworn written interrogatories and depositions. Subsection (g) removes the 5th Amendment right against being made to make self incriminating statements in the civil matter, but the statute protects the person providing the information by providing that no testimony, answers, documents, or objects compelled in the discovery may be used against the person in any criminal action except for perjury or contempt. A person who fails to comply with the investigative discovery may be held in contempt.

G.S. 108A-70.15 grants immunity from liability to a person who furnishes information to officials investigating false claims violations. It also gives protection to employees who provide investigative information against their employer who is a provider under investigation from retaliation by the employer.

G.S. 108A-70.16 provides that the Act is to be interpreted and construed so as to harmonized with the Federal False Claims Act.

The bill become effective December 1, 1997 and applies to violation committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-338
SENATE BILL 943

AN ACT TO ENACT THE MEDICAL ASSISTANCE PROVIDER FALSE CLAIMS ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 108A of the General Statutes is amended by adding the following new Part to read:

"Part 7. Medical Assistance Provider False Claims Act.

"§ 108A-70.10. Short title.

This Part may be cited as the Medical Assistance Provider False Claims Act.

"§ 108A-70.11. Definitions.

Definitions. -- As used in this Part:

(1) 'Attorney General' means the Attorney General or any Deputy, Assistant, or Associate Attorney General.

(2) 'Claim' means an application for payment or approval or for use in determining entitlement to payment presented to the Medical Assistance Program in any form, including written, electronic, or magnetic, which identifies a service, good, or accommodation as reimbursable under the Medical Assistance Program.

(3) 'Damages' means the difference between what the Medical Assistance Program paid a provider and the amount it would have paid the provider in the absence of a violation of this section and may be established by statistical sampling methods.

(4) 'Knowingly' means that a provider, with respect to the information:

a. Has actual knowledge of the information;

b. Acts in deliberate ignorance of the truth or falsity of the information; or

c. Acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.

(5) 'Medical Assistance Program' means the North Carolina Division of Medical Assistance and its fiscal agent.

"§ 108A-70.12. Liability for certain acts; damages; effect of repayment.

(a) Liability for Certain Acts. -- It shall be unlawful for any provider of medical assistance under the Medical Assistance Program to:

(1) Knowingly present, or cause to be presented to the Medical Assistance Program a false or fraudulent claim for payment or approval; or

(2) Knowingly make, use, or cause to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Medical Assistance Program.

Each claim presented or caused to be presented in violation of this section is a separate violation.

(b) Damages. --

(1) Except as provided in subdivision (2) of this subsection, a court shall assess against any provider of medical assistance under the Medical Assistance Program who violates this section a civil penalty of not less than five thousand dollars ($5,000) and not more than ten thousand dollars ($10,000) plus three times the amount of damages which the Medicaid Assistance Program sustained because of the act of the provider.

(2) A court may assess a penalty of not less than two times the amount of damages which the Medical Assistance Program sustains because of the act of the provider if a court finds that:

a. The provider committing a violation of this section furnished officials of the State responsible for investigating false claims violations with all information known to the provider about the violation within 30 days after the date the provider first obtained the information;

b. The provider fully cooperated with any State investigation of the violation; and

c. At the time the provider furnished the State with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the provider did not have actual knowledge of the existence of an investigation into the violation.

(3) In addition to the damages and penalty assessed by the court pursuant to subdivision (1) or (2) of this subsection, a provider violating this section shall also be liable for the costs of a civil action brought to recover any penalty or damages, interest on the damages at the maximum legal rate in effect on the date the payment was made to the provider for the period from the date upon which payment was made to the provider to the date upon which repayment is made by the provider to the Medical Assistance Program, and the costs of the investigation.

(4) As applied to providers that are subject to certification review by the Division of Facility Services, a violation of Medicaid provider certification standards in providing a service, good, or accommodation shall not be considered an independent basis for liability under this Act. However, liability may be imposed if a false or fraudulent claim is presented as set forth in subsection (a) of this section in connection with that service, good, or accommodation.

(c) Effect of Repayment. -- Intent to repay or repayment of any amounts obtained by a provider as a result of any acts described in subsection (a) of this section shall not be a defense to or grounds for dismissal of an action brought pursuant to this section. However, a court may consider any repayment in mitigation of the amount of any penalties assessed.

"§ 108A-70.13. False claims procedure.

(a) The Attorney General shall have the authority to investigate, institute proceedings, compromise and settle any investigation or action, and perform all duties in connection with any civil action to enforce G.S. 108A-70.12.

(b) A civil action under G.S. 108A-70.12 may not be brought more than six years after the date the violation of G.S. 108A-70.12 is committed, or more than three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the State of North Carolina charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

(c) In any action brought under G.S. 108A-70.12, the State shall be required to prove all essential elements of the cause of action, including damages, by the greater weight of the evidence.

(d) Notwithstanding any other provision of law or rule, a final judgment rendered in favor of the State in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under G.S. 108A-70.12.

