1997

HOUSE
JUDICIARY II

MINUTES

HOUSE JUDICIARY II COMMITTEE
1997 SESSION

REPRESENTATIVE CHARLES B. NEELY, JR.
CHAIRMAN

REPRESENTATIVE JOE L. KISER
VICE-CHAIRMAN

Betty Harrison, Clerk
Room 420/Legislative Office Building
715-3001

HOUSE JUDICIARY II COMMITTEE

1997-1998

Charles B. Neely, Jr.
CHAIRMAN

Joe Kiser
VICE-CHAIRMAN

Phil Baddor, Jr.

Cherie K. Berry

Joanne W. Bowie

Lanier M. Canser

Billy J. Creech

Bill Culpepper

Michael Decker

Charlotte A. Gardner

Wayne Goodwin

Joe Hackney

Bob Hensley

Edwin McMahan

Martin L. Nesbitt, Jr.

David Redwine

Carolyn B. Russell

Drew P. Saunders

Fern H. Shubert

Ronnie Sutton

John H. Weatherly

Michael S. Wilkins

Connie Wilson

HOUSE COMMITTEE ON JUDICIARY II
1997-98

REPRESENTATIVE	TELEPHONE	OFFICE	SEAT NUMBER	SECRETARY
Charles B. Neely, Jr. Chairman	715-3001	LOB-420	29	Betty Harrison
Joe Kiser Vice-Chairman	733-5803	LB-1313	86	Marilyn Holder
Phil Baddour, Jr.	733-5903	LOB-501	119	Sandra Webster
Cherie K. Berry	733-5861	LB-1006	41	Betty Smith
Joanne W. Bowie	733-5853	LB-1206	26	Sharon Gaudette
Lanier M. Cansler	715-3007	LOB-419A	53	Barbara Cansler
Billy J. Creech	733-5829	LOB-635	42	Betty Anne Lennon
Bill Culpepper	733-5802	LOB-604	36	Dot Crocker
Michael Decker	733-7208	LB-2121	13	Cindy Keen
Charlotte A. Gardner	715-3017	LOB-417B	7	Barbara Hocutt
Wayne Goodwin	733-4838	LOB-502	111	Ann Smith
Joe Hackney	733-5752	LB-1321	69	Emily Reynolds
Bob Hensley	733-5936	LB-509	67	Margie Kirby
Edwin McMahan	733-5732	LB-2213	28	Sharon Cram
Martin L. Nesbitt, Jr.	715-0873	LB-1213	118	Jan Lee
David Redwine	733-4948	LB-1204	117	Katie Shull
Carolyn B. Russell	715-0875	LB-2207	27	Susan Brothers
Drew P. Saunders	733-5530	LB-1017	110	Ruth Fish
Fern H. Shubert	733-5771	LB-2119	64	Dawn Ellis
Ronnie Sutton	733-5782	LB-1317	83	Juanita Coley
John H. Weatherly	733-5849	LOB-503	61	Debbie Puckett
Michael S. Wilkins	733-5746	LB-1220	32	Lillie Pearce
Connie Wilson	733-7663	LOB-529	40	Joanna Mills

ATTENDANCE

HOUSE JUDICIARY II COMMITTEE

1997-98

DATES	2-11	2-13	2-18/10	2-18/1	2-20	2-25/10	2-25/1	2-27	3-4/10	3-4/1	3-6	3-11/10	3-11/1	3-18/10	3-18/1 pm
NEELY - CHAIR	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
KISER - CO-CHAIR	✓	✓	✓	✓	✓	✓		✓		✓		✓	✓	✓	✓
BADDOUR	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
BERRY	✓	✓	✓	✓		✓			✓	✓	✓	✓	✓	✓	✓
BOWIE	✓	✓	✓	✓	✓	✓		✓	✓		✓	✓	✓	✓	✓
CANSLER	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
CREECH		✓	✓		✓	✓	✓		✓	✓	✓	✓		✓	✓
CULPEPPER		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
DECKER	✓	✓	✓					✓	✓		✓	✓	✓	✓	
GARDNER	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
GOODWIN	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓		✓	✓
HACKNEY	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓
HENSLEY	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓
McMAHAN		✓	✓	✓	✓			✓	✓				✓	✓	✓
NESBITT	✓				✓	✓	✓		✓	✓		✓	✓	✓	
REDWINE	—	—	✓	✓	✓	✓	✓		✓	✓		✓	✓	✓	✓
RUSSELL	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	✓	✓
SAUNDERS	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
SHUBERT	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓		✓	✓
SUTTON	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
WEATHERLY		✓	✓	✓	✓	✓			✓	✓		✓		✓	✓
WILKINS	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	
WILSON, C.	—	—	✓					✓	✓						

Redwine & Wilson appointed to Committee 2/13/97

ATTENDANCE

HOUSE JUDICIARY II COMMITTEE

1997-98

DATES	3-20	3-25/10	3-25/1	3-27	4-1/10	4-1/1	4-3	4-8/10	4-8/1	4-8	4-10	4-15/10	4-15/1	4-16	4-17
NEELY - CHAIR		✓	✓	✓	✓	✓		✓	✓	✓	✓		✓	✓	✓
KISER - CO-CHAIR	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓
BADDOUR	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓		✓	✓
BERRY		✓	✓	✓	✓	✓		✓				✓			
BOWIE	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓
CANSLER	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
CREECH	✓	✓	✓		✓						✓				
CULPEPPER	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			
DECKER	✓			✓			✓	✓							
GARDNER	✓		✓		✓	✓		✓	✓		✓	✓	✓	✓	✓
GOODWIN	✓	✓	✓	✓	✓		✓	✓		✓	✓	✓	✓	✓	✓
HACKNEY	✓	✓	✓	✓				✓	✓	✓	✓	✓	✓	✓	✓
HENSLEY	✓	✓		✓	✓	✓	✓				✓	✓	✓		
McMAHAN	✓			✓	✓	✓		✓		✓	✓	✓	✓	✓	✓
NESBITT	✓	✓		✓	✓		✓	✓			✓	✓		✓	✓
REDWINE	✓	✓		✓	✓	✓		✓	✓		✓		✓	✓	✓
RUSSELL	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓
SAUNDERS	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓	✓	✓
SHUBERT	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓			✓
SUTTON		✓		✓	✓	✓		✓	✓	✓	✓				✓
WEATHERLY						✓		✓	✓	✓	✓	✓	✓	✓	✓
WILKINS	✓	✓		✓	✓	✓	✓			✓	✓	✓	✓	✓	✓
WILSON, C.	✓														

ATTENDANCE

HOUSE JUDICIARY II COMMITTEE

1997-98

DATES	4-17 10	4-22 7:30	4-28 10	4-22 1	4-23 7:30	4-23 1	4-24 7:30	4-24 10	4-24 1	4-29 7:30	4-29 10	4-29 1	4-30 7:30	4-30 10	5-6 10
NEELY - CHAIR		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
KISER - CO-CHAIR	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
BADDOUR	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
BERRY	✓		✓	✓		✓			✓			✓	✓		
BOWIE	✓	✓	✓		✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
CANSLER	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
CREECH	✓	✓	✓			✓		✓	✓				✓	✓	✓
CULPEPPER		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
DECKER				✓		✓		✓	✓		✓	✓	✓		✓
GARDNER	✓		✓					✓	✓		✓	✓	✓	✓	✓
GOODWIN	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
HACKNEY	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
HENSLEY	✓		✓	✓	✓			✓	✓	✓	✓	✓	✓		✓
McMAHAN	✓	✓		✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	
NESBITT	✓		✓	✓		✓		✓	✓		✓	✓		✓	✓
REDWINE	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓		✓	✓
RUSSELL	✓	✓	✓	✓	✓		✓	✓	✓	✓	·	✓	✓		✓
SAUNDERS	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
SHUBERT	✓	✓	✓	✓			✓	✓	✓	✓		✓	✓	✓	✓
SUTTON	✓	✓	✓	✓		✓	✓	✓	✓		✓	✓			✓
WEATHERLY			✓			✓	✓		✓		✓	✓	✓	✓	
WILKINS	✓	✓	✓	✓	✓	✓	✓		✓		✓	✓	✓	✓	✓
WILSON, C.															

ATTENDANCE

HOUSE JUDICIARY II COMMITTEE

1997-98

DATES	5-6/1	5-8	5-13/10	5-13/1	5-15	5-20/10	5-20/1	5-20	5-27/10	5-27/1	6-3/10	6-8/1	6-10	6-12	6-17
NEELY - CHAIR	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓		✓		✓
KISER - CO-CHAIR	✓	✓	✓					✓			✓	✓	✓	✓	
BADDOUR	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
BERRY					✓								✓		
BOWIE		✓	✓	✓		✓		✓		✓	✓			✓	✓
CANSLER	✓	✓	✓	✓	✓		✓	✓			✓	✓	✓	✓	✓
CREECH		✓			✓	✓								✓	✓
CULPEPPER	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓		✓	✓
DECKER	✓	✓		✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	
GARDNER	✓	✓	✓	✓			✓	✓			✓		✓	✓	
GOODWIN			✓		✓		✓	✓		✓	✓		✓	✓	✓
HACKNEY	✓	✓		✓	✓	✓	✓		✓	✓	✓	✓		✓	✓
HENSLEY	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓
McMAHAN		✓	✓		✓	✓					✓	✓	✓	✓	✓
NESBITT	✓	✓	✓		✓	✓		✓	✓	✓		✓	✓		
REDWINE	✓	✓	✓	✓		✓		✓	✓	✓	✓	✓	✓	✓	✓
RUSSELL	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
SAUNDERS	✓	✓	✓	✓	✓	✓		✓	✓			✓	✓	✓	✓
SHUBERT	✓	✓	✓			✓	✓		✓	✓				✓	✓
SUTTON	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
WEATHERLY	✓	✓	✓	✓		✓				✓	✓	✓	✓		✓
WILKINS		✓	✓	✓	✓		✓	✓	✓		✓	✓	✓		✓
WILSON, C.						✓					✓	✓	✓		

ATTENDANCE

HOUSE JUDICIARY II COMMITTEE

1997-98

DATES	6-19 PM	6-19 11:15	6-24	6-26	7-1	7-3	7-8	7-9	7-23						
NEELY - CHAIR	✓	✓	✓	✓	✓	✓	✓	✓	✓						
KISER - CO-CHAIR		✓				✓		✓	✓						
BADDOUR	✓	✓	✓		✓		✓	✓	✓						
BERRY				✓	✓	✓									
BOWIE	✓	✓	✓			✓	✓		✓						
CANSLER	✓	✓	✓		✓	✓	✓		✓						
CREECH															
CULPEPPER	✓	✓		✓	✓	✓	✓		✓						
DECKER		✓			✓	✓		✓							
GARDNER	✓	✓				✓	✓		✓						
GOODWIN	✓	✓	✓	✓		✓	✓		✓						
HACKNEY	✓	✓	✓		✓	✓	✓		✓						
HENSLEY						✓									
McMAHAN			✓	✓	✓				✓						
NESBITT															
REDWINE	✓	✓	✓		✓										
RUSSELL	✓	✓	✓	✓	✓	✓	✓	✓	✓						
SAUNDERS	✓	✓	✓	✓	✓	✓	✓								
SHUBERT	✓		✓	✓	✓	✓	✓								
SUTTON		✓	✓	✓	✓				✓						
WEATHERLY	✓	✓	✓		✓	✓	✓	✓							
WILKINS	✓	✓			✓	✓									
WILSON, C.						✓									

MINUTES
HOUSE JUDICIARY II COMMITTEE

February 11, 1997

The North Carolina House of Representatives Judiciary II Committee met on February 11, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Berry, Bowie, Cansler, Decker, Gardner, Goodwin, Hackney, Hensley, Nesbitt, Russell, Saunders, Shubert, Sutton and Wilkins. A list of visitors is attached.

Representative Neely asked Staff and Committee members to introduced themselves.

The following bill was discussed:

HB-29 RAFFLE LIMITS UPPED

Representative Baker was recognized to explain the bill and answer questions of committee members. A copy of the bill and bill explanation prepared by Susan Hayes, Committee Counsel, are attached.

Representative Baddour was recognized to send forth an amendment and moved for adoption; motion passed. A copy of the amendment is attached.

Representative Goodwin was recognized to send forth an amendment and moved for adoption; motion passed. A copy of the amendment is attached.

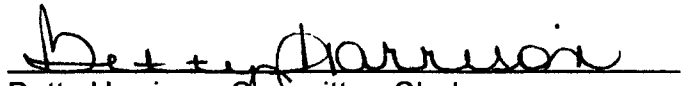
Representative Shubert moved the amendments be incorporated into a committee substitute bill with a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

Representative Hensley requested bills passed by the Judiciary II Committee not be placed on the Consent Calendar. Representative Neely stated unless there were objections, bills would not be placed on the Consent Calendar.

The meeting was adjourned at 10:40 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman



Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 29

Short Title: Raffle Limits Upped. (Public)

Sponsors: Representatives Baker; Hall and Gulley.

Referred to: Judiciary II.

February 4, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE MAXIMUM RAFFLE CASH PRIZES AND THE FAIR MARKET VALUE OF RAFFLE MERCHANDISE PRIZES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-309.15(d) reads as rewritten:

"(d) The maximum cash prize that may be offered or paid for any one raffle is ~~five thousand dollars ($5,000)~~ ten thousand dollars ($10,000) and if merchandise is used as a prize, and it is not redeemable for cash, the maximum fair market value of that prize may be ~~twenty-five thousand dollars ($25,000).~~ fifty thousand dollars ($50,000). No real property may be offered as a prize in a raffle. The total cash prizes offered or paid may not exceed ten thousand dollars ($10,000) in any calendar year. The total fair market value of all prizes offered, either in cash or in merchandise that is not redeemable for cash, may not exceed fifty thousand dollars ($50,000) in any calendar year."

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

North Carolina General Assembly
Legislative Services Agency

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

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

Donald W. Fulford, Director
Information Systems Division
Suite 400, LOB
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Terrence D. Sullivan, Director
Research Division
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Raleigh, NC 27603-5925
(919) 733-2578

February 11, 1997

MEMORANDUM

TO: Representative Charles B. Neely, Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

SUBJECT: House Bill 29 - Raffle Limits Upped

House Bill 29 increases the prize limits for raffles held by nonprofit organizations or associations.

SECTION 1 amends G.S. 14-309.15(d) by increasing the cash prize limit from $5,000 to $10,000 and the maximum fair market value of any merchandise prize not redeemable for cash from $25,000 to $50,000. This section also adds language that restricts the total cash prizes offered in one calendar year to $10,000 and the fair market value of any prizes offered, whether in cash or merchandise, to $50,000 per calendar year.

SECTION 2 makes this act effective when it becomes law.

§ 14-309.15. Raffles.

(a) It is lawful for any nonprofit organization or association, recognized by the Department of Revenue as tax-exempt pursuant to G.S. 105-130.11(a), to conduct raffles in accordance with this section. Any person who conducts a raffle in violation of any provision of this section shall be guilty of a Class 2 misdemeanor. Upon conviction that person shall not conduct a raffle for a period of one year. It is lawful to participate in a raffle conducted pursuant to this section. It shall not constitute a violation of State law to advertise a raffle conducted in accordance with this section. A raffle conducted pursuant to this section is not "gambling".

(b) For purposes of this section "raffle" means a game in which the prize is won by random drawing of the name or number of one or more persons purchasing chances.

(c) Raffles shall be limited to two per nonprofit organization per year.

(d) The maximum cash prize that may be offered or paid for any one raffle is five thousand dollars ($5,000) and if merchandise is used as a prize, and it is not redeemable for cash, the maximum fair market value of that prize may be twenty-five thousand dollars ($25,000). No real property may be offered as a prize in a raffle.

(e) Raffles shall not be conducted in conjunction with bingo.

(f) As used in this subsection, "net proceeds of a raffle" means the receipts less the cost of prizes awarded. No less than ninety percent (90%) of the net proceeds of a raffle shall be used by the nonprofit organization or association for charitable, religious, educational, civic, or other nonprofit purposes. None of the net proceeds of the raffle may be used to pay any person to conduct the raffle, or to rent a building where the tickets are received or sold or the drawing is conducted.

(1983 (Reg. Sess., 1984), c. 1107, s. 11; 1993, c. 219, s. 1; c. 539, s. 215; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. - Session Laws 1993, c. 219, which amended this section, in s. 2 provides that for purposes of the act, government entities within the State of North Carolina shall be considered nonprofit as defined in G.S. 105-130.11(a).

Session Laws 1993, c. 539, s. 215, 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."

CASE NOTES

Obligation of One Conducting "Raffle." - By using a "raffle," with a car as the grand prize, as an inducement for people to buy tickets at a price of $100.00 each, defendant was obligated, by virtue of subsection (b) of this section, to ensure that (1) the designated prize would be given to a ticket holder, and (2) the method of selecting that ticket holder would be random. Keene Convenient Mart, Inc. v. SSS Band Backers, 109 N.C. App. 384, 427 S.E.2d 322 (1993).

Randomness. - Defendant, by putting the ticket of ticket purchaser, which had been inadvertently omitted from basket, in the basket out of which names were being drawn, after some of the names already

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NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 29 DATE

S. B. No. Amendment No.
(to be filled in by Principal Clerk)

Rep.) BADDOUR
Sen.)

moves to amend the bill on page 1, line 11,

by inserting after the word "paid" the following: "by any nonprofit organization or association"

~~and on page 1, line 12 by inserting after the word "offered," the following: "by any nonprofit organization or association"~~

and on page 1, line 12 by deleting the word "offered," and substituting the following: "offered by any nonprofit organization or association,"

SIGNED Phil Baddour

ADOPTED FAILED TABLED

GA-33-A PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 29 DATE

S. B. No. Amendment No.
(to be filled in by Principal Clerk)

Rep.) Goodwin
Sen.)

moves to amend the bill on page 1, line 15,

by rewriting the line to read:

"Section 2. This act becomes effective July 1, 1997."

SIGNED Wayne Goodwin

ADOPTED FAILED TABLED

GA-33-A PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 29 A BILL TO BE ENTITLED AN ACT TO INCREASE THE MAXIMUM RAFFLE CASH PRIZES AND THE FAIR MARKET VALUE OF RAFFLE MERCHANDISE PRIZES.

☐ 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 29
Proposed Committee Substitute H29-PCSA137

Short Title: Raffle Limits Upped. (Public)

Sponsors:

Referred to:

February 4, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE MAXIMUM RAFFLE CASH PRIZES AND THE FAIR MARKET VALUE OF RAFFLE MERCHANDISE PRIZES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-309.15(d) reads as rewritten:

"(d) The maximum cash prize that may be offered or paid for any one raffle is ~~five thousand dollars ($5,000)~~ ten thousand dollars ($10,000) and if merchandise is used as a prize, and it is not redeemable for cash, the maximum fair market value of that prize may be ~~twenty-five thousand dollars ($25,000).~~ fifty thousand dollars ($50,000). No real property may be offered as a prize in a raffle. The total cash prizes offered or paid by any nonprofit organization or association may not exceed ten thousand dollars ($10,000) in any calendar year. The total fair market value of all prizes offered by any nonprofit organization or association, either in cash or in merchandise that is not redeemable for cash, may not exceed fifty thousand dollars ($50,000) in any calendar year."

Section 2. This act becomes effective July 1, 1997.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II COMMITTEE — February 11, 1997 10:00 AM
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
Jill Miller	NCATL
Stephen Harris	Carolina Gazette
R. Paul Wilms	NCMSA
Alan Miles	Baily & Dixon LLP
Susan Valauri	Nationwide
John Rustin	Hunton & Williams
Nancy Bradley	NCCBI
Ralph D. Scott	CSC Franklin Co.
[illegible]	N.C. VAN
A.A. Adams	N.C. VAN
[illegible]	[illegible]
Lucius PULLEN	ATTORNEY
Ann Christian	ncawa
Don McCorquodale	NCRMA

#6996

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II COMMITTEE — February 11, 1997 10:00 AM
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK.

NAME	FIRM OR AGENCY AND ADDRESS
John Bowdish	Zeb Alley PA
Evelyn Hagthorne	NCHA
Lucia Reel	NC Medical Society

#6996

MINUTES
HOUSE JUDICIARY II COMMITTEE

February 13, 1997

The North Carolina House of Representatives Judiciary II Committee met on February 13, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Berry, Bowie, Cansler, Creech, Culpepper, Decker Gardner, Goodwin, Hackney, Hensley, McMahan, Russell, Saunders, Shubert, Sutton, Weatherly and Wilkins. A list of visitors is attached.

The following bill was discussed:

HB-66 TRESPASS/THEFT OF PINE STRAW

Representative Brown was recognized to present the bill and Susan Hayes, Staff Counsel, explained the bill and answered questions of committee members. A copy of the bill and bill explanation prepared by Susan Hayes, Staff Counsel, are attached.

Paula Gupton and Andy Ellen, North Carolina Farm Bureau Federation, Inc., spoke in favor of the bill and answered questions of committee members. Mr. Ellen provided members with a copy of a newspaper article from the Fayetteville Observer-Times, Monday, May 27, 1996. A copy of the article is attached.

Representative Baddour was recognized to send forth an amendment and moved it be adopted; motion passed. Representative Brown stated he had no objection to this amendment. A copy of the amendment is attached.

Representative Sutton was recognized to send forth an amendment and moved it be adopted; motion failed. A copy of the amendment is attached.

Representative Decker moved the amendment be incorporated into a committee substitute bill with a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 66*

Short Title: Trespass/Theft of Pine Straw. (Public)

Sponsors: Representatives Brown; Aldridge, Baker, Barbee, Buchanan, Capps, Culp, Eddins, Goodwin, McComas, Mitchell, Weatherly, and G. Wilson.

Referred to: Judiciary II.

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE OFFENSES OF TRESPASS ON PINE STRAW PRODUCTION LAND AND LARCENY OF PINE STRAW.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 22A of Chapter 14 of the General Statutes reads as rewritten:

"ARTICLE 22A.

Trespassing upon 'Posted' Property to Hunt, ~~Fish or Trap.~~ Fish, Trap, or Remove Pine Needles/Straw."

Section 2. G.S. 14-159.6 reads as rewritten:

"**§ 14-159.6. Trespass for purposes of hunting, etc., without written consent a misdemeanor.**

(a) Any person who willfully goes on the land, waters, ponds, or a legally established waterfowl blind of another upon which notices, signs or ~~posters, described in G.S. 14-159.7,~~ posters prohibiting hunting, fishing or ~~trapping,~~ trapping have been placed in accordance with the provisions of G.S. 14-159.7, or upon which 'posted' notices have been ~~placed,~~ placed in accordance with the provisions of G.S. 14-159.7, to hunt, fish or trap without the written consent of the owner or his agent shall be guilty of a Class 2 misdemeanor. Provided, further, that no arrests under authority of this ~~section~~ subsection shall be made without the consent of the owner or owners of said land, or their duly authorized agents in the following counties: Halifax and Warren.

(b) Any person who willfully goes on the land of another upon which notices, signs, or posters prohibiting raking or removing pine needles or pine straw have been placed in accordance with the provisions of G.S. 14-159.7, or upon which 'posted' notices have been placed in accordance with the provisions of G.S. 14-159.7, to rake or remove pine needles or pine straw without the written consent of the owner or his agent shall be guilty of a Class 1 misdemeanor for the first offense, and of a Class I felony for second or subsequent offenses."

Section 3. Article 16 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-79.1. Larceny of pine needles or pine straw.**

If any person shall take and carry away, or shall aid in taking or carrying away, any pine needles or pine straw being produced on the land of another person with the intent to steal the pine needles or pine straw, that person shall be guilty of a Class H felony."

Section 4. This act becomes effective January 1, 1998, and applies to offenses committed on or after that date.

North Carolina General Assembly
Legislative Services Agency

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

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

Gerry F. Cohen, Director
Bill Drafting Division
Suite 100, 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

February 13, 1997

MEMORANDUM

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: **House Bill 66 - Trespass/Theft of Pine Straw.**

House Bill 66 is a recommendation of the Agriculture, Forestry, and Seafood Awareness Study Committee, and is identical to Senate Bill 1188 from the 1995-96 session. This bill would create criminal offenses for trespassing upon the posted lands of another to rake or remove pine straw without permission, and for stealing or aiding in the stealing of pine straw.

Section 2 of the bill would amend G.S. 14-159.6 to make it unlawful to go upon the lands of another, that have been posted with signs prohibiting raking or removing pine straw, or that have been posted generally against trespassing, to rake or remove pine straw. Notices would have to be posted in accordance with G.S. 14-159.7 (a copy of which is attached) which specifies the size of the notice and where on the property the notices have to be posted.

Punishment for the first offense of trespassing to rake or remove pine straw would be a Class 1 misdemeanor, and the second offense would be punished as a Class I felony. This punishment would be more severe than trespassing on lands posted for other purposes (hunting, fishing, or trapping - Class 2 misdemeanor; general posting trespass - Class 3 misdemeanor). The Sentencing Commission has advised that setting a more severe punishment for a second offense is generally inconsistent with Structured Sentencing in that Structured Sentencing offenses are classed based on the harm to the victim, not the number of prior convictions.

Section 3 creates a separate offense for larceny of pine straw, or aiding in the larceny of pine straw. Any person who takes and carries away, or helps take or carry away, pine straw

with the intent to steal is guilty of a Class H felony. This statute would add pine straw to a list of other crops (ungathered crops - G.S. 14-78; ginseng - G.S. 14-79), the theft of which is punished as a Class H felony.

This bill would become effective January 1, 1998.

§ 14-159.7. Regulations as to posting of property.

The notices, signs or posters described in G.S. 14-159.6 shall measure not less than 120 square inches and shall be conspicuously posted on private lands not more than 200 yards apart close to and along the boundaries. At least one such notice, sign, or poster shall be posted on each side of such land, and one at each corner thereof, provided that said corner can be reasonably ascertained. For the purpose of prohibiting fishing, or the taking of fish by any means, in any stream, lake, or pond, it shall only be necessary that the signs, notices, or posters be posted along the stream or shoreline of a pond or lake at intervals of not more than 200 yards apart.

(1949, c. 887, s. 2; 1953, c. 1226; 1965, c. 923; 1975, c. 280, ss. 2, 3; 1979, c. 830, s. 11.)

§ 14-78. Larceny of ungathered crops.

If any person shall steal or feloniously take and carry away any maize, corn, wheat, rice or other grain, or any cotton, tobacco, potatoes, peanuts, pulse, fruit, vegetable or other product cultivated for food or market, growing, standing or remaining ungathered in any field or ground, that person is guilty of a Class H felony.

(1811, c. 816, P.R.; R.C., c. 34, s. 21; 1868-9, c. 251; Code, s. 1069; Rev., s. 3503; C.S., s. 4257; 1975, c. 697; 1993, c. 539, s. 1168; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 14-79. Larceny of ginseng.

If any person shall take and carry away, or shall aid in taking or carrying away, any ginseng growing upon the lands of another person, with intent to steal the same, he shall be punished as a Class H felon: Provided, that such ginseng, at the time the same is taken, shall be in beds and the land upon which such beds are located shall be surrounded by a lawful fence.

(1905, c. 211; Rev., s. 3502; C.S., s. 4258; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; c. 179, s. 14; 1993, c. 539, s. 1169; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 14-159.12. First degree trespass.

(a) Offense. - A person commits the offense of first degree trespass if, without authorization, he enters or remains:

(1) On premises of another so enclosed or secured as to demonstrate clearly an intent to keep out intruders; or

(2) In a building of another.

(b) Classification. - First degree trespass is a Class 2 misdemeanor.

(1987, c. 700, s. 1; 1993, c. 539, s. 101; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 14-159.13. Second degree trespass.

(a) Offense. - A person commits the offense of second degree trespass if, without authorization, he enters or remains on premises of another:

(1) After he has been notified not to enter or remain there by the owner, by a person in charge of the premises, by a lawful occupant, or by another authorized person; or

(2) That are posted, in a manner reasonably likely to come to the attention of intruders, with notice not to enter the premises.

(b) Classification. - Second degree trespass is a Class 3 misdemeanor.

(1987, c. 700, s. 1; 1993, c. 539, s. 102; 1994, Ex. Sess., c. 24, s. 14(c).)

FAYETTEVILLE OBSERVER-TIMES
MONDAY, MAY 27, 1996

PINE NEEDLE LOSSES BALEFUL

Thieves spin straw into gold

By David Sinclair
Staff writer

CARTHAGE — Stolen pine straw is big business in North Carolina — $8 million annually by some estimates.

Jerry Holder says the only way to combat the theft is to enact tougher laws.

Holder, president of the N.C. Pine Needles Producers Association, may get his wish. Bills filed in the state House and Senate would change an existing law and make swiping pine straw on private property a felony.

The measures would allow a property owner to post signs prohibiting the removal of pine straw, a popular landscaping material.

"They have a lot of money invested in their land in most cases," said Holder, who lives in Vass. "They expect to get a return and this is one way they can do that. But a large percentage is being stolen.

"It is very hard to catch these people. They can hear you coming a half mile away. They can get away before you can catch them."

Holder told the Moore County commissioners last week that the

See Needles, Page 4A

Needles

From Page 1A

measure would allow a law enforcement officer to arrest someone caught stealing pine straw on private property without seeking consent from the property owner.

The commissioners passed a resolution urging the General Assembly to enact the measure.

Holder, like many producers, contracts with landowners to remove their pine straw.

"It is an awful feeling to drive up and see someone removing the straw. It cost me money. It can be a tough situation. I've been approached by someone with a pitch fork. I have heard of people being struck with one. It can be a dangerous situation."

Charles Hammond, director of the Moore County Cooperative Extension Service, says pine straw sales generate $51 million a year in North Carolina, according to figures from the state extension Service. It is confined mainly in the eastern part of the state and the Sandhills.

There are about 585,000 acres of longleaf pine forest in the state. A bail of pine straw is worth about $4.50. An average acre can generate 75 bails, which amounts to $337.50, Hammond said.

Pine straw theft has been a growing problem in Moore County, Holder said.

The county commissioners passed an ordinance a few years ago requiring purchasers of pine straw in Moore County to keep detailed records on who they buy from, including the license number of their vehicle. Commissioners hoped the ordinance would deter the sale of stolen straw.

Holder said the ordinance has been ineffective in dealing with the problem.

Maj. Lane Carter of the Sheriff's Department said "most of the buying stations just moved out of the county. Theft still continues and the problem is getting worse."

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

Rep.)
) Baddour
Sen.)

moves to amend the bill on page 2, line 12,

by inserting after the word "person" the following:

"upon which land notices, signs, or posters prohibiting the raking or removal of pine needles or pine straw have been placed in accordance with the provisions of G.S. 14-159.7, or upon which posted notices have been placed in accordance with the provisions of G.S. 14-159.7,"

SIGNED Ruth A Baddour

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.)
) SUTTON
Sen.)

moves to amend the bill on page 2, line 5

( ) WHICH CHANGES THE TITLE

by

deleting the word "written".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 66 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE OFFENSES OF TRESPASS ON PINE STRAW PRODUCTION LAND AND LARCENY OF PINE STRAW.

☐ 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** ( ), ☐ 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 D

HOUSE BILL 66*
Proposed Committee Substitute H66-PCS6055

Short Title: Trespass/Theft of Pine Straw. (Public)

Sponsors:

Referred to:

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE OFFENSES OF TRESPASS ON PINE STRAW PRODUCTION LAND AND LARCENY OF PINE STRAW.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 22A of Chapter 14 of the General Statutes reads as rewritten:

"ARTICLE 22A.

Trespassing upon 'Posted' Property to Hunt, ~~Fish or Trap.~~ Fish, Trap, or Remove Pine Needles/Straw."

Section 2. G.S. 14-159.6 reads as rewritten:

"**§ 14-159.6. Trespass for purposes of hunting, etc., without written consent a misdemeanor.**

(a) Any person who willfully goes on the land, waters, ponds, or a legally established waterfowl blind of another upon which notices, signs or ~~posters, described in G.S. 14-159.7,~~ posters prohibiting hunting, fishing or ~~trapping,~~ trapping have been placed in accordance with the provisions of G.S. 14-159.7, or upon which 'posted' notices have been ~~placed,~~ placed in accordance with the provisions of G.S. 14-159.7, to hunt, fish or trap without the written consent of the owner or his agent shall be guilty of a Class 2 misdemeanor. Provided, further, that no arrests under authority of this ~~section~~ subsection shall be made without the consent of the owner or owners of said land, or their duly authorized agents in the following counties: Halifax and Warren.

(b) Any person who willfully goes on the land of another upon which notices, signs, or posters prohibiting raking or removing pine needles or pine straw have been placed in accordance with the provisions of G.S. 14-159.7, or upon which 'posted' notices have been placed in accordance with the provisions of G.S. 14-159.7, to rake or remove pine needles or pine straw without the written consent of the owner or his agent shall be guilty of a Class 1 misdemeanor for the first offense and of a Class I felony for second or subsequent offenses."

Section 3. Article 16 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-79.1. Larceny of pine needles or pine straw.**

If any person shall take and carry away, or shall aid in taking or carrying away, any pine needles or pine straw being produced on the land of another person upon which land notices, signs, or posters prohibiting the raking or removal of pine needles or pine straw have been placed in accordance with the provisions of G.S. 14-159.7, or upon which posted notices have been placed in accordance with the provisions of G.S. 14-159.7, with the intent to steal the pine needles or pine straw, that person shall be guilty of a Class H felony."

Section 4. This act becomes effective January 1, 1998, and applies to offenses committed on or after that date.

HOUSE JUDICIARY II

February 13, 1997

VISITOR REGISTRATION

VISITORS: PLEASE SIGN BELOW AND RETURN TO CLERK.

NAME	FIRM OR AGENCY ADDRESS
Debbie Meagher	NC Sentencing Commission
Jill Miller	NCATL
John McMillan	Manning Fulton Skinner
Paul F. Rose	N.C. Agribusiness Council
Bob Stevens	NC Poultry Assn.
[illegible]	NC FB
David Ferrell	Hafer, McNamara, Caldwell, McElroy & Cutler
Eddie Caldwell	NC Sheriffs Assn
Judy Ellen	NC Farm Bureau
Patricia Rowell	NCACC
Stephen Harris	Carolina Gazette
Jean Holmes	CCNC / Sierra Club
Jim Stathakis MD	Wayne County

MINUTES
HOUSE JUDICIARY II COMMITTEE

February 18, 1997
10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on February 18, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Berry, Bowie, Cansler, Creech, Culpepper, Decker, Gardner, Goodwin, Hackney, Hensley, McMahan, Redwine, Russell, Saunders, Shubert, Sutton, Weatherly, Wilkins, and C. Wilson. A list of visitors is attached.

The following bill was discussed:

HB-114 REPEAL UCC BULK TRANSFERS

Representative Culpepper was recognized to give an overview of the bill. A copy of the bill and bill explanation prepared by the General Statutes Commission are attached.

Mr. Floyd Lewis, Advisor of Statutes, General Statutes Commission, and Representative Culpepper answered questions of committee members.

No action was taken on House Bill 114.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 114*

Short Title: Repeal UCC Article on Bulk Transfers. (Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary II.

February 12, 1997

A BILL TO BE ENTITLED

AN ACT TO REPEAL ARTICLE 6 OF THE UNIFORM COMMERCIAL CODE RELATING TO BULK TRANSFERS AND TO ENACT CONFORMING AMENDMENTS TO THE UNIFORM COMMERCIAL CODE AND OTHER GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 6 of Chapter 25 of the General Statutes is repealed.

Section 2. G.S. 25-9-111 is repealed.

Section 3. G.S. 25-1-105(2) reads as rewritten:

"(2) Where one of the following provisions of this Chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. (G.S. 25-2-402).

Applicability of the article on bank deposits and collections. (G.S. 25-4-102).

~~Bulk transfers subject to the article on bulk transfers. (G.S. 25-6-102).~~

Applicability of the article on investment securities. (G.S. 25-8-106).

Perfection provisions of the article on secured transactions. (G.S. 25-9-103).

Governing law in the article on Funds Transfers. (G.S. 25-4A-507)."

Section 4. G.S. 25-2-403(4) reads as rewritten:

"(4) The rights of other purchasers of goods and of lien creditors are governed by the articles on secured transactions ~~(article 9), bulk transfers (article 6)~~ (article 9) and documents of title (article 7)."

Section 5. G.S. 66-186 reads as rewritten:

"**§ 66-186. Uniform commercial practice.**

~~(a)~~ This Article does not affect a security interest of the supplier in the inventory of the dealer.

~~(b) A repurchase of inventory under this Article shall not be subject to the bulk sales provisions of Article 6 of Chapter 25 of the General Statutes.~~"

Section 6. G.S. 85B-2(a)(11) reads as rewritten:

"(11) Sales of collateral, sales conducted to enforce carriers' or warehousemen's liens, ~~bulk sales,~~ sales of goods by a presenting bank following dishonor of a documentary draft, resales of rightfully rejected goods, resales of goods by an aggrieved seller, or other resales conducted pursuant to authority in Articles 2, 4, ~~6, 7~~ 7, and 9 of Chapter 25 of the General Statutes (the Uniform Commercial Code)."

Section 7. This act becomes effective October 1, 1997. Rights and obligations arising under Article 6 of Chapter 25 of the General Statutes and G.S. 25-9-111 before the effective date of this act remain valid and may be enforced as though those statutes had not been repealed.

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
P.O. BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 733-6026

MEMORANDUM

TO: House Judiciary II Committee

FROM: General Statutes Commission

DATE: February 17, 1997

RE: House Bill 114 (Repeal UCC Article on Bulk Transfers)

House Bill 114 reflects the recommendation of the General Statutes Commission to repeal Article 6 of the Uniform Commercial Code, regulating bulk transfers, and to make conforming amendments to the Uniform Commercial Code and other sections of the General Statutes. The Uniform Commercial Code (UCC) was enacted in North Carolina in 1965 and took effect in 1967. UCC Article 6, Bulk Transfers, has been amended once since the UCC was enacted.

Article 6 was revisited by the National Conference of Commissioners on Uniform State Laws (the Conference) and the American Law Institute (the Institute) in 1989. The Conference and the Institute believe that changes in the business and legal contexts in which sales are conducted have made regulation of bulk sales unnecessary and therefore withdraw their support for Article 6 and encourage those states that have enacted the Article to repeal it. Since that decision was made, 35 states have now repealed Article 6 or its equivalent, and two states have pending legislation to repeal the Article.

In the Conference's information kit on UCC Article 6, the following reasons are given as to why states should repeal Article 6:

> Bulk sales laws were originally drafted in response to a fraud perceived to be common around the turn of the century: a merchant would acquire his stock in trade on credit, then sell his entire inventory ('in bulk') and abscond with the proceeds, leaving creditors unpaid.
>
> Article 6 was drafted as a response to this 'bulk sale risk.' It imposes several duties on the buyer in bulk, including the duty to notify all creditors of the impending bulk transfer. It also requires compliance even when there is no reason to believe that the seller is

conducting a fraudulent transfer. The Article imposes strict liability for noncompliance. Failure to comply with the provisions render the transfer ineffective, even when the buyer has complied in good faith.

But today, changes in the business and legal contexts in which sales are conducted have made regulation of bulk sales unnecessary. Creditors are better able to make informed decision about whether to extend credit. Changes in technology have enabled credit reporting services to provide fast, accurate, and more complete credit histories at relatively small cost.

Creditors also have greater opportunity to collect their debts. The adoption of state long-arm statutes and rules have greatly improved the possibility of obtaining personal jurisdictions over a debtor who flees to another state.