(e) No criminal or administrative action need be brought against any provider as a condition for establishing civil liability under G.S. 108A-70.12. The civil liability under G.S. 108A-70.12 is in addition to any other criminal, civil, and administrative liabilities or penalties that may be prescribed by law. However, treble and double damages and civil penalties provided by G.S. 108A-70.12 shall not be assessed against a provider if treble or double damages or civil penalties have been previously assessed against the provider for the same claims under the federal False Claims Act, 31 U.S.C. § 3729, et seq., or the federal Civil Monetary Penalty Law, 42 U.S.C. § 1320a-7a. In the event that any provider is found liable under the provisions of this Act and is subsequently found liable for the same claim under the federal False Claims Act, or the appropriate sections of the federal Civil Monetary Penalty Law, the State and the Medical Assistance Program shall pay to the federal government on behalf of the provider any amounts, other than restitution, recovered or otherwise obtained by the State under this Act, not to exceed the amount of the federal damages and penalties.

(f) The amount of damages and number of violations of G.S. 108A-70.12 shall be established by the trial judge or, in the event of a jury trial, by jury verdict. The amount of penalties, treble or double damages, interest, cost of the investigation, and cost of the civil action shall be determined by the trial judge as prescribed in G.S. 108A-70.12(b).

(g) Venue for any action brought pursuant to G.S. 108A-70.12 shall be in either Wake County or in any county in which claim originated, or in which any statement or record was made, or acts done, or services, goods, or accommodations rendered in connection with any act constituting part of the violation of G.S. 108A-70.12.

"§ 108A-70.14. Civil investigative demand.

(a) If the Attorney General has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to an investigation or that would lead to the discovery of relevant information in an investigation of a violation of G.S. 108A-70.12, the Attorney General may serve upon the person, before bringing an action under G.S. 108A-70.12 or other false claims law, a civil investigative demand to appear and be examined under oath, to answer written interrogatories under oath, and to produce any documents or objects for their inspection and copying.

(b) The civil investigative demand shall:

(1) Be served upon the person in the manner required for service of process in civil actions and may be served by the Attorney General or investigator assigned to the North Carolina Department of Justice;
(2) Describe the nature of the conduct constituting the violation under investigation;
(3) Describe the class or classes of any documents or objects to be produced with sufficient definiteness to permit them to be fairly identified;
(4) Contain a copy of any written interrogatories to be answered;
(5) Prescribe a reasonable date and time at which the person shall appear to testify, answer any written interrogatories, or produce any document or object;
(6) Advise the person that objections to or reasons for not complying with the demand may be filed with the Attorney General on or before that date and time;
(7) Specify a place for the taking of testimony;
(8) Designate a person to whom answers to written interrogatories shall be submitted and to whom any document or object shall be produced; and
(9) Contain a copy of subsections (b) and (c) of this section.

(c) The date within which to answer any written interrogatories and within which any document or object must be produced shall be more than 30 days after the civil investigative demand has been served upon the person. The date within which a person must appear to testify shall be more than 15 days after the demand has been served upon a person who resides out-of-state or more than 10 days after the demand has been served upon a person who resides in-state.

(d) The person before whom the oral examination is to be taken shall put the person to be examined on oath and shall personally, or by someone acting under the person's direction and in the person's presence, record the testimony of the person to be examined. The Attorney General may exclude from the place where the examination is held all persons except the person giving the testimony, the attorney or other representative of the person giving the testimony, the Attorney General conducting the examination, the investigator assisting the Attorney General, the stenographer, and any other person agreed upon by the Attorney General and the person giving the testimony. When the testimony is transcribed, the person shall have a reasonable opportunity to examine and read the transcript, unless an examination and reading are waived by the person. Any changes in form or substance which the person desires to make shall be entered and identified upon the transcript by the person. The transcript shall then be signed by the person, unless the person in writing waives the signing, is ill, cannot be found, or refuses to sign.

(e) Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under sworn certificate by the person to whom the demand is directed, or in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to the production and authorized to act on behalf of the person. If a person objects to any interrogatory, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(f) The production of documents and objects in response to a civil investigative demand served under this section shall be made under a sworn certificate by the person to whom the demand is directed, or in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to the production and authorized to act on behalf of the person. The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available. Upon written agreement between the person served with the civil investigative demand and the Attorney General, the person may substitute copies for originals of all or any part of the documents requested.

(g) No person shall be excused from testifying, answering interrogatories, or producing documents or objects in response to a civil investigative demand on the ground that the testimony, answers, documents, or objects required of the person may tend to incriminate the person. However, no testimony, answers, documents, or objects compelled pursuant to G.S. 108A-70.14 may be used against the person in a criminal action, except a prosecution for perjury or for contempt arising from a failure to comply with an order of the court.

(h) Any person appearing for oral testimony under a civil investigative demand issued pursuant to this section shall be entitled to the same fees and allowances paid to witnesses in the General Court of Justice of the State of North Carolina.

(i) If a person objects to or otherwise fails to comply with a civil investigative demand served upon the person under subsection (a) of this section, the Attorney General may file an action in superior court for an order to enforce the demand. Venue for the action to enforce the demand shall be in either Wake County or the county in which the person resides. Notice of a hearing on the action to enforce the demand and a copy of the action shall be served upon the person in the same manner as prescribed in the Rules for Civil Procedure. If the court finds that the demand is proper, that there is reasonable cause to believe that there may have been a violation of G.S. 108A-70.12, and that the information sought or document or object demanded is relevant to the violation, the court shall order the person to comply with the demand, subject to modifications the court may prescribe.

(j) If the person fails to comply with an order entered pursuant to subsection (i) of this section, the court may:

(1) Adjudge the person to be in contempt of court;

(2) Grant injunctive relief against the person to whom the demand is issued to restrain the conduct which is the subject of the investigation; or

(3) Grant any other relief as the court may deem proper.