And creditors no longer face the choice of extending unsecured credit or no credit at all. Retaining an interest in inventory to secure its price has become relatively simple and inexpensive under Article 9 of the UCC - adopted in 49 states. If a bulk sale is fraudulent and the buyer is a party to the fraud, creditors have remedies under the Uniform Fraudulent Transfer Act.

There is no evidence that in today's economy, fraudulent bulk sales are frequent enough, or engender credit losses significant enough, to require regulation of all bulk sales, including the vast majority that are conducted in good faith.

National Conference of Commissioners on Uniform State Laws Information Kit, "Why States Should Repeal Article 6 of the Uniform Commercial Code." See also UCC Repealer of Article 6: Bulk Transfers and (Revised) Article 6: Bulk Sales; Prefatory Note (1990). Please note that the Uniform Fraudulent Transfer Act has not been enacted in this State, although it is expected to be introduced this session. This State has existing statutes on fraudulent conveyances that are set out in Article 3 of Chapter 39 of the General Statutes, G.S. 39-15 et seq.

In light of the reasons set out by the Conference, the General Statutes Commission recommends that the North Carolina General Assembly repeal UCC Article 6, Bulk Transfers, by enacting House Bill 114.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

February 18, 1997 10:00 A.M. — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charles Cromer	NCATL
John Rustin	Hunton & Williams
Floyd M. Lewis	
Gaffney Hayes	Flair Corp S.
Patricia Pelfrey	NCACC
Ralph Strickland	CSC Franklin Co.
Carolyn Caudill	Lobbyist
Bill Head	General Statutes Commission
Janis Ramquist	MCI

MINUTES
HOUSE JUDICIARY II COMMITTEE

February 18, 1997
1:00 P.M.

The North Carolina House of Representatives Judiciary II Committee met on February 18, 1997, at 1:00 P.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Berry, Bowie, Cansler, Culpepper, Gardner, Goodwin, Hackney, Hensley, McMahan, Redwine, Russell, Saunders, Shubert, Sutton, Weatherly and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-204 FORECLOSURE FILING FEES
HB-221 INITIAL APPEARANCE BY VIDEO
HB-222 HABITUAL FEON DETERMINATION

Representative Kiser was recognized to Chair during Representative Neely's presentation of HB-204.

Representative Neely was recognized to present HB-204. Mr. John Kennedy, Clerk of Superior Court, Wake County, explained the bill. Representative Neely and Mr. Kennedy answered questions of committee members. A copy of the bill and bill explanation prepared by Tim Hovis, Committee Counsel, are attached.

Representative Neely moved for a favorable report and recommendation that the bill be re-referred to the Committee on Finance; motion passed.

Representative Culpepper was recognized to present HB-221. A copy of the bill is attached.

Representative Culpepper and Mr. Peter E. Powell, Associate Counsel, Administrative Office of the Courts, answered questions of committee members.

Representative Shubert moved for a favorable report; motion passed.

Representative Culpepper was recognized to explain HB-222 and answer questions of committee members. A copy of the bill and bill explanation prepared by Tim Hovis, Committee Counsel, are attached.

Representative Neely appointed the following subcommittee to study House Bill 222:

Representative Culpepper, Chair
Representative Baddour
Representative Kiser

No action was taken on HB-222.

The meeting was adjourned at 1:45 P.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 204*

Short Title: Foreclosure Filing Fees. (Public)

Sponsors: Representatives Neely, Culpepper, Hensley, R. Hunter, and McCrary.

Referred to: Judiciary II, if favorable, Finance.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO RAISE THE FORECLOSURE FILING FEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-308(a) reads as rewritten:

"(a) The following miscellaneous fees and commissions shall be collected by the clerk of superior court and remitted to the State for the support of the General Court of Justice:

(1) Foreclosure under power of sale in deed of trust or mortgage ~~$25.00~~ $30.00

~~Plus if the property is sold pursuant to the power of sale, an additional sum of thirty cents (30¢) per one hundred dollars ($100.00), or major fraction thereof, of the final sale price shall be collected. In no case shall the additional sum exceed two hundred dollars ($200.00).~~ If the property is sold under the power of sale, an additional amount will be charged, determined by the following formula: thirty cents (30¢) per one hundred dollars ($100.00), or major fraction thereof, of the final sale price. If the amount determined by the formula is less than ten dollars ($10.00), a minimum ten dollar ($10.00) fee will be collected. If the amount determined by the formula is more than two hundred dollars ($200.00), a maximum two hundred dollar ($200.00) fee will be collected.

(2) Proceeding supplemental to execution 20.00

(3)	Confession of judgment	15.00
(4)	Taking a deposition	5.00
(5)	Execution	15.00
(6)	Notice of resumption of former name	5.00
(7)	Taking an acknowledgment or administering an oath, or both, with or without seal, each certificate (except that oaths of office shall be administered to public officials without charge)	1.00
(8)	Bond, taking justification or approving	5.00
(9)	Certificate, under seal	2.00
(10)	Exemplification of records	5.00
(11)	Recording or docketing (including indexing) any document	
	-- first page	4.00
	-- each additional page or fraction thereof	.25
(12)	Preparation of copies	
	-- first page	1.00
	-- each additional page or fraction thereof	.25
(13)	Preparation and docketing of transcript of judgment	5.00
(14)	Substitution of trustee in deed of trust	5.00
(15)	Execution of passport application -- the amount allowed by federal law	
(16)	Repealed by Session Laws 1989, c. 783, s. 2.	
(17)	Criminal record search except if search is requested by an agency of the State or any of its political subdivisions or by an agency of the United States or by a petitioner in a proceeding under Article 2 of General Statutes Chapter 20	5.00
(18)	Filing the affirmations, acknowledgments, agreements and resulting orders entered into under the provisions of G.S. 110-132 and G.S. 110-133	4.00
(19)	Repealed by Session Laws 1989, c. 783, s. 3."	

Section 2. This act becomes effective October 1, 1997.

North Carolina General Assembly
Legislative Services Agency

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February 18, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 204-Foreclosure Filing Fees (Neely)

House Bill 204 is a recommendation of the North Carolina Courts Commission. The bill would raise foreclosure filing fees under a deed of trust or mortgage from $25 to $30. The bill also provides for a minimum $10 fee for property sold under the power of sale. The fee was last increased in 1983 when it was raised from $15.00 to $25.00.

(Reg. Sess., 1986), c. 855; 1987, c. 837; 1989, c. 719; 1991 (Reg. Sess., 1992), c. 811, ss. 4, 5.)

Editor's Note. — Session Laws 1985, c. 481, which amended this section, provided in s. 9d: "The fee set out in Section 5 of this act shall be assessed at the time the service is rendered."

CASE NOTES

Costs in Trust and Estate Proceedings Initiated Prior to August 1, 1983. — The legislature intended that the word "action," in the directive of Session Laws 1983, c. 713, s. 109 stating that the amendment to subdivision (a)(2) of this section "shall become effective August 1, 1983, and shall apply to all actions initiated on and after that date," include estate proceedings in this limited instance. In re King, 79 N.C. App. 139, 339 S.E.2d 87 (1986).

Proceedings regarding estate administration were "initiated" prior to August 1, 1983, where estate was opened for probate on October 23, 1980. In re King, 79 N.C. App. 139, 339 S.E.2d 87 (1986), holding that costs to be assessed against estate were governed by subdivision (a)(2) of this section as it existed prior to amendment by Session Laws 1983, c. 713.

Any action or proceeding relating to trusts was "initiated" prior to August 1, 1983, where letters of trusteeship for each of the trusts were issued on July 23, 1981. In re King, 79 N.C. App. 139, 339 S.E.2d 87 (1986), holding that costs to be assessed against estate and trusts were governed by subdivision (a)(2) of this section as it existed prior to amendment by Session Laws 1983, c. 713.

Proceeds recovered for the wrongful death of a decedent are not subject to the assessment of costs in the administration of estates of decedents provided for under subdivision (a)(2) of this section, since the proceeds recovered under the wrongful death statute are not a part of the decedent's estate. In re Below, 12 N.C. App. 657, 184 S.E.2d 378 (1971).

Guardian's fees where clerk attempted to remove administratrix. — Where clerk, upon his own motion, sought to have administratrix of estate removed, minor heirs clearly had a vested interest and the right of appeal from the clerk's determination. Thus, clerk took the appropriate and proper step of appointing a guardian ad litem to protect their interests, and the clerk could compel the payment of the necessary expenses from the estate to which the heirs would potentially benefit, including the costs of the guardian ad litem's attorneys' fees. In re Estate of Sturman, 93 N.C. App. 473, 378 S.E.2d 204 (1989).

§ 7A-308. Miscellaneous fees and commissions.

(a) The following miscellaneous fees and commissions shall be collected by the clerk of superior court and remitted to the State for the support of the General Court of Justice:

(1) Foreclosure under power of sale in deed of trust or mortgage..... Plus if the property is sold pursuant to the power of sale, an additional sum of thirty cents (30¢) per one hundred dollars ($100.00), or major fraction thereof, of the final sale price shall be collected. In no case shall the additional sum exceed two hundred dollars ($200.00).	$25.00
(2) Proceeding supplemental to execution.....	20.00
(3) Confession of judgment.....	15.00
(4) Taking a deposition	5.00
(5) Execution.....	15.00
(6) Notice of resumption of former name	5.00

(7) Taking an acknowledgment or administering an oath, or both, with or without seal, each certificate (except that oaths of office shall be administered to public officials without charge) 1.00
(8) Bond, taking justification or approving..... 5.00
(9) Certificate, under seal 2.00
(10) Exemplification of records 5.00
(11) Recording or docketing (including indexing) any document
— first page..... 4.00
— each additional page or fraction thereof..... .25
(12) Preparation of copies
— first page..... 1.00
— each additional page or fraction thereof..... .25
(13) Preparation and docketing of transcript of judgment..... 5.00
(14) Substitution of trustee in deed of trust 5.00
(15) Execution of passport application — the amount allowed by federal law
(16) Repealed by Session Laws 1989, c. 783, s. 2, effective August 12, 1989.
(17) Criminal record search except if search is requested by an agency of the State or any of its political subdivisions or by an agency of the United States or by a petitioner in a proceeding under Article 2 of General Statutes Chapter 20..... 5.00
(18) Filing the affirmations, acknowledgments, agreements and resulting orders entered into under the provisions of G.S. 110-132 and G.S. 110-133 ..... 4.00
(19) Repealed by Session Laws 1989, c. 783, s. 3, effective August 12, 1989.

(b) The fees and commissions set forth in this section are not chargeable when the service is performed as a part of the regular disposition of any action or special proceeding or the administration of an estate. When a transaction involves more than one of the services set forth in this section, only the greater service fee shall be charged. The Director of the Administrative Office of the courts shall issue guidelines pursuant to G.S. 7A-343(3) to be followed in administering this subsection. (1965, c. 310, s. 1; 1967, c. 691, ss. 32, 33; 1969, c. 1190, s. 31; 1971, c. 956, s. 2; 1973, c. 503, s. 16; c. 886; 1975, c. 829; 1981, c. 313, s. 1; 1983, c. 713, s. 18; 1985, c. 475, ss. 2, 3; c. 481, ss. 6-8; c. 511, s. 2; 1989, c. 783, ss. 2-4.)

Editor's Note. — Session Laws 1985, c. 481, which amended this section, provided in ss. 9b and 9c:

"b. The additional sum based on the final sale price specified in G.S. 7A-308(a)(1), as amended by Chapter 713 of the 1983 Session Laws, shall be assessed at the time the property is sold, regardless of the date the action or proceeding was initiated.

"c. Except as otherwise specified in this section, the miscellaneous fees specified in G.S. 7A-308, as amended by Chapter 713 of the 1983 Session Laws, shall be assessed at the time the service is rendered."

Session Laws 1989, c. 786, s. 3 would have rewritten subdivision (a)(16), effective August 15, 1989. However, Session Laws 1989, c. 783, s. 1, provided: "If Senate Bill 1177 [c. 786], 1989 Session is enacted, then Section 3 of that act is repealed." The act was ratified August 12, 1989. Consequently, the amendment by section 3 of chapter 786 never went into effect.

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1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 204 A BILL TO BE ENTITLED AN ACT TO RAISE THE FORECLOSURE FILING FEES.

☐ With a favorable report.

X **With a favorable report and recommendation that the bill be re-referred to the Committee on** ☐ Appropriations **X 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.B. FILED
0221 FEB 13 97
HOUSE PRINCIPAL CLERK

H D

HOUSE DRH1025-RGZ01(1.24)

Short Title: Initial Appearance by Video. (Public)

Sponsors: Representatives Culpepper, Hensley, R. Hunter, McCrary, and Neely.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A MAGISTRATE OR OTHER AUTHORIZED JUDICIAL OFFICIAL IN A NONCAPITAL CASE TO CONDUCT AN INITIAL APPEARANCE BY A TWO-WAY AUDIO AND VIDEO PROCEEDING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-511 reads as rewritten:

"**§ 15A-511. Initial appearance.**

(a) Appearance before Magistrate. --

(1) A law-enforcement officer making an arrest with or without a warrant must take the arrested person without unnecessary delay before a magistrate as provided in G.S. 15A-501.

(2) The magistrate must proceed in accordance with this section, except in those cases in which he has the power to determine the matter pursuant to G.S. 7A-273. In those cases, if the arrest has been without a warrant, the magistrate must prepare a magistrate's order containing a statement of the crime with which the defendant is charged.

(3) If the defendant brought before a magistrate is so unruly as to disrupt and impede the proceedings, becomes unconscious, is grossly intoxicated, or is otherwise unable to understand the procedural rights afforded him by the initial appearance, upon order of the magistrate he may be confined or otherwise secured. If this is done, the magistrate's order must provide for an initial appearance within a reasonable time so as to make certain that the

defendant has an opportunity to exercise his rights under this Chapter.

(a1) A proceeding for initial appearance in a noncapital case under this section may be conducted by an audio and video transmission between the magistrate or other authorized judicial official and the defendant in which the parties can see and hear each other. If the defendant has counsel, the defendant shall be allowed to communicate fully and confidentially with his attorney during the proceeding.

(a2) Prior to the use of audio and video transmission pursuant to subsection (a1) of this section, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the senior regular resident superior court judge and the chief district court judge for a judicial district or set of districts and approved by the Administrative Office of the Courts.

(b) Statement by the Magistrate. -- The magistrate must inform the defendant of:

(1) The charges against him;

(2) His right to communicate with counsel and friends; and

(3) The general circumstances under which he may secure release under the provisions of Article 26, Bail.

(c) Procedure When Arrest Is without Warrant; Magistrate's Order. -- If the person has been arrested, for a crime, without a warrant:

(1) The magistrate must determine whether there is probable cause to believe that a crime has been committed and that the person arrested committed it, and in the manner provided by G.S. 15A-304(d).

(2) If the magistrate determines that there is no probable cause the person must be released.

(3) If the magistrate determines that there is probable cause, he must issue a magistrate's order:

a. Containing a statement of the crime of which the person is accused in the same manner as is provided in G.S. 15A-304(c) for a warrant for arrest, and

b. Containing a finding that the defendant has been arrested without a warrant and that there is probable cause for his detention.

(4) Following the issuance of the magistrate's order, the magistrate must proceed in accordance with subsection (e) and must file the order with any supporting affidavits and records in the office of the clerk.

(d) Procedure When Arrest Is Pursuant to Warrant. -- If the arrest is made pursuant to a warrant, the magistrate must proceed in accordance with subsection (e).

(e) Commitment or Bail. -- If the person arrested is not released pursuant to subsection (c), the magistrate must release him in accordance with Article 26 of this Chapter, Bail, or commit him to an appropriate detention facility pursuant to G.S. 15A-521 pending further proceedings in the case.

(f) Powers Not Limited to Magistrate. -- Any judge, justice, or clerk of the General Court of Justice may also conduct an initial appearance as provided in this section."

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 221 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE A MAGISTRATE OR OTHER AUTHORIZED JUDICIAL OFFICIAL IN A NONCAPITAL CASE TO CONDUCT AN INITIAL APPEARANCE BY A TWO-WAY AUDIO AND VIDEO PROCEEDING.

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

H.B. FILED
0222 FEB 13 97
HOUSE PRINCIPAL CLERK

D

HOUSE DRH2025-RGZ03(1.24)

Short Title: Habit. Felon Determination. (Public)

Sponsors: Representatives Culpepper, Hensley, R. Hunter, McCrary, and Neely.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE ISSUE OF WHETHER A DEFENDANT IS A HABITUAL FELON OR A VIOLENT HABITUAL FELON SHALL BE DETERMINED BY THE TRIAL JUDGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-7.3 reads as rewritten:

"**§14-7.3. Charge of habitual felon.**

An indictment which charges a person who is an habitual felon within the meaning of G.S. 14-7.1 with the commission of any felony under the laws of the State of North Carolina must, in order to sustain a conviction of habitual felon, also charge that said person is an habitual felon. The indictment charging the defendant as an habitual felon shall be separate from the indictment charging him with the principal felony. An indictment which charges a person with being an habitual felon must set forth the date that prior felony offenses were committed, the name of the state or other sovereign against whom said felony offenses were committed, the dates that pleas of guilty were entered to or convictions returned in said felony offenses, and the identity of the court wherein said pleas or convictions took place. No defendant charged with being an habitual felon in a bill of indictment shall be required to ~~go to trial on~~ defend said charge within 20 days of the finding of a true bill by the grand jury; provided, the defendant may waive this 20-day period."

Section 2. G.S. 14-7.5 reads as rewritten:

"**§14-7.5. Verdict and judgment.**

When an indictment charges an habitual felon with a felony as above provided and an indictment also charges that said person is an habitual felon as provided herein, the defendant shall be tried for the principal felony as provided by law. The

indictment that the person is an habitual felon shall not be revealed to the jury ~~unless the jury shall find that the defendant is guilty of the principal felony or other felony with which he is charged.~~ at any time. If the jury finds the defendant guilty of a felony, the bill of indictment charging the defendant as an habitual 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 habitual felon were a principal charge.~~ shall be tried before the trial judge without a jury. If the ~~jury~~ trial judge finds by a preponderance of the evidence that the defendant is an habitual felon, the trial judge shall enter judgment according to the provisions of this Article. If the ~~jury~~ trial judge finds that the defendant is not an habitual felon, the trial judge shall pronounce judgment on the principal felony or felonies as provided by law."

Section 3. G.S. 14-7.9 reads as rewritten:

"**§ 14-7.9. Charge of violent habitual felon.**

An indictment that charges a person who is a violent habitual felon within the meaning of G.S. 14-7.7 with the commission of any violent felony must, in order to sustain a conviction of violent habitual felon, also charge that the person is a violent habitual felon. The indictment charging the defendant as a violent habitual felon shall be separate from the indictment charging the defendant with the principal violent felony. An indictment that charges a person with being a violent habitual felon must set forth the date that prior violent felonies were committed, the name of the state or other sovereign against whom the violent felonies were committed, the dates of convictions of the violent felonies, and the identity of the court in which the convictions took place. A defendant charged with being a violent habitual felon in a bill of indictment shall not be required to ~~go to trial on~~ defend that charge within 20 days after the finding of a true bill by the grand jury unless the defendant waives this 20-day period."

Section 4. G.S. 14-7.11 reads as rewritten:

"**§ 14-7.11. Verdict and judgment.**

When an indictment charges a violent habitual felon with a violent felony as provided in this Article and an indictment also charges that the person is a violent habitual felon as provided in this Article, the defendant shall be tried for the principal violent felony as provided by law. The indictment that the person is a violent habitual felon shall not be revealed to the jury ~~unless the jury finds that the defendant is guilty of the principal violent felony or another violent felony with which the defendant is charged.~~ at any time. If the jury finds the defendant guilty of a violent felony, the bill of indictment charging the defendant as a violent habitual 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 violent habitual felon were a principal charge.~~ shall be tried before the trial judge without a jury. If the ~~jury~~ trial judge finds by a preponderance of the evidence that the defendant is a violent habitual felon, the trial judge shall enter judgment according to the provisions of this Article. If the ~~jury~~ trial judge finds that the defendant is not a violent habitual felon, the trial judge shall pronounce judgment on the principal violent felony or felonies as provided by law."

Section 5. This act becomes effective December 1, 1997, and applies to sentencing for offenses committed on or after that date.

North Carolina General Assembly
Legislative Services Agency

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February 18, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 222-Habitual Felon Determination (Culpepper)

Under current law, a defendant charged with a felony may also be charged with being an habitual felon or a violent habitual felon depending on the defendant's prior felony record. However, if a charge of habitual felon or violent habitual felon is made, it is treated as a separate proceeding which ultimately must be determined separately by a jury.

House Bill 222 would amend Chapter 14 of the General Statutes to provide that the charge of habitula felon or violent habitual felon is tried before the trial judge without a jury.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

February 18, 1997 1:00 P.M. — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
K E Powell	AOC
Charles Vernon	NCATL
Dick Taylor	NCATL
Rob Bryan	Duke Law
John Kennedy	Clerk of Superior Court - Wake

MINUTES
HOUSE JUDICIARY II COMMITTEE

February 20, 1997
10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on February 20, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Bowie, Cansler, Creech, Gardner, Goodwin, Hackney, Hensley, McMahan, Nesbitt, Redwine, Russell, Saunders, Shubert, Sutton, Weatherly and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-137 AGGRAVATING FACTOR/INJURE OFFICIAL
HB-196 POST RELEASE/F & G FELLONS

Representative Brawley was recognized to present HB-137 and answer questions of committee members. A copy of the bill, fiscal note and bill explanation prepared by NC Sentencing and Policy Advisory Commission are attached.

Mr. John Madler and Mr. Robin Lubitz, North Carolina Sentencing and Policy Advisory Commission, spoke in support of the bill and answered questions of committee members.

Representative Bowie moved for a favorable report; motion passed.

Representative Bowie was recognized to present HB-196. A copy of the bill and bill explanation prepared by Susan Hayes, Committee Counsel, are attached.

Mr. John Madler and Mr. Robin Lubitz, North Carolina Sentencing and Policy Advisory Commission, and Mr. Andrew Terrell, Parole Commission, answered questions of committee members.

Mr. Greg Stahl, Legislation Liaison, Department of Corrections, spoke in support of the bill and answered questions of committee members.

No action was taken on HB-196.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 137*

Short Title: Aggravating Factor/Injure Official. (Public)

Sponsors: Representatives Brawley; Smith and Shubert.

Referred to: Judiciary II.

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO ADD TO THE LIST OF AGGRAVATING FACTORS THAT CERTAIN PEOPLE WERE SERIOUSLY INJURED AS A RESULT OF THE OFFENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1340.16(d) reads as rewritten:

"(d) Aggravating Factors. -- The following are aggravating factors:

(1) The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.

(2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.

(3) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(4) The defendant was hired or paid to commit the offense.

(5) The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(6) The offense was committed against <u>or resulted in serious injury to</u> a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness

against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

(7) The offense was especially heinous, atrocious, or cruel.

(8) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

(9) The defendant held public office at the time of the offense and the offense related to the conduct of the office.

(10) The defendant was armed with or used a deadly weapon at the time of the crime.

(11) The victim was very young, or very old, or mentally or physically infirm, or handicapped.

(12) The defendant committed the offense while on pretrial release on another charge.

(13) The defendant involved a person under the age of 16 in the commission of the crime.

(14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.

(15) The defendant took advantage of a position of trust or confidence to commit the offense.

(16) The offense involved the sale or delivery of a controlled substance to a minor.

(17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.

(18) The defendant does not support the defendant's family.

(18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.

(19) The serious injury inflicted upon the victim is permanent and debilitating.

(20) Any other aggravating factor reasonably related to the purposes of sentencing.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation. Evidence necessary to establish that an enhanced sentence is required under G.S. 14-2.2 may not be used to prove any factor in aggravation.

The judge shall not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial."

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

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February 20, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: NC Sentencing and Policy Advisory Commission

RE: House Bill 137 - Aggravating Factor/Injure Official

NC Sentencing Commission summary for HB 137

RECOMMENDATION #8

ADD NEW AGGRAVATING FACTOR FOR INJURY TO PUBLIC SAFETY OFFICER

ISSUE: Under current law, firefighters and other public safety officials can be seriously injured responding to a criminal act. However, unless the offender commits the act directly against the public safety official, there is no additional punishment available.

APPROACH: This bill amends the statutory aggravating factors in G.S. 15A-1340.1(d)(6) to include situations where the commission of an offense resulted in serious injury to a public safety official engaged in the performance of that person's official duties even though the offense was not directed at that official.

IMPACT: It is extremely difficult to project the impact of this proposal since there is no way of knowing how often judges will find this aggravating factor and impose an aggravated sentence. This bill would not increase the number of offenders sentenced to prison but could increase the length of the sentence by as much as 20% in those cases where the factor was found and the judge chose to impose an aggravated sentence.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 137 (First Edition)

SHORT TITLE: Aggravating Factor/Injure Official

SPONSOR(S): Representatives Brawley; Smith and Shubert.

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: AGGRAVATING FACTOR/INJURE OFFICIAL. *TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO ADD TO THE LIST OF AGGRAVATING FACTORS THAT CERTAIN PEOPLE WERE SERIOUSLY INJURED AS A RESULT OF THE OFFENSE.* [redacted]ends GS 15A-1340.16(d) to provide that serious injury to specified law enforcement, court, or corrections personnel, or [redacted]er specified individuals performing official duties is an aggravating factor that may be considered in sentencing defendant for criminal offense. Applies to offenses committed on or after Dec. 1, 1997.

ASSUMPTIONS AND METHODOLOGY:
As currently written, the language of G.S. 15A-1340.16(d) permits an aggravating factor to be found when the offense is committed *against* one of the named individuals. The proposed language would also permit aggravation in those cases when the injury occurs without the offense being directed against them (e.g. a firefighter injured in the course of fighting a fire resulting from arson). The Judicial Branch's opinion is that the situations in which the new aggravating language would be applicable would be relatively rare and that the Judicial Branch is unlikely to experience a significant increase in trial activity from this bill alone. The Sentencing Commission estimates no additional prison inmates from this bill.

TECHNICAL CONSIDERATIONS: None

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

FISCAL RESEARCH DIVISION
[redacted]3-4910

PREPARED BY: Elisa Wolper
APPROVED BY: Tom Covington **Tom C**
DATE: February 19, 1997

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 137 A BILL TO BE ENTITLED AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO ADD TO THE LIST OF AGGRAVATING FACTORS THAT CERTAIN PEOPLE WERE SERIOUSLY INJURED AS A RESULT OF THE OFFENSE.

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 196

Short Title: Post-Release Supervision/F and G Felons. (Public)

Sponsors: Representative Bowie.

Referred to: Judiciary II.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION TO ADD POST-RELEASE SUPERVISION FOR CLASS F AND CLASS G FELONS AND TO MAKE OTHER SUBSTANTIVE CHANGES AFFECTING POST-RELEASE SUPERVISION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1368(a)(5) reads as rewritten:

"(5) Maximum imposed term. -- The maximum term of imprisonment imposed on an individual prisoner by a court judgment, as described in G.S. 15A-1340.13(c). When a prisoner is serving consecutive prison terms, the maximum imposed term, for purposes of this Article, is the sum of all maximum terms imposed in the court judgment, less nine months for each of the second and subsequent sentences imposed for Class ~~B~~ B1 through Class ~~E~~ G felonies."

Section 2. G.S. 15A-1340.17(d) reads as rewritten:

"(d) Maximum Sentences Specified for Class ~~F~~ H through Class I Felonies. -- Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class ~~F~~ H through Class I felonies. The first figure in each cell in the table is the minimum term and the second is the maximum term.

3-4	4-5	5-6	6-8	7-9	8-10	9-11	10-12
11-14	12-15	13-16	14-17	15-18	16-20	17-21	18-22
19-23	20-24	21-26	22-27	23-28	24-29	25-30	~~26-32~~
~~27-33~~	~~28-34~~	~~29-35~~	~~30-36~~	~~31-38~~	~~32-39~~	~~33-40~~	~~34-41~~
~~35-42~~	~~36-44~~	~~37-45~~	~~38-46~~	~~39-47~~	~~40-48~~	~~41-50~~	~~42-51~~
~~43-52~~	~~44-53~~	~~45-54~~	~~46-56~~	~~47-57~~	~~48-58~~	~~49-59~~".	

Section 3. G.S. 15A-1340.17(e) reads as rewritten:

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

8-19	9-20	10-21	11-23	12-24	13-25	14-26	
15-27	16-29	17-30	18-31	19-32	20-33	21-35	22-36
23-37	24-38	25-39	26-41	27-42	28-43	29-44	30-45
31-47	32-48	33-49	34-50	35-51	36-53	37-54	38-55
39-56	40-57	41-59	42-60	43-61	44-62	45-63	46-65
47-66	48-67	49-68	50-69	51-71	52-72	53-73	54-74
55-75	56-77	57-78	58-79	59-80	60-81	61-83	62-84
63-85	64-86	65-87	66-89	67-90	68-91	69-92	70-93
71-95	72-96	73-97	74-98	75-99	76-101	77-102	78-103
79-104	80-105	81-107	82-108	83-109	84-110	85-111	86-113
87-114	88-115	89-116	90-117	91-119	92-120	93-121	94-122
95-123	96-125	97-126	98-127	99-128	100-129	101-131	102-132
103-133	104-134	105-135	106-137	107-138	108-139	109-140	110-141
111-143	112-144	113-145	114-146	115-147	116-149	117-150	118-151
119-152	120-153	121-155	122-156	123-157	124-158	125-159	126-161
127-162	128-163	129-164	130-165	131-167	132-168	133-169	134-170
135-171	136-173	137-174	138-175	139-176	140-177	141-179	142-180
143-181	144-182	145-183	146-185	147-186	148-187	149-188	150-189
151-191	152-192	153-193	154-194	155-195	156-197	157-198	158-199
159-200	160-201	161-203	162-204	163-205	164-206	165-207	166-209
167-210	168-211	169-212	170-213	171-215	172-216	173-217	174-218
175-219	176-221	177-222	178-223	179-224	180-225	181-227	182-228
183-229	184-230	185-231	186-233	187-234	188-235	189-236	190-237
191-239	192-240	193-241	194-242	195-243	196-245	197-246	198-247
199-248	200-249	201-251	202-252	203-253	204-254	205-255	206-257
207-258	208-259	209-260	210-261	211-263	212-264	213-265	214-266
215-267	216-269	217-270	218-271	219-272	220-273	221-275	222-276
223-277	224-278	225-279	226-281	227-282	228-283	229-284	230-285
231-287	232-288	233-289	234-290	235-291	236-293	237-294	238-295

239-296 240-297 241-299 242-300 243-301 244-302 245-303 246-305
247-306 248-307 249-308 250-309 251-311 252-312 253-313 254-314
255-315 256-317 257-318 258-319 259-320 260-321 261-323 262-324
263-325 264-326 265-327 266-329 267-330 268-331 269-332 270-333
271-335 272-336 273-337 274-338 275-339 276-341 277-342 278-343
279-344 280-345 281-347 282-348 283-349 284-350 285-351 286-353
287-354 288-355 289-356 290-357 291-359 292-360 293-361 294-362
295-363 296-365 297-366 298-367 299-368 300-369 301-371 302-372
303-373 304-374 305-375 306-377 307-378 308-379 309-380 310-381
311-383 312-384 313-385 314-386 315-387 316-389 317-390 318-391
319-392 320-393 321-395 322-396 323-397 324-398 325-399 326-401
327-402 328-403 329-404 330-405 331-407 332-408 333-409 334-410
335-411 336-413 337-414 338-415 339-416".

Section 4. G.S. 15A-1354(b) reads as rewritten:

"(b) Effect of Consecutive Terms. -- In determining the effect of consecutive sentences imposed under authority of this Article and the manner in which they will be served, the Department of Correction must treat the defendant as though he has been committed for a single term with the following incidents:

(1) The maximum prison sentence consists of the total of the maximum terms of the consecutive sentences, less nine months for each of the second and subsequent sentences imposed for Class ~~B~~ B1 through Class ~~E~~ G felonies; and

(2) The minimum term consists of the total of the minimum terms of the consecutive sentences."

Section 5. G.S. 15A-1368.1 reads as rewritten:

"**§ 15A-1368.1. Applicability of Article 84A.**

This Article applies to all felons in Class B1 through Class ~~E~~ G sentenced to an active punishment under Article 81B of this Chapter, but does not apply to felons in Class B1 sentenced to life imprisonment without parole. Prisoners subject to Articles 85 and 85A of this Chapter are excluded from this Article's coverage."

Section 6. G.S. 15A-1368.2 reads as rewritten:

"**§ 15A-1368.2. Post-release supervision eligibility and procedure.**

(a) A prisoner to whom this Article applies shall be released from prison for post-release supervision on the date equivalent to his maximum imposed prison term less nine months, less any earned time awarded by the Department of Correction or the custodian of a local confinement facility under G.S. 15A-1340.13(d). If a prisoner has not been awarded any earned time, the prisoner shall be released for post-release supervision on the date equivalent to his maximum prison term less nine months.

(b) A prisoner shall not refuse post-release supervision.

(c) A supervisee's period of post-release supervision shall be for a period of nine months, unless the offense is an offense for which registration is required pursuant to Article 27A of Chapter 14 of the General Statutes. For offenses subject to the registration requirement of Article 27A of Chapter 14 of the General Statutes, the

period of post-release supervision is five years. The conditions of post-release supervision are as authorized in G.S. 15A-1368.5.

~~(d) A supervisee's period of post-release supervision may be reduced while the supervisee is under supervision by earned time awarded by the Department of Correction, pursuant to rules adopted in accordance with law. A supervisee is eligible to receive earned time credit toward the period of supervision for compliance with reintegrative conditions described in G.S. 15A-1368.5.~~

(e) The Commission shall choose the level of supervision for supervisees. It may place a supervisee on any available level of supervision, including electronic monitoring, intensive supervision, or regular supervision.

(e1) Delegation to Adult Probation and Parole. The Commission may delegate to the Division of Adult Probation and Parole the authority to require a supervisee on post-release supervision to:

(1) Submit to electronic monitoring;

(2) Submit to substance abuse monitoring or treatment; or

(3) Participate in an educational or vocational skills development program.

The Division may exercise any authority delegated to it pursuant to this subsection only if it first determines that the supervisee has failed to comply with one or more of the conditions of post-release supervision imposed by the Commission. If the Division imposes any of the above conditions, then it may subsequently modify the condition to make it less restrictive or it may eliminate the condition.

If the Division exercises authority delegated to it pursuant to this subsection, the offender may file a motion with the Commission to review the action taken by the Division. The offender shall be given notice of the right to seek the review.

(f) When a supervisee completes the period of post-release supervision, the sentence or sentences from which the supervisee was placed on post-release supervision are terminated."

Section 7. G.S. 15A-1368.4(a) reads as rewritten:

"(a) In General. -- Conditions of post-release supervision may be reintegrative in nature or designed to control the supervisee's behavior and to enforce compliance with law or judicial order. A supervisee may have his supervision period revoked for any violation of a controlling condition or for repeated violation of a reintegrative condition. ~~Compliance with reintegrative conditions may entitle a supervisee to earned time credits as described in G.S. 15A-1368.2(d).~~"

Section 8. G.S. 15A-1368.3 reads as rewritten:

"**§ 15A-1368.3. Incidents of post-release supervision.**

(a) Conditionality. -- Post-release supervision is conditional and subject to revocation.

(b) Modification. -- The Commission may for good cause shown modify the conditions of post-release supervision at any time before the termination of the supervision period.

(c) Effect of Violation. -- If the supervisee violates a condition, described in G.S. 15A-1368.4, at any time before the termination of the supervision period, the

Commission may continue the supervisee on the existing supervision, with or without modifying the conditions, or if continuation or modification is not appropriate, may revoke post-release supervision as provided in G.S. 15A-1368.6 and reimprison the supervisee for a term consistent with the following requirements:

(1) The supervisee will be returned to prison ~~up to~~ for the time remaining on his maximum imposed term. In calculating the time remaining, earned time that is awarded at the time the supervisee is released on post-release supervision cannot be rescinded.

(2) The supervisee shall not receive any credit for days on post-release supervision against the maximum term of imprisonment imposed by the court under G.S. 15A-1340.13.

(3) Pursuant to Article 19A of Chapter 15, the Department of Correction shall award a prisoner credit against any term of reimprisonment for all time spent in custody as a result of revocation proceedings under G.S. 15A-1368.6.

(4) The prisoner is eligible to receive earned time credit at the rate of up to four days per month of incarceration against the maximum prison term as provided in G.S. 15A-1340.13(d) for time served in prison after the revocation.

(d) No Re-Release After Revocation of Post-Release Supervision. -- A prisoner who has been reimprisoned prior to completing a post-release supervision period may not again be released on post-release supervision by the Commission ~~subject to the provisions which govern initial release.~~ during the period of imprisonment for the offense for which the prisoner was placed on post-release supervision.

(e) Timing of Revocation. -- The Commission may revoke post-release supervision for violation of a condition during the period of supervision. The Commission may also revoke post-release supervision following a period of supervision if:

(1) Before the expiration of the period of post-release supervision, the Commission has recorded its intent to conduct a revocation hearing; and

(2) The Commission finds that every reasonable effort has been made to notify the supervisee and conduct the hearing earlier. Prima facie evidence of reasonable effort to notify is the issuance of a temporary or conditional revocation order, as provided in G.S. 15A-1376, that goes unserved."

Section 9. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

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February 20, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: House Bill 196 - Post-Release Supervision/ F and G Felons

House Bill 196 is a Sentencing Commission Bill that extends post-release supervision to offenders convicted of Class F and G felonies and makes some other substantive changes to post-release supervision.

Section 1 amends G. S. 15A-1368(a)(5), the definition of "maximum imposed term", by changing the offense range to which this term applies, so that Class B1 through Class G felonies are included.

Section 2 amends G.S. 15A-1340.17(d) to remove the maximum sentence levels for F and G felonies from the chart for lower level felonies.

Section 3 amends G.S. 15A-1340.17(e) by adding the maximum sentence levels for F and G felonies to the chart for upper level felonies.

Section 4 amends G.S. 15A-1354(b) to make a conforming change to include Class B1 through Class G felonies in post-release supervision.

Section 5 amends G.S. 15A-1368.1 to make a conforming change to include Class B1 through Class G felonies in post-release supervision.

Section 6 amends G.S. 15A-1368.2. Subsection (d) of the statute is deleted, which removes the supervisee's ability to earn time off their 9 month period of post-release supervision. With this change, each supervisee will spend a full 9 months on post-release supervision.

A new subsection (e1) is created, which authorizes the Commission to delegate certain powers to the Division of Adult Probation and Parole. If this authority is delegated, the Division may require a supervisee on post-release supervision to: 1) submit to electronic monitoring; 2) submit to substance abuse monitoring or treatment; or 3) participate in an educational or

vocational skills development program. This authority may only be exercised if the Division first determines that the supervisee has failed to comply with one or more of the conditions of post-release supervision set by the Commission. There is also a provision for the supervisee to appeal, to the Commission, for a review of action taken under this authority.

Section 7 amends G.S. 15A-1368.4(a) to make a conforming change to make the statute consistent with the removal of G.S. 15A-1368.2(d) in Section 6 of the bill.

Section 8 amends G.S. 15A-1368.3. Subsection (c)(1) is amended to provide that if the supervisee fails to comply with the terms of post-release supervision, they will be returned to prison for the remainder of the maximum imposed term. Any earned time granted to the supervisee before or at the time of release on post-release supervision cannot be rescinded.

Subsection (c)(4) is amended by adding new language clarifying that the amount of earned time that a prisoner, who's post-release supervision has been revoked, can receive is up to four days per month.

Subsection (d) is amended to provide that once a prisoner's post-release supervision has been revoked, they may NOT be re-released on post-release supervision for the same offense. This is a change from the existing law, which did allow the re-release of the prisoner.

Section 9 makes the bill effective December 1, 1997 and applies to offenses committed on or after that date.

The Sentencing Commissions summary is attached.

RECOMMENDATION #16

ADD POST-RELEASE SUPERVISION FOR CLASS F AND CLASS G FELONS

ISSUE: After release from prison, all felons in Offense Classes B1 through E (except for those sentenced to life without parole) must undergo a term of post-release supervision. As part of this supervision, they are required to adhere to certain "controlling" and "reintegrative" conditions. Failure to abide by these conditions may result in the offender being returned to prison. Currently, post-release supervision is not authorized for Offense Classes F through I.

APPROACH: This bill would extend post-release supervision for offenders convicted of Class F and Class G offenses.

IMPACT:

PROJECTED CHANGE IN INMATES: END OF FISCAL YEAR									
98**	99	0	1	2	3	4	5	6	7
0	10	146	211	230	231	232	239	245	256

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

** Too soon after implementation to have any measurable impact

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **February 20, 1997**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Curt Williams	Offices of Sen.
William G. Soggin	NCBA
Debbie Meagher	NC Sentencing Commission
John Madler	Sentencing Commission
Patrice Roesler	NCACDL
Lyn Ruberti	CJPC
[illegible]	NCFB
Tracy Herring	PRS + Parole Comm.
Andrew Turner	Youth Commission
Jeff Miller	NCATL
Gregg Stahl	AOC
PERRI MORGAN	NFIB
Rob Hulsik	Sentencing Commission
Roslyn Sawyer	Lobbyist
Rep Arlie Culp	Gen Assembly

MINUTES
HOUSE JUDICIARY II COMMITTEE

February 25, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on February 25, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Berry, Bowie, Cansler, Creech Culpepper, Gardner, Goodwin, Hackney, Hensley, Nesbitt, Redwine, Russell, Saunders, Shubert, Sutton, Weatherly and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-212 CLARIFY COMMUNITY-BASED CORRECTION
HB-136 LATE VIDEO RETURN/SALES TAX

Representative Brawley was recognized to present HB-212 and answer questions of committee members. Mr. John Madler, Associate Director for Policy Analysis, North Carolina Sentencing and Policy Advisory Commission, explained the bill and answered questions of committee members. A copy of the bill and bill explanation prepared by Tim Hovis, Committee Counsel, are attached.

Representative Neely said he would appoint a subcommittee to study all sentencing bills.

No action was taken on House Bill 212.

Representative Weatherly was recognized to present HB-136 and answer questions of committee members. Mr. Tim Hovis, Committee Counsel, explained the bill and answered questions of committee members. A copy of the bill and bill explanation prepared by Mr. Hovis are attached.

Mr. George Long, Department of Revenue, spoke in favor of the bill and answered questions of committee members.

Representative Shubert was recognized to send forth an amendment and moved for adoption; motion passed. A copy of the amendment is attached.

Representative Baddour was recognized to send forth an amendment and moved for adoption; motion passed. A copy of the amendment is attached.

Representative Shubert moved the amendments be incorporated in a committee substitute bill with a favorable report as to committee substitute bill, unfavorable as to original bill, motion passed.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 212

Short Title: Clarify Community-Based Corrections. (Public)

Sponsors: Representatives Brawley; and Sexton.

Referred to: Judiciary II.

February 17, 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 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 Agency

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February 24, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 212-Clarify Community Based Corrections (Brawley)

House Bill 212 is a recommendation of the North Carolina Sentencing and Policy Advisory Commission.

Section 1 of the bill renames the Intensive Probation and Parole Program the Intensive Supervision Program. This section also clarifies that, in addition to probationers and parolees, the Program provides intensive supervision for post-release supervisees. The Program is currently providing supervision for post-release supervisees, notwithstanding the current statutory language. All offenders under the Program must submit to supervision by the officers assigned to the Program and rules adopted for the Program.

Section 2 amends G.S. 15A-1340.11 to require that, unless the court orders otherwise, intensive supervision require multiple contacts by a probation officer per week, impose certain residential curfew restrictions, and impose employment or educational requirements upon the offender.

Section 2 of the bill also renames the intermediate punishment of electronic monitoring as "house arrest with electronic monitoring". This punishment is redefined in the bill as probation in which the offender must stay at his or her residence, unless the court or officer authorize the offender to leave for employment, counseling, course study, or vocational training.

Section 3 of the bill amends G.S. 15A-1343, which outlines the conditions of probation, to reflect the changes made in Section 2 of the bill concerning intensive probation and house arrest with electronic monitoring.

G.S. 15A-1343.2 authorizes a judge to delegate to a probation officer the authority to impose additional probation requirements on an offender without

bringing the offender back to court. Section 4 of the bill would make such a delegation automatic, unless the judge specifically finds that the delegation of authority is not appropriate.

The Communities Penalties Program submits community penalty plans to the judge, as an alternative to incarceration, for offenders convicted of misdemeanors or felonies. Section 5 changes the definition of targeted offenders under the Program to include persons "charged with" misdemeanors or felonies, as well as persons convicted of such offenses. This change allows the Program time to prepare a plan for the offender, particularly when the offender is convicted and sentenced on the same day.

Section 6 of the bill provides that the Post-Release Supervision and Parole Commission may not impose community service as a condition of post-release supervision.

CASE NOTES

Rights and privileges of mental health patients who are in the custody of the Department of Correction are determined by the rules and regulations adopted by the Department of Correction pursuant to this section. Baugh v. Woodard, 56 N.C. App. 180, 287 S.E.2d 412 (1982).

With respect to the rights of prisoners receiving care in facilities operated by the Department of Human Resources, this section and the regulations adopted pursuant thereto would apply, rather than former §§ 122-36 and 122-55.2(d), as they do to those prisoners who remain in prison for their mental health care. Baugh v. Woodard, 56 N.C. App. 180, 287 S.E.2d 412 (1982).

§ 143B-261.2. Repair or replacement of personal property.

(a) The Secretary of Correction may adopt rules governing repair or replacement of personal property items excluding private passenger vehicles that belong to employees of State facilities within the Department of Correction and that are damaged or stolen by inmates of the State facilities provided that the item is determined by the Secretary to be damaged or stolen on or off facility grounds during the performance of employment and necessary for the employee to have in his possession to perform his assigned duty.

(b) Reimbursement for items damaged or stolen shall not be granted in instances in which the employee is determined to be negligent or otherwise at fault for the damage or loss of the property. Negligence shall be determined by the superintendent of the facility.

(c) The superintendent of the facility shall determine if the person seeking reimbursement has made a good faith effort to recover the loss from all other non-State sources and has failed before reimbursement is granted.

(d) Reimbursement shall be limited to the amount specified in the rules and shall not exceed a maximum of two hundred dollars ($200.00) per incident. No employee shall receive more than five hundred dollars ($500.00) per year in reimbursement. Reimbursement is subject to the availability of funds.

(e) The Secretary of Correction shall establish by rule an appeals process consistent with Chapter 150B of the General Statutes. (1987, c. 639, s. 1; 1989, c. 189, s. 2.)

Editor's Note. — Section 3 of Session Laws 1987, c. 639, had provided that the act would expire July 1, 1989. However, Session Laws 1989, c. 189, s. 2 amended Session Laws 1987, c. 639, s. 3, by deleting the expiration provision. Therefore, this section remains in effect.

§ 143B-262. Department of Correction — functions.

(a) The functions of the Department of Correction shall comprise except as otherwise expressly provided by the Executive Organization Act of 1973 or by the Constitution of North Carolina all functions of the executive branch of the State in relation to corrections and the rehabilitation of adult offenders and juvenile delinquents including detention, parole, and aftercare supervision, and further including those prescribed powers, duties, and functions enumerated in Article 14 of Chapter 143A of the General Statutes and other laws of this State.

(b) All such functions, powers, duties, and obligations heretofore vested in the Department of Social Rehabilitation and Control and any agency enumerated in Article 14 of Chapter 143A of the General Statutes and laws of this State are hereby transferred to and vested in the Department of Correction except as otherwise provided by the Executive Organization Act of 1973. They shall include, by way of extension and not of limitation, the functions of:

(1) The State Department of Correction and Commission of Correction,
(2) The State Board of Youth Development,
(3) The State Probation Commission,
(4) The State Board of Paroles,
(5) The Interstate Agreement on Detainers, and
(6) The Uniform Act for Out-of-State Parolee Supervision.

(c) The Department shall establish within the Division of Adult Probation and Parole a program of Intensive Probation and Parole. This program shall provide intensive supervision for probationers 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 program shall be available to both felons and misdemeanants.

(d) The Department shall establish a Substance Abuse Program. This Program shall include an intensive term of inpatient treatment, normally four to six weeks, for alcohol or drug addiction in independent, residential facilities for approximately 100 offenders per facility. (1973, c. 1262, s. 4; 1983, c. 682, s. 1; 1987, c. 479; c. 738, s. 111(a); 1989 (Reg. Sess., 1990), c. 994.)

Editor's Note. — Session Laws 1987, c. 738, s. 111(c) provided: "The Substance Abuse Program established by subsection (a) of this section shall be offered in a medium custody facility, or a portion of a medium custody facility that is self-contained, so that the residential and program space is separate from any other programs or inmate housing, and shall be operational by January 1, 1988, at such unit as the Secretary may designate."

Section 111(c) of Session Laws 1987, c. 738, also provided, inter alia:

"Admission priorities shall be established as follows:

"(1) Court recommendation.
"(2) Evaluation and referral from reception and diagnostic centers.
"(3) General staff referral.
"(4) Self-referral.

"The Program shall include extensive follow-up after the period of intensive treatment. There will be specific plans for each departing inmate for follow-up, including active involvement with Alcoholics Anonymous, community resources, and personal sponsorship."

Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 126.1(a) amended Session Laws 1987, c. 738, s. 111(c), so as to provide for additional personnel for the substance abuse program.

Article 14 of Chapter 143A, referred to in this section, was repealed by Session Laws 1973, c. 1262, s. 10. The same 1973 act enacted this Article.

§ 143B-262.1. Department of Correction — Substance Abuse Program.

(a) The Substance Abuse Program established by subsection (d) of § 143B-262 shall be offered in a medium custody facility, or a portion of a medium custody facility that is self-contained, so that the residential and program space is separate from any other programs or inmate housing, and shall be operational by January 1, 1988, at such unit as the Secretary may designate.

(b) An Assistant Secr[illegible] for[illegible] ployed and shall report [illegible]tly Correction. A Correctional Admi manage programs for offenders v the Department of Correction ar Administrator I shall report to stance Abuse. A Secretary IV sha tional Administrator I. An Adm tary IV shall be employed to a work under his direction and ma tant Secretary shall include the

(1) Administer and coordina grants, contracts, and re of Correction;
(2) Develop and maintain ments with agencies an developing and operati the Department of Cor
(3) Develop and coordinate stance Abuse Program
(4) Develop and present t stance abuse for emplo agency;
(5) Develop programs that mates, probationers, a problems;
(6) Maintain contact with field and active suppo
(7) Supervise directly the ized personnel[illegible]d pr oped in the [illegible]me
(8) Develop emplo[illegible]assis substance abuse probl

(c) Ten additional program be a Correctional Program D Assistant Secretary for Subst responsible for managing and ment program. Also employed rector I, two Correctional Pro Program Assistant II's, one C one Clerk-Stenographer IV.

(d) The duties of the Progr ing:

(1) Implement and mana for inmates with su
(2) Supervise personnel program;
(3) Assist in developing with substance abu
(4) Recruit and develo other staff as requ
(5) Assist in developing tween the inpatient tions, and other faci
(6) Be responsible for tre schedules for all as

amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1995 amendment, effective June 26, 1995, rewrote subsection (j).

§ 15A-1343. Conditions of probation.

(a) In General. — The court may impose conditions of probation reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so.

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

(1) Commit no criminal offense in any jurisdiction.

(2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.

(3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.

(4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).

(5) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.

(6) Pay a supervision fee as specified in subsection (c1).

(7) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip him for suitable employment. A defendant pursuing a course of study or of vocational training shall abide by all of the rules of the institution providing the education or training, and the probation officer shall forward a copy of the probation judgment to that institution and request to be notified of any violations of institutional rules by the defendant.

(8) Notify the probation officer if he fails to obtain or retain satisfactory employment.

(9) Pay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection (d).

(10) Pay the State of North Carolina for the costs of appointed counsel, public defender, or appellate defender to represent him in the case(s) for which he was placed on probation.

(11) At a time to be designated by his probation officer, visit with his probation officer a facility maintained by the Division of Prisons.

In addition to these regular conditions of probation, a defendant required to serve an active term of imprisonment as a condition of special probation pursuant to G.S. 15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and regulations of the Department of Correction governing the

conduct of inmates while imprisoned and report to a probation officer in the State of North Carolina within 72 hours of his discharge from the active term of imprisonment.

Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more of the conditions in open court and in the judgment of the court. It is not necessary for the presiding judge to state each regular condition of probation in open court, but the conditions must be set forth in the judgment of the court.

Defendants placed on unsupervised probation are subject to the provisions of this subsection, except that defendants placed on unsupervised probation are not subject to the regular conditions contained in subdivisions (2), (3), (6), (8), and (11).

(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 Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program.

(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.

(b2) Special Conditions of Probation for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. — As special conditions of probation, a defendant who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, must:

(1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).

(2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.

(3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

(4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.

(5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the minor child's best interest to allow the probationer to reside in the same household with a minor child.

(6) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation.

Defendants subject to the provisions of this subsection shall not be placed on unsupervised probation.

(c) Statement of Conditions. — A defendant released on supervised probation must be given a written statement explicitly setting forth the conditions on which he is being released. If any modification of the terms of that probation is subsequently made, he must be given a written statement setting forth the modifications.

(c1) Supervision Fee. — Any person placed on supervised probation pursuant to subsection (a) shall pay a supervision fee of twenty dollars ($20.00) per month, unless exempted by the court. The court may exempt a person from paying the fee only for good cause and upon written motion of the person placed on supervised probation. No person shall be required to pay more than one supervision fee per month. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by such methods if he is authorized by subsection (g) to determine the payment schedule. Supervision fees must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund.

(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 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 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 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

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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.

(e) Costs of Court and Appointed Counsel. — Unless the court finds there are extenuating circumstances, any person placed upon supervised or unsupervised probation under the terms set forth by the court shall, as a condition of probation, be required to pay all court costs and costs for appointed counsel or public defender in the case in which he was convicted. The court shall determine the amount due and the method of payment.

(f) Repealed by Session Laws 1983, c. 561, s. 5, effective October 1, 1983.

(g) Probation Officer May Determine Payment Schedules. — If a person placed on supervised probation is required as a condition of that probation to pay any moneys to the clerk of superior court, the court may delegate to a probation officer the responsibility to determine the payment schedule. The court may also authorize the probation officer to transfer the person to unsupervised probation after all the moneys are paid to the clerk. If the probation officer transfers a person to unsupervised probation, he must notify the clerk of that action. (1977, c. 711, s. 1; 1977, 2nd Sess., c. 1147, ss. 8-10; 1979, c. 662, s. 1; c. 801, s. 3; c. 830, s. 12; 1981, c. 530, ss. 1, 2; 1983, c. 135, s. 1; c. 561, ss. 1-6; c. 567, s. 2; c. 712, s. 1; 1983 (Reg. Sess., 1984), c. 972, ss. 1, 2; 1985, c. 474, ss. 1, 7, 8; 1985 (Reg. Sess., 1986), c. 859, ss. 1, 2; 1987, c. 282, s. 33; c. 397, s. 1; c. 579, ss. 1, 2; c. 598, s. 1; c. 819, s. 32; c. 830, s. 17; 1989, c. 529, s. 5; c. 727, s. 218(4); 1989 (Reg. Sess., 1990), c. 1010, s. 1; c. 1034, s. 1; 1991 (Reg. Sess., 1992), c. 1000, s. 1; 1993, c. 538, s. 16; 1994, Ex. Sess., c. 9, s. 1; c. 24, s. 14(b); 1996, 2nd Ex. Sess., c. 18, s. 20.14(c).)

Editor's Note. —

Session Laws 1989 (Reg. Sess., 1990), c. 1010, which added subdivision (b1)(2a), provided in s. 2:

"Sec. 2. The Department of Correction shall use residential programs with the goal of providing alternatives to long-term imprisonment of youthful first offenders, such as the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT), for offenders placed on probation under Section 1 of this act [subdivision (b1)(2a)]."

Session Laws 1993, c. 538, s. 16, which amended this section, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 24, s. 19(a) and (b) appropriates funds to the Department of Correction for the operation of a boot camp for youthful offenders and a post-boot camp program for certain probationers likely to benefit therefrom.

Session Laws 1994, Extra Session, c. 24, s. 19, as amended by Session Laws 1995, c. 324, s. 19.3, provides:

"(c) The Department of Correction shall evaluate the IMPACT program and the post-Boot Camp probation program funded under this section [s. 19 of c. 24] and report by January 1 of each year to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections Oversight Committee, and the Fiscal Research Division. The evaluation of the IMPACT program and the post-Boot Camp probation program shall include a comparison of that program's effectiveness, cost, and recidivism rate to other corrections programs for offenders in the same age group and similar offense classes as that covered by the IMPACT program."

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1989, c. 529, s. 5, which amended this section, became effective October 1, 1989, and applied to child support orders entered or modified on or after that date.

Session Laws 1989 (Reg. Sess., 1990), c. 1034, s. 1, which amended this section, became effective October 1, 1990, and applied to all persons on supervised probation or parole prior to that date, and to all persons on supervised probation or parole on or after that date.

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1994 Extra Session amendment by c. 9, s. 1, effective May 1, 1994, added the second sentence of subdivision (b)(7).

The 1996 Second Extra Session amendment, effective December 1, 1996, added subsection (c).

CASE NOTES

I. General Consideration.
II. Valid Conditions.
IV. Restitution.

I. GENERAL CONSIDERATION.

Legislative Intent. — The legislature plainly did not intend that this section import wholesale each and every condition precedent to recovery in a civil

§§ 7A-760 through 7A-769: Reserved for future codification purposes.

SUBCHAPTER XIII. COMMUNITY PENALTIES PROGRAM.

ARTICLE 61.

Community Penalties Program Act of 1983.

§ 7A-770. Purpose.

This Article shall be known and may be cited as the "Community Penalties Act of 1983." The purpose of this Article is to reduce prison overcrowding by providing the judicial system with community sentences to be used in lieu of and at less cost than imprisonment. In furtherance of this purpose, this Article provides for the following:

(1) Establishment of local sentencing alternatives for felons who require less than institutional custody but more than regular probation supervision.
(2) Increased opportunities for certain felons to make restitution to victims of crime through financial reimbursement or community service.
(3) Local involvement in the development of community penalties to assure that they are specifically designed to meet local needs.
(4) Reduced expenditures of State funds through an emphasis on alternative penalties for offenders so that new prisons need not be built or new space added. (1983, c. 909, s. 1; 1991, c. 566, ss. 2, 3.)

Local Modification. — (As to Part 6 of Article 11) Buncombe: 1987, c. 862.

Editor's Note. — This Subchapter is former Part 6 of Article 11 of Chapter 143B as rewritten by Session Laws 1991, c. 566, s. 2, and recodified. Where appropriate, the historical citations to the section in the former part have been added to the corresponding sections in the subchapter as rewritten and recodified. References to "this Part" have been changed to "this Article".

§ 7A-771. Definitions.

As used in this Article:

(1) "Community penalties program" means an agency or State-run office within the judicial district which shall (i) prepare community penalty plans; (ii) arrange or contract with public and private agencies for necessary services for offenders; and (iii) monitor the progress of offenders placed on community penalty plans.
(2) "Community penalty plan" means a plan presented in writing to the sentencing judge which provides a detailed description of the targeted offender's proposed community penalty.
(2a) "Director" means the Director of the Administrative Office of the Courts.

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(3) "Judicial district" means a district court district as defined in G.S. 7A-133.

(4) Repealed by Session Laws 1991, c. 566, s. 4, effective July 1, 1991.

(5) "Targeted offenders" means persons 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. (1983, c. 909, s. 1; 1989, c. 770, s. 58; 1991, c. 566, ss. 2, 4; 1993 (Reg. Sess., 1994), c. 767, s. 14; 1995, c. 324, s. 21.9(c).)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 767, which amended this section, in s. 34 provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 24.1(a) and (b) provide: "(a) Of the funds appropriated from the General Fund to the Judicial Department for the 1994-95 fiscal year to conduct the community penalties program, the sum of three million five hundred thirteen thousand and six hundred fifty-eight dollars ($3,513,658) may be allocated by the Judicial Department in any amount among existing community penalties programs, including any State-operated programs, or may be used to establish new State-operated community penalties programs, notwithstanding the provisions of G.S. 7A-771 and G.S. 7A-772.

"(b) The Judicial Department shall report annually to the Senate and House Appropriations Subcommittees on Justice and Public Safety and to the Fiscal Research Division on the administrative expenditures of the community penalties programs. The Judicial Department shall report quarterly to the Joint Legislative Commission on the Governmental Operations on any elimination or reduction of funding for existing community penalties programs."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.2 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1994-95 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1994-95 fiscal year."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, substituted "misdemeanors or felonies who are eligible to receive an intermediate punishment based on their class of offense and prior record level" for "misdemeanors, Class H felonies other than involuntary manslaughter, or Class I or J felonies, who would be eligible for intensive probation or house arrest" in subdivision (5).

The 1995 amendment, effective July 1, 1995, added "or State-run office" in subdivision (1).

§ 7A-772. Allocation of funds.

(a) The Director may award grants in accordance with the policies established by this Article and in accordance with any laws made for that purpose, including appropriations acts and provisions in appropriations acts, and adopt regulations for the implementation, operation, and monitoring of community penalties programs. Community penalties programs that are grantees shall use such funds to develop, implement, and monitor community penalty plans. Grants shall be awarded by the Director to agencies whose compre-

that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1993 (Reg. Sess., 1994), c. 767, which amended this section, in s. 34 provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 14, s. 27, which amended this section, was effective on the same date that Chapter 539 of the 1993 Session Laws became effective (October 1, 1994), and applicable to offenses occurring on or after that date.

§ 15A-1368.4. Conditions of post-release supervision.

(a) In General. — Conditions of post-release supervision may be reintegrative in nature or designed to control the supervisee's behavior and to enforce compliance with law or judicial order. A supervisee may have his supervision period revoked for any violation of a controlling condition or for repeated violation of a reintegrative condition. Compliance with reintegrative conditions may entitle a supervisee to earned time credits as described in G.S. 15A-1368.2(d).

(b) Required Condition. — The Commission shall provide as an express condition of every release that the supervisee not commit another crime during the period for which the supervisee remains subject to revocation. A supervisee's failure to comply with this controlling condition is a supervision violation for which the supervisee may face revocation as provided in G.S. 15A-1368.3.

(b1) Additional Required Conditions for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. — In addition to the required condition set forth in subsection (b) of this section, for a supervisee who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, controlling conditions, violations of which may result in revocation of post-release supervision, are:

(1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).

(2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the Commission.

(3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

(4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.

(5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless a court of competent jurisdiction expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the child's best interest to allow the supervisee to reside in the same household with a minor child.

(c) Discretionary Conditions. — The Commission may in its discretion impose conditions on a supervisee it believes reasonably necessary to ensure that the supervisee will lead a law-abiding life or to assist the supervisee to do so.

(d) Reintegrative Conditions. — Appropriate reintegrative conditions, for which a supervisee may receive earned time credits against the length of the supervision period, and repeated violation that may result in revocation of post-release supervision, are:

(1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip the supervisee for suitable employment.

(2) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

(3) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on post-release supervision.

(4) Support the supervisee's dependents and meet other family responsibilities.

(5) In the case of a supervisee who attended a basic skills program during incarceration, continue attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma.

(6) Satisfy other conditions reasonably related to reintegration into society.

(e) Controlling Conditions. — Appropriate controlling conditions, violation of which may result in revocation of post-release supervision, are:

(1) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for the supervisee 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.

(2) Comply with a court order to pay the costs of reintegrative treatment for a minor and a minor's parents or custodians where the offense involved evidence of physical, mental, or sexual abuse of a minor.

(3) Comply with a court order to pay court costs and costs for appointed counsel or public defender in the case for which the supervisee was convicted.

(4) Not possess a firearm, destructive device, or other dangerous weapon unless granted written permission by the Commission or a post-release supervision officer.

(5) Report to a post-release supervision officer at reasonable times and in a reasonable manner, as directed by the Commission or a post-release supervision officer.

(6) Permit a post-release supervision officer to visit at reasonable times at the supervisee's home or elsewhere.

(7) Remain within the geographic limits fixed by the Commission unless granted written permission to leave by the Commission or the post-release supervision officer.

(8) Answer all reasonable inquiries by the post-release supervision officer and obtain prior approval from the post-

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§ 15A-1368.5. Cor
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(9) Promptly notify the post-release supervision officer of any change in address or employment.

(10) Submit at reasonable times to searches of the supervisee's person by a post-release supervision officer for purposes reasonably related to the post-release supervision. The Commission shall not require as a condition of post-release supervision that the supervisee submit to any other searches that would otherwise be unlawful. Whenever the search consists of testing for the presence of illegal drugs, the supervisee may also be required to reimburse the Department of Correction for the actual cost of drug testing and drug screening, if the results are positive.

(11) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.

(12) Comply with an order from a court of competent jurisdiction regarding the payment of an obligation of the supervisee in connection with any judgment rendered by the court.

(f) Required Supervision Fee. — The Commission shall require as a condition of post-release supervision that the supervisee pay a supervision fee of twenty dollars ($20.00) per month. The Commission may exempt a supervisee from this condition only if it finds that requiring payment of the fee is an undue economic burden. The fee shall be paid to the clerk of superior court of the county in which the supervisee was convicted. The clerk shall transmit any money collected pursuant to this subsection to the State to be deposited in the State's General Fund. In no event shall a supervisee be required to pay more than one supervision fee per month. (1993, c. 538, s. 20.1; 1994, Ex. Sess., c. 24, s. 14(b); 1996, 2nd Ex. Sess., c. 18, s. 20.14(b).)

Editor's Note. — The number of this section was assigned by the Revisor of Statutes, the number in Session Laws 1993, c. 538, s. 20.1 having been § 15A-1370.5.

Session Laws 1993, c. 538, which enacts this Article, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective December 1, 1996, added subsection (b1).

§ 15A-1368.5. Commencement of post-release supervision; multiple sentences.

A period of post-release supervision begins on the day the prisoner is released from imprisonment. Periods of post-release supervision run concurrently with any federal or State prison, jail, probation, or parole terms to which the prisoner is subject during the period, only

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 136

Short Title: Late Video Return/Sales Tax. (Public)

Sponsors: Representatives Weatherly; Arnold, Baker, Brown, Cansler, Davis, McCombs, Mitchell, Preston, Rayfield, and Shubert.

Referred to: Judiciary II, if favorable, Finance.

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CERTAIN LATE CHARGES FOR THE LATE RETURN OF RENTED PROPERTY ARE SUBJECT TO SALES TAX AND TO PROVIDE FOR TREBLE DAMAGES IN A CIVIL ACTION TO ENFORCE PAYMENT OF CERTAIN LATE CHARGES FOR THE LATE RETURN OF A RENTED VIDEOCASSETTE TAPE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.3(16) is amended by adding a new sub-subdivision to read:

"g. The term 'sales price' includes a late charge for the late return of leased or rented personal property to the extent the charge for the late period does not exceed the rental charge for an equivalent period. The term 'sales price' does not include the excess of the late charge for the late period over the rental charge for an equivalent period if the following conditions are met:

1. The late charge is imposed only if the lessee violates the terms of the lease or rental agreement by failing to return the property on time.
2. The late charge is charged and accounted for separately from the charge for leasing or renting the property."

Section 2. Article 13 of Chapter 66 of the General Statutes is amended by adding a new section to read:

"**§ 66-67.4. Remedies for failure to pay extra-day charges for late return of video.**

(a) The following definitions apply in this section:

(1) Extra-day charge. -- A charge for the late return of a rented videocassette at the same rate as the daily rental charge rate or the regular per day rental charge rate.

(2) Member of record. -- A person in whose name a video rental store membership is held and on whose membership a videocassette is rented.

(3) Videocassette. -- The term includes video cartridges.

(4) Video rental store. -- Any entity whose principal business is the rental of videocassette tapes for noncommercial use.

(b) A member of record who fails to pay the extra-day charges assessed for the late return of a videocassette within 30 days after written demand for its return is liable to the video rental store for a minimum amount of fifty dollars ($50.00) or three times the amount of the extra-day charges, whichever is greater.

(c) The written demand shall be mailed by certified mail to the member of record's last known address.

(d) The damages provided for in this section do not apply unless at the time of the rental of the videocassette tape the video rental store conspicuously displayed in the vicinity of the checkout counter a sign that displays the following warnings in block letters not less than one inch in height:

'STATE LAW PROVIDES THAT FAILURE TO PAY THE LATE RETURN, EXTRA-DAY CHARGES DUE ON ANY RENTED VIDEOCASSETTE TAPE MAY RESULT IN DAMAGES OF TRIPLE THE AMOUNT OF THE LATE CHARGES, WITH A MINIMUM OF $50.00. (G.S. 66-67.4).'

(e) The presiding judge or magistrate may award the prevailing party, as part of the court costs payable, a reasonable attorney's fee for the licensed attorney representing the prevailing party in an action under this section.

(f) Nothing contained in this section shall prohibit recovery upon any other theory of law."

Section 3. This act becomes effective October 1, 1997, and applies to rentals occurring on or after that date.

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February 24, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr.
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 136-Late Video/Sales Tax

Section 1 of House Bill 136 amends G.S. 105-164.3 dealing with sales and use taxes to provide that, for the purposes of sales tax, the term "sales price" includes a late charge for the late return of leased or rented personal property, but only to the extent the late charge does not exceed the rental charge for the same period. The excess of the late charge over the rental charge is not included in the sales price if it (1) is imposed only if the lessee violates the terms of the agreement by failing to return the property on time; and (2) is charged and accounted for separately.

Section 2 of the bill creates a new G.S. 66-67.4 to provide remedies for failure to pay late charges for the late return of rented videos. The bill defines late video return charges as charges at the same rate as the daily rental. The "member of record" is defined as the person in whose name a store membership is held and on whose membership the video is rented.

If the member of record fails to pay the late charges within 30 days after written demand for the video's return, the member of record is liable for a minimum of $50.00 or three times the amount of late charges, whichever is greater. Written demand must be mailed by certified mail to the member's last known address. Also, the damages do not apply unless the store displays a warning in block letters not less than one inch in height stating the amount of damages available under this section.

Attorneys fees may be awarded the prevailing party in an action under this section.

This act becomes effective October 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

ARTICLE 5.

Schedule E. Sales and Use Tax.

DIVISION I. TITLE, PURPOSE AND DEFINITIONS.

§ 105-164.3. Definitions.

The following definitions apply in this Article, except when the context clearly indicates a different meaning:

(1) "Business" shall include any activity engaged in by any person or caused to be engaged in by him with the object of gain, profit, benefit or advantage, either direct or indirect. The term "business" shall not be construed in this Article to include occasional and isolated sales or transactions by a person who does not hold himself out as engaged in business.

(2) Reserved.

(3) "Consumer" shall mean and include every person storing, using or otherwise consuming in this State tangible personal property purchased or received from a retailer either within or without this State.

(4) "Cost price" means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, cash discounts, labor or service costs, transportation charges or any expenses whatsoever.

(5) "Engaged in business" means maintaining, occupying or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business, for the selling or delivering of tangible personal property for storage, use or consumption in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, salesman, canvasser or solicitor operating in this State in such selling or delivering, and the fact that any corporate retailer, agent or subsidiary engaged in business in this State may not be legally domesticated or qualified to do business in this State is immaterial. It also means maintaining in this State, either permanently or temporarily, directly or through a subsidiary, tangible personal property for the purpose of lease or rental. It also means making a mail order sale, as defined in this section, if one of the conditions listed in G.S. 105-164.8(b) is met.

(6) "Gross sales" means the sum total of all retail sales of tangible personal property as defined herein, whether for cash or credit without allowance for cash discount and without any deduction on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or any other expenses whatsoever and without any deductions of any kind or character except as provided in this Article.

(7) "In this (the) State" means within the exterior limits of the State of North Carolina and includes all territory within

such limits owned by or ceded to the United States of America.

(7a) "Lease or rental" means a transfer, for consideration, of the use but not the ownership of property to another for a period of time.

(8) "Mail order sale" means a sale of tangible personal property, ordered by mail, telephone, computer link, or other similar method, to a purchaser who is in this State at the time the order is remitted, from a retailer who receives the order in another state and transports the property or causes it to be transported to a person in this State. It is presumed that a resident of this State who remits an order was in this State at the time the order was remitted.

(8a) "Manufactured home" means a structure that is designed to be used as a dwelling and:
a. Is built on a permanent chassis;
b. Is transportable in one or more sections;
c. When transported, is at least eight feet wide or forty feet long; and
d. When erected on a site, has at least 320 square feet.

(8b) "Motor vehicle" means a vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:
a. A moped as defined in G.S. 20-4.01(27)(d1).
b. Special mobile equipment as defined in G.S. 20-4.01(44).
c. A tow dolly that is exempt from motor vehicle title and registration requirements under G.S. 20-51(10) or (11).
d. A farm tractor or other implement of husbandry.
e. A manufactured home, a mobile office, or a mobile classroom.
f. Road construction or road maintenance machinery or equipment.

(9) "Net taxable sales" shall mean and include the gross retail sales of the business of the retailer taxed under this Article after deducting exempt sales and nontaxable sales.

(10) "Nonresident retail or wholesale merchant" means a person who does not have a place of business in this State, is engaged in the business of acquiring, by purchase, consignment, or otherwise, tangible personal property and selling the property outside the State, and is registered for sales and use tax purposes in a taxing jurisdiction outside the State.

(11) "Person" has the same meaning as in G.S. 105-228.90.

(11a) Prepared food and drink. — Meals, food, and beverages to which a retailer has added value or whose state the retailer has altered (other than solely by cooling) by preparing, combining, dividing, heating, or serving, in order to make them available for immediate human consumption.

(11b) "Prescription drug" means a drug that under federal law is required, prior to being dispensed or delivered, to be labeled with the following statement: "Caution: Federal law prohibits dispensing without prescription".

(12) "Purchase" means acquired for a consideration whether
a. The acquisition was effected by a transfer of title or possession, or both, or a license to use or consume;
b. The transfer was absolute or conditional regardless of the means by which it was effected; and

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c. The consideration is a price or rental in money or by way of exchange or barter.

It shall also include the procuring of a retailer to erect, install or apply tangible personal property for use in this State.

(13) "Retail" shall mean the sale of any tangible personal property in any quantity or quantities for any use or purpose on the part of the purchaser other than for resale.

(14) "Retailer" means and includes every person engaged in the business of making sales of tangible personal property at retail, either within or without this State, or peddling the same or soliciting or taking orders for sales, whether for immediate or future delivery, for storage, use or consumption in this State and every manufacturer, producer or contractor engaged in business in this State and selling, delivering, erecting, installing or applying tangible personal property for use in this State notwithstanding that said property may be permanently affixed to a building or realty or other tangible personal property. "Retailer" also means a person who makes a mail order sale, as defined in this section, if one of the conditions listed in G.S. 105-164.8(b) is met. Provided, however, that when in the opinion of the Secretary it is necessary for the efficient administration of this Article to regard any salesmen, solicitors, representatives, consignees, peddlers, truckers or canvassers as agents of the dealers, distributors, consignors, supervisors, employers or persons under whom they operate or from whom they obtain the tangible personal property sold by them regardless of whether they are making sales on their own behalf or on behalf of such dealers, distributors, consignors, supervisors, employers or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers or persons as "retailers" for the purpose of this Article.

(15) "Sale" or selling. — The transfer of title or possession of tangible personal property, conditional or otherwise, in any manner or by any means whatsoever, for a consideration paid or to be paid.

The term includes the fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work. The term also includes the furnishing or preparing for a consideration of any tangible personal property consumed on the premises of the person furnishing or preparing the property or consumed at the place at which the property is furnished or prepared. The term also includes a transaction in which the possession of the property is transferred but the seller retains title or security for the payment of the consideration.

If a retailer engaged in the business of selling prepared food and drink for immediate or on-premises consumption also gives prepared food or drink to its patrons or employees free of charge, for the purposes of this Article the property given away is considered sold along with the property sold. If a retailer gives an item of inventory to a customer free of charge on the condition that the customer

purchase similar or related property, the item given away is considered sold along with the item sold. In all other cases, property given away or used by any retailer or wholesale merchant is not considered sold, whether or not the retailer or wholesale merchant recovers its cost of the property from sales of other property.

(16) Except as provided in paragraph f., "sales price" means the total amount for which tangible personal property is sold including charges for any services that go into the fabrication, manufacture or delivery of such tangible personal property and that are a part of the sale valued in money whether paid in money or otherwise and includes any amount for which credit is given to the purchaser by the seller without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest charged, losses or any other expenses whatsoever. Provided, however, that where a manufacturer, producer or contractor erects, installs or affixes tangible personal property upon real property pursuant to a construction or performance-type contract with or for the benefit of the owner of such real property, the sales price shall be the cost of such property to the manufacturer, producer or contractor performing the contract. Provided, further:

a. The cost for labor or services rendered in erecting, installing or applying property sold when separately charged shall not be included as a part of the "sales price";

b. Finance charges, service charges or interest from credit extended under conditional sales contracts or other conditional contracts providing for deferred payments of the purchase price shall not be considered a part of the "sales price" when separately charged;

c. "Sales price" shall not include the amount of any tax imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or consumer except that any manufacturers' or importers' excise tax shall be included in the term.

d. "Sales price" shall not include any amounts charged as deposits on beverage containers which are returnable to vendors for reuse and which amounts are refundable or creditable to vendees, whether or not said deposits are separately charged.

e. "Sales price" shall not include amounts charged as deposits on aeronautic, automotive, industrial, marine and farm replacement parts which are returnable to vendors for rebuilding or remanufacturing and which amounts are refundable or creditable to vendees, whether or not such deposits are separately charged. This subsection shall not be construed to include tires and batteries.

f. The sales price of tangible personal property sold through a coin-operated vending machine, other than closed-container soft drinks subject to excise tax under Article 2B of this Chapter or tobacco products, is considered to be fifty percent (50%) of the total amount for which the property is sold in the vending machine.

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(16a) "Secretary" means the Secretary of the North Carolina Department of Revenue.

(16b) "State agency" means a unit of the executive, legislative, or judicial branch of State government, such as a department, a commission, a board, a council, or The University of North Carolina. The term does not include a local board of education.

(17) "Storage" means and includes any keeping or retention in this State for any purpose by the purchaser thereof, except sale in the regular course of business, of tangible personal property purchased from a retailer.

(18) "Use" means and includes the exercise of any right or power or dominion whatsoever over tangible personal property by a purchaser thereof and includes, but is not limited to, any withdrawal from storage, installation, affixation to real or personal property, exhaustion or consumption of tangible personal property by the owner or purchaser thereof, but shall not include the sale of tangible personal property in the regular course of business.