(k) Any transcript of oral testimony, answers to written interrogatories, and documents and objects produced pursuant to this section may be used in connection with any civil action brought under G.S. 108A-70.12.

(l) The North Carolina Rules of Civil Procedure shall apply to this section to the extent that the rules are not inconsistent with the provisions of this section.

"**§ 108A-70.15. Employee remedies.**

(a) In the absence of fraud or malice, no person who furnishes information to officials of the State responsible for investigating false claims violations shall be liable for damages in a civil action for any oral or written statement made or any other action that is necessary to supply information required pursuant to this Part.

(b) Any employee of a provider who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by the employee's employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under G.S. 108A-70.12, including investigation for, initiation of, testimony for, or assistance

in an action filed or to be filed under G.S. 108A-70.12, shall be entitled to all relief necessary to make the employee whole. Relief shall include reinstatement with the same seniority status as the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate court for the relief provided in this section.

"§ 108A-70.16. Uniformity of interpretation.

This Part shall be so interpreted and construed as to be consistent with the federal False Claims Act, 31 U.S.C. § 3729, et seq., and any subsequent amendments to that act."

Section 2. This act becomes effective December 1, 1997, and applies to violations committed on or after that date.

In the General Assembly read three times and ratified this the 17th day of July, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 2:15 p.m. this 25th day of July, 1997

North Carolina House *of* Representatives

JUDICIARY I COMMITTEE

1 tape

Thursday, July 10, 1997
15 Minutes after Session

Representative N. Leo Daughtry
Representative Edwin M. Hardy
Co-Chairmen

Members Present

N. Leo Daughtry	Edwin M. Hardy
Jerry Braswell	Martha Alexander
Dan Blue	Russell Capps
Debbie Clary	Sam Ellis
Bobby Ray Hall	Thomas Hardaway
Robert C. Hunter	John W. Hurley
Margaret M. Jeffus	Larry T. Justus
H. M. Michaux, Jr.	George W. Miller, Jr.

The House Committee on Judiciary I met on Thursday, July 10, 1997, fifteen minutes after Session in Room 1327 of the Legislative Building. Representative Daughtry opened the meeting.

Committee Counsels, Steven Rose and Karen Cochrane-Brown, were present to assist the Committee. . The Visitor Registration sheet is attached as a part of the record.

The following bills were considered--Representative Hardy presiding:

Senate Bill 919, A BILL TO BE ENTITLED AN ACT TO REQUIRE DISCONTINUATION OF TELECOMMUNICATIONS SERVICES USED FOR UNLAWFUL PURPOSES, was explained by Senator Odom, sponsor. Chairman Daughtry read a letter from Mr. Skip Stam expressing his concerns for the bill. Representative Michaux sent forth amendment #1 (attached) to amend the bill on page two, line 5, by deleting "shall" and substituting "may". This would allow the court to have descretion as to whether they are going to discontinue telecommunications service. Without objection, the amendment was adopted.

Representative Capps sent forth a technical amendment #2 (attached). Without objection, the amendment was adopted.

Representative Daughtry made a motion to give SB 919 a favorable report as amended with the amendments to be rolled into a proposed committee substitute and unfavorable as to original bill. The motion carried. (Report attached)

The next bill considered was Senate Bill 571, A BILL TO BE ENTITLED AN ACT TO REPLACE ON THE SCHEDULE II CONTROLLED SUBSTANCES LIST THE DRUG REMIFENTANIL AND SALTS THEREOF, IN ACCORDANCE WITH FEDERAL LAW. The bill was explained by Senator Dalton, sponsor. The bill was requested by the Department of Human Resources. Remifentanil is a drug used by anesthesiologists. It is similar to morphine, and has a street name of "china white". A motion was made by Senator Ellis for a favorable report of SB571 and the motion carried.

Senate Bill 30, A BILL TO BE ENTITLED AN ACT TO INCREASE THE PENALTY FOR SPEEDING IN A HIGHWAY WORK ZONE TO TWO HUNDRED FIFTY DOLLARS, AND TO PROVIDE THAT THE SAFE DRIVER INCENTIVE PLAN EXCEPTION FOR VIOLATIONS OF SPEEDING TEN MILES PER HOUR OR LESS OVER THE SPEED LIMIT SHALL NOT APPLY TO SPEEDING IN A HIGHWAY WORK ZONE, was considered. Senator Gulley, sponsor, explained the bill. A proposed committee substitute for SB 30 was distributed. Representative Capps moved to adopt the committee substitute for the purpose of discussion. The motion carried.

Representative Hunter sent forth an amendment to the proposed committee substitute to read "up to two hundred fifty dollars", and made a motion for its adoption. The motion carried. A motion was made to give the committee substitute a favorable report as amended with a title change to reflect "AN INCREASED PENALTY FOR SPEEDING IN A HIGHWAY WORK ZONE OF UP TO TWO HUNDRED FIFTY DOLLARS. The motion carried.

The meeting was adjourned.