(19) "Storage" and "Use"; Exclusion. — "Storage" and "use" do not include the keeping, retaining or exercising of any right or power over tangible personal property by the purchaser thereof for the original purpose of subsequently transporting it outside the State for use by said purchaser thereafter solely outside the State and which purpose is consummated, or for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the State and thereafter used by the purchaser thereof solely outside the State.

(20) "Tangible personal property" means and includes personal property which may be seen, weighed, measured, felt or touched or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance or other obligations or securities, nor shall it include water delivered by or through main lines or pipes either for commercial or domestic use or consumption. The term includes all "canned" or prewritten computer programs, either in the form of written procedures or in the form of storage media on which or in which the program is recorded, held, or existing for general or repeated sale, lease, or license to use or consume. The term does not include the design, development, writing, translation, fabrication, lease, license to use or consume, or transfer for a consideration of title or possession of a custom computer program, other than a basic operational program, either in the form of written procedures or in the form of storage media on which or in which the program is recorded, or any required documentation or manuals designed to facilitate the use of the custom computer program. The term also does not include access to a computer program or a database when the user of the computer program or database receives a separately stated fee or other charge for the access.

As used in this subdivision:

a. "Basic operational program" or "control program" means a computer program that is fundamental and neces-

sary to the functioning of a computer. A basic operational program is that part of an operating system, including supervisors, monitors, executives, and control or master programs, which consists of the control program elements of that system. A control or master program, as opposed to a processing program, controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main storage, input/output devices, and processing programs. A processing program is used to develop and implement the specific applications the computer is to perform.

b. "Computer program" means the complete plan for the solution of a problem, such as the complete sequence of automatic data-processing equipment instructions necessary to solve a problem, and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.

c. "Custom computer program" means a computer program prepared to the special order of the customer. Custom computer programs include one of the following elements:

1. Preparation or selection of the programs for the customer's use requires an analysis of the customer's requirements by the vendor; or
2. The program requires adaptation by the vendor to be used in a particular make and model of computer utilizing a specified output device.

d. "Storage media" means punched cards, tapes, disks, diskettes, or drums.

(21) "Taxpayer" means any person liable for taxes under this Article.

(22) "Use tax" means and includes the tax imposed by Part 3 in Division II of this Article.

(23) "Wholesale merchant" shall mean every person who engages in the business of buying or manufacturing any tangible personal property and selling same to registered retailers, wholesalers and nonresident retail or wholesale merchants for resale. It shall also include persons making sales of tangible personal property which are defined herein as wholesale sales. For the purposes of this Article any person, firm, corporation, estate or trust engaged in the business of manufacturing, producing, processing or blending any articles of commerce and maintaining a store or stores, warehouse or warehouses, or any other place or places, separate and apart from the place of manufacture or production, for the sale or distribution of its products (other than bakery products) to other manufacturers or producers, wholesale or retail merchants, for the purpose of resale shall be deemed a "wholesale merchant."

(24) "Wholesale sale" shall mean a sale of tangible personal property by a wholesale merchant to a manufacturer, or registered jobber or dealer, or registered wholesale or retail merchant, for the purpose of resale but does not include a sale to users or consumers not for resale.

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1993, c. 354, s. 16; c.
1996), c. 649, s. 2; 19

Editor's Note. —
Session Laws 1996, Second Extra
sion, c. 14, s. 26, provides: "This act
not affect the rights or liabilities o
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DIVISION

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§ 105-164.4. Tax imp

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(25) "Utility" means an electric power company, a gas company, or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a business entity that provides local, toll, or private telecommunications service as defined by G.S. 105-120(e) or a municipality that sells electric power, other than a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 1213, s. 1; 1967, c. 1110, s. 6; 1973, c. 476, s. 193; c. 1287, s. 8; 1975, c. 104; c. 275, s. 6; 1979, c. 48, s. 2; c. 71; c. 801, s. 72; 1983, c. 713, ss. 87, 88; 1983 (Reg. Sess., 1984), c. 1097, ss. 4, 5; 1985, c. 23; 1987, c. 27; c. 557, s. 3.1; c. 854, ss. 2, 3; 1987 (Reg. Sess., 1988), c. 1044, s. 3; c. 1096, ss. 1-3; 1989, c. 692, s. 3.2; 1989 (Reg. Sess., 1990), c. 813, s. 13; 1991, c. 45, s. 15; c. 79, ss. 1, 3; c. 689, s. 190.1(a); 1991 (Reg. Sess., 1992), c. 949, s. 3; 1993, c. 354, s. 16; c. 484, s. 1; c. 507, s. 1; 1995 (Reg. Sess., 1996), c. 649, s. 2; 1996, 2nd Ex. Sess., c. 14, ss. 13, 14.)

Editor's Note. —
Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

"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. — Session Laws 1995 (Reg. Sess., 1996), c. 649, s. 2, effective June 21, 1996, added subdivision (11b).

Session Laws 1996, Second Extra Session, c. 14, ss. 13 and 14, effective August 1, 1996, rewrote subdivision (15); and added subdivision (11a).

Division II. Taxes Levied.

Part 1. Retail Sales Tax.

§ 105-164.4. Tax imposed on retailers.

(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four percent (4%).

(1) The general rate of tax applies to the sales price of each item or article of tangible personal property that is sold at retail and is not subject to tax under another subdivision in this section.

(1a) The rate of two percent (2%) applies to the sales price of each manufactured home sold at retail, including all accessories attached to the manufactured home when it is delivered to the purchaser. The maximum tax is three hundred dollars ($300.00) per article. Each section of a manufactured home that is transported separately to the site where it is to be erected is a separate article.

(1b) The rate of three percent (3%) applies to the sales price of each aircraft, boat, railway car, or locomotive sold at retail,

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 136 DATE 2/25

S. B. No. _____ Amendment No. _____

(to be filled in by Principal Clerk)

Rep.) [redacted] Shubert

Sen.)

moves to amend the bill on page 2, line 15,

by deleting the words "its return" and substituting the words "payment of such charges".

SIGNED Frank H Shubert

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 136 DATE 2/25

S. B. No. _____ Amendment No. _____

(to be filled in by Principal Clerk)

Rep.) Baddour

Sen.)

moves to amend the bill on page 2, lines 29-31

by deleting subsection (e) and relettering the remaining subsections accordingly

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 136 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT CERTAIN LATE CHARGES FOR THE LATE RETURN OF RENTED PROPERTY ARE SUBJECT TO SALES TAX AND TO PROVIDE FOR TREBLE DAMAGES IN A CIVIL ACTION TO ENFORCE PAYMENT OF CERTAIN LATE CHARGES FOR THE LATE RETURN OF A RENTED VIDEOCASSETTE TAPE.

☐ 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 D

HOUSE BILL 136
Proposed Committee Substitute H136-PCS1103

Short Title: Late Video Return/Sales Tax. (Public)

Sponsors:

Referred to:

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CERTAIN LATE CHARGES FOR THE LATE RETURN OF RENTED PROPERTY ARE SUBJECT TO SALES TAX AND TO PROVIDE FOR TREBLE DAMAGES IN A CIVIL ACTION TO ENFORCE PAYMENT OF CERTAIN LATE CHARGES FOR THE LATE RETURN OF A RENTED VIDEOCASSETTE TAPE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.3(16) is amended by adding a new sub-subdivision to read:

"g. The term 'sales price' includes a late charge for the late return of leased or rented personal property to the extent the charge for the late period does not exceed the rental charge for an equivalent period. The term 'sales price' does not include the excess of the late charge for the late period over the rental charge for an equivalent period if the following conditions are met:

1. The late charge is imposed only if the lessee violates the terms of the lease or rental agreement by failing to return the property on time.
2. The late charge is charged and accounted for separately from the charge for leasing or renting the property."

Section 2. Article 13 of Chapter 66 of the General Statutes is amended by adding a new section to read:

"**§ 66-67.4. Remedies for failure to pay extra-day charges for late return of video.**

(a) The following definitions apply in this section:

(1) Extra-day charge. -- A charge for the late return of a rented videocassette at the same rate as the daily rental charge rate or the regular per day rental charge rate.

(2) Member of record. -- A person in whose name a video rental store membership is held and on whose membership a videocassette is rented.

(3) Videocassette. -- The term includes video cartridges.

(4) Video rental store. -- Any entity whose principal business is the rental of videocassette tapes for noncommercial use.

(b) A member of record who fails to pay the extra-day charges assessed for the late return of a videocassette within 30 days after written demand for payment of such charges is liable to the video rental store for a minimum amount of fifty dollars ($50.00) or three times the amount of the extra-day charges, whichever is greater.

(c) The written demand shall be mailed by certified mail to the member of record's last known address.

(d) The damages provided for in this section do not apply unless at the time of the rental of the videocassette tape the video rental store conspicuously displayed in the vicinity of the checkout counter a sign that displays the following warnings in block letters not less than one inch in height:

'STATE LAW PROVIDES THAT FAILURE TO PAY THE LATE RETURN, EXTRA-DAY CHARGES DUE ON ANY RENTED VIDEOCASSETTE TAPE MAY RESULT IN DAMAGES OF TRIPLE THE AMOUNT OF THE LATE CHARGES, WITH A MINIMUM OF $50.00. (G.S. 66-67.4).'

(e) Nothing contained in this section shall prohibit recovery upon any other theory of law."

Section 3. This act becomes effective October 1, 1997, and applies to rentals occurring on or after that date.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

February 25, 1997 10:00 A.M. — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patrice Roesler	NCACC
GARY EICHELBERGER	CC&PS
Laura Hartsell	MCIC
David Simmons	Zeb, Alley, PA
JOE NEFF	NBJ
Billy Hall	General Statutes Commission
PETE MARTIN	DMH/DD/SAS
Chuck Crane	State Planning
Debbie Meggyesy	Sentencing Commission
Delita Broomes	Parole Commission
Tracy Herring	Parole Commission
Andrew Jennette	Parole Commission
Jill Miller	NCATL
Rob Lubitz	Sentencing Commission
Howard Lunge	N.C. Bar
A.A. Adams	Victim Advocate
H.A. Webb	Auto Dealers
Jon Ribal Lee Guy	Jordan Price Wall Gray & Jones PROBATION - PAROLE, DOC
Jan Johnson	city
Gregory J. Long	NC DOR
Ralph K. Pope	PARKER ADVERTISING, INC. ACC 10 TV
Thom Steeple	Lobbyist
Steve Snider	Jordan Price Wall Gray & Jones
Charles Crosmer	NCATL
Dick Taylor	NCATL

MINUTES
HOUSE JUDICIARY II COMMITTEE

February 25, 1997 1:00 P.M.

The North Carolina House of Representatives Judiciary II Committee met on February 25, 1997, at 1:00 P.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Baddour, Cansler, Creech, Culpepper, Gardner, Hackney, Hensley, Nesbitt, Redwine, Saunders, Shubert and Wilkins. A list of visitors is attached.

The following bill was discussed:

HB-202 INCREASE MINIMUM UPSET AMOUNT

Representative Culpepper was recognized to present a proposed committee substitute and moved it be adopted for purpose of discussion; motion passed. Representative Culpepper explained the proposed committee substitute and answered questions of committee members. A copy of the proposed committee substitute is attached.

Ms. P. Bly Hall, General Statutes Commission, spoke in favor of the proposed committee substitute and answered questions of committee members.

Representative Nesbitt moved for a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

The meeting was adjourned at 1:40 P.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H D

H202-PCSRG-001A
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 202
THIS IS A DRAFT 25-FEB-97 12:39:01
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

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 and execution sales occurring on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 202 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.

☐ 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 202*
Proposed Committee Substitute H202-PCS2093

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 and execution sales occurring on or after that date.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

February 25, 1997 1:00 P.M. — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Floyd M. Lewis	General Statutes Commission
Billy Hull	ditto -
David Simmons	345 Alley, DA

MINUTES
HOUSE JUDICIARY II COMMITTEE

February 27, 1997

The North Carolina House of Representatives Judiciary II Committee met on February 27, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Bowie, Cansler, Culpepper, Decker, Gardner, Goodwin, Hackney, Hensley, McMahan, Saunders, Shubert, Sutton, Wilkins and C. Wilson. A list of visitors is attached.

The committee agreed to legislative effective dates of December 1st on criminal matters and October 1st on all other matters, unless there is a strong sense among the committee that it should be expedited for some other reason.

The following bills were discussed:

HB-197 JUDICIAL TIMBER SALE/SEALED BID
HB-218 CONFOM WITNESS TRAVEL FEES
SB-86 FAST-TRACK TECHNICAL AMENDMENTS

Representative McCrary was recognized to explain HB-218 and answer questions of committee members. A copy of the bill and bill explanation prepared by Tim Hovis, Committee Counsel, are attached.

Mr. Thomas J. Andrews, Administrative Office of the Courts, spoke in favor of the bill and answered questions of committee members.

Representative Decker was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Decker moved the amendment be incorporated into a committee substitute bill, with a favorable 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; motion passed.

Senator Hartsell was recognized to explain SB-86 and answer questions of committee members. A copy of the bill and bill explanation prepared by the General Statutes Commission are attached.

Representative Hackney was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Wilson moved the amendment be incorporated into a committee substitute bill, with a favorable report as to House committee substitute bill, unfavorable as to original bill; motion passed.

Representative Neely appointed the following subcommittee:

Representative Kiser, Chairman
Representative Baddour
Representative Bowie
Representative Nesbitt
Representative Russell

to study:

HB-158 Prison Offenses/Increase Penalty
HB-159 Prison Escape Penalties
HB-173 Relabel Prior Misdemeanor Convict.
HB-174 Active Sentence/Trial Waiting Time
HB-175 Struct. Sent./Technical Amends
HB-182 Exclude 10 Yr. Conviction
HB-187 Amend Prior Record Calculations
HB-195 Clarify Post-Release Supervision
HB-196 Post-Release/F & G Felons
HB-212 Clarify Community-Based Correction

Representative Culpepper was recognized to explain HB-197 and answer questions of committee members. A copy of the bill and bill explanation prepared by the General Statutes Commission are attached.

Mr. Robert W. Slocum, Jr., Executive Vice President, North Carolina Forestry Association, Inc., spoke in favor of the bill and answered questions of committee members.

No action was taken on HB-197.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 218

Short Title: Conform Witness Travel Fees. (Public)

Sponsors: Representatives McCrary, Culpepper, Hensley, R. Hunter, and Neely.

Referred to: Judiciary II, if favorable, Appropriations.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO RECONFORM THE MILEAGE REIMBURSEMENT FOR OUT-OF-STATE WITNESSES TO THAT RECEIVED BY IN-STATE WITNESSES AND STATE EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-314(c) reads as rewritten:

"(c) A witness who resides in a state other than North Carolina and who appears for the purpose of testifying in a criminal action and proves his attendance may be compensated at the rate ~~of ten cents (10¢) a mile~~ currently authorized for State employees for one round-trip from his place of residence to the place of appearance, and five dollars ($5.00) for each day that he is required to travel and attend as a witness, upon order of the court based upon a finding that the person was a necessary witness. If such a witness is required to appear more than one day, he is also entitled to reimbursement for actual expenses incurred for lodging and meals, not to exceed the maximum currently authorized for State employees."

Section 2. G.S. 15A-813 reads as rewritten:

"§ 15A-813. Witness from another state summoned to testify in this State.

If a person in any state which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence in this State, is a material witness in a prosecution pending in a court of record in this State, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court, stating these facts and specifying the number of days the witness will be required. Said certificate may include a

recommendation that the witness be taken into immediate custody and delivered to an officer of this State to assure his attendance in this State. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If the witness is summoned to attend and testify in this State he shall be ~~tendered the sum of ten cents (10¢) a mile~~ compensated at the rate currently authorized for State employees for each mile by the ordinary traveled route to and from the court where the prosecution is pending, and five dollars ($5.00) for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this State a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court. If such a witness is required to appear more than one day, he is also entitled to reimbursement for actual expenses incurred for lodging and meals, not to exceed the maximum currently authorized for State employees when traveling in the State. If such witness, after coming into this State, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State."

Section 3. This act is effective when it becomes law and applies to all out-of-state witness travel expenses incurred on or after that date.

North Carolina General Assembly
Legislative Services Agency

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

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

Gerry F. Cohen, Director
Bill Drafting Division
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Thomas L. Covington, Director
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(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

February 26, 1997

MEMORANDUM

TO: Rep. Charles B. Neely. Jr., Chairman

FROM: Tim Hovis, Committee Counsel

RE: House Bill 218-Conform Witness Travel Fees (McCrary)

House Bill 218 is a recommendation of the North Carolina Courts Commission and was requested by the Administrative Office of the Courts.

Under current law, G.S. 7A-314 provides that witnesses from inside the State are reimbursed for mileage at the rate authorized for State employees. This rate is currently 31.5 cents per mile. However, witnesses from outside the State are compensated at the rate of 10 cents per mile.

House Bill 218 would provide that, as with in-State witnesses, witnesses from outside the State are compensated for mileage at the rate authorized for State employees.

§ 7A-312 is set out twice. See notes.

($12.00) per day. A juror required to remain overnight at the site of the trial shall be furnished adequate accommodations and subsistence. If required by the presiding judge to remain in a body during the trial of a case, meals shall be furnished the jurors during the period of sequestration. Jurors from out of the county summoned to sit on a special venire shall receive mileage at the same rate as State employees. (1965, c. 310, s. 1; 1967, c. 1169; 1969, c. 1190, s. 32; 1971, c. 377, s. 26; 1973, c. 503, s. 19; 1979, c. 985; 1983, c. 881, ss. 2, 3; 1989, c. 646, s. 2; 1995, c. 324, s. 21.1(a).)

Section Set Out Twice. — The version of § 7A-312 set out above is effective June 30, 1997. For version effective until June 30, 1997, see the preceding section.

Editor's Note. — Session Laws 1995, c. 324, s. 21.1(c) provides that the amendment to this section by s. 21.1(a) expires June 30, 1997. The section is set out above as it read prior to the amendment by c. 324, s. 21.1(a).

CASE NOTES

Applied in State v. Setzer, 42 N.C. App. 98, 256 S.E.2d 485 (1979).

§ 7A-313. Uniform jail fees.

Only persons who are lawfully confined in jail awaiting trial, or who are ordered to pay jail fees pursuant to a probationary sentence, shall be liable to the county or municipality maintaining the jail in the sum of five dollars ($5.00) for each 24 hours' confinement, or fraction thereof, except that a person so confined shall not be liable for this fee if the case or proceeding against him is dismissed, or if acquitted, or if judgment is arrested, or if probable cause is not found, or if the grand jury fails to return a true bill. (1965, c. 310, s. 1; 1969, c. 1190, s. 33; 1973, c. 503, s. 20; 1975, c. 444; 1989, c. 733, s. 1.)

CASE NOTES

Stated in In re Dunlap, 66 N.C. App. 152, 310 S.E.2d 415 (1984).

§ 7A-314. Uniform fees for witnesses; experts; limit on number.

(a) A witness under subpoena, bound over, or recognized, other than a salaried State, county, or municipal law-enforcement officer, or an out-of-state witness in a criminal case, whether to testify before the court, Judicial Standards Commission, jury of view, magistrate, clerk, referee, commissioner, appraiser, or arbitrator shall be entitled to receive five dollars ($5.00) per day, or fraction thereof, during his attendance, which, except as to witnesses before the Judicial Standards Commission, must be certified to the clerk of superior court.

(b) A witness entitled to the fee set forth in subsection (a) of this section, and a law-enforcement officer who qualifies as a witness, shall be entitled to receive reimbursement for travel expenses as follows:

(1) A witness whose residence is outside the county of appearance but within 75 miles of the place of appearance shall be entitled to receive mileage reimbursement at the rate currently authorized for State employees, for each mile necessarily traveled from his place of resident to the place of appearance and return, each day.

(2) A witness whose residence is outside the county of appearance and more than 75 miles from the place of appearance shall be entitled to receive mileage reimbursement at the rate currently authorized State employees for one round-trip from his place of residence to the place of appearance. A witness required to appear more than one day shall be entitled to receive reimbursement for actual expenses incurred for lodging and meals not to exceed the maximum currently authorized for State employees, in lieu of daily mileage.

(c) A witness who resides in a state other than North Carolina and who appears for the purpose of testifying in a criminal action and proves his attendance may be compensated at the rate of ten cents (10¢) a mile for one round-trip from his place of residence to the place of appearance, and five dollars ($5.00) for each day that he is required to travel and attend as a witness, upon order of the court based upon a finding that the person was a necessary witness. If such a witness is required to appear more than one day, he is also entitled to reimbursement for actual expenses incurred for lodging and meals, not to exceed the maximum currently authorized for State employees.

(d) An expert witness, other than a salaried State, county, or municipal law-enforcement officer, shall receive such compensation and allowances as the court, or the Judicial Standards Commission, in its discretion, may authorize. A law-enforcement officer who appears as an expert witness shall receive reimbursement for travel expenses only, as provided in subsection (b) of this section.

(e) If more than two witnesses are subpoenaed, bound over, or recognized, to prove a single material fact, the expense of the additional witnesses shall be borne by the party issuing or requesting the subpoena.

(f) In a criminal case when a person who does not speak or understand the English language is an indigent defendant, a witness for an indigent defendant, or a witness for the State and the court appoints a language interpreter to assist that defendant or witness in the case, the reasonable fee for the interpreter's services, as set by the court, are payable from funds appropriated to the Administrative Office of the Courts. (1965, c. 310, s. 1; 1969, c. 1190, s. 34; 1971, c. 377, s. 27; 1973, c. 503, ss. 21, 22; 1983, c. 713, s. 20.)

Cross References. — As to items allowed as costs generally, see § 6-1. As to proof of attendance by witness, see § 6-53.

CASE NOTES

The court's power to tax costs is entirely dependent upon statutory authorization. State v. Johnson, 282 N.C. 1, 191 S.E.2d 641 (1972).

Subsections (a) and (d) of this section must be considered together. State v. Johnson, 282 N.C. 1, 191 S.E.2d 641 (1972).

As to expert witnesses, subsection (d) modifies subsection (a) by permit-

ting the court, in its discretion, t
crease their compensation and a
ances, but the modification relates
to the amount of an expert witness'
it does not abrogate the require
that all witnesses must be subpoe
before they are entitled to compens
State v. Johnson, 282 N.C. 1, 191 S
641 (1972).

Unless an expert witness is poenaed, the witness' fees are generally recognized as costs. v. Wade, 72 N.C. App. 372, 325 S 260, cert. denied, 313 N.C. 612 S.E.2d 616 (1985).

It is error for a trial court to t
expert witness fee as part of the
when the expert has not testified
ant to a subpoena. Craven v. Cha
56 N.C. App. 151, 287 S.E.2d 905
overruled on other grounds, John
Ruark Ob. & Gyn. Assocs., 327 N.
395 S.E.2d 85 (1990).

§ 7A-315. Liability criminal able.

In a criminal action, if n
court as liable for the co
convicted and unable to
judgment is arrested, or
jury fails to return a tru
witness fees allowed per
tests and comparisons inc
1979, c. 576, s. 4.)

§ 7A-316. Payment tions.

A witness in a criminal
who proves his attendan
shall be paid by the c
disbursed shall be asses
liable for the fee, a witne
the last day of court in
shall be paid by the cl
witnesses shall be subpo
single material fact, di
shall be charged agains
poena. (1965, c. 310, s.

§ 7A-317. Countie quire

Counties and municip
the facilities fee, the Ge
fees enumerated in G.S.
in G.S. 7A-311. (1967,

from a court of record in this State. (1937, c. 217, s. 2; 1973, c. 12
s. 9.)

CASE NOTES

Applied in State v. Tolley, 290 N.C. 349, 226 S.E.2d 353 (1976).

§ 15A-813. Witness from another state summoned to testify in this State.

If a person in any state which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence in this State, is a material witness in a prosecution pending in a court of record in this State, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court, stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this State to assure his attendance in this State. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If the witness is summoned to attend and testify in this State he shall be tendered the sum of ten cents (10¢) a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending, and five dollars ($5.00) for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this State a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court. If such witness, after coming into this State, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State. (1937, c. 217, s. 3; 1973, c. 1286, s. 9.)

CASE NOTES

Defendant Has Burden of Procuring Attendance. — An accused may not place the burden on the officers of the law and the court to see that he procures the attendance of witnesses and makes preparation for his defense. State v. Tindall, 294 N.C. 689, 242 S.E.2d 806 (1978).

Absence of Witness as Grounds for Continuance. — Ordinarily, the absence of a witness who could have been served with a subpoena does not constitute grounds for continuance. State v. Lee, 293 N.C. 570, 238 S.E.2d 299 (1977).

No Duty to Suggest Procedures to Defendant. — Where the trial court properly denied defendant's request under § 15A-803 for a material witness order to compel attendance of witnesses from New York, the court was under no duty to search the statutes and suggest to defense counsel that this section might provide a procedure for obtaining the result which he sought, but could not obtain, under § 15A-803. State v. Tindall, 294 N.C. 689, 242 S.E.2d 806 (1978).

Applied in State v. Tolley, 290 N.C. 349, 226 S.E.2d 353 (1976).

Cited in Jackson v. Garrison, 667 F.2d 371 (4th Cir. 1981); State v. Cyrus, 60 N.C. App. 774, 300 S.E.2d 58 (1983).

15A-814. Exemption from a process.

If a person comes into this State in c
cting him to attend and testify in this
his State pursuant to such summons,
rvice of process, civil or criminal, i
hich arose before his entrance into this
If a person passes through this State v
obedience to a summons to attend a
hile returning therefrom, he shall no
his State be subject to arrest or the
riminal, in connection with matters v
rance into this State under the summo
1286, s. 9.)

CASE NOTES

Exemption from Service Is Personal Privilege. — The privilege of claiming an exemption from service of civil process granted by this section is personal. The service is not void. It is merely voidable, and, until the defendant elects to exercise his privilege by claiming his exemption and establishing his nonresidence, the service is binding. Thrush v. Thrush, 246 N.C. 114, 97 S.E.2d 472 (1957), decided under former

Nonresident defendant while in this State in compliance with conditions of a bail bond is not exempt from the service of process. Hare v. Hare, 228 N.C. 740, 46 S.E.2d 840 (1948), decided under former law.

Decisions That Nonresident Exempt from Process Held Res Judicata in Subsequent Proceeding. — In an action against the driver of a car upon whom service of summons was had while he was in the State in obedience to a summons from a coroner to testify at an inquest, motion to vacate the service was allowed upon the court's finding from the evidence that defendant was a nonres exempt nection his ent to the quent a lision, admini collisio fendant same m adjudic resident under t judgmer the stat dant, a trator u veritate court in tially th was a re service must be support 220 N.C cided u

15A-815. Uniformity of interp

This Article shall be so interpreted and its general purpose to make uniform th enact it. (1937, c. 217, s. 5; 1973, c. 12

§ 138-6. Travel allowances of State officers and employees.

(a) Travel on official business by the officers and employees of State departments, institutions and agencies which operate from funds deposited with the State Treasurer shall be reimbursed at the following rates:

(1) For transportation by privately owned automobile, the business standard mileage rate set by the Internal Revenue Service per mile of travel and the actual cost of tolls paid. Any other law which sets a mileage rate by referring to the rate set herein, instead establishes a rate of twenty-five cents (25¢) per mile. No reimbursement shall be made for the use of a personal car in commuting from an employee's home to his duty station in connection with regularly scheduled work hours. Any designation of an employee's home as his duty station by a department head shall require prior approval by the Office of State Budget and Management on an annual basis.

(2) For bus, railroad, Pullman, or other conveyance, actual fare.

(3) For expenses incurred for subsistence, payment of seventy-one dollars ($71.00) per day when traveling in-state or eighty-three dollars ($83.00) per day when traveling out-of-state. When travel involves less than a full day (24-hour period), a reasonable prorated amount shall be paid in accordance with regulations and criteria which shall be promulgated and published by the Director of the Budget. Reimbursement to State employees for lunches eaten while on official business may be made only in the following circumstances:

a. When an overnight stay is required reimbursement is allowed while an employee is in travel status;

b. When the cost of the lunch is included as part of a registration fee for a formal congress, conference, assembly, or convocation, by whatever name called. Such assembly must involve the active participation of persons other than the employees of a single State department, institution, or agency and must be necessary for conducting official State business; or

c. When the State employee is a member of a State board, commission, committee, or council which operates from funds deposited with the State Treasurer, and the lunch is preplanned as part of the meeting for the entire board, commission, committee, or council.

(4) For convention registration fees not to exceed thirty dollars ($30.00) per convention.

(b) Out-of-state travel on official business by the officers and employees of State departments, institutions, and agencies which operate from funds deposited with the State Treasurer shall be reimbursed only upon authorization obtained in the manner prescribed by the Director of the Budget.

(c) Reimbursement of actual costs of overnight lodging, whether in-state or out-of-state, must be documented by a receipt of actual lodging expenses from a commercial establishment. This documentation shall be attached to the reimbursement request. All reim-

bursement requests shall be filed for approval and payment within 30 days after the travel period for which the reimbursement is being requested. (1961, c. 833, s. 6; 1963, c. 1049, s. 2; 1965, c. 1089; 1969, c. 1153; 1971, c. 881, ss. 1, 2; 1973, c. 595, s. 1; c. 1456; 1975, c. 892, s. 1; 1977, c. 928; 1977, 2nd Sess., c. 1136, s. 38.1; c. 1237, ss. 1, 2; 1979, c. 34, s. 1; c. 1002, s. 1; c. 1050, s. 1; 1979, 2nd Sess., c. 1137, s. 26; 1981, c. 859, ss. 57-59; 1983, c. 761, s. 22; c. 913, s. 27; c. 923, s. 217; 1985, c. 757, s. 201(a); 1985 (Reg. Sess., 1986), c. 1014, s. 39(b); 1987, c. 738, ss. 58(c), 58(d), 60; 1987 (Reg. Sess., 1988), c. 1086, s. 30(a); c. 1100, s. 38(a); 1993, c. 321, s. 24(a); 1993 (Reg. Sess., 1994), c. 769, s. 7.27A.)

Cross References. — For provision that notwithstanding this section, a magistrate may not be reimbursed by the State for travel expenses incurred on official business within the county in which the magistrate resides, see § 7A-171.1(b). For provisions authorizing the Commissioner of Insurance to pay examiners an amount in lieu of traveling expenses, see § 58-6-5(3). As to travel expenses incurred by Department of Agriculture employees while testing a manufacturer's weighing or measuring device, see § 81A-10.

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1100, s. 38(a), which amended subdivision (a)(3), was effective from September 1, 1988, through June 30, 1990. This amendment having expired, subdivision (a)(3) is set out above as it read prior to amendment by c. 1100, s. 38(a), but as amended by Session Laws 1993 (Reg. Sess., 1994), c. 769.

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993, c. 321, s. 322 and Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 are severability clauses.

Effect of Amendments. — The 1993 amendment, effective August 1, 1993, in the first sentence of subdivision (a)(1), substituted "the business standard mileage rate set by the Internal Revenue Service" for "twenty-five cents (25¢)" and added the second sentence.

The 1993 (Reg. Sess., 1994) amendment, effective July 1, 1994, substituted "seventy-one dollars ($71.00)" for "fifty-five dollars ($55.00)" and "eighty-three dollars ($83.00)" for "sixty-seven dollars ($67.00)" in the first sentence of subdivision (a)(3).

OPINIONS OF ATTORNEY GENERAL

Reimbursement of State Officers and Employees Traveling in Privately Owned Automobiles on Official Business. — State officers and employees are entitled to be reimbursed at a rate of 15¢ (now 25¢) per mile traveled when privately owned automobiles are used in pursuance of official State business, regardless of the number of miles traveled. See opinion of Attorney General to Honorable Donald L. Smith, 45 N.C.A.G. 168 (1975).

Proration of the daily subsistence allowance as promulgated pursuant to subdivision (a)(3) of this section by the Division of State Budget, for the reimbursement of state employees for expenses incurred for lodging and meals when travel involves less than a 24-hour period, is applicable to occupational licensing board members. See opinion of Attorney General to Mr. Henry L. Bridges, State Auditor, 49 N.C.A.G. 74 (1979).

§ 138-7. Exceptions to §§ 138-5 and 138-6.

Expenditures in excess of the maximum amounts set forth in G.S. 138-5 and 138-6 for travel and subsistence may be reimbursed if the prior approval of the department head is obtained. The Director of the Budget shall establish and publish uniform standards and criteria under which actual expenses in excess of the travel and subsistence allowances and convention registration fees as prescribed in

G.S. 138-5 and 138-6 may extraordinary charges for such charges are the resu 833, s. 6.1; 1965, c. 1089; 595, s. 2; 1979, c. 838, s

OPINIONS

Director of the budget has ity to authorize payment of expenses in excess of statutor mum. See opinion of Attorney to Mr. G. Andrew Jones, State Office, Department of Admini 40 N.C.A.G. 742 (1970).

Travel Expenses of Mem Occupational Licensing Bo This section does not authorize

§ 138-8. Moving ex

Subject to the rules an State Budget and Manag Budget, any departmen hereby authorized to pa expenses for transportin members of his household considered by the Directo of the State. (1977, c. 8

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1st

H. B. No. 218 DATE 2/27/97

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

1 moves to amend the bill on page 2, line 18
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting the line to read:
4
5 "Section 3. This act becomes effective
6 October 1, 1997 and applies to all"
7
9
10
11
12
13
14
15
16
17
18
19

SIGNED Michael Decker

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 218 A BILL TO BE ENTITLED AN ACT TO RECONFORM THE MILEAGE REIMBURSEMENT FOR OUT-OF-STATE WITNESSES TO THAT RECEIVED BY IN-STATE WITNESSES AND STATE EMPLOYEES.

☐ 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 D

HOUSE BILL 218
Proposed Committee Substitute H218-PCS1110

Short Title: Conform Witness Travel Fees. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO RECONFORM THE MILEAGE REIMBURSEMENT FOR OUT-OF-STATE WITNESSES TO THAT RECEIVED BY IN-STATE WITNESSES AND STATE EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-314(c) reads as rewritten:

"(c) A witness who resides in a state other than North Carolina and who appears for the purpose of testifying in a criminal action and proves his attendance may be compensated at the rate ~~of ten cents (10¢) a mile~~ currently authorized for State employees for one round-trip from his place of residence to the place of appearance, and five dollars ($5.00) for each day that he is required to travel and attend as a witness, upon order of the court based upon a finding that the person was a necessary witness. If such a witness is required to appear more than one day, he is also entitled to reimbursement for actual expenses incurred for lodging and meals, not to exceed the maximum currently authorized for State employees."

Section 2. G.S. 15A-813 reads as rewritten:

"§ 15A-813. Witness from another state summoned to testify in this State.

If a person in any state which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence in this State, is a material witness in a prosecution pending in a court of record in this State, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court, stating these facts and specifying

the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this State to assure his attendance in this State. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

If the witness is summoned to attend and testify in this State he shall be ~~tendered the sum of ten cents (10¢) a mile~~ compensated at the rate currently authorized for State employees for each mile by the ordinary traveled route to and from the court where the prosecution is pending, and five dollars ($5.00) for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this State a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court. If such a witness is required to appear more than one day, he is also entitled to reimbursement for actual expenses incurred for lodging and meals, not to exceed the maximum currently authorized for State employees when traveling in the State. If such witness, after coming into this State, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State."

Section 3. This act becomes effective October 1, 1997, and applies to all out-of-state witness travel expenses incurred on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 86*

Short Title: Fast-Track Technical Amendments. (Public)

Sponsors: Senators Hartsell; and Soles.

Referred to: Judiciary.

February 11, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO TWO SECTIONS OF THE GENERAL STATUTES IN NEED OF PROMPT CORRECTIONS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-597 reads as rewritten:

"**§ 1-597. Regulations for newspaper publication of legal notices, advertisements, etc.**

Whenever a notice or any other paper, document or legal advertisement of any kind or description shall be authorized or required by any of the laws of the State of North Carolina, heretofore or hereafter enacted, or by any order or judgment of any court of this State to be published or advertised in a newspaper, such publication, advertisement or notice shall be of no force and effect unless it shall be published in a newspaper with a general circulation to actual paid subscribers which newspaper at the time of such publication, advertisement or notice, shall have been admitted to the United States mails as ~~second-class matter~~ in the Periodicals class in the county or political subdivision where such publication, advertisement or notice is required to be published, and which shall have been regularly and continuously issued in the county in which the publication, advertisement or notice is authorized or required to be published, at least one day in each calendar week for at least 25 of the 26 consecutive weeks immediately preceding the date of the first publication of such advertisement, publication or notice; provided that in the event that a newspaper otherwise meeting the qualifications and having the characteristics prescribed by G.S. 1-597 to 1-599, should fail for a period not exceeding four weeks in any calendar year to publish one or more of its issues such newspaper shall nevertheless be deemed to have complied

with the requirements of regularity and continuity of publication prescribed herein. Provided further, that where any city or town is located in two or more adjoining counties, any newspaper published in such city or town shall, for the purposes of G.S. 1-597 to 1-599, be deemed to be admitted to the mails, issued and published in all such counties in which such town or city of publication is located, and every publication, advertisement or notice required to be published in any such city or town or in any of the counties where such city or town is located shall be valid if published in a newspaper published, issued and admitted to the mails anywhere within any such city or town, regardless of whether the newspaper's plant or the post office where the newspaper is admitted to the mails is in such county or not, if the newspaper otherwise meets the qualifications and requirements of G.S. 1-597 to 1-599. This provision shall be retroactive to May 1, 1940, and all publications, advertisements and notices published in accordance with this provision since May 1, 1940, are hereby validated.

Notwithstanding the provisions of G.S. 1-599, whenever a notice or any other paper, document or legal advertisement of any kind or description shall be authorized or required by any of the laws of the State of North Carolina, heretofore or hereafter enacted, or by any order or judgment of any court of this State to be published or advertised in a newspaper qualified for legal advertising in a county and there is no newspaper qualified for legal advertising as defined in this section in such county, then it shall be deemed sufficient compliance with such laws, order or judgment by publication of such notice or any other such paper, document or legal advertisement of any kind or description in a newspaper published in an adjoining county or in a county within the same district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be; provided, if the clerk of the superior court finds as a fact that such newspaper otherwise meets the requirements of this section and has a general circulation in such county where no newspaper is published meeting the requirements of this section.

Section 2. The prefatory language of subsection (b) of Section 20.14B of Chapter 18 of the 1995 Session Laws, Second Extra Session 1996, reads as rewritten:

"(b) G.S. ~~143-34.6~~ 14-34.6 reads as rewritten:".

Section 3. This act is effective when it becomes law.

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
P.O. BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 733-6026

MEMORANDUM

TO: House Judiciary II Committee

FROM: General Statutes Commission

DATE: February 26, 1997

RE: Senate Bill 86 (Fast-Track Technical Amendments)

General Comments

The General Statutes Commission (Commission) customarily recommends a technical amendments bill that makes technical corrections such as fixing typographical, grammatical, and redlining errors and updating, correcting, and conforming statutory references, proper names, and obsolete expressions in various sections of the statutes. Because this process is a continuous one, the general technical corrections bill is usually one of the last bills of the session to be ratified. In reviewing possible technical corrections for the 1997 session, the Commission identified two that would benefit from immediate ratification instead of ratification late in the session. It therefore decided to introduce a separate bill containing these two amendments.

Specific Comments

Section 1. This section amends G.S. 1-597 to update the reference to "second-class matter". The United States Postal Service recently changed the name of its second-class mail classification to "Periodicals". It also made other changes, primarily to the manner in which periodicals are processed, but there does not appear to have been a substantive change in the types of material that qualify for this type of permit.

The urgency connected with this correction is caused by a different statute, G.S. 1-598, which requires the owner or another designated officer or employee of a newspaper that accepts legal advertising to execute a written statement under oath that the newspaper meets the requirements of G.S. 1-597. At present, it is impossible for such a person to swear truthfully that a newspaper literally meets all of the statutory requirements.

Section 2. This section corrects a typographical error in an amendment in Chapter 18 of the 1996 Session Laws (Second Extra Session). The opening language of subsection (b) of

Section 20.14B of that act began with the words, "G.S. 143-34.6 reads as rewritten:", but the text actually set out and shown as being amended was the text of G.S. 14-34.6. The amendment increased the penalty for assaulting a firefighter in the performance of duty. The Commission considered this correction urgent because any sentence imposing the enhanced penalty would be subject to challenge because of the discrepancy, and the effective date for the amendment, December 1, 1996, has already passed.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1st

H. B. No. _____ DATE 2/27/97

S. B. No. 86 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Hackney
) _____
Sen.)

moves to amend the bill on page 1, line 15

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"United States mails ~~as second class matter~~ in the Periodicals class in the county or"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
S.B. 86 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL CORRECTIONS TO TWO SECTIONS OF THE GENERAL STATUTES IN NEED OF PROMPT CORRECTIONS AS RECOMMENDED BY THE GENERAL STATUTES 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 ☐

☐ 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, 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 D

SENATE BILL 86*
Proposed Committee Substitute S86-PCS1581

Short Title: Fast-Track Technical Amendments. (Public)

Sponsors:

Referred to:

February 11, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS TO TWO SECTIONS OF THE GENERAL STATUTES IN NEED OF PROMPT CORRECTIONS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-597 reads as rewritten:

"**§ 1-597. Regulations for newspaper publication of legal notices, advertisements, etc.**

Whenever a notice or any other paper, document or legal advertisement of any kind or description shall be authorized or required by any of the laws of the State of North Carolina, heretofore or hereafter enacted, or by any order or judgment of any court of this State to be published or advertised in a newspaper, such publication, advertisement or notice shall be of no force and effect unless it shall be published in a newspaper with a general circulation to actual paid subscribers which newspaper at the time of such publication, advertisement or notice, shall have been admitted to the United States mails ~~as second-class matter~~ in the Periodicals class in the county or political subdivision where such publication, advertisement or notice is required to be published, and which shall have been regularly and continuously issued in the county in which the publication, advertisement or notice is authorized or required to be published, at least one day in each calendar week for at least 25 of the 26 consecutive weeks immediately preceding the date of the first publication of such advertisement, publication or notice; provided that in the event that a newspaper otherwise meeting the qualifications and having the characteristics prescribed by G.S. 1-597 to 1-599, should fail for a period not exceeding four weeks in any calendar year to publish one

or more of its issues such newspaper shall nevertheless be deemed to have complied with the requirements of regularity and continuity of publication prescribed herein. Provided further, that where any city or town is located in two or more adjoining counties, any newspaper published in such city or town shall, for the purposes of G.S. 1-597 to 1-599, be deemed to be admitted to the mails, issued and published in all such counties in which such town or city of publication is located, and every publication, advertisement or notice required to be published in any such city or town or in any of the counties where such city or town is located shall be valid if published in a newspaper published, issued and admitted to the mails anywhere within any such city or town, regardless of whether the newspaper's plant or the post office where the newspaper is admitted to the mails is in such county or not, if the newspaper otherwise meets the qualifications and requirements of G.S. 1-597 to 1-599. This provision shall be retroactive to May 1, 1940, and all publications, advertisements and notices published in accordance with this provision since May 1, 1940, are hereby validated.

Notwithstanding the provisions of G.S. 1-599, whenever a notice or any other paper, document or legal advertisement of any kind or description shall be authorized or required by any of the laws of the State of North Carolina, heretofore or hereafter enacted, or by any order or judgment of any court of this State to be published or advertised in a newspaper qualified for legal advertising in a county and there is no newspaper qualified for legal advertising as defined in this section in such county, then it shall be deemed sufficient compliance with such laws, order or judgment by publication of such notice or any other such paper, document or legal advertisement of any kind or description in a newspaper published in an adjoining county or in a county within the same district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be; provided, if the clerk of the superior court finds as a fact that such newspaper otherwise meets the requirements of this section and has a general circulation in such county where no newspaper is published meeting the requirements of this section.

Section 2. The prefatory language of subsection (b) of Section 20.14B of Chapter 18 of the 1995 Session Laws, Second Extra Session 1996, reads as rewritten:

"(b) G.S. ~~143-34.6~~ 14-34.6 reads as rewritten:".

Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 197

Short Title: Judicial Timber Sale/Sealed Bid. (Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary II.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROCEDURE FOR CONDUCTING JUDICIAL SALES OF TIMBER BY SEALED BID, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-339.3A reads as rewritten:

"**§ 1-339.3A. Judge or clerk may order public or private sale.**

The judge or clerk of court having jurisdiction has authority in his discretion to determine whether a sale of either real or personal property shall be a public or private ~~sale.~~ sale and whether a public sale of timber, or of timber together with the tract of land upon which the timber is growing, shall be by auction or by sealed bid. Any private sale conducted under an order issued prior to July 1, 1955 by a judge or clerk of court having jurisdiction is hereby validated as to the order that ~~such~~ the sale be a private sale."

Section 2. G.S. 1-339.8(a) reads as rewritten:

"(a) When an order of public sale directs the sales of separate tracts of real property situated in different counties, exclusive jurisdiction over ~~such~~ the sale remains in the superior or district court of the county where the proceeding, in which the order of sale was issued, is pending, but there shall be a separate advertisement, sale and report of sale with respect to the property in each county. In any such sale proceeding, the clerk of the superior court of the county where the original order of sale was issued, has jurisdiction with respect to the resale of separate tracts of property situated in other counties as well as in the clerk's own county, and when the

public sale is by auction an upset bid may be filed only with ~~such~~ that clerk, except in those cases where the judge retains resale jurisdiction pursuant to G.S. 1-339.27."

Section 3. G.S. 1-339.8(c) reads as rewritten:

"(c) ~~The sale,~~ When the public sale is by auction, the sale and each subsequent resale, of each ~~such~~ separate tract shall be subject to a separate upset bid; and to the extent deemed necessary by the judge or clerk of court of the county where the original order of sale was issued, the sale of each tract, after an upset bid thereon, shall be treated as a separate sale for the purpose of determining the procedure applicable thereto."

Section 4. G.S. 1-339.13(a) reads as rewritten:

"(a) Whenever a public sale is ordered, the order of sale shall

(1) Designate the person authorized to hold the sale;

(2) Direct that the property be sold at public auction to the highest ~~bidder;~~ bidder or, in a case in which a sale by sealed bid is authorized by law, direct that the property be sold to the highest bidder and specify whether the sale is to be by public auction or by sealed bid;

(3) Describe real property to be sold, by reference or otherwise, sufficiently to identify it;

(4) Describe personal property to be sold, by reference or otherwise, sufficiently to indicate its nature and quantity;

(5) Designate, consistently with G.S. 1-339.6, the county and the place therein at which the sale is to be held; ~~and~~

(6) Prescribe the terms of sale, specifying the amount of the cash deposit, if any, to be made by the highest bidder at the ~~sale.~~ sale; and

(7) If the sale is to be by sealed bid, specify:

a. The minimum number of bids that must be submitted, which shall not be less than three , and

b. The time at which any cash deposit required of the highest bidder must be made, which shall not be more than three business days after the date on which the sealed bids are opened."

Section 5. G.S. 1-339.13(b) reads as rewritten:

"(b) The order of public sale may also, but is not required to

(1) State the method by which the property shall be sold, pursuant to G.S. 1-339.9;

(2) Direct any posting of the notice of sale or any advertisement of the sale, in addition to that required by G.S. 1-339.17 in the case of real property or G.S. 1-339.18 in the case of personal property, which the judge or clerk of the superior court deems ~~advantageous.~~ advantageous; and

(3) Specify the number of appraisals to be obtained pursuant to G.S. 1-339.13A."

Section 6. Chapter 1 of the General Statutes is amended by adding a new section to read:

"**§ 1-339.13A. Public sale by sealed bid; appraisal, bid procedure.**

(a) When a sale by sealed bid is ordered, the person holding the sale, before giving notice of the sale, shall:

(1) Obtain one or more appraisals of the timber to be sold, or of the timber and the tract of land upon which is growing if both are to be sold;

(2) Determine the place at which and the manner and form in which sealed bids should be submitted;

(3) Determine the first date on which sealed bids will be accepted, which shall not be less than five days after the date on which the notice of sale is first published pursuant to G.S. 1-339.17; and

(4) Determine the date, time, and place at which sealed bids will be opened.

(b) Each appraisal obtained pursuant to subsection (a) of this section shall be made by a registered professional forester or other person qualified by training and experience to appraise the timber to be sold. Copies of all appraisals obtained pursuant to this section shall be included in the report required under G.S. 1-339.24.

(c) All sealed bids received on or after the first date set for submitting bids and at or before the time set for opening the bids shall be opened publicly at that time at the place set for doing so. If the minimum number of bids is received and there is only one highest bid, that bid shall be announced at that time; the highest bidder is the purchaser and all bidders shall immediately be notified of that fact. If the minimum number of bids is not received, or if two or more bids in the same amount are the highest bids, that fact shall be announced at that time, and all bidders shall immediately be notified of that fact; the person holding the sale shall then obtain a new order of sale."

Section 7. G.S. 1-339.15 reads as rewritten:

"**§ 1-339.15. Public sale; contents of notice of sale.**

The notice of public sale ~~shall~~ shall:

(1) Refer to the order authorizing the sale;

(2) ~~Designate~~ If the sale is to be by public auction, designate the date, hour and place of sale;

(2a) If the sale is to be by sealed bid, specify:

a. The date on which sealed bids will first be accepted;

b. The place or address at which sealed bids are to be submitted;

c. The manner and form in which sealed bids are to be submitted;

d. The time and place at which any sealed bids received will be opened; and

e. The minimum number of bids required, as determined pursuant to G.S. 1-339.13(a)(7);

(3) Describe real property to be sold, by reference or otherwise, sufficiently to identify it, and may add ~~such~~ any further description as will acquaint bidders with the nature and location of the property;

(4) Describe personal property to be sold sufficiently to indicate its nature and quantity, and may add ~~such~~ any further description as will acquaint bidders with the nature of the property;

(5) State the terms of the sale, specifying the amount of the cash deposit, if any, to be made by the highest bidder at the ~~sale; and~~ sale and, in the case of a sale by sealed bid, the date by which any deposit shall be made, as determined pursuant to G.S. 1-339.13(a)(7); and

(6) Include any other provisions required by the order of sale to be included therein."

Section 8. G.S. 1-339.17 reads as rewritten:

"**§ 1-339.17. Public sale; posting and publishing notice of sale of real property.**

(a) The notice of public sale of real property shall

(1) Be posted, ~~at the courthouse door~~ in the area designated by the clerk of superior court for the posting of notices in the county in which the property is situated, for thirty days immediately preceding the sale,

(2) And in addition thereto,

a. If a newspaper qualified for legal advertising is published in the county, the notice shall be published in such a newspaper once a week for at least four successive weeks, but

b. If no ~~such~~ newspaper qualified for legal advertising is published in the county, then notice shall be published once a week for at least four successive weeks in a newspaper having a general circulation in the county.

(b) When the notice of public sale is published in a newspaper,

(1) The period from the date of the first publication to the date of the last publication, both dates inclusive, shall not be less than twenty-two days, including Sundays, and

(2) The date of the last publication shall be not more than 10 days preceding the date of the ~~sale.~~ sale in a sale by auction, or the date on which sealed bids are opened in a sale by sealed bid.

(c) When the real property to be sold is situated in more than one county, the provisions of subsections (a) and (b) of this section shall be complied with in each county in which any part of the property is situated.

(c1) When the public sale is by sealed bid, the notice shall also be given in writing, not less than 21 days before the date on which bids are opened, to a reasonable number of prospective timber buyers, which in all cases shall include the timber

buyers listed in the office of the North Carolina Division of Forest Resources for the county or counties in which the timber to be sold is located.

(d) In addition to the foregoing, the notice of public sale shall be otherwise posted or the sale shall be otherwise advertised as may be required by the judge or clerk pursuant to the provisions of G.S. 1-339.13(b)(2).

(e) If the sale is by sealed bid, the person holding the sale shall include in the report required by G.S. 1-339.24 an affidavit showing that the requirements of this section have been complied with and listing all the persons notified pursuant to subsection (c1) of this section."

Section 9. G.S. 1-339.18(a) reads as rewritten:

"(a) The notice of public sale of personal property, except in the case of perishable property as provided by G.S. 1-339.19, shall be posted, ~~at the courthouse door,~~ in the area designated by the clerk of superior court for the posting of notices, in the county in which the sale is to be held, for ten days immediately preceding the date of sale."

Section 10. G.S. 1-339.20(a) reads as rewritten:

"(a) A person authorized to hold a public sale by auction may postpone the sale to a day certain not later than six days, exclusive of Sunday, after the original date for the ~~sale~~ sale, and a person authorized to hold a public sale by sealed bid may postpone the time for submitting and opening bids to a date, time, and place certain not later than six days, exclusive of Sunday, after the original date for the opening of bids:

(1) When there are no bidders, or
(2) When, in his judgment, the number of prospective bidders at the sale is substantially decreased by inclement weather or by any casualty, or
(3) When there are so many other sales advertised to be held at the same time and place as to make it inexpedient and impracticable, in his judgment, to hold the sale on that day, or
(4) When he is unable to hold the sale because of illness or for other good reason, or
(5) When other good cause exists."

Section 11. G.S. 1-339.20(b) reads as rewritten:

"(b) Upon postponement of public sale the person authorized to hold the sale shall personally, or through his agent or attorney

(1) At the time and place advertised for the ~~sale,~~ sale or for the opening of sealed bids, publicly announce the postponement ~~thereof, and~~ thereof;
(2) On the same day, attach to or enter on the original notice of sale or a copy thereof posted ~~at the courthouse door~~, as provided in G.S. 1-339.17 in the case of real property or G.S. 1-339.18 in the case of personal property, a notice of the ~~postponement.~~ postponement; and
(3) In the case of a public sale by sealed bid, give notice of postponement to each person who submitted a bid."

Section 12. G.S. 1-339.20(c) reads as rewritten:

"(c) The ~~posted~~ notice of postponement ~~shall~~ shall:

(1) State that the sale is postponed,

(2) ~~State~~ In the case of a sale by public auction, state the hour and date to which the sale is postponed,

(2a) In the case of a sale by sealed bid, state the date, time, and place to which the opening of bids is postponed,

(3) State the reason for the postponement, and

(4) Be signed by the person authorized to hold the sale, or by his agent or attorney."

Section 13. G.S. 1-339.21 reads as rewritten:

"**§ 1-339.21. Public ~~sale;~~ sale by auction; time of sale.**

(a) A public sale by auction shall begin at the time designated in the notice of sale or as soon thereafter as practicable, but not later than one hour after the time fixed therefor unless it is delayed by other sales held at the same place.

(b) No public sale by auction shall commence before 10:00 o'clock A.M. or after 4:00 o'clock P.M.

(c) No public sale by auction shall continue after 4:00 o'clock P.M., except that in cities or towns of more than 5,000 inhabitants, as shown by the most recent federal census, sales of personal property may continue until 10:00 o'clock P.M."

Section 14. G.S. 1-339.22 reads as rewritten:

"**§ 1-339.22. Public ~~sale;~~ sale by auction; continuance of uncompleted sale.**

A public sale by auction commenced but not completed within the time allowed by G.S. 1-339.21 shall be continued by the person holding the sale to a designated time between 10:00 o'clock A.M. and 4:00 o'clock P.M. the next following day, other than Sunday. In case ~~such~~ a continuance becomes necessary, the person holding the sale shall publicly announce the time to which the sale is continued."

Section 15. G.S. 1-339.24(a) reads as rewritten:

"(a) The person holding a public sale shall, within five days after the date of the ~~sale,~~ sale if the sale was by auction, or within five days after the date on which bids were opened if the sale was by sealed bid, file a report thereof with the clerk of the superior court of the county where the proceeding for the sale is pending."

Section 16. G.S. 1-339.24(b) reads as rewritten:

"(b) The report shall be signed by the person authorized to hold the sale, or by his agent or attorney and shall show

(1) The title of the action or proceeding;

(2) The authority under which the person making the sale acted;

(3) ~~The~~ If the sale was by public auction, the date, hour and place of the sale;

(3a) If the sale was by sealed bid, the date, time, and place at which the sealed bids were opened, the number of bids received, and the amount of each bid;

(4) A description of real property sold, by reference or otherwise, sufficient to identify it, and, if sold in parts, a description of each part so sold; and
(5) A description of personal property sold, sufficient to indicate the nature and quantity of the property sold to each purchaser;
(6) The names of the purchasers;
(7) The price at which the property, or each part thereof, was sold and that ~~such~~ this price was the highest bid therefor; and
(8) The date of the report."

Section 17. G.S. 1-339.24 is amended by adding a new subsection to read:

"(d) The report of a sale by sealed bid shall include the information required by G.S. 1-339.13A(b) and G.S. 1-339.17(c1)."

Section 18. G.S. 1-339.25(a) reads as rewritten:

"(a) An upset bid is an advanced, increased or raised bid in a public sale by auction whereby a person offers to purchase real property theretofore sold, for an amount exceeding the reported sale price by ten percent (10%) of the first $1000 thereof plus five percent (5%) of any excess above $1000, but in any event with a minimum increase of $25, ~~such~~ the 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~~ the report; ~~such~~ the 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 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).~~ (b) of this section."

Section 19. G.S. 1-339.25 is amended by adding a new subsection to read:

"(e) The provisions of this section do not apply to public sales by sealed bid."

Section 20. G.S. 1-339.26 reads as rewritten:

"§ 1-339.26. Public ~~sale;~~ sale by auction; separate upset bids when real property sold in parts; subsequent procedure.

When real property is sold at public sale by auction in parts, as provided by G.S. 1-339.9, the sale, and each subsequent resale, of any ~~such~~ part shall be subject to a separate upset bid; and, to the extent the judge or clerk of court having jurisdiction deems advisable, the sale of each ~~such~~ part shall thereafter be treated as a separate sale for the purpose of determining the procedure applicable thereto."

Section 21. The catch line of G.S. 1-339.27 reads as rewritten:

"§ 1-339.27. Public ~~sale;~~ sale by auction; resale of real property; jurisdiction; procedure."

Section 22. G.S. 1-339.27(a) reads as rewritten:

"(a) When in a public sale by auction an upset bid is submitted to the clerk of the superior court, together with a compliance bond if one is required, a resale shall be ordered."

Section 23. G.S. 1-339.27(b) reads as rewritten:

"(b) In any case in which a judge has jurisdiction of the original ~~sale,~~ public sale by auction, he may provide by order that jurisdiction is retained for resale purposes, and in ~~such~~ that case when an upset bid is submitted, the judge having jurisdiction shall make the order of resale. In all cases where the judge does not retain jurisdiction of a public sale by auction for resale purposes, and in all cases where a public sale by auction is originally ordered by a clerk, the clerk shall make the order of resale and shall have jurisdiction of the proceeding for resale purposes. Whenever the original order of public sale by auction is made by the judge, the terms of any resale ordered by the clerk shall be consistent with terms of the original order, and the final order of confirmation shall be made by the judge having jurisdiction of the proceeding."

Section 24. G.S. 1-339.27(c) reads as rewritten:

"(c) Notice of any resale to be held because of an upset bid ~~shall~~ shall:

(1) Be posted, ~~at the courthouse door~~ in the area designated by the clerk of superior court for the posting of notices in the county in which the property is situated, for fifteen days immediately preceding the sale,

(2) And in addition thereto,

a. If a newspaper qualified for legal advertising is published in the county, the notice shall be published in such a newspaper once a week for at least two successive weeks, but

b. If no ~~such~~ newspaper qualified for legal advertising is published in the county, the notice shall be posted at three other public places in the county for fifteen days immediately preceding the sale."

Section 25. G.S. 1-339.27 is amended by adding a new subsection to read:

"(j) The provisions of this section do not apply to public sales by sealed bid."

Section 26. G.S. 1-339.28(b) reads as rewritten:

"(b) No public sale of real property of a minor or incompetent originally ordered by a clerk may be consummated until confirmed both by the clerk and by ~~the~~ a resident superior court judge ~~of the district or the~~ of, or a judge regularly holding the courts ~~of~~ of, the ~~district.~~ district or set of districts as defined in G.S. 7A-41.1(a)."

Section 27. G.S. 1-339.28(c) reads as rewritten:

"(c) No public sale of real property sold at public auction may be confirmed until the time for submitting an upset bid, pursuant to G.S. 1-339.25, has expired."

Section 28. G.S. 1-339.28 is amended by adding a new subsection to read:

"(e) No public sale of property sold by sealed bid shall be confirmed until the court determines that the highest bid is an adequate price for the property sold and that sale to the highest bidder is in the best interest of the person or estate for whom the property is being sold. In so doing, the court may consider any of the following factors:

(1) The appraisals obtained by the person who conducted the sale;
(2) The number and amounts of the other bids received;
(3) Comparable sales of similar property within the relevant time period;
(4) Short-term market factors that depressed the price at the time of the sale;
(5) The likelihood of significantly increasing the price through another sale;
(6) The additional cost of conducting another sale;
(7) The effect on the person or estate for whom the property is being sold of the delay that would result from conducting another sale; and
(8) Any other factors in evidence that the court considers relevant."

Section 29. G.S. 1-339.30(a) reads as rewritten:

"(a) If an order of public sale by auction requires the highest bidder to make a cash deposit at the sale, and he fails to make ~~such~~ the required deposit, the person holding the sale shall at the same time and place again offer the property for sale."

Section 30. G.S. 1-339.30 is amended by adding a new subsection to read:

"(a1) If an order of public sale by sealed bid requires the highest bidder to make a cash deposit and the bidder fails to make the required deposit within the time specified in the order, the judge or clerk having jurisdiction may direct that the property be sold to the person who submitted the next highest bid or may order a resale. The procedure for a resale is the same in every respect as is provided by this Article in the case of an original public sale."

Section 31. G.S. 1-339.30(d) reads as rewritten:

"(d) When the highest bidder at a public sale or resale of real property by auction fails to comply with his bid within ten days after the tender to him of a deed for the property or after a bona fide attempt to tender ~~such~~ the deed, the judge or clerk having jurisdiction may order a resale. The procedure for ~~such~~ a resale of real property is the same in every respect as is provided by this Article in the case of an original public sale of real property except that the provisions of G.S. 1-339.27 (c), (d) and (e) apply with respect to the posting and publishing of the notice of ~~such~~ the resale."

Section 32. G.S. 1-339.30 is amended by adding a new subsection to read:

"(d1) When the highest bidder at a public sale or resale by sealed bid fails to comply with his bid within 10 days after the tender to him of a deed for the property or after a bona fide attempt to tender a deed, the judge or clerk having jurisdiction

may direct that the property be sold to the person who submitted the next highest bid or may order a resale. The procedure for a resale is the same in every respect as is provided by this Article in the case of an original public sale."

Section 33. G.S. 1-339.30(e) reads as rewritten:

"(e) A defaulting bidder at any sale or resale is liable on his bid, and in case a resale is had because of ~~such~~ his default, he shall remain liable to the extent that the final sale price is less than his ~~bid plus~~ bid, and for all costs of ~~such~~ the resale or resales."

Section 34. This act becomes effective December 1, 1997, and applies to all judicial sales ordered on or after that date.

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
P.O. BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 733-6026

MEMORANDUM

TO: House Judiciary II Committee

FROM: General Statutes Commission

DATE: February 26, 1997

RE: House Bill 197 (Judicial Timber Sale/Sealed Bid)

General Comments

This bill amends Article 29A of Chapter 1 of the General Statutes on judicial sales to establish an alternative method of selling timber at public sale. Currently, judicial sales (sales specifically directed by a court) may be public or private. If public, they must be by public auction. Experience in at least one area of North Carolina has shown that timber companies will not bid at public auction but will bid at sealed bid sales. Moreover, prices obtained through sealed bid sales of timber are generally somewhat higher than prices obtained through private sales. It would therefore benefit the sellers if timber sold in a judicial sale could be sold through a sealed bid process as a method of public sale. This bill incorporates provisions establishing such a process into the current statutes. The procedure is limited to sales of timber, or sales of timber and the land on which the timber stands, because the problem described to the General Statutes Commission was only reported in connection with timber sales. Please note that the timber will continue to be able to be sold at public sale by auction or by private sale if conditions change and one of those judicial sale methods becomes more advantageous to the sellers.

For all judicially ordered public sales under the current judicial sales provisions, the seller must obtain an order of sale, publicize the sale, including the publication of legal notice in a qualified newspaper, hold the auction, submit a report to the court, repeat the process for a resale if a qualifying upset bid is submitted, and eventually obtain court confirmation of the sale. The primary changes to the usual procedure made in this bill for a sale of timber by sealed bid are that bids can be accepted over a period of days rather than at auction on a fixed day, although the bids must be opened at a particular time and place on a fixed day, and the upset bid procedure will not apply, since it is apparently a principal reason timber companies have given for refusing to attend and bid at public auctions.

The judicial sales provisions contain some archaic drafting terms that have been updated and will not be specifically referenced.

All references to "public sale" in this memorandum are to judicial sales.

Specific Comments

Section 1 amends G.S. 1-339.3A to allow a judicial sale of timber by sealed bid.

Sections 2 and 3 amends subsections (a) and (c), respectively, of G.S. 1-339.8, which deals with the public sale (by auction) of separate tracts of real property located in more than one county, to clarify that the section applies only to auctions and not to sales of timber by sealed bid.

Sections 4 and 5 amend subsections (a) and (b), respectively, of G.S. 1-339.13, which describes the mandatory and optional information to be included in an order of public sale. Section 4 requires the order to include the minimum number of sealed bids that must be submitted, which must be at least three, and the time the cash deposit must be paid. Section 5 allows but does not require the order to specify the number of appraisals of the timber that must be obtained before the sale.

Section 6 adds a new section 1-339.13A setting out the procedure to follow in a public sale of timber by sealed bid. The person conducting the sale must obtain at least one appraisal, fix a place and manner for submission of bids, and fix a date after which bids will be accepted and a date on which they will be opened. The new section also sets requirements for appraisers of timber, requires the bids to be opened publicly, provides that the highest bidder is the purchaser if the minimum number of bids is received, and directs the person conducting the sale to obtain a new order of sale if the minimum number of bids is not received or the top bid is a tie.

Section 7 amends G.S. 1-339.15, which contains requirements for the contents of a notice of public sale, to add provisions covering sales of timber by sealed bid.

Section 8 amends G.S. 1-339.17, which requires that public sales be publicized. Currently, the statute requires that notices of public sale be posted at the courthouse door and advertised in a qualifying newspaper at least once a week for four successive weeks. The amendments add conforming requirements for sales of timber by sealed bid and two new substantive requirements, namely that the person conducting the sale notify the timber companies listed in the office of the Division of Forest Resources for the county in which the timber is located and include in the report of sale an affidavit that these companies were notified.

In addition, the statute is being amended to replace the literal reference to posting on the courthouse door with a reference to posting in the area designated by the clerk for posting notices, which conforms to current practice.

Section 9 amends G.S. 1-339.18(a) to replace the reference to posting at the courthouse door with a reference to posting in the designated location to conform to current practice, as described under Section 8.

Sections 10, 11, and 12 amend subsections (a), (b), and (c), respectively, of G.S. 1-339.20 to make essentially conforming amendments to the section on postponement of public sales, accounting for sealed bid sales.

Sections 13 and 14 amend G.S. 1-339.21 and G.S. 1-339.22, respectively, to clarify that they apply only to public sales by auction and not to public sales of timber by sealed bid.

Sections 15, 16, and 17 make what are essentially conforming amendments to G.S. 1-339.24, which requires a report of the sale to be made to the clerk of court.

Sections 18 and 19 amends G.S. 1-339.25 to clarify that that section applies only to public sales by auction and not to public sales by sealed bid.

Sections 20 through 23 amend G.S. 1-339.26 and G.S. 1-339.27, respectively, to specify that these sections apply only to public sales by auction and not to public sales by sealed bid.

Section 24 amends G.S. 1-339.27(c) to replace the reference to posting at the courthouse door with a reference to posting in the designated location to conform to current practice, as described under Section 8.

Sections 25 through 28 amend G.S. 1-339.28, which requires judicial confirmation of a public sale. Sections 25 and 27 clarify that the existing provisions relating to public sales (by auction) do not apply to public sales by sealed bid, and Section 28 adds a new subsection (e) setting out separate requirements for confirmation of those sales. Section 27 makes a technical amendment updating the description of the judge who must confirm the sale.

Sections 29 through 33 amend G.S. 1-339.30, which requires a resale if the highest bidder at a public sale fails to make a required cash deposit or payment. In a public sale by auction, a resale must be ordered. The amendments add new provisions dealing with public sale by sealed bid that permit either a resale or a sale to the next highest sealed bidder.

Section 34 makes the act effective December 1, 1997, applicable to judicial sales ordered on or after that date.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

February 27, 1997 10:00 A.M. — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amanda Digby	NC Academy of Trial Lawyers
Bob Sloderbeck	NC Forestry Assoc.
Andy Ellen	NC Farm Bureau
John Rustin	Hunton & Williams
Robin Lovett	NC Coalition Against Domestic Violence
Hilda Hunter Jr.	Senate
P. Bly Hall	General Statutes Commission
Floyd M. Lewis	General Statutes Commission
Bill Scoggin	NC Bar Assoc.
Lee Rogers	CJPC
Tom Andrews	DOC
[illegible]	[illegible]
Al Dell	DHR/DOA
John Madler	Sentencing Commission

MINUTES
HOUSE JUDICIARY II COMMITTEE

March 4, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on March 4, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Baddour, Berry, Bowie, Cansler, Creech, Culpepper, Decker, Gardner, Goodwin, Hackney, Hensley, McMahan, Nesbitt, Redwine, Russell, Saunders, Shubert, Sutton, Weatherly, Wilkins, and C. Wilson. A list of visitors is attached.

The following bills were discussed:

HB-134 INVESTMENT SECURITIES UCC REWRITE
HB-203 COURTS SUPPLEMENT CLARK'S CALENDAR

Representative Culpepper was recognized to present HB-134 and answer questions of committee members. A copy of the bill and bill explanation prepared by the General Statutes Commission are attached.

Professor Don Clifford, from Chapel Hill, was recognized to explain Article 8 of the Uniform Commercial Code and answer questions of committee members.

Ms. Doris Bray, Securities Attorney and Vice-Chair of the General Statutes Commission, spoke in favor of the bill and answered questions of committee members.

Due to concerns of committee members HB-134 was displaced until the next meeting at 1:00 P.M.

Representative Culpepper was recognized to explain HB-203 and answer questions of committee members. A copy of the bill and Clark's Calendar are attached.

Scott Templeton, Deputy Secretary, Secretary of State, spoke in favor of the bill.

Representative Creech moved for a favorable report; motion passed.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, ~~Jr., Ch~~airman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 134*

Short Title: Investment Securities UCC Rewrite. (Public)

Sponsors: Representatives Culpepper; and Starnes.

Referred to: Judiciary II.

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO ENACT THE REVISED ARTICLE 8 OF THE UNIFORM COMMERCIAL CODE AND CONFORMING AND MISCELLANEOUS AMENDMENTS TO THE UNIFORM COMMERCIAL CODE AND OTHER GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 8 of Chapter 25 of the General Statutes is rewritten to read:

"ARTICLE 8.

"Investment Securities.

"PART 1.

"SHORT TITLE AND GENERAL MATTERS.

"§ 25-8-101. Short title.

This Article may be cited as Uniform Commercial Code-- Investment Securities.

"§ 25-8-102. Definitions.

(a) In this Article:

(1) 'Adverse claim' means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of

the claimant for another person to hold, transfer, or deal with the financial asset.

(2) 'Bearer form', as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(3) 'Broker' means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(4) 'Certificated security' means a security that is represented by a certificate.

(5) 'Clearing corporation' means:

(i) A person that is registered as a 'clearing agency' under the federal securities laws;

(ii) A federal reserve bank; or

(iii) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(6) 'Communicate' means to:

(i) Send a signed writing; or

(ii) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(7) 'Entitlement holder' means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of G.S. 25-8-501(b)(2) or (3), that person is the entitlement holder.

(8) 'Entitlement order' means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(9) 'Financial asset', except as otherwise provided in G.S. 25-8-103, means:

(i) A security;

(ii) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Article.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(10) 'Good faith', for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this Article, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(11) 'Indorsement' means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(12) 'Instruction' means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(13) 'Registered form', as applied to a certificated security, means a form in which:

(i) The security certificate specifies a person entitled to the security; and

(ii) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(14) 'Securities intermediary' means:

(i) A clearing corporation; or

(ii) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(15) 'Security', except as otherwise provided in G.S. 25-8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) Which:

(A) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) Is a medium for investment and by its terms expressly provides that it is a security governed by this Article.

(16) 'Security certificate' means a certificate representing a security.

(17) 'Security entitlement' means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5 of this Article.

(18) 'Uncertificated security' means a security that is not represented by a certificate.

(b) Other definitions applying to this Article and the sections in which they appear are:

'Appropriate person'	G.S. 25-8-107.
'Control'	G.S. 25-8-106.
'Delivery'	G.S. 25-8-301.
'Investment company security'	G.S. 25-8-103.
'Issuer'	G.S. 25-8-201.
'Overissue'	G.S. 25-8-210.
'Protected purchaser'	G.S. 25-8-303.
'Securities account'	G.S. 25-8-501.

(c) In addition, Article 1 of this Chapter contains general definitions and principles of construction and interpretation applicable throughout this Article.

(d) The characterization of a person, business, or transaction for purposes of this Article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

"§ 25-8-103. Rules for determining whether certain obligations and interests are securities or financial assets.

(a) A share of similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(b) An 'investment company security' is a security. 'Investment company security' means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this Article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this Article and not by Article 3 of this Chapter, even though it also meets the requirements of that Article.

However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in G.S. 25-9-115, is not a security or financial asset.

"**§ 25-8-104. Acquisition of security or financial asset or interest therein.**

(a) A person acquires a security or an interest therein, under this Article, if:

(1) The person is a purchaser to whom a security is delivered pursuant to G.S. 25-8-301; or

(2) The person acquires a security entitlement to the security pursuant to G.S. 25-8-501.

(b) A person acquires a financial asset, other than a security, or an interest therein, under this Article, if the person acquires a security entitlement to the financial asset.

(c) A person who acquires a security entitlement to a security or other financial asset has the rights specified in Part 5 of this Article, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in G.S. 25-8-503.

(d) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (a) or (b) of this section.

"**§ 25-8-105. Notice of adverse claim.**

(a) A person has notice of an adverse claim if:

(1) The person knows of the adverse claim;

(2) The person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

(3) The person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

(b) Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

(c) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

(1) One year after a date set for presentment or surrender for redemption or exchange; or

(2) Six months after a date set for payment of money against presentation or surrender of the certificate if money was available for payment on that date.

(d) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

(1) Whether in bearer or registered form, has been indorsed 'for collection' or 'for surrender' or for some other purpose not involving transfer; or

(2) Is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

(e) Filing of a financing statement under Article 9 of this Chapter is not notice of an adverse claim to a financial asset.

"**§ 25-8-106. Control.**

(a) A purchaser has 'control' of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(b) A purchaser has 'control' of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

(1) The certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(2) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(c) A purchaser has 'control' of an uncertificated security if:

(1) The uncertificated security is delivered to the purchaser; or

(2) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(d) A purchaser has 'control' of a security entitlement if:

(1) The purchaser becomes the entitlement holder; or

(2) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of subdivision (c)(2) or (d)(2) of this section has control even if the registered owner in the case of subdivision (c)(2) of this section or the entitlement holder in the case of subdivision (d)(2) of this section retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subdivision (c)(2) or (d)(2) of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

"§ 25-8-107. Whether indorsement, instruction, or entitlement order is effective.

(a) 'Appropriate person' means:

(1) With respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;

(2) With respect to an instruction, the registered owner of an uncertificated security;

(3) With respect to an entitlement order, the entitlement holder;

(4) If the person designated in subdivision (1), (2), or (3) of this subsection is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or

(5) If the person designated in subdivision (1), (2), or (3) of this subsection lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

(b) An indorsement, instruction, or entitlement order is effective if:

(1) It is made by the appropriate person;

(2) It is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under G.S. 25-8-106(c)(2) or (d)(2); or

(3) The appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(c) An indorsement, instruction, or entitlement order made by a representative is effective even if:

(1) The representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or

(2) The representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(d) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a

person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(e) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

"**§ 25-8-108. Warranties in direct holding.**

(a) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:

(1) The certificate is genuine and has not been materially altered;

(2) The transferor or indorser does not know of any fact that might impair the validity of the security;

(3) There is no adverse claim to the security;

(4) The transfer does not violate any restriction on transfer;

(5) If the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(6) The transfer is otherwise effective and rightful.

(b) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

(1) The instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;

(2) The security is valid;

(3) There is no adverse claim to the security; and

(4) At the time the instruction is presented to the issuer:

(i) The purchaser will be entitled to the registration of transfer;

(ii) The transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;

(iii) The transfer will not violate any restriction on transfer; and

(iv) The requested transfer will otherwise be effective and rightful.

(c) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

(1) The uncertificated security is valid;

(2) There is no adverse claim to the security;

(3) The transfer does not violate any restriction on transfer; and

(4) The transfer is otherwise effective and rightful.

(d) A person who indorses a security certificate warrants to the issuer that:

(1) There is no adverse claim to the security; and

(2) The indorsement is effective.

(e) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

(1) The instruction is effective; and

(2) At the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

(f) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

(g) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(h) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection (g) of this section.

(i) Except as otherwise provided in subsection (g) of this section, a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (a) through (f) of this section. A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection (a) or (b) of this section, and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

"**§ 25-8-109. Warranties in indirect holding.**

(a) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

(1) The entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(2) There is no adverse claim to the security entitlement.

(b) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in G.S. 25-8-108(a) or (b).

(c) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in G.S. 25-8-108(a) or (b).

"§ 25-8-110. Applicability; choice of law.

(a) The local law of the issuer's jurisdiction, as specified in subsection (d) of this section, governs:

(1) The validity of a security;

(2) The rights and duties of the issuer with respect to registration of transfer;

(3) The effectiveness of registration of transfer by the issuer;

(4) Whether the issuer owes any duties to an adverse claimant to a security; and

(5) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(b) The local law of the securities intermediary's jurisdiction, as specified in subsection (e) of this section, governs:

(1) Acquisition of a security entitlement from the securities intermediary;

(2) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(4) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(c) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(d) 'Issuer's jurisdiction' means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this State may specify the law of another jurisdiction as the law governing the matters specified in subdivisions (a)(2) through (5) of this section.

(e) The following rules determine a 'securities intermediary's jurisdiction' for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(2) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in subdivision (1) of this subsection, but expressly specifies that the securities account is maintained at an office in a particular

jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subdivision (1) or (2) of this subsection, the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account.

(4) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subdivision (1) or (2) of this subsection and an account statement does not identify an office serving the entitlement holder's account as provided in subdivision (3) of this subsection, the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

(f) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account.