N. LEO DAUGHTRY, Co-Chairman

EDWIN M. HARDY, Co-Chairman

JACQUELYN A. HAMBY, Clerk

NORTH CAROLINA HOUSE *of* REPRESENTATIVES

COMMITTEE ON JUDICIARY I

Thursday, July 10, 1997
Room 1327 LB
15 Minutes after Session

Representatives N. Leo Daughtry,
Edwin M. "Sandy" Hardy
Co-Chairmen

OPENING REMARKS

BILLS TO BE CONSIDERED:

SB 30 SPEEDING IN WORK ZONE
(Senator Jordan - Sponsor)

SB 571 CONTROLLED SUBSTANCE/SCHEDULE II
(Senator Dalton - Sponsor)

SB 919 UNLAWFUL TELECOMMUNICATIONS
(Senator Odom - Sponsor)

Adjournment

ATTENDANCE

House JUDICIARY I COMMITTEE

July 1997 (Name of Committee)

DATES	7/10														
Daughtry	✓														
Hardy	✓														
Braswell	✓														
Alexander	✓														
Arnold															
Blue	✓														
Capps	✓														
Clary	✓														
Crawford															
Ellis	✓														
Esposito															
Fitch															
Gray															
Hall	✓														
Hardaway	✓														
Holmes															
Hunter	✓														
Hurley	✓														
Jeffus	✓														
Justus	✓														
Michaux	✓														
Miller	✓														
Morgan															
Sherrill															
Thompson															

Rep. Alexander Odom

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hardy and Daughtry** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
S.B. 919 A BILL TO BE ENTITLED AN ACT TO REQUIRE DISCONTINUATION OF TELECOMMUNICATIONS SERVICES USED FOR UNLAWFUL PURPOSES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☒ With a favorable report as to House committee substitute bill, unfavorable as to original bill.

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar. (PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

4/24/97

Minutes
7-10-97
J-I

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
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Terrence D. Sullivan, Director
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Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

June 4, 1997

MEMORANDUM

TO: **House Judiciary I Committee**

FROM: **Steven Rose, Committee Counsel**

RE: **Senate Bill 919; Discontinue telecommunications services used for unlawful purposes**

Senate Bill 919 authorizes the discontinuation of telecommunications services that are used for unlawful purposes. It adds a new G.S. 15A-299 to Article 16 of Chapter 15A of the General Statutes. Article 16 deals with the subject of electronic surveillance.

Proposed G.S. 15A-299 contains five subsections.

Subsection (a) is a finding by the legislature that some persons use telecommunications services to violate the law and to avoid detection or arrest.

Subsection (b) provides that a customer of a telecommunications company within the State may use such services only for lawful purposes.

Subsection (c) provides that a law enforcement officer acting within the scope of the officer's duties who obtains evidence that telecommunications services are, or have been, used by a **customer or an employee or agent of a customer** to violate the law, may apply to the District Court for an order requiring the telecommunications company to discontinue service to the customer. Notice of the hearing must be delivered to the address where the services are furnished or to the billing address, as well as to the registered agent of the telecommunications company, at least 48 hours prior to the hearing. If the court finds clear and convincing evidence that the telecommunications services are, or have been, used to violate State or federal law the court must order the telecommunications company to discontinue service immediately.

Subsection (d) provides that discontinued services may only be reinstated by court order, and that call forwarding or message referral may not be provided to a discontinued service until reinstatement is ordered.

Subsection (e) provides that a telecommunications company shall be held harmless from liability to any person when complying with the court order.

The act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

S919-SMRL-001

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

Amend. #1

EDITION No. 1

H. B. No. _____ DATE _____

S. B. No. 919 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) Michaux

moves to amend the bill on page 2, line 5

( ) WHICH CHANGES THE TITLE

by deleting "shall" and substituting "may".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

#2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 919

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S919-ARL-001

Date_____,1997

Comm. Sub. []
Amends Title []

moves to amend the bill on page 1, lines 5 and 6, by rewriting those lines to read:

"Section 1. Subchapter II of Chapter 15A of the General Statutes is amended by adding a new Article to read:

'ARTICLE 16A.

'Discontinuation of Telecommunications Services.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Minutes
J-1
7-10-97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 919

midway amend 1 adopted
Coppa T amend 2 adopted
Cipora offered 3 a sub. amend, adopted
Miller, amend 4 adopted
Daughtry moved for favorable to P.C.S. unfav to engross

Short Title: Unlawful Telecommunications. (Public)

Sponsors: Senators Odom; Rucho and Winner.

Referred to: Commerce.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE DISCONTINUATION OF TELECOMMUNICATIONS SERVICES USED FOR UNLAWFUL PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. Article 16 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-299. Discontinuation of telecommunications services used for unlawful purposes.**

(a) The legislature finds that some persons use telecommunications services to violate State or federal law. The legislature further finds that some persons use telecommunications services or technology, such as call forwarding and cellular radio transmission, to avoid detection or arrest.

(b) A customer of a telecommunications company operating within the State may use telecommunications services only for lawful purposes.

(c) If a local, State, or federal law enforcement officer acting within the scope of the officer's duties obtains evidence that telecommunications services are being used or have been used by a customer or by the employee or agent of the customer to violate State or federal law, the officer may apply to the district court of the county in which the suspected violation of State or federal law occurred for an order requiring the telecommunications company to discontinue service to the customer. The court shall hold a hearing on the application as soon as possible, but no sooner than 48 hours after notice of the application for discontinuation of service is delivered to the address at which the telecommunications services are furnished or to the address to which bills for telecommunications services are mailed, according to

the telecommunications company records. Notice must also be given to the registered agent for the service of process upon the telecommunications company at least 48 hours prior to the hearing. If the court finds clear and convincing evidence that the telecommunications services are being used or have been used to violate State or federal law, the court shall order the telecommunications company to discontinue such service immediately.