"§ 25-8-111. Clearing corporation rules.

A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this Article and affects another party who does not consent to the rule.

"§ 25-8-112. Creditor's legal process.

(a) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (d) of this section. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(b) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (d) of this section.

(c) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (d) of this section.

(d) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(e) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent

jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

"**§ 25-8-113. Statute of frauds inapplicable.**

A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making.

"**§ 25-8-114. Evidentiary rules concerning certificated securities.**

The following rules apply in an action on a certificated security against the issuer:

(1) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted.

(2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.

(3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.

(4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted.

"**§ 25-8-115. Securities intermediary and others not liable to adverse claimant.**

A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

(1) Took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(2) Acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

(3) In the case of a security certificate that has been stolen, acted with notice of the adverse claim.

"**§ 25-8-116. Securities intermediary as purchaser for value.**

A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security

entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder.

"PART 2.

"ISSUE AND ISSUER.

"§ 25-8-201. Issuer.

(a) With respect to an obligation on or a defense to a security, an 'issuer' includes a person that:

(1) Places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;

(2) Creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;

(3) Directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or

(4) Becomes responsible for, or in place of, another person described as an issuer in this section.

(b) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

(c) With respect to a registration of a transfer, issuer means a person on whose behalf transfer books are maintained.

"§ 25-8-202. Issuer's responsibility and defenses; notice of defect or defense.

(a) Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

(b) The following rules apply if an issuer asserts that a security is not valid:

(1) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

(2) Subdivision (1) of this subsection applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(c) Except as otherwise provided in G.S. 25-8-205, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

(d) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the security without notice of the particular defense.

(e) This section does not affect the right of a party to cancel a contract for a security 'when, as and if issued' or 'when distributed' in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(f) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

"§ 25-8-203. Staleness as notice of defect or defense.

After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

(1) Requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

(2) Is not covered by subdivision (1) of this section and the purchaser takes the security more than two years after the date set for surrender or presentation or the date on which performance became due.

"§ 25-8-204. Effect of issuer's restriction on transfer.

A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

(1) The security is certificated and the restriction is noted conspicuously on the security certificate; or

(2) The security is uncertificated and the registered owner has been notified of the restriction.

"§ 25-8-205. Effect of unauthorized signature on security certificate.

An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

(1) An authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar security certificates, or the immediate preparation for signing of any of them; or

(2) An employee of the issuer, or of any of the persons listed in subdivision (1) of this section, entrusted with responsible handling of the security certificate.

"§ 25-8-206. Completion of alteration of security certificate.

(a) If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(1) Any person may complete it by filling in the blanks as authorized; and

(2) Even if the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(b) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

"§ 25-8-207. Rights and duties of issuer with respect to registered owners.

(a) Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

(b) This Article does not affect the liability of the registered owner of a security for a call, assessment, or the like.

"§ 25-8-208. Effect of signature of authenticating trustee, registrar, or transfer agent.

(a) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

(1) The certificate is genuine;

(2) The person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and

(3) The person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

(b) Unless otherwise agreed, a person signing under subsection (a) of this section does not assume responsibility for the validity of the security in other respects.

"§ 25-8-209. Issuer's lien.

A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.

"§ 25-8-210. Overissue.

(a) In this section, 'overissue' means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

(b) Except as otherwise provided in subsections (c) and (d) of this section, the provisions of this Article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

(c) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

(d) If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand.

"PART 3.

"TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES.

"§ 25-8-301. Delivery.

(a) Delivery of a certificated security to a purchaser occurs when:

(1) The purchaser acquires possession of the security certificate;

(2) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(3) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and has been specially indorsed to the purchaser by an effective indorsement.

(b) Delivery of an uncertificated security to a purchaser occurs when:

(1) The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(2) Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

"§ 25-8-302. Rights of purchaser.

(a) Except as otherwise provided in subsections (b) and (c) of this section, upon delivery of a certificated or uncertificated security to a purchaser, the purchaser acquires all rights in the security that the transferor had or had power to transfer.

(b) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(c) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

"§ 25-8-303. Protected purchaser.

(a) 'Protected purchaser' means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

(1) Gives value;

(2) Does not have notice of any adverse claim to the security; and

(3) Obtains control of the certificated or uncertificated security.

(b) In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim.

"§ 25-8-304. Indorsement.

(a) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

(b) An indorsement purporting to be only part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(c) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(d) If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

(e) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

(f) Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in G.S. 25-8-108 and not an obligation that the security will be honored by the issuer.

"**§ 25-8-305. Instruction.**

(a) If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

(b) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by G.S. 25-8-108 and not an obligation that the security will be honored by the issuer.

"**§ 25-8-306. Effect of guaranteeing signature, indorsement, or instruction.**

(a) A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

(1) The signature was genuine;

(2) The signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and

(3) The signer had legal capacity to sign.

(b) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

(1) The signature was genuine;

(2) The signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and

(3) The signer had legal capacity to sign.

(c) A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection (b) of this section and also warrants that at the time the instruction is presented to the issuer:

(1) The person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and

(2) The transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(d) A guarantor under subsections (a) and (b) of this section or a special guarantor under subsection (c) of this section does not otherwise warrant the rightfulness of the transfer.

(e) A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection (a) of this section and also warrants the rightfulness of the transfer in all respects.

(f) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection (c) of this section and also warrants the rightfulness of the transfer in all respects.

(g) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

(h) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

"§ 25-8-307. Purchaser's right to requisites for registration of transfer.

Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer.

"PART 4.

"REGISTRATION.

"§ 25-8-401. Duty of issuer to register transfer.

(a) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

(1) Under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;

(2) The indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(3) Reasonable assurance is given that the indorsement or instruction is genuine and authorized (G.S. 25-8-402);

(4) Any applicable law relating to the collection of taxes has been complied with;

(5) The transfer does not violate any restriction on transfer imposed by the issuer in accordance with G.S. 25-8-204;

(6) A demand that the issuer not register transfer has not become effective under G.S. 25-8-403, or the issuer has complied with G.S. 25-8-403(b) but no legal process or indemnity bond is obtained as provided in G.S. 25-8-403(d); and

(7) The transfer is in fact rightful or is to a protected purchaser.

(b) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or

to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer.

"§ 25-8-402. Assurance that indorsement or instruction is effective.

(a) An issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:

(1) In all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;

(2) If the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;

(3) If the indorsement is made or the instruction is originated by a fiduciary pursuant to G.S. 25-8-107(a)(4) or G.S. 25-8-107(a)(5), appropriate evidence of appointment or incumbency;

(4) If there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(5) If the indorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

(b) An issuer may elect to require reasonable assurance beyond that specified in this section.

(c) In this section:

(1) 'Guaranty of the signature' means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(2) 'Appropriate evidence of appointment or incumbency' means:

(i) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within 60 days before the date of presentation for transfer; or

(ii) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considers appropriate.

"§ 25-8-403. Demand that issuer not register transfer.

(a) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(b) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to (i) the person who initiated the demand at the address provided in the demand and (ii) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

(1) The certificated security has been presented for registration of transfer or the instruction for registration of transfer of the uncertificated security has been received;

(2) A demand that the issuer not register transfer had previously been received; and

(3) The issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

(c) The period described in subdivision (b)(3) of this section may not exceed 30 days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(d) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

(1) Obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

(2) File with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

(e) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective.

"§ 25-8-404. Wrongful registration.

(a) Except as otherwise provided in G.S. 25-8-406, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

(1) Pursuant to an ineffective indorsement or instruction;

(2) After a demand that the issuer not register transfer became effective under G.S. 25-8-403(a) and the issuer did not comply with G.S. 25-8-403(b);

(3) After the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer

had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(4) By an issuer acting in collusion with the wrongdoer.

(b) An issuer that is liable for wrongful registration of transfer under subsection (a) of this section on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by G.S. 25-8-210.

(c) Except as otherwise provided in subsection (a) of this section or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction.

"§ 25-8-405. Replacement of lost, destroyed, or wrongfully taken security certificate.

(a) If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:

(1) So requests before the issuer has notice that the certificate has been acquired by a protected purchaser;

(2) Files with the issuer a sufficient indemnity bond; and

(3) Satisfies other reasonable requirements imposed by the issuer.

(b) If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by G.S. 25-8-210. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking under that person, except a protected purchaser.

"§ 25-8-406. Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate.

If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under G.S. 25-8-404 or a claim to a new security certificate under G.S. 25-8-405.

"§ 25-8-407. Authenticating trustee, transfer agent, and registrar.

A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.

"PART 5.

"SECURITY ENTITLEMENTS.

"§ 25-8-501. Securities account; acquisition of security entitlement from securities intermediary.

(a) 'Securities account' means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(b) Except as otherwise provided in subsections (d) and (e) of this section, a person acquires a security entitlement if a securities intermediary:

(1) Indicates by book entry that a financial asset has been credited to the person's securities account;

(2) Receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

(3) Becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

(c) If a condition of subsection (b) of this section has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(d) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(e) Issuance of a security is not establishment of a security entitlement.

"§ 25-8-502. Assertion of adverse claim against entitlement holder.

An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under G.S. 25-8-501 for value and without notice of the adverse claim.

"§ 25-8-503. Property interest of entitlement holder in financial asset held by securities intermediary.

(a) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in G.S. 25-8-511.

(b) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time

the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(c) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under G.S. 25-8-505 through G.S. 25-8-508.

(d) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section may be enforced against a purchaser of the financial asset or interest therein only if:

(1) Insolvency proceedings have been initiated by or against the securities intermediary;

(2) The securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(3) The securities intermediary violated its obligations under G.S. 25-8-504 by transferring the financial asset or interest therein to the purchaser; and

(4) The purchaser is not protected under subsection (e) of this section.

The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(e) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under G.S. 25-8-504.

"**§ 25-8-504. Duty of securities intermediary to maintain financial asset.**

(a) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(b) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (a) of this section.

(c) A securities intermediary satisfies the duty in subsection (a) of this section if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(d) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

"§ 25-8-505. Duty of securities intermediary with respect to payments and distributions.

(a) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(b) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

"§ 25-8-506. Duty of securities intermediary to exercise rights as directed by entitlement holder.

A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

"§ 25-8-507. Duty of securities intermediary to comply with entitlement order.

(a) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(b) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions

that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

"§ 25-8-508. Duty of securities intermediary to change entitlement holder's position to other form of security holding.

A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

"§ 25-8-509. Specification of duties of securities intermediary by other statute or regulation; manner of performance of duties of securities intermediary and exercise of rights of entitlement holder.

(a) If the substance of a duty imposed upon a securities intermediary by G.S. 25-8-504 through G.S. 25-8-508 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

(b) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(c) The obligation of a securities intermediary to perform the duties imposed by G.S. 25-8-504 through G.S. 25-8-508 is subject to:

(1) Rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

(2) Rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(d) G.S. 25-8-504 through G.S. 25-8-508 do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

"§ 25-8-510. Rights of purchaser of security entitlement from entitlement holder.

(a) An action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under G.S. 25-8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(c) In a case not covered by the priority rules in Article 9, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Purchasers who have control rank equally, except that a securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

"**§ 25-8-511. Priority among security interests and entitlement holders.**

(a) Except as otherwise provided in subsections (b) and (c) of this section, if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(b) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(c) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders."

Section 2. G.S. 25-9-103(6) reads as rewritten:

"(6) ~~Uncertificated Securities. -- The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or nonperfection of a security interest in uncertificated securities.~~

Investment property. --

(a) This subsection applies to investment property.

(b) Except as otherwise provided in paragraph (f) of this subsection, during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby are governed by the local law of that jurisdiction.

(c) Except as otherwise provided in paragraph (f) of this subsection, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in G.S. 25-8-110(d).

(d) Except as otherwise provided in paragraph (f) of this subsection, perfection of a security interest, the effect of perfection or

nonperfection, and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary's jurisdiction as specified in G.S. 25-8-110(e).

(e) Except as otherwise provided in paragraph (f) of this subsection, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction. The following rules determine a 'commodity intermediary's jurisdiction' for purposes of this paragraph:

(i) If an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary jurisdiction.

(ii) If an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in subparagraph (i), but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(iii) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraphs (i) or (ii), the commodity intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer's account.

(iv) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraphs (i) or (ii) and an account statement does not identify an office serving the commodity customer's account as provided in subparagraph (iii), the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.

(f) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located."

Section 3. G.S. 25-9-105 reads as rewritten:

"**§ 25-9-105. Definitions and index of definitions.**

(1) In this Article unless the context otherwise requires:

(a) 'Account debtor' means the person who is obligated on an account, chattel paper or general intangible;

(b) 'Chattel paper' means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) 'Collateral' means the property subject to a security interest, and includes accounts and chattel paper which have been sold;

(d) 'Debtor' means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term 'debtor' means the owner of a collateral in any provision of the article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) 'Deposit account' means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;

(f) 'Document' means document of title as defined in the general definitions of article 1 (G.S. 25-1-201), and a receipt of the kind described in subsection (2) of G.S. 25-7-201;

(g) 'Encumbrance' includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(h) 'Goods' includes all things which are movable at the time the security interest attaches or which are fixtures (G.S. 25-9-313), but does not include money, documents, instruments, investment property, commodity contracts, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops;

(i) 'Instrument' means a negotiable instrument ~~(defined in G.S. 25-3-104),~~ (defined in G.S. 25-3-104) ~~or a certificated security (defined in G.S. 25-8-102)~~ or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or

~~assignment;~~ assignment. The term does not include investment property;

(j) 'Mortgage' means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(k) An advance is made 'pursuant to commitment' if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(l) 'Security agreement' means an agreement which creates or provides for a security interest;

(m) 'Secured party' means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

(2) Other definitions applying to this ~~article~~ Article and the sections in which they appear are:

'Account.' (G.S. 25-9-106).
'Attach.' (G.S. 25-9-203).
'Commodity account.' (G.S. 25-9-115).
'Commodity contract.' (G.S. 25-9-115).
'Commodity customer.' (G.S. 25-9-115).
'Commodity intermediary.' (G.S. 25-9-115).
'Construction mortgage.' (G.S. 25-9-313(1)).
'Consumer goods.' (G.S. 25-9-109(1)).
'Control.' (G.S. 25-9-115).
'Equipment.' (G.S. 25-9-109(2)).
'Farm products.' (G.S. 25-9-109(3)).
'Fixture.' (G.S. 25-9-313(1)).
'Fixture filing.' (G.S. 25-9-313(1)).
'General intangibles.' (G.S. 25-9-106).
'Inventory.' (G.S. 25-9-109(4)).
'Investment property.' (G.S. 25-9-115).
'Lien creditor.' (G.S. 25-9-301(3)).
'Proceeds.' (G.S. 25-9-306(1)).
'Purchase money security interest.' (G.S. 25-9-107).
'United States.' (G.S. 25-9-103).

(3) The following definitions in other ~~articles~~ Articles apply to this ~~article:~~ Article:

'Broker.' (G.S. 25-8-102).
'Certificated security.' (G.S. 25-8-102).
'Check.' (G.S. 25-3-104).
'Clearing corporation.' (G.S. 25-8-102).
'Contract for sale.' (G.S. 25-2-106).

'Control.' (G.S. 25-8-106).
'Delivery.' (G.S. 25-8-301).
'Entitlement holder.' (G.S. 25-8-102).
'Financial asset.' (G.S. 25-8-102).
'Holder in due course.' (G.S. 25-3-302).
'Note.' (G.S. 25-3-104).
'Sale.' (G.S. 25-2-106).
'Securities intermediary.' (G.S. 25-8-102).
'Security.' (G.S. 25-8-102).
'Security certificate.' (G.S. 25-8-102).
'Security entitlement.' (G.S. 25-8-102).
'Uncertificated security.' (G.S. 25-8-102).

(4) In ~~addition article~~ addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this ~~article.~~ Article."

Section 4. G.S. 25-9-106 reads as rewritten:

"**§ 25-9-106. Definitions: 'Account'; 'general intangibles.'**

'Account' means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. 'General intangibles' means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, investment property, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts."

Section 5. Article 9 of Chapter 25 of the General Statutes is amended by adding a new section to read:

"**§ 25-9-115. Investment property.**

(1) In this Article:

(a) 'Commodity account' means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(b) 'Commodity contract' means a commodity futures contract, an option on a commodity futures contract, a commodity option, or other contract that, in each case, is:

(i) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the federal commodities laws; or

(ii) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(c) 'Commodity customer' means a person for whom a commodity intermediary carries a commodity contract on its books.

(d) 'Commodity intermediary' means:

(i) A person who is registered as a futures commission merchant under the federal commodities laws: or

(ii) A person who in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to the federal commodities laws.

(e) 'Control' with respect to a certificated security, uncertificated security, or security entitlement has the meaning specified in G.S. 25-8-106. A secured party has control over a commodity contract if by agreement among the commodity customer, the commodity intermediary, and the secured party, the commodity intermediary has agreed that it will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer. If a commodity customer grants a security interest in a commodity contract to its own commodity intermediary, the commodity intermediary as secured party has control. A secured party has control over a securities account or commodity account if the secured party has control over all security entitlements or commodity contracts carried in the securities account or commodity account.

(f) 'Investment property' means:

(i) A security, whether certificated or uncertificated;

(ii) A security entitlement;

(iii) A securities account;

(iv) A commodity contract; or

(v) A commodity account.

(2) Attachment or perfection of a security interest in a securities account is also attachment or perfection of a security interest in all security entitlements carried in the securities account. Attachment or perfection of a security interest in a commodity account is also attachment or perfection of a security interest in all commodity contracts carried in the commodity account.

(3) A description of collateral in a security agreement or financing statement is sufficient to create or perfect a security interest in a certificated security, uncertificated security, security entitlement, securities account, commodity contract, or commodity account whether it describes the collateral by those terms, or as investment property, or by description of the underlying security, financial asset, or commodity contract. A description of investment property collateral in a security agreement or financing statement is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or allocational formula or procedure, or by any other method, if the identity of the collateral is objectively determinable.

(4) Perfection of a security interest in investment property is governed by the following rules:

(a) A security interest in investment property may be perfected by control.

(b) Except as otherwise provided in paragraphs (c) and (d), a security interest in investment property may be perfected by filing.

(c) If the debtor is a broker or securities intermediary, a security interest in investment property is perfected when it attaches. The filing of a financing statement with respect to a security interest in investment property granted by a broker or securities intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(d) If a debtor is a commodity intermediary, a security interest in a commodity contract or a commodity account is perfected when it attaches. The filing of a financing statement with respect to a security interest in a commodity contract or a commodity account granted by a commodity intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(5) Priority between conflicting security interests in the same investment property is governed by the following rules:

(a) A security interest of a secured party who has control over investment property has priority over a security interest of a secured party who does not have control over the investment property.

(b) Except as otherwise provided in paragraphs (c) and (d), conflicting security interests of secured parties each of whom has control rank equally.

(c) Except as otherwise agreed by the securities intermediary, a security interest in a security entitlement or a securities account granted to the debtor's own securities intermediary has priority over any security interest granted by the debtor to another secured party.

(d) Except as otherwise agreed by the commodity intermediary, a security interest in a commodity contract or a commodity account granted to the debtor's own commodity intermediary has priority over any security interest granted by the debtor to another secured party.

(e) Conflicting security interests granted by a broker, a securities intermediary, or a commodity intermediary which are perfected without control rank equally.

(f) In all other cases, priority between conflicting security interests in investment property is governed by G.S. 25-9-312(5), (6), and (7). G.S. 25-9-312(4) does not apply to investment property.

(6) If a security certificate in registered form is delivered to a secured party pursuant to agreement, a written security agreement is not required for attachment or enforceability of the secured interest, delivery suffices for perfection of the security

interest, and the security interest has priority over a conflicting security interest perfected by means other than control, even if a necessary indorsement is lacking."

Section 6. Article 9 of Chapter 25 of the General Statutes is amended by adding a new section to read:

"**§ 25-9-116. Security interest arising in purchase or delivery of financial asset.**

(1) If a person buys a financial asset through a securities intermediary in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase, and the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary, the securities intermediary has a security interest in the buyer's security entitlement securing the buyer's obligation to pay. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

(2) If a certificated security or other financial asset represented by a writing which in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment is delivered pursuant to an agreement between persons in the business of dealing with such securities or financial assets, and the agreement calls for delivery versus payment, the person delivering the certificate or other financial asset has a security interest in the certificated security or other financial asset securing the seller's right to receive payment. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected."

Section 7. G.S. 25-9-203(1) reads as rewritten:

"(1) Subject to the provisions of G.S. 25-4-208 on the security interest of a collecting bank, ~~G.S. 25-8-321 on security interests in securities~~ G.S. 25-9-115 and G.S. 25-9-116 on security interests in investment property, and G.S. 25-9-113 on a security interest arising under the article on sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless

(a) the collateral is in the possession of the secured party pursuant to agreement, the collateral is investment property and the secured party has control pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned; and

(b) value has been given; and

(c) the debtor has rights in the collateral."

Section 8. G.S. 25-9-301(1) reads as rewritten:

"(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

(a) persons entitled to priority under G.S. 25-9-312;

(b) a person who becomes a lien creditor before the security interest is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of ~~accounts and~~ accounts, general intangibles, and investment property, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected."

Section 9. G.S. 25-9-302(1) reads as rewritten:

"(1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under G.S. 25-9-305;

(b) a security interest temporarily perfected in ~~instruments~~ instruments, certificated securities, or documents without delivery under G.S. 25-9-304 or in proceeds for a 10-day period under G.S. 25-9-306;

(c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) a purchase money security interest in consumer goods; but compliance with G.S. 20-58 et seq. is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in G.S. 25-9-313;

(e) an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(f) a security interest of a collecting bank (G.S. 25-4-208) ~~or in securities (G.S. 25-8-321)~~ or arising under the article on sales (see G.S. 25-9-113) or covered in subsection (3) of this section;

(g) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee ~~thereunder.~~ thereunder;

(h) a security interest in investment property which is perfected without filing under G.S. 25-9-115 or G.S. 25-9-116."

Section 10. G.S. 25-9-304 reads as rewritten:

"**§ 25-9-304. Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.**

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than ~~certificated securities or~~ instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of G.S. 25-9-306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in ~~instruments (other than certificated securities)~~ instruments, certificated securities, or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an ~~instrument (other than a certificated security),~~ instrument, a certificated security, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection (3) of G.S. 25-9-312; or

(b) delivers the instrument or certificated security to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21-day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this article."

Section 11. G.S. 25-9-305 reads as rewritten:

"**§ 25-9-305. When possession by secured party perfects security interest without filing.**

A security interest in letters of credit and advices of credit (subsection (2)(a) of G.S. 25-5-116), goods, ~~instruments (other than certificated securities),~~ instruments, money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this article. The security interest may be otherwise perfected as provided in this article before or after the period of possession by the secured party."

Section 12. G.S. 25-9-306(1) reads as rewritten:

"(1) 'Proceeds' includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Any payments or distributions made with respect to investment property collateral are proceeds. Money, checks, deposit accounts, and the like are 'cash proceeds.' All other proceeds are 'noncash proceeds.'"

Section 13. G.S. 25-9-306(3) reads as rewritten:

"(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected 10 days after receipt of the proceeds by the debtor unless

(a) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; ~~or~~

(b) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; ~~or~~

(c) the original collateral was investment property and the proceeds are identifiable cash proceeds; or

~~(c)~~ (d) the security interest in the proceeds is perfected before the expiration of the 10-day period.

Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this article for original collateral of the same type."

Section 14. G.S. 25-9-309 reads as rewritten:

"**§ 25-9-309. Protection of purchasers of instruments, ~~documents~~ documents, and securities.**

Nothing in this article limits the rights of a holder in due course of a negotiable instrument (G.S. 25-3-302) or a holder to whom a negotiable document of title has been duly negotiated (G.S. 25-7-501) or a ~~bona fide~~ protected purchaser of a security ~~(G.S. 25-8-302)~~ (G.S. 25-8-303) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this article does not constitute notice of the security interest to such holders or purchasers."

Section 15. G.S. 25-9-312(1) reads as rewritten:

"(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.~~ consignments; G.S. 25-9-115 on security interests in investment property."

Section 16. G.S. 25-9-312(7) reads as rewritten:

"(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,~~ G.S. 25-9-115 or G.S. 25-9-116 on investment property, 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 17. G.S. 25-1-105(2) reads as rewritten:

"(2) Where one of the following provisions of this Chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. (G.S. 25-2-402).

Applicability of the article on bank deposits and collections. (G.S. 25-4-102).

Bulk transfers subject to the article on bulk transfers. (G.S. 25-6-102).

Applicability of the article on investment securities. ~~(G.S. 25-8-106).~~ (G.S. 25-8-110).

Perfection provisions of the article on secured transactions. (G.S. 25-9-103).

Governing law in the article on Funds Transfers. (G.S. 25-4A-507)."

Section 18. G.S. 25-1-206(2) reads as rewritten:

"(2) Subsection (1) of this section does not apply to contracts for the sale of goods (G.S. 25-2-201) nor of securities ~~(G.S. 25-8-319)~~ (G.S. 25-8-113) nor to security agreements (G.S. 25-9-203)."

Section 19. G.S. 25-4-104(a)(6) reads as rewritten:

"(6) 'Documentary draft' means a draft to be presented for acceptance or payment if specified documents, certificated securities (G.S. 25-8-102) or instructions for uncertificated securities ~~(G.S. 25-8-308),~~ (G.S. 25-8-102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft."

Section 20. G.S. 25-5-114(2) reads as rewritten:

"(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (G.S. 25-7-507) or of a certificated security ~~(G.S. 25-8-306)~~ (G.S. 25-8-108) or is forged or fraudulent or there is fraud in the transaction

(a) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (G.S. 25-3-302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (G.S.

25-7-502) or a ~~bona fide~~ protected purchaser of a certificated security ~~(G.S. 25-8-302);~~ (G.S. 25-8-303); and

(b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor."

Section 21. G.S. 25-10-104(2) is repealed.

Section 22. G.S. 28A-13-3(a)(10) reads as rewritten:

"(10) To hold shares of stock or other securities in the name of a nominee, without mention of the estate in the instrument representing stock or other securities or in registration records of the issuer thereof; provided, that

a. The estate records and all reports or accounts rendered by the personal representative clearly show the ownership of the stock or other securities by the personal representative and the facts regarding its holdings, and

b. The nominee shall not have possession of the stock or other securities or access thereto except under the immediate supervision of the personal representative or when such securities are deposited by the personal representative in a clearing corporation as defined in ~~G.S. 25-8-102(3).~~ G.S. 25-8-102.

Such personal representative shall be personally liable for any acts or omissions of such nominee in connection with such stock or other securities so held, as if such personal representative had done such acts or been guilty of such omissions."

Section 23. Article 2 of Chapter 32 of the General Statutes is repealed.

Section 24. G.S. 36A-70(2) reads as rewritten:

(2) The nominee shall not have possession of the stock or other securities or access thereto except under the immediate supervision of the trustee or when such securities are deposited by the fiduciary in a clearing corporation as defined in ~~G.S. 25-8-102(3).~~ G.S. 25-8-102."

Section 25. G.S. 53-47(a) reads as rewritten:

"(a) In addition to any powers or investments authorized by any other section of this Chapter, a bank may invest in the capital stock or other securities of any other state, national or foreign bank or trust company, and in any other industrial bank, savings bank, Morris Plan bank, savings and loan association, bankers' bank or other deposit taking entity chartered or existing under any federal, state, or foreign law including, but not limited to, the capital stock of clearing corporations defined in ~~G.S. 25-8-102(3),~~ G.S. 25-8-102, the capital stock or other securities of central reserve banks whose capital stock exceeds one million dollars ($1,000,000) and the capital

stock of an Edge or Agreement corporation. As used in this Chapter, the term "bankers' bank" means an insured depository financial institution, organized and chartered to do business exclusively with other banks and savings institutions, and the stock of which, or the stock of the holding company which controls such bank, is owned exclusively (except to the extent directors' qualifying shares are required by law) by banks or savings institutions. To constitute a central reserve bank as contemplated by this Chapter, at least fifty percent (50%) of the capital stock of such bank shall be owned by other banks. The investment of any bank in the capital stock of such central reserve bank or bank organized under the 'Edge Act', (12 U.S.C. § 611 et seq.) shall at no time exceed ten percent (10%) of the paid-in capital and permanent surplus of the bank making the investment."

Section 26. G.S. 53-159.1 reads as rewritten:

"§ 53-159.1. Power of fiduciary or custodian to deposit securities in a clearing corporation.

Notwithstanding any other provision of law, any fiduciary holding securities in its fiduciary capacity, any bank or trust company holding securities in a fiduciary capacity or as a custodian or agent is authorized to deposit or arrange for the deposit of such securities in a clearing corporation as defined in ~~G.S. 25-8-102(3).~~ G.S. 25-8-102. When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such bank or trust company acting as a fiduciary or as a custodian or managing agent shall at all times show the name of the party for whose account the securities are so deposited. Title to such securities may be transferred by bookkeeping entry on the books of such clearing corporation without physical delivery of certificates representing such securities. A bank or trust company so depositing securities pursuant to this section shall be subject to such rules and regulations as, in the case of State-chartered institutions, the State Banking Commission and, in the case of national banking associations, the Comptroller of the Currency may from time to time issue. A bank or trust company acting as custodian or agent for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such bank or trust company in such clearing corporation for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such clearing corporation for its account as such fiduciary. This section shall apply to any fiduciary holding securities in its fiduciary capacity, and to any bank or trust company holding securities as a fiduciary or as a custodian or managing agent acting on May 15, 1973, or who thereafter may act regardless of the date of the agreement, instrument or court order by which it is appointed and regardless of whether or not such fiduciary, custodian or agent owns capital stock of such clearing corporation. The fiduciary

shall personally be liable for any loss to the trust resulting from an act of such nominee in connection with such securities so deposited."

Section 27. G.S. 78A-63(i) reads as rewritten:

"(i) Interest charged by a broker or dealer registered under the Securities Exchange Act of 1934, as amended, or registered under this Chapter, as now or hereafter amended, on a debit balance in an account for a customer, shall be exempt from the provisions of Chapter 24 of the North Carolina General Statutes if such debit balance is payable at will without penalty and is secured by securities as defined in ~~the Uniform Commercial Code, Article 8, Investment Securities, G.S. 25-8-101 through 25-8-406.~~ G.S. 25-8-102."

Section 28. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Commercial Code, Revised Article 8 and conforming and miscellaneous amendments to Articles 1, 4, 5, 9, and 10 and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

Section 29. (a) If a security interest in a security is perfected at the date this act takes effect, and the action by which the security interest was perfected would suffice to perfect a security interest under this act, no further action is required to continue perfection. If a security interest in a security is perfected at the date this act takes effect but the action by which the security interest was perfected would not suffice to perfect a security interest under this act, the security interest remains perfected for a period of four months after the effective date and continues perfected thereafter if appropriate action to perfect under this act is taken within that period. If a security interest is perfected at the date this act takes effect and the security interest can be perfected by filing under this act, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect.

(b) This act becomes effective October 1, 1997, and does not affect actions or proceedings commenced before that date.

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
P.O. BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 733-6026

MEMORANDUM

TO: House Judiciary II Committee

FROM: General Statutes Commission

DATE: February 28, 1997

RE: **House Bill 134 (Investment Securities UCC Rewrite)**

General Comments

House Bill 134 enacts Revised Article 8 of the Uniform Commercial Code (Investment Securities) which updates current Article 8 to provide a modern legal structure for a system of holding securities through brokers, banks, and other securities intermediaries ("indirect holding system"). The bill also enacts conforming and miscellaneous amendments to Articles 1 (General Provisions), 4 (Bank Deposits and Collections), 5 (Letters of Credit), 9 (Secured Transactions; Sales of Accounts and Chattel Paper), and 10 (Effective Date and Repealer) of the Uniform Commercial Code and other sections of the General Statutes. Revised Article 8, which was adopted by the National Conference of Commissioners on Uniform State Laws in 1994, has been enacted in 29 states, the District of Columbia, and Puerto Rico and has been introduced this year in 6 other states.

Current Article 8 deals with what is now called the "direct holding system" where the purchaser of securities has a direct relationship with the issuer of the securities and security transfers require physical delivery of indorsed certificates representing the securities. This direct relationship between the purchaser and the issuer worked reasonably well until the late 1960s, but with the development of automation and electronic systems of transfer, the securities industry became unable to process the paper resulting from the increased volume of securities transfers. In 1989 the General Assembly amended current Article 8 to enact the 1977 amendments adopted by the National Conference of Commissioners on Uniform State Laws to allow issuers the option of issuing securities without certificates ("uncertificated securities"). Transfers of uncertificated securities are registered on the books of the issuer of those securities.

Uncertificated securities never caught on. Wall street solved the paperwork crunch by adapting to the indirect holding system, under which the customer does not take possession of the security, but has an account with a broker that credits the customer with "ownership" of the security. The broker in turn has an account with a depository institution, which credits the

broker's "ownership" of the security. The Depository Trust Corporation in turn holds legal title to the security (probably through a nominee such as "Cede & Co.") as part of a "jumbo" stock certificate which consolidates the holdings of all the broker and trust and pension accounts. The depository institution is then registered as a single, very large shareholder on the books of the issuer.

Revised Article 8 defines the nature of the property interest of the customer and sets forth the rights and duties of the participants in the indirect holding system. It also retains the basic conceptual structure and provisions of current Article 8 relating to the direct holding of certificated and uncertificated securities, while eliminating ambiguities and inconsistencies that have been found in the Article.

Specific Comments

Section 1. This section amends Chapter 25 of the General Statutes to enact Revised Article 8 of the Uniform Commercial Code, entitled "Investment Securities." Part 1 of the Article sets forth definitions and other statutory provisions that apply to both direct and indirect holdings. Parts 2, 3, and 4 of the Article deal with direct holdings in much the same way as in current Article 8. Part 5, which provides legal principles for the acquisition and transfer of rights through the indirect holding system, contains the most important innovations of Revised Article 8.

Part 1 (Short Title and General Matters), in addition to defining several new terms, contains key provisions relating to direct and indirect holdings. The Part includes provisions:

(1) listing ways in which interests in securities, financial assets, or securities entitlements may be acquired;

(2) specifying when a person has notice of an adverse claim to a security or security entitlement;

(3) describing how a purchaser can take control of a financial asset, thereby placing itself in a position where it can have the securities sold, without further action by the owner;

(4) describing the warranties given within the direct holding system by a transferor and by a person who originates an entitlement order to a securities intermediary;

(5) describing the means by which a creditor may reach a debtor's interest in a certificated security, uncertificated security, or security entitlement to satisfy any claims;

(6) abolishing any requirement that a contract for sale or purchase of a security be in writing; and

(7) ensuring that securities intermediaries will not risk liability to third parties when they act on the instructions of their customers.

Part 2 (Issue and Issuer), which is mainly unchanged from current Article 8, deals with the relationship between issuers of securities and securities holders. The Part contains provisions governing an issuer's obligations when registering and transferring securities on its books and the extent to which an issuer can assert defenses against purchasers of its securities.

Part 3 (Transfer of Certificated and Uncertificated Securities) mainly reorganizes and clarifies the provisions of current Article 8 that relate to interests in securities acquired, held, transferred, or pledged directly by actual possession of security certificates or record ownership on the books of issuers. The few provisions of Part 3 of current Article 8 governing interests in securities acquired, held, transferred, and pledged through securities intermediaries have been moved to new Part 5 of Revised Article 8 and substantially clarified and supplemented.

Part 4 (Registration), which mainly retains the structure and legal principles of current Article 8, deals with the process for registering transfers of securities by the issuer under the direct holding system.

Part 5 (Security Entitlements) contains the provisions for the indirect holding system. The Part contains provisions governing the rights, obligations, duties, and liabilities of persons who deal in and hold securities and other financial assets indirectly through brokers and other securities intermediaries. These provisions also set forth the law governing the relationships among securities intermediaries, their customers, and their respective lenders. Under Part 5, the interest in the property held by, and the package of personal rights against, a securities intermediary is called a "security entitlement." A person identified in the records of a securities intermediary as the person having a security entitlement against the security intermediary is called an "entitlement holder."

Sections 2 through 16. These sections enact conforming and miscellaneous amendments to Article 9. The amendments gather in one place specific provisions governing the attachment, perfection, and priority of security interests in all types of investment property, including certificated securities, uncertificated securities, security entitlements, securities accounts, commodity contracts, and commodity accounts. New sections G.S. 25-9-115 (Investment Property) and G.S. 25-9-116 (Security Interest Arising In Purchase Or Delivery Of Financial Assets) are added for the purpose of permitting the creation of a security interest in financial assets held in the indirect holding system.

Sections 17 through 20. These sections update statutory references and language in other sections of the Uniform Commercial Code to reflect the appropriate references and language of Revised Article 8.

Section 21. This section makes a conforming amendment to Article 10.

Sections 22 through 27. These sections make conforming amendments to other sections of the General Statutes. Specifically, Sections 22 and 24 through 27 update statutory references to reflect the appropriate references to Revised Article 8, and Section 23 repeals the Uniform Act for Simplification of Fiduciary Security Transfers which will no longer be necessary if Revised Article 8 is enacted.

Section 28. This section authorizes the printing of official and drafters' comments.

Section 29. This section contains transition provisions and provides that the act is to become effective October 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 203*

Short Title: Courts Supplement Clark's Calendar. (Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary II.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO SUPPLEMENT CLARK'S CALENDAR, WHICH MAY BE INTRODUCED IN EVIDENCE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 8-48 reads as rewritten:

"**§ 8-48. Clark's Calendar; proof of dates.**

(a) In any controversy or inquiry in any court or before any fact finding board, commission, administrative agency or other body, where it becomes necessary or pertinent to determine any information which may be established by reference to a calendar for any year between the years ~~one thousand seven hundred and fifty-three~~ 1753 A.D. and ~~two thousand and two, anno domini,~~ 2002 A.D., inclusive, it is permissible to introduce in evidence 'Clark's Calendar, a Calendar Covering 250 Years, 1753 A.D. to 2002 A.D.,' as supplemented, copyrighted, 1940, by E. D. Clark, Entry: Class AA, Number ~~three hundred and twenty-eight thousand five hundred and seventy-three,~~ 328,573, Copyright Office of the United States of America, Washington, or any reprint of ~~said one thousand nine hundred and forty~~ the 1940 edition certified by the Secretary of State to be an accurate copy ~~thereof;~~ of it, and ~~such~~ the calendar or reprint, when so introduced, shall be prima facie evidence that the information disclosed by ~~said~~ the calendar or reprint ~~thereof~~ is true and correct.

(b) The Secretary of State shall prepare and publish a perpetual calendar similar to Clark's Calendar covering years beginning with 2003 A.D. The perpetual calendar published by the Secretary of State shall be admissible in evidence to the same degree and in the same manner as Clark's Calendar for years beginning with 2003."

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

Which Day of the Week was Your Birth Day?

* * *

Sunday, Monday, Tuesday, Wednesday, Thursday, Friday or Saturday?

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This 250 year calendar will tell you.

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A handy reference for everyone, regardless of age or business.

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Doctors, Lawyers, Farmers, Merchants, Offices, Stores, Postoffices, County Officials, Court Houses will find it handy, convenient, and correct.

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Whenever any calendar past, present or future is needed this publication will serve.

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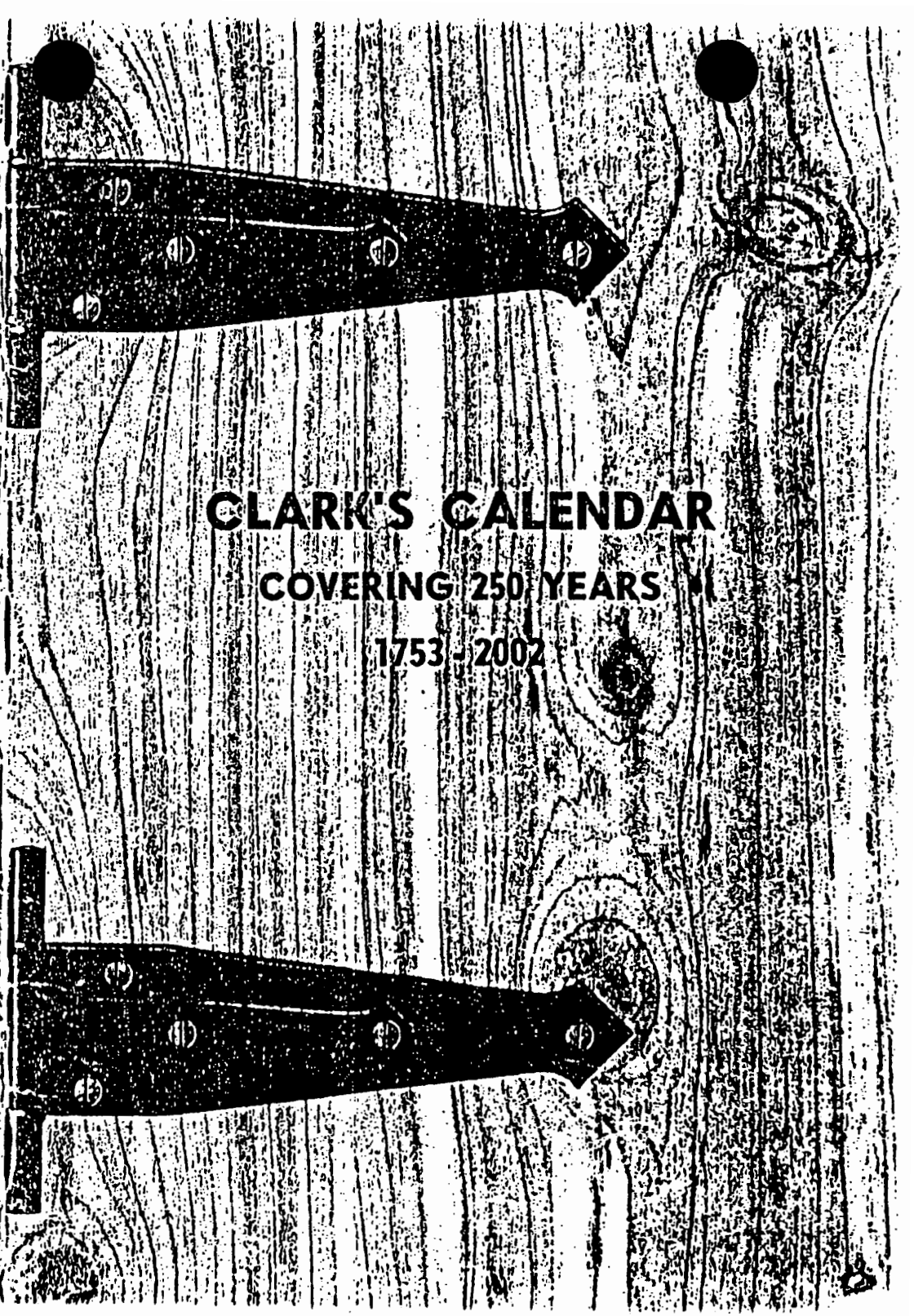
Current for over fifty years. Covers over 180 years past.

* * * *

Published and for sale by E. B. Clark, Weldon, N. C.



CLARK'S CALENDAR

COVERING 250 YEARS

1753 - 2002

A CALENDAR COVERING 250 YEARS

1753 A. D. TO 2002 A. D.

OUR PRESENT CALENDAR ADOPTED 1752 A. D.

INSTRUCTIONS FOR USE OF CHART

Whenever the calendar for any year between above dates is desired, find the page number referred to opposite the desired year, then turn to this page as numbered. The desired year and all like years between the above dates are recorded thereon.

Year	Page	Year	Page	Year	Page	Year	Page	Year	Page	Year	Page	Year	Page
1753	2	1784	12	1815	1	1846	5	1877	2	1908	11	1939	1	1970	6
1754	3	1785	7	1816	9	1847	6	1878	3	1909	6	1940	9	1971	6
1755	4	1786	1	1817	4	1848	14	1879	4	1910	7	1941	4	1972	14
1756	12	1787	2	1818	5	1849	2	1880	12	1911	1	1942	5	1973	2
1757	7	1788	10	1819	6	1850	3	1881	7	1912	9	1943	6	1974	3
1758	1	1789	5	1820	14	1851	4	1882	1	1913	4	1944	11	1975	4
1759	2	1790	6	1821	2	1852	12	1883	2	1914	5	1945	2	1976	12
1760	10	1791	7	1822	3	1853	7	1884	10	1915	6	1946	3	1977	7
1761	5	1792	8	1823	4	1854	1	1885	5	1916	14	1947	4	1978	1
1762	6	1793	3	1824	12	1855	2	1886	6	1917	2	1948	12	1979	2
1763	7	1794	4	1825	7	1856	10	1887	7	1918	3	1949	7	1980	10
1764	8	1795	5	1826	1	1857	5	1888	8	1919	4	1950	1	1981	5
1765	3	1796	13	1827	2	1858	6	1889	3	1920	12	1951	2	1982	6
1766	4	1797	1	1828	10	1859	7	1890	4	1921	7	1952	10	1983	7
1767	5	1798	2	1829	5	1860	8	1891	5	1922	1	1953	5	1984	8
1768	13	1799	3	1830	6	1861	3	1892	13	1923	2	1954	6	1985	3
1769	1	1800	4	1831	7	1862	4	1893	1	1924	10	1955	7	1986	4
1770	2	1801	5	1832	8	1863	5	1894	2	1925	5	1956	8	1987	5
1771	3	1802	6	1833	3	1864	13	1895	3	1926	6	1957	3	1988	13
1772	11	1803	7	1834	4	1865	1	1896	11	1927	7	1958	4	1989	1
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1776	9	1807	5	1838	2	1869	6	1900	2	1931	5	1962	2	1993	6
1777	4	1808	13	1839	3	1870	7	1901	3	1932	13	1963	3	1994	7
1778	5	1809	1	1840	11	1871	1	1902	4	1933	1	1964	11	1995	1
1779	6	1810	2	1841	6	1872	9	1903	5	1934	2	1965	6	1996	9
1780	14	1811	3	1842	7	1873	4	1904	13	1935	3	1966	7	1997	4
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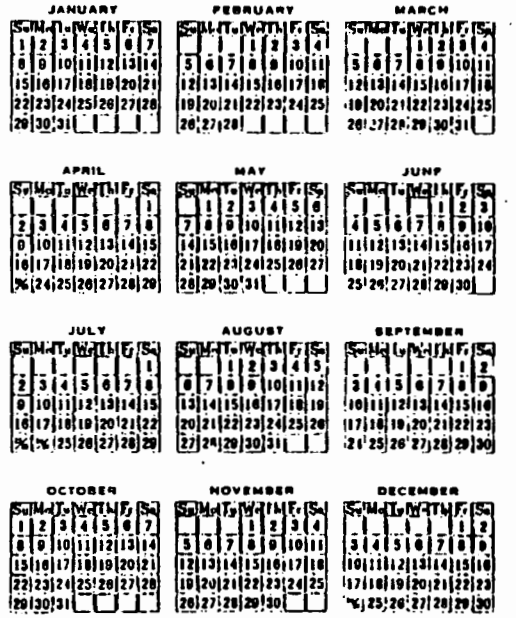

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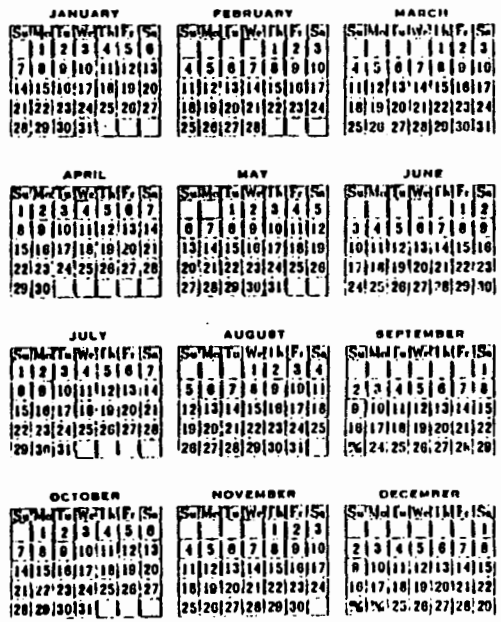

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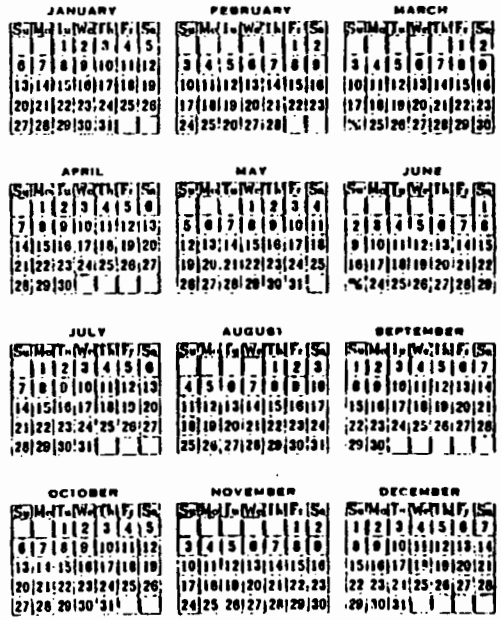

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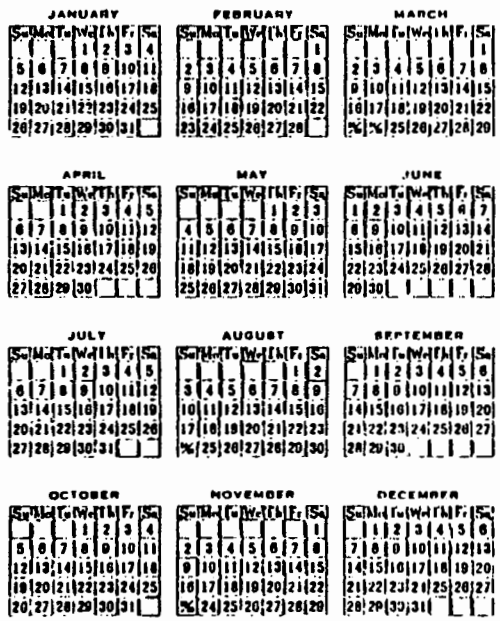

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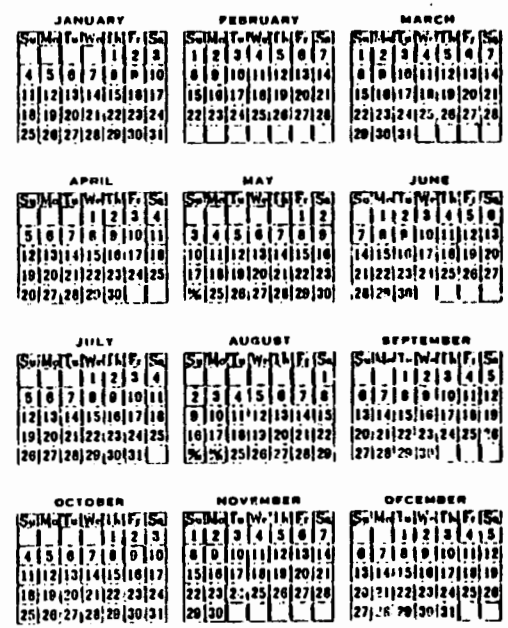

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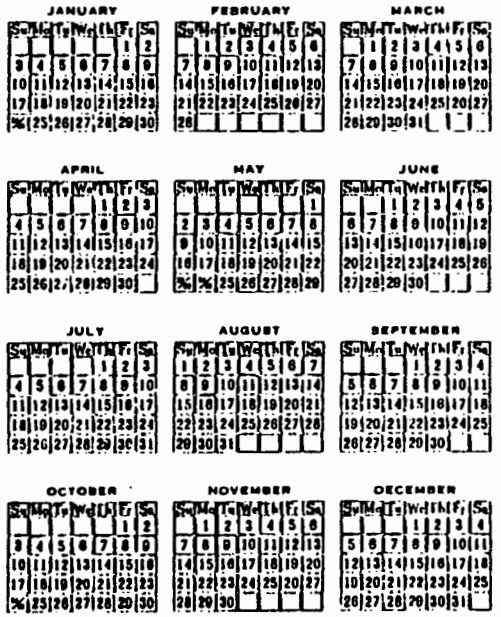

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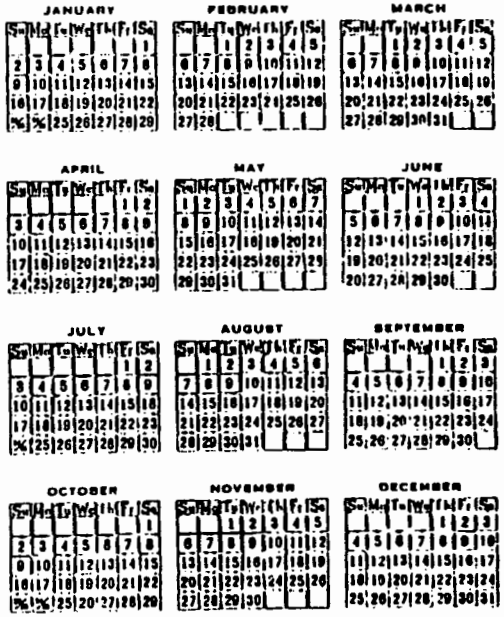

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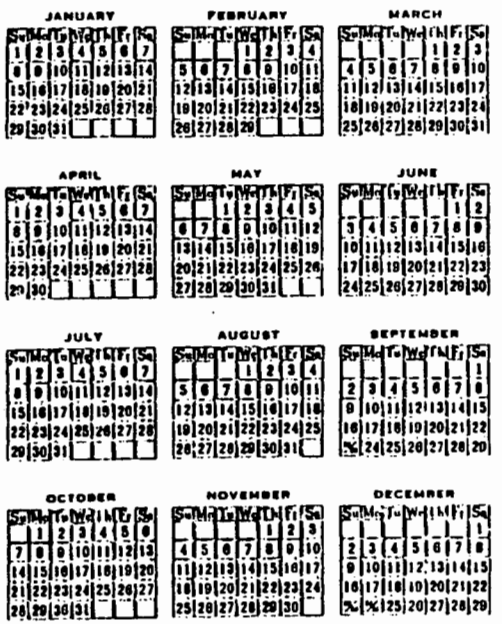

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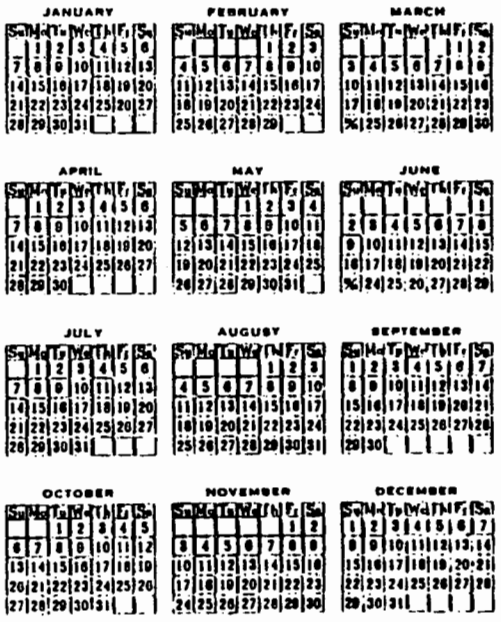

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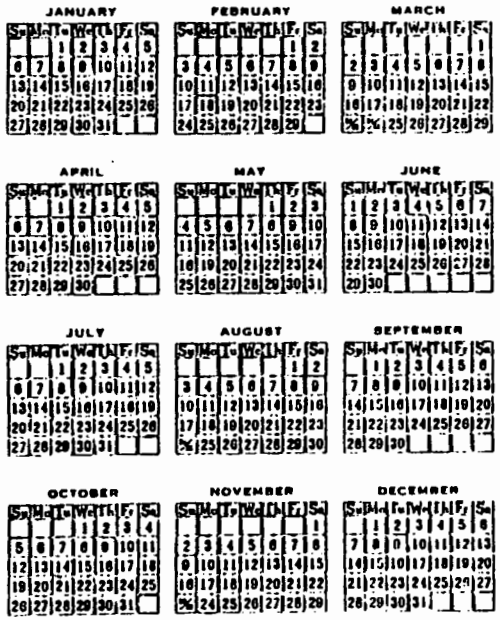

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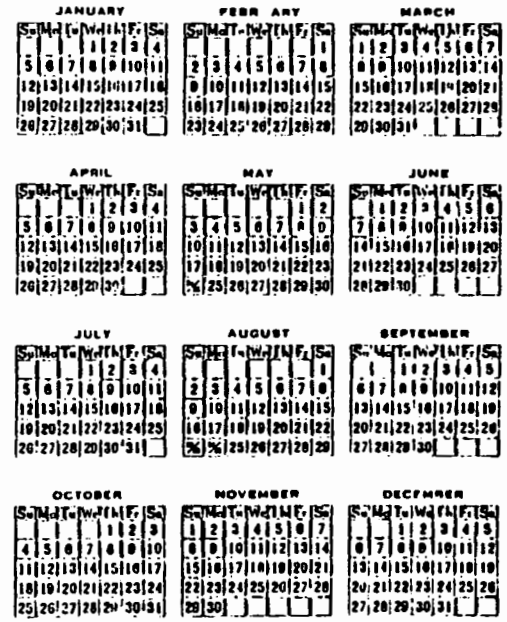

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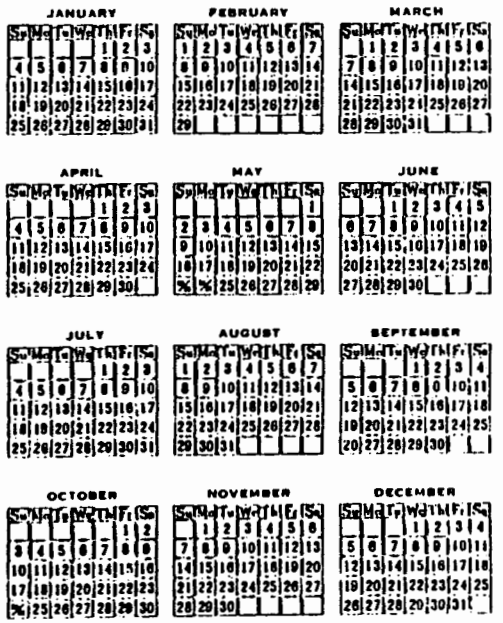

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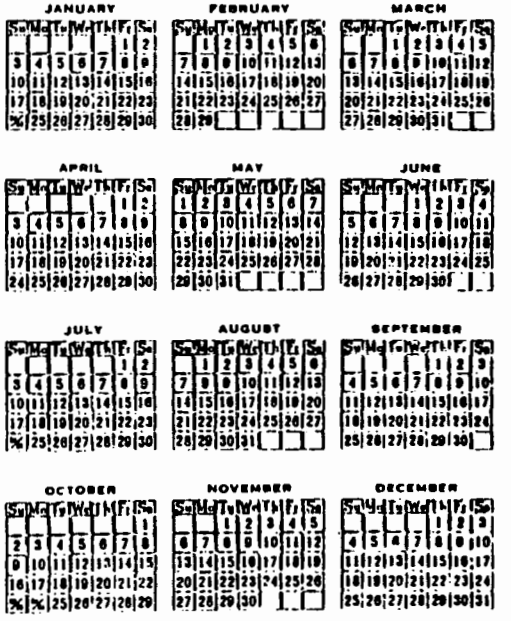

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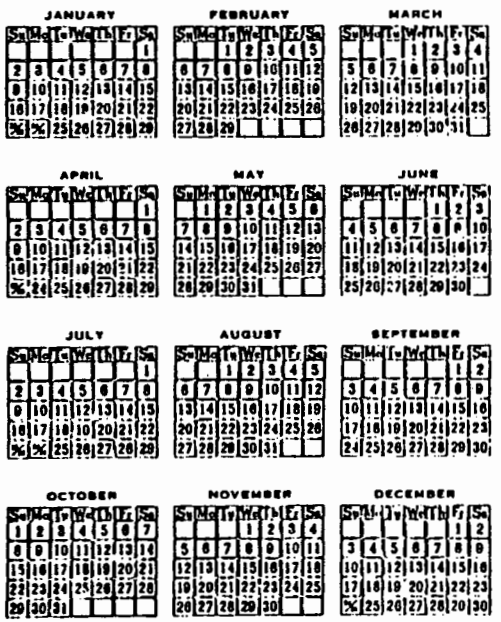

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PAGE A

A SUPPLEMENT TO:

"A CALENDAR COVERING 250 YEARS, 1753, A. D. to 2002, A. D." Copyrighted, 1940, by E. B. Clark, Entry: Class AA, No. 328573, Copyright Office of the United States of America, Washington.

For the purpose of making the above mentioned Calendar competent as evidence, for the years covered by it, in any and all Courts throughout the United States of America, and the World, the author has decided to publish his method of arriving at the classification of the years shown on the pages thereof. This method will disclose positive proof of the correctness of said calendar.

At first a chart was made containing fourteen yearly calendars, seven 365 day years; and seven 366 day years; and these were numbered from one to seven for the 365 day years, and from eight to fourteen for the 366 day years. Just as shown on the pages of the calendar, numbered from "1" to "14".

Another chart was then made to classify the days of the week on which January 1st falls. As below:

365 day years, page number:	January 1st begins	366 day years page number:
1.	SUNDAY	8.
2.	MONDAY	9.
3.	TUESDAY	10.
4.	WEDNESDAY	11.
5.	THURSDAY	12.
6.	FRIDAY	13.
7.	SATURDAY	14.

All 365 day years begin and end on the same day of the week. All 366 day years end one day later than they begin.

If a 365 day year begins on Sunday, it will end on Sunday. If a 366 day year begins on Sunday, it will end on Monday.

Continued on Page B.

PAGE B

For example: 1940, a leap year, began on Monday, which is page 9 of Calendar, it will end on Tuesday, and the 1st of January begins:
1941 on Wednesday--Page 4.
1942 on Thursday—Page 5.
1943 on Friday—Page 6.
1944 (leap year) on Saturday page 14. Ends Sunday and
1945 begins on Monday—page 2.
And so on to chart all future years.

Now, to find out and chart past years, just reverse the above outlined procedure. For example:

1940, began on Monday. Then 1939, beginning and ending on the same day of the week, must have begun on Sunday;
1939 on Sunday—Page 1.
1938 on Saturday—Page 7.
1937 on Friday—Page 6.
1936 on Wednesday—page 11, having ended on Thursday.
And so on to chart all past years until 1753, A. D. The years 1800 and 1900 were not leap years.

THE AUTHOR.

Copyright, 1940. E. B. Clark.

House Bill No. 773 [illegible]

AN ACT TO FACILIATE THE PROOF OF DATES AND THE RECKONING OF TIME IN ACTIONS AND PROCEEDINGS.

WHEREAS, it is often necessary in actions and proceedings in the courts of the State and before commissions and other administrative and fact finding bodies to determine the day of the week upon which a particular date fell or will fall, or the particular date upon which a given day of the week fell or will fall, or otherwise to compute or reckon dates and days of the week, month and year both in the past years and future years; and

WHEREAS, such reliable information is not always readily available for presentation to the court or other fact finding body; and

WHEREAS, E. B. Clark, of Weldon, North Carolina, has prepared a complete calendar, in ready reference form, covering the years from 1753 to 2002, Anno Domini, inclusive; and the said E. B. Clark offers the use of said calendar to the State for the purpose of this Act without request for or expectation of any compensation from the State; and

WHEREAS, this calendar has been verified by the State Auditor, and has been found to be correct and accurate in every detail, and a reliable source for obtaining information; Now, therefore,

The General Assembly of North Carolina do enact:

Section 1. That in any controversy or inquiry in any court or before any fact finding board, commission, administrative agency or other body, where it becomes necessary or pertinent to determine any information which may be established by reference to a calendar for any year between the years 1753 and 2002, Anno Domini, inclusive, it is permissible to introduce in evidence "Clark's Calendar, A Calendar Covering 250 years, 1753 A. D. to 2002 A. D." as supplemented, copyrighted, 1940 by E. B. Clark, Entry Class AA Number three hundred and twenty-eight thousand five hundred and seventy-three, Copyright Office of the United States of America, Washington, or any reprint of said 1940 edition certified by the Secretary of State to be an accurate copy thereof; and such calendar or reprint, when so introduced, shall be prima facie evidence that the information disclosed by said calendar or reprint thereof is true and correct.

Sec. 2. That nothing herein shall be construed to impose any liability or obligation on the part of the State of North Carolina to E. B. Clark or his personal representatives, heirs or assigns on account of the operation of this Act.

Sec. 3. That all laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 4. That this Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 15th day of March, 1941.

R. L. Harris,
President of the Senate

O. M. Mull,
Speaker of the House of Representatives

Examined and found correct,
Banks
Fan Committee

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 203 A BILL TO BE ENTITLED AN ACT TO SUPPLEMENT CLARK'S CALENDAR, WHICH MAY BE INTRODUCED IN EVIDENCE, 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)

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **March 4, 1997 10:00 A.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Andrews	ADC
Scott Templeton	Sec. State
Bruce Winn	NCBA
Paul Miller	N.C. State Firemen's Assoc.
Tim Minton	NC Assoc of Realtors
Starla H. McKenney	NC Dept. of Ins.
Doris Bray	General Statutes Comm.
Charles Cromer	NCATL
Mike Carpenter	NCATSA
Floyd M. Lewis	General Statutes Commission
P. Bey Hall	ditto
John Bode	Bode Call & Green
RP Thomas	NAIC Co
David Hensley	PFFAC
[illegible]	CSC Forbes Co
Beth Taylor	BPW
Nancy Winslow	BPW
Stella Wallace	BPW.
Bernard Allen	Secy. of State
Michelle Cook	Womble Carlyle
Deborah Ross	ACLU
[illegible]	

MINUTES
HOUSE JUDICIARY II COMMITTEE

March 4, 1997 1:00 P.M.

The North Carolina House of Representatives Judiciary II Committee met on March 4, 1997, at 1:00 P.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Berry, Cansler, Creech, Culpepper, Gardner, Goodwin, Hackney, Hensley, Howard, Nesbitt, Redwine, Russell, Saunders, Shubert, Sutton, Weatherly and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-134 INVESTMENT SECURITIES UCC REWRITE
HB-197 JUDICIAL TIMBER SALE/SEALED BID
HB-234 SMOKE DETECTOR PENALTIES

Representative Creech moved for a favorable report for HB-134; motion passed.

Representative Culpepper was recognized to present a proposed committee substitute for HB-197, and moved it be adopted for purpose of discussion; motion passed.

After discussion and questions, committee members agreed to displace the proposed committee substitute until the meeting Thursday, March 6, 1997.

Representative Dickson was recognized to present HB-234. Ms. Susan Hayes, Staff Counsel, provided members with a proposed committee substitute bill. Representative Goodwin moved adoption of the proposed committee substitute for purpose of discussion; motion passed. A copy of the bill, explanation prepared by Ms. Hayes, and proposed committee substitute bill are attached.

Mr. Al Deitch, spoke in favor of the bill on behalf of the Child Fatality Task Force and provided members with a handout. A copy of the handout is attached.

Mr. Jim Long, Commissioner, and Mr. Dascheil Propes, Assistant Commissioner, Department of Insurance, spoke in favor of the bill and answered questions of committee members.

Mr. Ricky Strickland, Fire Marshal, Cumberland County, and Mr. Wesley H. Greene, Fire Chief, Mount Airy, spoke in favor of the bill and answered questions of committee members.

No action was taken on House Bill 234.

Representative Neely appointed the following subcommittee to study House Bill 234:

Representative Berry, Chair
Representative Hensley
Representative McMahan
Representative Wilkins

The meeting was adjourned at 1:50 P.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 134 A BILL TO BE ENTITLED AN ACT TO ENACT THE REVISED ARTICLE 8 OF THE UNIFORM COMMERCIAL CODE AND CONFORMING AND MISCELLANEOUS AMENDMENTS TO THE UNIFORM COMMERCIAL CODE AND OTHER GENERAL STATUTES, 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 1995

H D

H197-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 197
THIS IS A DRAFT 4-MAR-97 08:57:02
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Judicial Timber Sale/Sealed Bid. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROCEDURE FOR CONDUCTING JUDICIAL SALES OF TIMBER BY SEALED BID, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-339.3A reads as rewritten:

"**§ 1-339.3A. Judge or clerk may order public or private sale.**

The judge or clerk of court having jurisdiction has authority in his discretion to determine whether a sale of either real or personal property shall be a public or private ~~sale.~~ sale and whether a public sale of timber shall be by auction or by sealed bid. Any private sale conducted under an order issued prior to July 1, 1955 by a judge or clerk of court having jurisdiction is hereby validated as to the order that ~~such~~ the sale be a private sale."

Section 2. G.S. 1-339.8(a) reads as rewritten:

"(a) When an order of public sale directs the sales of separate tracts of real property situated in different counties, exclusive jurisdiction over ~~such~~ the sale remains in the superior or district court of the county where the proceeding, in which the order of sale was issued, is pending, but there shall be a separate

advertisement, sale and report of sale with respect to the property in each county. In any such sale proceeding, the clerk of the superior court of the county where the original order of sale was issued, has jurisdiction with respect to the resale of separate tracts of property situated in other counties as well as in the clerk's own county, and when the public sale is by auction an upset bid may be filed only with ~~such~~ that clerk, except in those cases where the judge retains resale jurisdiction pursuant to G.S. 1-339.27."

Section 3. G.S. 1-339.8(c) reads as rewritten:

"(c) ~~The sale,~~ When the public sale is by auction, the sale and each subsequent resale, of each ~~such~~ separate tract shall be subject to a separate upset bid; and to the extent deemed necessary by the judge or clerk of court of the county where the original order of sale was issued, the sale of each tract, after an upset bid thereon, shall be treated as a separate sale for the purpose of determining the procedure applicable thereto."

Section 4. G.S. 1-339.13(a) reads as rewritten:

"(a) Whenever a public sale is ordered, the order of sale shall

(1) Designate the person authorized to hold the sale;

(2) Direct that the property be sold at public auction to the highest ~~bidder;~~ bidder or, in the case of a sale of timber, direct that the timber be sold to the highest bidder and specify whether the sale is to be by public auction or by sealed bid;

(3) Describe real property to be sold, by reference or otherwise, sufficiently to identify it;

(4) Describe personal property to be sold, by reference or otherwise, sufficiently to indicate its nature and quantity;

(5) Designate, consistently with G.S. 1-339.6, the county and the place therein at which the sale is to be held; ~~and~~

(6) Prescribe the terms of sale, specifying the amount of the cash deposit, if any, to be made by the highest bidder at the ~~sale.~~ sale; and

(7) If the sale is to be a sale of timber by sealed bid, specify:

a. The minimum number of bids that must be submitted, which shall not be less than three, and

b. The time at which any cash deposit required of the highest bidder must be made, which shall not be more than three business days after the date on which the sealed bids are opened."

Section 5. G.S. 1-339.13(b) reads as rewritten:

"(b) The order of public sale may also, but is not required to

(1) State the method by which the property shall be sold, pursuant to G.S. 1-339.9;

(2) Direct any posting of the notice of sale or any advertisement of the sale, in addition to that required by G.S. 1-339.17 in the case of real property or G.S. 1-339.18 in the case of personal property, which the judge or clerk of the superior court deems ~~advantageous.~~ advantageous; and

(3) Specify the number of appraisals to be obtained pursuant to G.S. 1-339.13A."

Section 6. Chapter 1 of the General Statutes is amended by adding a new section to read:

"**§ 1-339.13A. Public sale of timber by sealed bid; appraisal, bid procedure.**

(a) When a sale of timber by sealed bid is ordered, the person holding the sale, before giving notice of the sale, shall:

(1) Obtain one or more appraisals of the timber to be sold;

(2) Determine the place at which and the manner and form in which sealed bids should be submitted;

(3) Determine the first date on which sealed bids will be accepted, which shall not be less than five days after the date on which the notice of sale is first published pursuant to G.S. 1-339.17; and

(4) Determine the date, time, and place at which sealed bids will be opened.

(b) Each appraisal obtained pursuant to subsection (a) of this section shall be made by a registered professional forester or other person qualified by training and experience to appraise the timber to be sold. Copies of all appraisals obtained pursuant to this section shall be included in the report required under G.S. 1-339.24. A person conducting an appraisal pursuant to this section, including a partnership, corporation, company, or other business of the appraiser, may not submit a bid on the timber which is the subject of the appraisal.

(c) All sealed bids received on or after the first date set for submitting bids and at or before the time set for opening the bids shall be opened publicly at that time at the place set for doing so. If the minimum number of bids is received and there is only one highest bid, that bid shall be announced at that time; the highest bidder is the purchaser and all bidders shall immediately be notified of that fact. If the minimum number of bids is not received, or if two or more bids in the same amount are the highest bids, that fact shall be announced at that time, and all bidders shall immediately be notified of that fact; the person holding the sale shall then obtain a new order of sale."

Section 7. G.S. 1-339.15 reads as rewritten:

"**§ 1-339.15. Public sale; contents of notice of sale.**

The notice of public sale ~~shall~~ shall:

(1) Refer to the order authorizing the sale;

(2) ~~Designate~~ If the sale is to be by public auction, designate the date, hour and place of sale;

(2a) If the sale is to be a sale of timber by sealed bid, specify:

a. The date on which sealed bids will first be accepted;

b. The place or address at which sealed bids are to be submitted;

c. The manner and form in which sealed bids are to be submitted;

d. The time and place at which any sealed bids received will be opened; and

e. The minimum number of bids required, as determined pursuant to G.S. 1-339.13(a)(7);

(3) Describe real property to be sold, by reference or otherwise, sufficiently to identify it, and may add ~~such~~ any further description as will acquaint bidders with the nature and location of the property;

(4) Describe personal property to be sold sufficiently to indicate its nature and quantity, and may add ~~such~~ any further description as will acquaint bidders with the nature of the property;

(5) State the terms of the sale, specifying the amount of the cash deposit, if any, to be made by the highest bidder at the ~~sale; and~~ sale and, in the case of a sale by sealed bid, the date by which any deposit shall be made, as determined pursuant to G.S. 1-339.13(a)(7); and

(6) Include any other provisions required by the order of sale to be included therein."

Section 8. G.S. 1-339.17 reads as rewritten:

"**§ 1-339.17. Public sale; posting and publishing notice of sale of real property.**

(a) The notice of public sale of real property shall

(1) Be posted, ~~at the courthouse door~~ in the area designated by the clerk of superior court for the posting of notices in the county in which the property is situated, for thirty days immediately preceding the sale,

(2) And in addition thereto,

a. If a newspaper qualified for legal advertising is published in the county, the notice shall be published in such a newspaper once a week for at least four successive weeks, but

b. If no ~~such~~ newspaper qualified for legal advertising is published in the county, then notice shall be published once a week for at least four successive weeks in a newspaper having a general circulation in the county.

(b) When the notice of public sale is published in a newspaper,

(1) The period from the date of the first publication to the date of the last publication, both dates inclusive, shall not be less than twenty-two days, including Sundays, and

(2) The date of the last publication shall be not more than 10 days preceding the date of the ~~sale.~~ sale in a sale by auction, or the date on which sealed bids are opened in a sale by sealed bid.

(c) When the real property to be sold is situated in more than one county, the provisions of subsections (a) and (b) of this section shall be complied with in each county in which any part of the property is situated.

(c1) When the public sale is a sale of timber by sealed bid, the notice shall also be given in writing, not less than 21 days before the date on which bids are opened, to a reasonable number of prospective timber buyers, which in all cases shall include the timber buyers listed in the office of the Division of Forest Resources for the county or counties in which the timber to be sold is located.

(d) In addition to the foregoing, the notice of public sale shall be otherwise posted or the sale shall be otherwise advertised as may be required by the judge or clerk pursuant to the provisions of G.S. 1-339.13(b)(2).

(e) If the sale is a sale of timber by sealed bid, the person holding the sale shall include in the report required by G.S. 1-339.24 an affidavit showing that the requirements of this section have been complied with and listing all the persons notified pursuant to subsection (c1) of this section."

Section 9. G.S. 1-339.18(a) reads as rewritten:

"(a) The notice of public sale of personal property, except in the case of perishable property as provided by G.S. 1-339.19, shall be posted, ~~at the courthouse door,~~ in the area designated by the clerk of superior court for the posting of notices, in the county in which the sale is to be held, for ten days immediately preceding the date of sale."

Section 10. G.S. 1-339.20(a) reads as rewritten:

"(a) A person authorized to hold a public sale by auction may postpone the sale to a day certain not later than six days, exclusive of Sunday, after the original date for the ~~sale~~ sale, and a person authorized to hold a public sale of timber by sealed bid may postpone the time for submitting and opening bids to a date, time, and place certain not later than six days, exclusive of Sunday, after the original date for the opening of bids:

(1) When there are no bidders, or

(2) When, in his judgment, the number of prospective bidders at the sale is substantially decreased by inclement weather or by any casualty, or

(3) When there are so many other sales advertised to be held at the same time and place as to make it inexpedient and impracticable, in his judgment, to hold the sale on that day, or

(4) When he is unable to hold the sale because of illness or for other good reason, or

(5) When other good cause exists."

Section 11. G.S. 1-339.20(b) reads as rewritten:

"(b) Upon postponement of public sale the person authorized to hold the sale shall personally, or through his agent or attorney

(1) At the time and place advertised for the ~~sale,~~ sale or for the opening of sealed bids, publicly announce the postponement ~~thereof, and~~ thereof;

(2) On the same day, attach to or enter on the original notice of sale or a copy thereof posted ~~at the courthouse door~~, as provided in G.S. 1-339.17 in the case of real property or G.S. 1-339.18 in the case of personal property, a notice of the ~~postponement.~~ postponement; and

(3) In the case of a public sale of timber by sealed bid, give notice of postponement to each person who submitted a bid."

Section 12. G.S. 1-339.20(c) reads as rewritten:

"(c) The ~~posted~~ notice of postponement ~~shall~~ shall:

(1) State that the sale is postponed,

(2) ~~State~~ In the case of a sale by public auction, state the hour and date to which the sale is postponed,

(2a) In the case of a sale of timber by sealed bid, state the date, time, and place to which the opening of bids is postponed,

(3) State the reason for the postponement, and

(4) Be signed by the person authorized to hold the sale, or by his agent or attorney."

Section 13. G.S. 1-339.21 reads as rewritten:

"**§ 1-339.21. Public ~~sale;~~ sale by auction; time of sale.**

(a) A public sale by auction shall begin at the time designated in the notice of sale or as soon thereafter as practicable, but not later than one hour after the time fixed therefor unless it is delayed by other sales held at the same place.

(b) No public sale by auction shall commence before 10:00 o'clock A.M. or after 4:00 o'clock P.M.