(d) Telecommunications services discontinued under this section may be reinstated only by court order, and call forwarding or message referrals, whether recorded or live, may not be provided until reinstatement of service is ordered by the court.

(e) A telecommunications company shall be held harmless from liability to any person when complying with any court order issued under this section."

Section 2. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 919
Proposed House Committee Substitute S919-PCS8746

Short Title: Unlawful Telecommunications. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REQUIRE DISCONTINUATION OF TELECOMMUNICATIONS SERVICES USED FOR UNLAWFUL PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. Subchapter II of Chapter 15A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 16A.

"Discontinuation of Telecommunications Services.

"§ 15A-299. Discontinuation of telecommunications services used for unlawful purposes.

(a) The legislature finds that some persons use telecommunications services to violate State or federal criminal law. The legislature further finds that some persons use telecommunications services or technology, such as call forwarding and cellular radio transmission, to avoid detection or arrest.

(b) A customer of a telecommunications company operating within the State may use telecommunications services only for lawful purposes.

(c) If a local, State, or federal law enforcement officer acting within the scope of the officer's duties obtains evidence that telecommunications services are being used or have been used by a customer or by the employee or agent of the customer to violate State or federal criminal law, the officer may apply to the district court of the county in which the suspected violation of State or federal criminal law occurred for an order requiring the telecommunications company to discontinue service to the customer. The court shall hold a hearing on the application as soon as possible, but

no sooner than 48 hours after notice of the application for discontinuation of service is delivered to the address at which the telecommunications services are furnished or to the address to which bills for telecommunications services are mailed, according to the telecommunications company records. Notice must also be given to the registered agent for the service of process upon the telecommunications company at least 48 hours prior to the hearing. If the court finds clear and convincing evidence that the telecommunications services are being used or have been used to violate State or federal criminal law, the court may order the telecommunications company to discontinue such service immediately.

(d) Telecommunications services discontinued under this section may be reinstated only by court order, and call forwarding or message referrals, whether recorded or live, may not be provided until reinstatement of service is ordered by the court. The court may order reinstatement of telecommunications services if it finds that the customer is not likely to use the services to violate State or federal criminal law. The standard of proof shall be the same as that used for the disconnect order.

(e) A telecommunications company shall be held harmless from liability to any person when complying with any court order issued under this section."

Section 2. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

NORTH CAROLINA HOUSE OF REPRESENTATIVES
NOTIFICATION TO BILL SPONSOR

BILL SPONSOR: **Senator Odom**

OFFICE: **300-B LOB**

DATE: **July 9, 1997**

The House Committee on **JUDICIARY I** will meet as follows:

DAY & DATE: **Thursday, July 10, 1997**

TIME: **15 minutes after Session**

LOCATION: **1327 LB**

Your Bill (or Bills) will be discussed at this time:

SB 919 **UNLAWFUL TELECOMMUNICATIONS**

We would like to have you attend this meeting.

Representatives Hardy and Daughtry
Co-Chairs

Jackie Hamby (Committee Clerk)

Bernice Bullard (Rep. Daughtry)

From: Anne Wilson (Sen. Odom)
Sent: Thursday, July 03, 1997 11:15 AM
To: Bernice Bullard (Rep. Daughtry)
Subject: Senate Bill 919, "Unlawful Telecommunications"

Leo,

Senate Bill 919 was referred to the House Judiciary I Committee on May 1, 1997. I appreciate your calendaring it several times. Unfortunately, each time it was not reached or I was unable to get to the meetings.

Our law enforcement folks really need this bill. There is no controversy or opposition. I would greatly appreciate your bringing it up again. I will make every effort to attend and explain the bill.

Senator Rucho has attended some meetings for me, but the bill remains in Committee.

Help!

Fountain

Senator Dalton

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Daughtry and Hardy** for the Committee on **JUDICIARY I.**

☐ Committee Substitute for
S.B. 571 A BILL TO BE ENTITLED AN ACT TO REPLACE ON THE SCHEDULE II CONTROLLED SUBSTANCES LIST THE DRUG REMIFENTANIL AND SALTS THEREOF, IN ACCORDANCE WITH FEDERAL LAW.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar. (PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

4/24/97

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 571

Short Title: Controlled Substance/Schedule II. (Public)

Sponsors: Senators Dalton; Garwood, Jenkins, Phillips, Weinstein, and Wellons.

Referred to: Judiciary.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO PLACE ON THE SCHEDULE II CONTROLLED SUBSTANCES LIST THE DRUG REMIFENTANIL AND SALTS THEREOF, IN ACCORDANCE WITH FEDERAL LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-90(b) reads as rewritten:

"(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation unless specifically exempted or listed in other schedules:

01. Alfentanil.
1. Alphaprodine.
2. Anileridine.
3. Bezitramide.
3a. Carfentanil.
4. Dihydrocodeine.
5. Diphenoxylate.
6. Fentanyl.
7. Isomethadone.
7a. Levo-alphacetylmethadol. Some trade or other names: levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM.
8. Levomethorphan.
9. Levorphanol.
10. Metazocine.

11. Methadone.
12. Methadone -- Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
13. Moramide -- Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid.
14. Pethidine.
15. Pethidine -- Intermediate -- A, 4-cyano-1-methyl-4-phenylpipe ridine.
16. Pethidine -- Intermediate -- B, ethyl-4-phenylpiperidine-4-carboxylate.
17. Pethidine -- Intermediate -- C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
18. Phenazocine.
19. Piminodine.
20. Racemethorphan.
21. Racemorphan.
22. Sufentanil.
23. Remifentanil."

Section 2. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
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Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

July 9, 1997

MEMORANDUM

TO: Representative Leo Daughtry, Chairman, House Judiciary I Committee

FROM: Karen Cochrane Brown, Committee Co-Counsel
Brenda J. Carter, Staff Attorney

RE: **SENATE BILL 571 - CONTROLLED SUBSTANCE / SCHEDULE II**

Senate Bill 571 would add the drug Remifentanil to the list of Schedule II controlled substances. Remifentanil is an analgesic (produces insensibility to pain) and anesthetic that is available under the tradename Ultiva. It was recently approved by the FDA for analgesia during induction and maintenance of general anesthesia for inpatient and outpatient procedures, continuation analgesia into the immediate postoperative period under the direct supervision of an anesthesia practitioner in a postoperative anesthesia care unit or intensive care setting, and analgesia during monitored anesthesia care.

The bill would be effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

NORTH CAROLINA HOUSE OF REPRESENTATIVES
NOTIFICATION TO BILL SPONSOR

BILL SPONSOR: **Senator Dalton**

OFFICE: **2113 LB**

DATE: **July 9, 1997**

The House Committee on **JUDICIARY I** will meet as follows:

DAY & DATE: **THURSDAY, JULY 10, 1997**

TIME: **15 Minutes after Session**

LOCATION: **1327 LB**

Your Bill (or Bills) will be discussed at this time:

SB 571 CONTROLLED SUBSTANCE/SCHEDULE II

We would like to have you attend this meeting.

Representatives HARDY AND DAUGHTRY
Co-Chairs

JACKIE HAMBY (Committee Clerk)

Hunter

Jelle

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Hardy and Daughtry** for the Committee on **JUDICIARY I.**

☒ Committee Substitute for
S.B. 30 A BILL TO BE ENTITLED AN ACT AN ACT TO INCREASE THE PENALTY FOR SPEEDING IN A HIGHWAY WORK ZONE TO TWO HUNDRED FIFTY DOLLARS, AND TO PROVIDE THAT THE SAFE DRIVER INCENTIVE PLAN EXCEPTION FOR VIOLATIONS OF SPEEDING TEN MILES PER HOUR OR LESS OVER THE SPEED LIMIT SHALL NOT APPLY TO SPEEDING IN A HIGHWAY WORK ZONE.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☒ With a favorable report as to House committee substitute bill ~~(#)~~, ☒ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar. (PUBLIC BILLS ONLY)

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

4/24/97

J-1
7-10-97
Minutes
Finance

GENERAL ASSEMBLY OF NORTH CAROLINA

C. Sub FO

SESSION 1997

S 3

SENATE BILL 30
State Government, Local Government, and Personnel Committee Substitute Adopted 5/1/97
Third Edition Engrossed 5/1/97

Short Title: Speeding in a Work Zone. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR SPEEDING IN A HIGHWAY WORK ZONE TO TWO HUNDRED FIFTY DOLLARS, AND TO PROVIDE THAT THE SAFE DRIVER INCENTIVE PLAN EXCEPTION FOR VIOLATIONS OF SPEEDING TEN MILES PER HOUR OR LESS OVER THE SPEED LIMIT SHALL NOT APPLY TO SPEEDING IN A HIGHWAY WORK ZONE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-141(j2) reads as rewritten:

"(j2) A person who drives a motor vehicle in a highway work zone at a speed greater than the speed limit set and posted under G.S. 20-141 ~~is~~ is responsible for an infraction of 'Speeding in a Highway Work Zone' and ~~is~~ shall be required to pay a penalty of ~~one hundred dollars ($100.00).~~ two hundred fifty dollars ($250.00). A 'highway work zone' is the area between the first sign that informs motorists of the existence of a work zone on a highway and the last sign that informs motorists of the end of the work zone. This subsection applies only if a sign posted at the beginning of the highway work zone states the penalty for speeding in the work zone."

Section 2. G.S. 58-36-75(f) reads as rewritten:

"(f) The subclassification plan shall provide that with respect to a conviction for a 'violation of speeding 10 miles per hour or less over the speed limit' there shall be no premium surcharge nor any assessment of points unless there is a driving record

consisting of a conviction or convictions for a moving traffic violation or violations, except for a prayer for judgment continued for any moving traffic violation, during the three years immediately preceding the date of application or the preparation of the renewal. The subclassification plan shall also provide that with respect to a prayer for judgment continued for any moving traffic violation, there shall be no premium surcharge nor any assessment of points unless the vehicle owner, principal operator, or any licensed operator in the owner's household has a driving record consisting of a prayer or prayers for judgment continued for any moving traffic violation or violations during the three years immediately preceding the date of application or the preparation of the renewal. For the purpose of this subsection, a 'prayer for judgment continued' means a determination of guilt by a jury or a court though no sentence has been imposed. For the purpose of this subsection, a 'violation of speeding 10 miles per hour or less over the speed limit' does not include the offense of speeding in a school zone or a highway work zone in excess of the posted ~~school~~ zone speed limit."

Section 3. This act becomes effective October 1, 1997, and applies to violations which occur on or after that date.

NORTH CAROLINA HOUSE OF REPRESENTATIVES
NOTIFICATION TO BILL SPONSOR

BILL SPONSOR: **Senator Jordan**

OFFICE: **407 LOB**

DATE: **July 9, 1997**

The House Committee on **JUDICIARY I** will meet as follows:

DAY & DATE: **Thursday, July 10, 1997**

TIME: **15 minutes after Session**

LOCATION: **1327 LB**

Your Bill (or Bills) will be discussed at this time:
SB 30 **SPEEDING IN WORK ZONE**

We would like to have you attend this meeting.

Representatives Hardy and Daughtry
Co-Chairs

Jackie Hamby (Committee Clerk)

Bernice Bullard (Rep. Daughtry)

From: Carol Resar (Sen. Gulley)
Sent: Thursday, July 03, 1997 10:55 AM
To: Bernice Bullard (Rep. Daughtry)

Bernice:

Senator Gulley talked to Rep. Daughtry this morning about the JI Committee taking up SB 30, Speeding in Work Zones. This is Senator Jordan's bill, but Senator Gulley chaired the Subcommittee that this bill came out of and he is very interested in it. Please remind Rep. Daughtry of his conversation with Senator Gulley and Senator Gulley hopes this bill can be taken up as soon as possible.

Thanks Bernice,

Carol

Sloan Spencer Hunter

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

Hunter amendment adopted Rich moved fav. P.C.S. as far.

S 3

SENATE BILL 30
State Government, Local Government, and Personnel Committee
Substitute Adopted 5/1/97
Third Edition Engrossed 5/1/97
S30-CSRW-003
PROPOSED COMMITTEE SUBSTITUTE

Short Title: Speeding in a Work Zone. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR SPEEDING IN A HIGHWAY WORK ZONE TO TWO HUNDRED FIFTY DOLLARS, AND TO PROVIDE THAT THE SAFE DRIVER INCENTIVE PLAN EXCEPTION FOR VIOLATIONS OF SPEEDING TEN MILES PER HOUR OR LESS OVER THE SPEED LIMIT SHALL NOT APPLY TO SPEEDING IN A HIGHWAY WORK ZONE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-141(j2) reads as rewritten:

"(j2) A person who drives a motor vehicle in a highway work zone at a speed greater than the speed limit set and posted under G.S. 20-141 is responsible for an infraction of 'Speeding in a Highway Work Zone' and ~~is~~ shall be required to pay a penalty of ~~one hundred dollars ($100.00).~~ two hundred fifty dollars ($250.00). A 'highway work zone' is the area between the first sign that informs motorists of the existence of a work zone on a highway and the last sign that informs motorists of the end of the work zone. This subsection applies only if a sign posted at the beginning of the highway work zone states the penalty for speeding in the work zone. The Secretary shall ensure that work zones shall only be posted with penalty signs if the Secretary

determines, after engineering review, that the posting is necessary to ensure the safety of the traveling public due to a hazardous condition."

Section 2. G.S. 58-36-75(f) reads as rewritten:

"(f) The subclassification plan shall provide that with respect to a conviction for a 'violation of speeding 10 miles per hour or less over the speed limit' there shall be no premium surcharge nor any assessment of points unless there is a driving record consisting of a conviction or convictions for a moving traffic violation or violations, except for a prayer for judgment continued for any moving traffic violation, during the three years immediately preceding the date of application or the preparation of the renewal. The subclassification plan shall also provide that with respect to a prayer for judgment continued for any moving traffic violation, there shall be no premium surcharge nor any assessment of points unless the vehicle owner, principal operator, or any licensed operator in the owner's household has a driving record consisting of a prayer or prayers for judgment continued for any moving traffic violation or violations during the three years immediately preceding the date of application or the preparation of the renewal. For the purpose of this subsection, a 'prayer for judgment continued' means a determination of guilt by a jury or a court though no sentence has been imposed. For the purpose of this subsection, a 'violation of speeding 10 miles per hour or less over the speed limit' does not include the offense of speeding in a school zone or a highway work zone in excess of the posted ~~school~~ zone speed limit."

Section 3. This act becomes effective October 1, 1997, and applies to violations which occur on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 30
State Government, Local Government, and Personnel Committee Substitute Adopted 5/1/97
Third Edition Engrossed 5/1/97
Proposed House Committee Substitute S30-PCS7837

Short Title: Speeding in a Work Zone. (Public)

Sponsors:

Referred to:

February 3, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN INCREASED PENALTY FOR SPEEDING IN A HIGHWAY WORK ZONE OF UP TO TWO HUNDRED FIFTY DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-141(j2) reads as rewritten:

"(j2) A person who drives a motor vehicle in a highway work zone at a speed greater than the speed limit set and posted under G.S. 20-141 is responsible for an infraction of 'Speeding in a Highway Work Zone' and ~~is~~ shall be required to pay a penalty of not less than one hundred dollars ~~($100.00).~~ ($100.00), but not more than two hundred fifty dollars ($250.00). A 'highway work zone' is the area between the first sign that informs motorists of the existence of a work zone on a highway and the last sign that informs motorists of the end of the work zone. This subsection applies only if a sign posted at the beginning of the highway work zone states the penalty for speeding in the work zone. The Secretary shall ensure that work zones shall only be posted with penalty signs if the Secretary determines, after engineering review, that the posting is necessary to ensure the safety of the traveling public due to a hazardous condition."

Section 2. This act becomes effective October 1, 1997, and applies to violations which occur on or after that date.

record

J. I
7-10-97

VISITOR REGISTRATION SHEET

Judiciary I 7/10/97

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.	Leighton Porter	ZDA, PA
2.	Heather Smith	OSA
3.	Andrea Lytle	Allen & Pinnix
4.	John Poliscanik	Lawrence Bailey & Assoc.
5.	Berry Jenkins	Carolinas AGC
6.	Christie Barbee	CHPH
7.	John Bawdish	Zeb Alley PA.
8.	Tracy Poole	Poole & Steel
9.	John Womble	DMH/DDD/SAS
10.	Amy Anderson	Hunton & Williams
11.	Alan Miles	Bailey & Dixon LLP
22.	David Simmons	ZDA, PA
23.		
24.		
25.		
26.		
27.		
28.		
29.		
30.		
31.		

VISITOR REGISTRATION SHEET

JUDICIARY I 7/1/97

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

	NAME	FIRM OR AGENCY
1.		NCACC
2.	Bain Coston	NC Rural Ctr
3.	Glen Peterson	DOA
4.	Shw Leaston	DOA P&C
5.		DOA P&C
6.		NCHA
7.	Charlie Hayford	NC Dept. of Justice
8.	Jane B. Gray	DOJ
9.	STUART GORDAN	DOJ AGO INTERN
10.	Robert B. Nowell	DMA - Program Integrity
11.	Alan Mills	Bailey & Dixon LLP
22.	Kim Smith	NCLM
23.	Will Cherry	Intern Rep. Neely
24.		Lawrence Bailey & Assoc
25.	Catherine B. Davis	Electricities of NC
26.	CAIGHTON PORTER	~~DOA, P&C~~
27.	Tommy West	Carolina Clerk of Court
28.	Carmen Hooker Buell	Carolinas Healthcare System
29.	Evelyn Hawthorne	NCHA
30.	Durwood Laughinghouse	NS
31.	Ron Aycock	County Com.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 561

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S561-ARL-001

Date 7/1/97, 1997

Comm. Sub. [Yes]
Amends Title [Yes]
Third Edition

moves to amend the bill on page 1, line 4,
by inserting the following language immediately before the period:
"AND TO AMEND THE LAW CONCERNING CONCEALED HANDGUN PERMITS BY
REDUCING THE PENALTY FOR THE FIRST OFFENSE OF CARRYING A CONCEALED
HANDGUN ONTO PREMISES THAT HAVE EXCLUDED THEM"; and

on page 1, line 22, by rewriting that line to read:
"Section 2. G.S. 14-415.21 reads as rewritten:
'§ 14-415.21. Violations of this Article punishable as an infraction and a Class 2 misdemeanor.

(a) A person who has been issued a valid permit who is found to be carrying a concealed handgun without the permit in the person's possession or who fails to disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun, as required by G.S. 14-415.11, shall be guilty of an infraction for the first offense and shall be punished in accordance with G.S. 14-3.1. In lieu of paying a fine for the first offense, the person may surrender the permit. Subsequent offenses for failing to carry a valid permit or for failing to make the necessary disclosures to a law enforcement officer as required by G.S. 14-415.11 shall be punished in accordance with subsection (b) of this section.

(a1) If it is unlawful to carry a handgun on premises only because the premises are posted in accordance with G.S. 14-415.11(c) and a person violates G.S. 14-415.11 by failing to comply with that notice, the person shall be guilty of an infraction for the first offense and shall be punished in accordance with G.S. 14-3.1.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 561

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S561-ARL-001

Subsequent offenses for violations of this subsection shall be punished in accordance with subsection (b) of this section.

(b) A person who violates the provisions of this Article other than for first offenses as set forth in ~~subsection (a)~~ subsections (a) and (a1) of this section is guilty of a Class 2 misdemeanor.'

Section 3. Section 2 of this act shall become effective December 1, 1997. The remainder of this act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 417 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

(Rep.) Ellis
Sen.)

moves to amend the bill on pages 2 + 3, line _____

( ) WHICH CHANGES THE TITLE

by deleting section 2 of the bill and renumbering the following section accordingly;

and on page 1, line 3+4, by inserting a period after the word "BIDDING" and deleting the remainder of the lines.

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 4, line 39

( ) WHICH CHANGES THE TITLE

by inserting the following phrase between the words "liable" and "under"

"for the same claims"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 561

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S561-ARU-001 Page 1 of __

Date_____,1997

Comm. Sub. [YES]
Amends Title [YES]
Second Edition

Representative

moves to amend the bill on page 1, line 4,
by rewriting the line to read:
"CARRYING CONCEALED WEAPONS STATUTES AND TO CLARIFY THE MENTAL HEALTH REQUIREMENTS FOR A CONCEALED HANDGUN PERMIT."; and

on page 1, line 22,
by rewriting the line to read:
"Section 2. G.S. 14-415.12(b)(6) reads as rewritten:
'(6) Is currently, or has been previously adjudicated by a court or administratively determined by a governmental agency whose decisions are subject to judicial review to be, lacking mental capacity or mentally ill. Receipt of previous consultative services or outpatient treatment alone shall not disqualify an applicant under this subdivision.'.
Section 3. This act is effective when it becomes law and Section 2 applies to applications made before, on, or after the effective date.".

SIGNED Jean Arnold
Amendment Sponsor

SIGNED _____
Committee Chair if House Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____