(c) No public sale by auction shall continue after 4:00 o'clock P.M., except that in cities or towns of more than 5,000 inhabitants, as shown by the most recent federal census, sales of personal property may continue until 10:00 o'clock P.M."

Section 14. G.S. 1-339.22 reads as rewritten:

"**§ 1-339.22. Public ~~sale;~~ sale by auction; continuance of uncompleted sale.**

A public sale by auction commenced but not completed within the time allowed by G.S. 1-339.21 shall be continued by the person holding the sale to a designated time between 10:00 o'clock A.M. and 4:00 o'clock P.M. the next following day, other than Sunday. In case ~~such~~ a continuance becomes necessary, the person holding the sale shall publicly announce the time to which the sale is continued."

Section 15. G.S. 1-339.24(a) reads as rewritten:

"(a) The person holding a public sale shall, within five days after the date of the ~~sale,~~ sale if the sale was by auction, or within five days after the date on which bids were opened if the sale was a sale of timber by sealed bid, file a report thereof with the clerk of the superior court of the county where the proceeding for the sale is pending."

Section 16. G.S. 1-339.24(b) reads as rewritten:

"(b) The report shall be signed by the person authorized to hold the sale, or by his agent or attorney and shall show

(1) The title of the action or proceeding;

(2) The authority under which the person making the sale acted;

(3) ~~The~~ If the sale was by public auction, the date, hour and place of the sale;

(3a) If the sale was a sale of timber by sealed bid, the date, time, and place at which the sealed bids were opened, the number of bids received, and the amount of each bid;

(4) A description of real property sold, by reference or otherwise, sufficient to identify it, and, if sold in parts, a description of each part so sold; and

(5) A description of personal property sold, sufficient to indicate the nature and quantity of the property sold to each purchaser;
(6) The names of the purchasers;
(7) The price at which the property, or each part thereof, was sold and that ~~such~~ this price was the highest bid therefor; and
(8) The date of the report."

Section 17. G.S. 1-339.24 is amended by adding a new subsection to read:

"(d) The report of a sale of timber by sealed bid shall include the information required by G.S. 1-339.13A(b) and G.S. 1-339.17(c1)."

Section 18. G.S. 1-339.25(a) reads as rewritten:

"(a) An upset bid is an advanced, increased or raised bid in a public sale by auction whereby a person offers to purchase real property theretofore sold, for an amount exceeding the reported sale price by ten percent (10%) of the first $1000 thereof plus five percent (5%) of any excess above $1000, but in any event with a minimum increase of $25, ~~such~~ the 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~~ the report; ~~such~~ the 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 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).~~ (b) of this section."

Section 19. G.S. 1-339.25 is amended by adding a new subsection to read:

"(e) The provisions of this section do not apply to public sales of timber by sealed bid."

Section 20. G.S. 1-339.26 reads as rewritten:

"**§ 1-339.26. Public ~~sale;~~ sale by auction; separate upset bids when real property sold in parts; subsequent procedure.**

When real property is sold at public sale by auction in parts, as provided by G.S. 1-339.9, the sale, and each subsequent resale, of any ~~such~~ part shall be subject to a separate upset bid; and, to the extent the judge or clerk of court having jurisdiction deems advisable, the sale of each ~~such~~ part shall thereafter

be treated as a separate sale for the purpose of determining the procedure applicable thereto."

Section 21. The catch line of G.S. 1-339.27 reads as rewritten:

"**§ 1-339.27. Public ~~sale;~~ sale by auction; resale of real property; jurisdiction; procedure.**"

Section 22. G.S. 1-339.27(a) reads as rewritten:

"(a) When in a public sale by auction an upset bid is submitted to the clerk of the superior court, together with a compliance bond if one is required, a resale shall be ordered."

Section 23. G.S. 1-339.27(b) reads as rewritten:

"(b) In any case in which a judge has jurisdiction of the original ~~sale,~~ public sale by auction, he may provide by order that jurisdiction is retained for resale purposes, and in ~~such~~ that case when an upset bid is submitted, the judge having jurisdiction shall make the order of resale. In all cases where the judge does not retain jurisdiction of a public sale by auction for resale purposes, and in all cases where a public sale by auction is originally ordered by a clerk, the clerk shall make the order of resale and shall have jurisdiction of the proceeding for resale purposes. Whenever the original order of public sale by auction is made by the judge, the terms of any resale ordered by the clerk shall be consistent with terms of the original order, and the final order of confirmation shall be made by the judge having jurisdiction of the proceeding."

Section 24. G.S. 1-339.27(c) reads as rewritten:

"(c) Notice of any resale to be held because of an upset bid ~~shall~~ shall:

(1) Be posted, ~~at the courthouse door~~ in the area designated by the clerk of superior court for the posting of notices in the county in which the property is situated, for fifteen days immediately preceding the sale,

(2) And in addition thereto,

a. If a newspaper qualified for legal advertising is published in the county, the notice shall be published in such a newspaper once a week for at least two successive weeks, but

b. If no ~~such~~ newspaper qualified for legal advertising is published in the county, the notice shall be posted at three other public places in the county for fifteen days immediately preceding the sale."

Section 25. G.S. 1-339.27 is amended by adding a new subsection to read:

"(j) The provisions of this section do not apply to public sales of timber by sealed bid."

Section 26. G.S. 1-339.28(b) reads as rewritten:

"(b) No public sale of real property of a minor or incompetent originally ordered by a clerk may be consummated until confirmed both by the clerk and by ~~the~~ a resident superior court judge ~~of the district or the~~ of, or a judge regularly holding the courts ~~of~~ of, the ~~district.~~ district or set of districts as defined in G.S. 7A-41.1(a)."

Section 27. G.S. 1-339.28(c) reads as rewritten:

"(c) No public sale of real property sold at public auction may be confirmed until the time for submitting an upset bid, pursuant to G.S. 1-339.25, has expired."

Section 28. G.S. 1-339.28 is amended by adding a new subsection to read:

"(e) No public sale of timber sold by sealed bid shall be confirmed until the court determines that the highest bid is an adequate price for the timber sold and that sale to the highest bidder is in the best interest of the person or estate for whom the timber is being sold. In so doing, the court may consider any of the following factors:

(1) The appraisals obtained by the person who conducted the sale;
(2) The number and amounts of the other bids received;
(3) Comparable sales of similar timber within the relevant time period;
(4) Short-term market factors that depressed the price at the time of the sale;
(5) The likelihood of significantly increasing the price through another sale;
(6) The additional cost of conducting another sale;
(7) The effect on the person or estate for whom the timber is being sold of the delay that would result from conducting another sale; and
(8) Any other factors in evidence that the court considers relevant."

Section 29. G.S. 1-339.30(a) reads as rewritten:

"(a) If an order of public sale by auction requires the highest bidder to make a cash deposit at the sale, and he fails to make ~~such~~ the required deposit, the person holding the sale shall at the same time and place again offer the property for sale."

Section 30. G.S. 1-339.30 is amended by adding a new subsection to read:

"(a1) If an order of public sale of timber by sealed bid requires the highest bidder to make a cash deposit and the bidder fails to make the required deposit within the time specified in the order, the judge or clerk having jurisdiction may direct that the timber be sold to the person who submitted the next highest bid or may order a resale. The procedure for a resale is the same in every respect as is provided by this Article in the case of an original public sale."

Section 31. G.S. 1-339.30(d) reads as rewritten:

"(d) When the highest bidder at a public sale or resale of real property by auction fails to comply with his bid within ten days after the tender to him of a deed for the property or after a bona fide attempt to tender ~~such~~ the deed, the judge or clerk having jurisdiction may order a resale. The procedure for ~~such~~ a resale of real property is the same in every respect as is provided by this Article in the case of an original public sale of real property except that the provisions of G.S. 1-339.27 (c), (d) and (e) apply with respect to the posting and publishing of the notice of ~~such~~ the resale."

Section 32. G.S. 1-339.30 is amended by adding a new subsection to read:

"(d1) When the highest bidder at a public sale or resale of timber by sealed bid fails to comply with his bid within 10 days after the tender to him of a deed for the timber or after a bona fide attempt to tender a timber deed, the judge or clerk having jurisdiction may direct that the timber be sold to the person who submitted the next highest bid or may order a resale. The procedure for a resale is the same in every respect as is provided by this Article in the case of an original public sale."

Section 33. G.S. 1-339.30(e) reads as rewritten:

"(e) A defaulting bidder at any sale or resale is liable on his bid, and in case a resale is had because of ~~such~~ his default, he shall remain liable to the extent that the final sale price is less than his ~~bid plus~~ bid, and for all costs of ~~such~~ the resale or resales."

Section 34. This act becomes effective December 1, 1997, and applies to all judicial sales ordered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 234*

Short Title: Smoke Detector Penalties. (Public)

Sponsors: Representatives Easterling; and Adams.

Referred to: Judiciary II.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPOSE A CIVIL PENALTY AND TO MAKE IT A CLASS 3 MISDEMEANOR IF A LANDLORD FAILS TO PROVIDE, INSTALL, REPLACE, OR REPAIR A SMOKE DETECTOR IN A RESIDENTIAL RENTAL DWELLING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 42-44 reads as rewritten:

"**§ 42-44. General ~~remedies~~ remedies; penalties, and limitations.**

(a) Any right or obligation declared by this Chapter is enforceable by civil action, in addition to other remedies of law and in equity.

(a1) A court may impose a civil penalty of not less than five hundred dollars ($500.00) if a landlord fails to provide, install, replace, or repair a smoke detector as required by G.S. 42-42(a)(5).

(a2) A landlord who fails to provide, install, replace, or repair a smoke detector as required by G.S. 42-42(a)(5) shall be guilty of a Class 3 misdemeanor.

(b) Repealed by Session Laws 1979, c. 820, s. 8.

(c) The tenant may not unilaterally withhold rent prior to a judicial determination of a right to do so.

(d) A violation of this Article shall not constitute negligence per se."

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

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March 4, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: HB234 - Smoke Detector Installation/Penalties

This bill clarifies the landlord and tenant obligations in installing and maintaining smoke detectors in rental property. It also provides civil and criminal penalties for failure to fulfill the statutory obligations.

Section 1 of the bill amends G.S. 42-42(a)(5) to make it clear that the landlord is required to install smoke detectors. The previous language made it clear that they were to provide them, but was ambiguous as to whether they had to actually install them or whether they could require the tenant to install the detectors provided by the landlord. The remaining changes to G.S. 42-42(a) contained in this section are grammatical ones.

Section 2 of the bill amends G.S. 42-43(a)(7) to clear up an inconsistency between this statute and G.S. 42-42(a)(5). G.S. 42-42(a)(5) requires the tenant to notify the landlord <u>in writing</u> if the smoke detector needs replacement or repairs. G.S. 42-43(a)(7) currently allows the landlord and tenant to agree that notification must be in writing, but does not require it. This bill amends this section to require that the notification be in writing. The remaining changes to G.S. 42-43(a) contained in this section are grammatical ones.

Section 3 of the bill amends G.S. 42-44 by adding two new subsections. Subsection (a1) would allow a court to impose a civil penalty of not less than $500 if a landlord fails to provide, install, replace or repair a smoke detector. Subsection (a2) would make failure of a landlord to provide, install, replace or repair a smoke detector a Class 3 misdemeanor. A Class 3 misdemeanor is punishable by a maximum of 20 days active time at the highest prior record level.

Section 4 makes the new criminal offense contained in G.S. 42-44(a2) effective December 1, 1997. All other provisions of this act would become effective when the act becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 234*
Proposed Committee Substitute H234-LM-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Smoke Detector Installation/Penalties. (Public)

Sponsors:

Referred to: Judiciary II.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY A LANDLORD'S OBLIGATION TO INSTALL SMOKE DETECTORS, TO REQUIRE A TENANT TO NOTIFY A LANDLORD IN WRITING IF A SMOKE DETECTOR NEEDS TO BE REPLACED OR REPAIRED, AND TO IMPOSE A CIVIL PENALTY AND TO MAKE IT A CLASS 3 MISDEMEANOR IF A LANDLORD FAILS TO PROVIDE, INSTALL, REPLACE, OR REPAIR A SMOKE DETECTOR IN A RESIDENTIAL RENTAL DWELLING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 42-42(a) reads as rewritten:

"(a) The landlord shall:

(1) Comply with the current applicable building and housing codes, whether enacted before or after October 1, 1977, to the extent required by the operation of such codes; no new requirement is imposed by this subdivision (a)(1) if a structure is exempt from a current building ~~code;~~ code.

(2) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable ~~condition;~~ condition.

(3) Keep all common areas of the premises in safe ~~condition;~~ condition.

(4) Maintain in good and safe working order and promptly repair all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances supplied or required to be supplied by ~~him~~ the landlord provided that notification of needed repairs is made to the landlord in writing by the ~~tenant~~ tenant, except in emergency ~~situations; and~~ situations.

(5) Provide operable smoke detectors, either battery-operated or electrical, having an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, ~~that are installed~~ and install the smoke detectors in accordance with either the standards of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the landlord shall retain or provide as proof of compliance. The landlord ~~must~~ shall replace or repair the smoke detectors ~~provided~~ if the landlord is notified of needed replacement or repairs in writing by the tenant. Unless the landlord and the tenant have a written agreement to the contrary, the landlord ~~must~~ shall place new batteries in a battery-operated smoke detector at the beginning of a tenancy and the tenant ~~must~~ shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered as negligence on the part of the tenant or the landlord."

Section 2. G.S. 42-43(a) reads as rewritten:

"(a) The tenant shall:

(1) Keep that part of the premises ~~which he~~ that the tenant occupies and uses as clean and safe as the conditions of the premises permit and cause no unsafe or unsanitary conditions in the common areas and remainder of the premises ~~which he uses;~~ that the tenant uses.

(2) Dispose of all ashes, rubbish, garbage, and other waste in a clean and safe ~~manner;~~ manner.

(3) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition ~~permits;~~ permits.

(4) Not deliberately or negligently destroy, deface, damage, or remove any part of the premises, nor render inoperable the smoke detector provided by the landlord, or knowingly permit any person to do ~~so;~~ so.

(5) Comply with any and all obligations imposed upon the tenant by current applicable building and housing ~~codes;~~ codes.

(6) Be responsible for all damage, defacement, or removal of any property inside a dwelling unit in ~~his~~ the tenant's exclusive control unless ~~said~~ the damage, defacement or removal was due to ordinary wear and tear, acts of the landlord or ~~his~~ the landlord's agent, defective products supplied or repairs authorized by the landlord, acts of third parties not invitees of the tenant, or natural ~~forces; and~~ forces.

(7) Notify the ~~landlord~~ landlord, in writing, of the need for replacement of or repairs to a smoke detector. ~~Nothing in this bill shall prohibit an individual landlord in a written agreement with the tenant from requiring the tenant to provide notice in writing of the need for replacement of or repairs to a smoke detector.~~ Unless the landlord and the tenant have a written agreement to the contrary, the landlord ~~must~~ shall place new batteries in a battery-operated smoke detector at the beginning of a tenancy and the tenant ~~must~~ shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered as negligence on the part of the tenant or the landlord."

Section 3. G.S. 42-44 reads as rewritten:

"**§ 42-44. General ~~remedies~~ remedies; penalties, and limitations.**

(a) Any right or obligation declared by this Chapter is enforceable by civil action, in addition to other remedies of law and in equity.

(a1) A court may impose a civil penalty of not less than five hundred dollars ($500.00) if a landlord fails to provide, install, replace, or repair a smoke detector as required by G.S. 42-42(a)(5).

(a2) A landlord who fails to provide, install, replace, or repair a smoke detector as required by G.S. 42-42(a)(5) shall be guilty of a Class 3 misdemeanor.

(b) Repealed by Session Laws 1979, c. 820, s. 8.

(c) The tenant may not unilaterally withhold rent prior to a judicial determination of a right to do so.

(d) A violation of this Article shall not constitute negligence per se."

Section 4. G.S. 42-44(a2), as enacted by this act, becomes effective December 1, 1997, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

NC CHILD FATALITY TASK FORCE
HB 234: SMOKE DETECTOR PENALTIES

THE NORTH CAROLINA CHILD FATALITY TASK FORCE WAS CREATED BY THE GENERAL ASSEMBLY IN 1991 TO MAKE RECOMMENDATIONS FOR CHANGES TO LAW, RULE OR POLICY TO PROMOTE THE HEALTH, SAFETY AND WELL-BEING OF CHILDREN IN NORTH CAROLINA.

IN NORTH CAROLINA:

- IN 1992, 45 CHILDREN UNDER AGE 18 DIED IN HOUSE FIRES.
- IN 1993, 19 CHILDREN UNDER AGE 18 DIED IN HOUSE FIRES.
- IN 1994, 39 CHILDREN UNDER AGE 18 DIED IN HOUSE FIRES.
- IN 1995, 23 CHILDREN UNDER AGE 18 DIED IN HOUSE FIRES.

- SMOKE DETECTORS WERE FUNCTIONING IN ONLY 1 OF THE 25 FATAL HOUSE FIRES IN 1992.
- SMOKE DETECTORS WERE FUNCTIONING IN ONLY 6 OF THE 15 FATAL HOUSE FIRES IN 1993.
- SMOKE DETECTORS WERE FUNCTIONING IN ONLY 1 OF THE 22 FATAL HOUSE FIRES IN 1994.
- SMOKE DETECTORS WERE FUNCTIONING IN ONLY 1 OF THE 14 FATAL HOUSE FIRES IN 1995.

ONE OF THE PROUDEST ACCOMPLISHMENTS OF THE TASK FORCE WAS A LAW THAT PASSED IN THE 1995 SESSION OF THE GENERAL ASSEMBLY THAT REQUIRED SMOKE DETECTORS TO BE INSTALLED IN ALL RESIDENTIAL RENTAL PROPERTIES.

DESPITE THIS NEW LAW WHICH BECAME EFFECTIVE IN JANUARY OF 1996, CHILDREN CONTINUE TO DIE IN FIRES IN RENTED HOMES WITHOUT WORKING SMOKE DETECTORS.

SOME LANDLORDS WHO ARE AWARE OF THE NEW LAW HAVE NOT COMPLIED WITH IT. FIREFIGHTER ORGANIZATIONS HAVE PETITIONED THE TASK FORCE TO STRENGTHEN THE SMOKE DETECTOR LAW TO MAKE IT EASIER TO ENFORCE.

WORKING SMOKE DETECTORS SIGNIFICANTLY REDUCE THE RISK OF HOUSE FIRE FATALITIES AND INJURIES. THIS BILL WOULD PUT TEETH IN THE 1995 LAW AND **WILL SAVE LIVES**. WE URGE YOU TO PASS THIS BILL.

RALEIGH, N.C.
THE NEWS & OBSERVER
SUNDAY, MARCH 3, 1996

Burke County house fire kills 2 small children

Negligence charges are possible against a landlord who says he forgot to install smoke detectors.

THE ASSOCIATED PRESS

MORGANTON — The owner of a Burke County home where two children died in a fire said he forgot to install smoke detectors and that he did not know a new state law required them.

"I just forgot about it when we were working on that house and hadn't gotten back to it yet," Wilson Kincaid, 84, said Friday. "I hadn't heard about any law about that. If I had, they [detectors] would have been up."

Angelica Cooper, 3, and her brother, Zachariah, 1, died of smoke inhalation in the fire that started after another child living in the home set bedding on fire with a cigarette lighter, said Burke County Fire Marshal Kevin Stewart.

The children's mother, Emily; brother Dean, 3; sisters Niya, 4, and Chlorissa, 2; and two relatives escaped with minor injuries. The father, Bill Cooper, was at work.

A single smoke detector probably would have saved Zachariah and Angelica, Stewart said.

"Those detectors are very sensitive, and they probably would have picked up this fire at an early stage," he said. "That would have given these kids enough warning to get out before the smoke got to them."

Firefighters who rushed to the burning cinder-block home about 3 a.m. Friday pulled Zachariah from his crib, but were unable to revive him. He was pronounced dead soon after he arrived at Grace Memorial Hospital, Stewart said.

Angelica was inside a back bedroom blocked by flames and could not be reached. Her body was found in her bed after the blaze was extinguished, Stewart said.

The children's screams woke Emily Cooper, said Jean Redner, the children's grandmother.

"They were able to get the kids out of the front bedrooms, but the flames and smoke were too bad in the back bedroom," she said. "She heard Angel's voice, but she couldn't get to her."

Neighbors said they heard Emily Cooper crying for someone to help her save her babies just before fire crews arrived.

"It was terrible," said Norma Isaacs, a neighbor.

Under the state law which took effect Jan. 1, landlords are responsible for ensuring that all rental properties have working, battery-operated smoke detectors.

Stewart said he will ask 25th District Attorney David Flaherty to decide whether criminal charges are warranted.

"It's a pretty serious case when two people die," he said. "We'll let the DA decide if there is any type of criminal negligence involved here."

SECTION B

METRO

THE NEWS & OBSERVER

WEDNESDAY, APRIL 24, 1996

No smoke alarm at scene of deadly fire

The landlord of the house where a small boy died had been cited for not meeting the minimum housing code.

BY CRAIG JARVIS AND MATTHEW EISLEY
STAFF WRITERS

RALEIGH — The southwest Raleigh duplex where fire killed a young boy Sunday didn't have electricity or a smoke detector.

The family that lived there — a widowed mother and her three children — were using lanterns for light since her power had been cut off because of an overdue bill.

Police and fire investigators said Tuesday they were waiting for lab test results to pinpoint the cause of the fire and to determine whether it was accidentally set.

Christopher Jameal "C.J." Cooper, 5, died in fire in his family's 604-B Peach Road apartment. Last month the city cited landlord Norman Stanley because the home didn't meet the minimum housing code, including not having a smoke detector.

Sonya Denise Harris-Cooper, 31, said Tuesday that her children were sleeping in different rooms when the fire broke out about 10:30 p.m.

"I was trying to get to them but the smoke kept me away," the sedated woman said at Wake Medical Center. She has stayed at her daughter's bedside since the fire.

Tyeshia Cooper, 11, was admitted to the hospital to recover from smoke inhalation. Her other brother, Frederick, 9, was not injured, nor was their mother.

The woman said power had been out at her home for a couple days. Barbara Hockaday, a family friend, said she understood that the power was supposed to be turned on Friday or Monday.

A spokesman for Carolina Power & Light Co. confirmed that the home had no power, but wouldn't elaborate because of the confidentiality of customer records.

Harris-Cooper has struggled to make ends meet and has been at odds with the landlord, who twice took her to court for falling behind in the $474 monthly rent this year.

Stanley, who owns a significant portion of the low-priced housing in Raleigh, has been in trouble himself with city officials for not keeping his rentals up to code.

Under state law, landlords are required to install smoke detectors and make sure they are working when tenants move in. Tenants have to keep the batteries fresh and notify their landlord if a detector needs replacing or repairing.

A Raleigh housing inspector began an "unfit housing" case after the Coopers' neighbor in apartment A, Regina Medlin, called City Hall to complain that her heat didn't work right and her home smelled of kerosene.

The inspector found no evidence of kerosene leakage but did find that her apartment needed repairs to baseboard heaters, a wall, the shower nozzle, a door frame, the kitchen faucet and drain pipes, according to his inspection report.

The inspector also checked apartment B, where the Cooper family lived. He found that it needed repairs to its

SEE FIRE, PAGE 7B

RALEIGH N+O 5/2/96

For want of an alarm?

No one can say for sure whether a smoke detector would have saved 5-year-old "C.J." Cooper, who was sleeping when a burning candle lit a fire in his family's southwest Raleigh duplex. Would the alarm have given him time to flee? The answer is pure, and painful, speculation.

This much is known: The apartment, owned by landlord Norman Stanley, had no detector despite a state law requiring them in rental units. What's more, 27 days before the fire, a city inspector sent a letter warning Stanley of this and other housing code violations. Even then, at the time of the blaze, Stanley still had another 17 days to install a detector before he could be fined.

That's way too much time, given the risks involved in going without a smoke detector. The tragedy of C.J.'s death ought to prompt the Raleigh City Council to shorten the time that it gives landlords like Stanley to correct a violation of the smoke-detector law.

Under current city policy, the 44 days of leeway that Stanley had is typical. Usually, 20 days or more elapse between an inspection, when a property owner is notified of housing code violations, and a hearing. After that, the owner has another 20 days to come into compliance before fines kick in: $100 plus $25 for each day in violation.

That generous delay may be justified when an inspection uncovers problems requiring extensive repairs. But it makes no sense to give landlords this much time to put up something as simple, and as critical, as a smoke detector. A day or two, or a week at most, ought to be sufficient.

The council also needs to consider raising the fines for multiple violations. Under the current rules, an owner faces the same fine whether the property has one violation or 10. The present system, in effect for less than a year, has succeeded in getting the attention of landlords, who are prone to put off repairs as long as they can. Now the council needs to make refinements.

Low-income families like C.J.'s put a big chunk of their income into what is often decrepit housing provided by landlords such as Stanley, a major property owner whose disregard for the rules is well known. C.J.'s family was paying $474 a month rent for the duplex, where electrical power had been cut off because of an overdue bill. Families in such dire situations need to know that the city will not let landlords ignore rules that protect their safety.

GREENSBORO, N.C.

Landlords could be liable for lack of smoke detectors

Lawmakers are considering a bill that would fine landlords at least $500 for not installing and repairing smoke detectors in rental properties.

The Associated Press

DUNN — A fire that killed a family of five this week could prompt the General Assembly to punish landlords who don't install working smoke detectors in rental homes.

Officials investigating the Monday blaze that left Scott and Christine Moon and their three young sons dead believe the blaze was slowly ignited by a lighted cigarette.

Investigators also think a smoke detector might have been able to awaken the Moons while they still could escape, Tew said Tuesday.

"Smoke detectors could have made the difference," Tew said.

The landlord, J.W. Moore, has said he had not installed detectors because the ceilings were still wet from remodeling and another tenant had told him that the family needed a home right away.

Residential rental property owners have been required for more than a year to provide and install the devices and to replace and repair them when needed. But there is no punishment for ignoring the law.

A bill filed last week by Rep. Ruth Easterling, D-Mecklenburg, would make violation of the statute a misdemeanor and allow for a civil fine of at least $500. Sen. Bill Martin, D-Guilford, plans to sponsor the bill in the Senate. Easterling's bill was referred to a judiciary committee on Monday.

He said Tuesday that the proposal won't cost landlords too much or cause them a significant inconvenience.

"I don't think we'll have a whole lot of opposition to it," Martin said. "I would think most responsible landlords would want to do just this, and many have."

Al Deitch with the North Carolina Child Fatality Task Force says the proposed legislation could make a difference.

"If they had (smoke detectors) working in there, chances are they would have had a warning and there would not be five dead people for want of an $8 smoke detector," Deitch said Tuesday.

Thirty-nine children died in house fires in this state in 1994, according to the task force's recently released annual report. Smoke detectors were working in only one of those homes.

Many landlords say they don't know about the law. Raleigh assistant fire chief Earl Fowler said the state Fire Marshals Association has been able to spread the word through the news media in the major cities but hasn't had as much luck in some rural areas.

"There are still some places slipping through the cracks," Fowler said. "What people need to know is if they live in rental property and they don't have a smoke detector, they need to contact their landlord.

"But beyond that, until there is a penalty, there's not many avenues they can take to get the problem corrected."

RALEIGH

THE NEWS & OBSERVER
SATURDAY, FEBRUARY 22, 1997

EDITORIAL

Smoking out lax landlords

Perhaps a bill newly introduced in the state House will catch the attention of landlords with heads buried in North Carolina red clay. For more than a year, all landlords have been required to have working smoke detectors in their rentals. It's the law.

But a tragic house fire near Dunn this week in which a family of two parents and three children perished points to a statewide problem: Word about the law hasn't reached everyone. The house that burned lacked a smoke detector altogether, authorities said.

The bill by Rep. Ruth M. Easterling of Charlotte would make violation of the statute a misdemeanor and allow for a fine of at least $500. Sen. William N. Martin of Greensboro plans to sponsor the bill in the Senate. He asserts that the proposal won't cost landlords too much or cause them significant inconvenience. Let's hope not, since $500 seems a small price to pay for high-risk bungling.

Thankfully, fire fatalities across the country have dropped over the past 20 years from as many as 13,000 to about 5,000 a year, basically due to smoke detectors. Still, according to the North Carolina Child Fatality Task Force, 39 children died in house fires in this state in 1994. Smoke detectors were working in only one of those homes.

Ramshackle dwellings with safety and health hazards stretch across our state, so let's hope that others follow in Easterling's footsteps and move toward tougher enforcement. Landlords and building inspectors need to be held accountable for maintaining and approving deathtraps — and for ignoring the law.

THE NEWS & OBSERVER
FRIDAY, FEBRUARY 28, 1997

Report confirms smoke killed family

The Dunn fire chief says the five victims might have been able to escape had there been a working fire alarm.

BY GLENNA MUSANTE
STAFF WRITER

DUNN — An autopsy report released this week confirmed what fire officials had suspected: The Moon family died of smoke inhalation in a house without a working fire alarm.

Early Feb. 17, flames swept through the small rental house where Scott Moon, 32; his wife Chris, 27; and their sons, Daniel, 7, Kelly, 5, and Traviss, 3, had moved two days before.

High levels of carbon monoxide were found in blood samples from the victims, indicating that the family died of smoke inhalation before the flames reached the bedrooms.

"Levels over 60 percent carbon monoxide in the bloodstream are often fatal," said Chief Austin Tew of the Dunn Fire Department. "They had levels above 70 percent.

"This tells me the fire had been burning a long time before we got there and that it's very possible they could have escaped" if there had been a fire alarm in the house.

"If anything at all good comes from this, it's that people are realizing how important working fire alarms are," Tew said.

James Augustine, Chris Moon's father, said Thursday he plans to sue the landlord, J.W. Moore of Dunn.

"I don't want to make any money off my family dying, but I want to save another family," Augustine said. "I want their deaths to mean something."

Told about the autopsy results, Moore declined to comment.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **March 4, 1997 1:00 P.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jon Clifford	UNC School of Law
Jim Bradley	NC Dept of Insurance
Alan W. Perdue	Guilford County Fire Marshal's office
Wesley A. Greene	Chief, Mt. Airy Fire Department
Reed James	Forsyth Co. Fire Marshal's Office
Gregory H. Grayson	Wake Co. Public Safety - Raleigh NC
Ricky Strickland	Cumberland County Fire Marshal
Richard Strickland	Rocky Mount Fire Dept.
Mike Tapp	Orange County Fire Marshal
Gary Pope	Harnett County Fire Marshal Office
James Smith	Lenoir County Fire Marshal
Roger Dail	Lenoir County Fire Marshal
Paul Miller	NC State Firemen's Assoc.
Floyd M. Lewis	General Statutes Commission
R. Ray Hall	d.H.O
Paula A. Wolf	Covenant with NC's Children
[illegible]	[illegible]
[illegible]	Dept. of State
[illegible]	CFSC Franklin Co.
Tom Andrews	AOC
Gene Nixon	Child Fatality Task Force
Martha Livengood	DOA/YAID
Mary Deaton	Guardian ad Litem
[illegible]	YAID/DOA
Sheila M. McKenzy	NC Dept. of Ins.
Jim Long	Dept. of Ins
Darrell Propes	Dept of Ins

Cynthia Fuller	NC Dept. of Insurance
Joe McClees	N.C. Lawenforcement Comm
Tim Minton	N C Assoc of Realtors
Julie Rebder	NC Child Advocacy Institute
Pam Deardorff	DOA - VA10
BILL SCOGGIN	NCBA
Charles Cromer	NCATL
Julie Cunningham	NCCASA
FRED TAYLOR	WRAL-TV
A. A. Adams	Victim Advocate
Richard Unger	N.C. Ban
Barry Goldstein	DEHNR
Thomas V. Bennett	N.C. Child Fatality Task Force
DAVID ANDERS	DFI-NC
Richard O'Brien	" "
[illegible]	NAO
[illegible]	BPW/NC

MINUTES
HOUSE JUDICIARY II COMMITTEE

March 6, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on March 6, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Baddour, Berry, Bowie, Creech, Culpepper, Decker, Gardner, Goodwin, Hackney, Hensley, Russell, Saunders, and Sutton. A list of visitors is attached.

The following bills were discussed:

HB-197 JUDICIAL TIMBER SALE/SEALED BID
HB-292 TOWN MANAGERS/DUAL OFFICE HOLDING
HB-355 WAIVER OF RECORDING/DIST.CT.

Representative Culpepper was recognized to present a proposed committee substitute for HB-197 and moved it be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute is attached.

Mr. Hovis explained the committee substitute bill and answered questions of committee members.

Representative Gardner moved for a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

Representative Hensley was recognized to present HB-355 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Mr. Ralph Knott, Clerk of Superior Court, Franklin County, and Mr. Peter Powell, Associate Counsel, Administrative Office of the Courts, answered questions of committee members.

Representative Hensley moved for an unfavorable report; motion passed.

Representative Hill was recognized to present HB-292 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Mr. Andrew Romanet, General Counsel, North Carolina League of Municipalities, answered questions of committee members.

No action was taken on HB-292.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H D

H197-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 197
THIS IS A DRAFT 5-MAR-97 17:00:50
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Judicial Timber Sale/Sealed Bid. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROCEDURE FOR CONDUCTING JUDICIAL SALES OF TIMBER BY SEALED BID, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-339.3A reads as rewritten:

"**§ 1-339.3A. Judge or clerk may order public or private sale.**

The judge or clerk of court having jurisdiction has authority in his discretion to determine whether a sale of either real or personal property shall be a public or private ~~sale.~~ sale and whether a public sale of timber shall be by auction or by sealed bid. Any private sale conducted under an order issued prior to July 1, 1955 by a judge or clerk of court having jurisdiction is hereby validated as to the order that ~~such~~ the sale be a private sale."

Section 2. G.S. 1-339.8(a) reads as rewritten:

"(a) When an order of public sale directs the sales of separate tracts of real property situated in different counties, exclusive

jurisdiction over ~~such~~ the sale remains in the superior or district court of the county where the proceeding, in which the order of sale was issued, is pending, but there shall be a separate advertisement, sale and report of sale with respect to the property in each county. In any such sale proceeding, the clerk of the superior court of the county where the original order of sale was issued, has jurisdiction with respect to the resale of separate tracts of property situated in other counties as well as in the clerk's own county, and when the public sale is by auction an upset bid may be filed only with ~~such~~ that clerk, except in those cases where the judge retains resale jurisdiction pursuant to G.S. 1-339.27."

Section 3. G.S. 1-339.8(c) reads as rewritten:

"(c) ~~The sale,~~ When the public sale is by auction, the sale and each subsequent resale, of each ~~such~~ separate tract shall be subject to a separate upset bid; and to the extent deemed necessary by the judge or clerk of court of the county where the original order of sale was issued, the sale of each tract, after an upset bid thereon, shall be treated as a separate sale for the purpose of determining the procedure applicable thereto."

Section 4. G.S. 1-339.13(a) reads as rewritten:

"(a) Whenever a public sale is ordered, the order of sale shall

(1) Designate the person authorized to hold the sale;

(2) Direct that the property be sold at public auction to the highest ~~bidder;~~ bidder or, in the case of a sale of timber, direct that the timber be sold to the highest bidder and specify whether the sale is to be by public auction or by sealed bid;

(3) Describe real property to be sold, by reference or otherwise, sufficiently to identify it;

(4) Describe personal property to be sold, by reference or otherwise, sufficiently to indicate its nature and quantity;

(5) Designate, consistently with G.S. 1-339.6, the county and the place therein at which the sale is to be held; ~~and~~

(6) Prescribe the terms of sale, specifying the amount of the cash deposit, if any, to be made by the highest bidder at the ~~sale.~~ sale; and

(7) If the sale is to be a sale of timber by sealed bid, specify:
a. The minimum number of bids that must be submitted, which shall not be less than three, and
b. The time at which any cash deposit required of the highest bidder must be made, which shall not be more than three business days after the date on which the sealed bids are opened."

Section 5. G.S. 1-339.13(b) reads as rewritten:

"(b) The order of public sale may also, but is not required to

(1) State the method by which the property shall be sold, pursuant to G.S. 1-339.9;

(2) Direct any posting of the notice of sale or any advertisement of the sale, in addition to that required by G.S. 1-339.17 in the case of real property or G.S. 1-339.18 in the case of personal property, which the judge or clerk of the superior court deems ~~advantageous.~~ advantageous; and

(3) Specify the number of appraisals to be obtained pursuant to G.S. 1-339.13A."

Section 6. Chapter 1 of the General Statutes is amended by adding a new section to read:

"**§ 1-339.13A. Public sale of timber by sealed bid; appraisal, bid procedure.**

(a) When a sale of timber by sealed bid is ordered, the person holding the sale, before giving notice of the sale, shall:

(1) Obtain one or more appraisals of the timber to be sold;

(2) Determine the place at which and the manner and form in which sealed bids should be submitted;

(3) Determine the first date on which sealed bids will be accepted, which shall not be less than five days after the date on which the notice of sale is first published pursuant to G.S. 1-339.17; and

(4) Determine the date, time, and place at which sealed bids will be opened.

(b) Each appraisal obtained pursuant to subsection (a) of this section shall be made by a registered professional forester or other person qualified by training and experience to appraise the

timber to be sold. Copies of all appraisals obtained pursuant to this section shall be included in the report required under G.S. 1-339.24. A person conducting an appraisal pursuant to this section, including a partnership, corporation, company, or other business of the appraiser, may not submit a bid on the timber which is the subject of the appraisal. An appraisal conducted pursuant to this section shall remain confidential. The contents of the appraisal shall not be divulged by the appraiser to any person other than the person holding the sale nor may the appraiser conduct an appraisal of the timber for any other person until after the sale is confirmed.

(c) All sealed bids received on or after the first date set for submitting bids and at or before the time set for opening the bids shall be opened publicly at that time at the place set for doing so. If the minimum number of bids is received and there is only one highest bid, that bid shall be announced at that time; the highest bidder is the purchaser and all bidders shall immediately be notified of that fact. If the minimum number of bids is not received, or if two or more bids in the same amount are the highest bids, that fact shall be announced at that time, and all bidders shall immediately be notified of that fact; the person holding the sale shall then obtain a new order of sale."

Section 7. G.S. 1-339.15 reads as rewritten:

"**§ 1-339.15. Public sale; contents of notice of sale.**

The notice of public sale ~~shall~~ shall:

(1) Refer to the order authorizing the sale;

(2) ~~Designate~~ If the sale is to be by public auction, designate the date, hour and place of sale;

(2a) If the sale is to be a sale of timber by sealed bid, specify:

a. The date on which sealed bids will first be accepted;

b. The place or address at which sealed bids are to be submitted;

c. The manner and form in which sealed bids are to be submitted;

d. The time and place at which any sealed bids received will be opened; and

e. The minimum number of bids required, as determined pursuant to G.S. 1-339.13(a)(7);

(3) Describe real property to be sold, by reference or otherwise, sufficiently to identify it, and may add ~~such~~ any further description as will acquaint bidders with the nature and location of the property;
(4) Describe personal property to be sold sufficiently to indicate its nature and quantity, and may add ~~such~~ any further description as will acquaint bidders with the nature of the property;
(5) State the terms of the sale, specifying the amount of the cash deposit, if any, to be made by the highest bidder at the ~~sale; and~~ sale and, in the case of a sale by sealed bid, the date by which any deposit shall be made, as determined pursuant to G.S. 1-339.13(a)(7); and
(6) Include any other provisions required by the order of sale to be included therein."

Section 8. G.S. 1-339.17 reads as rewritten:

"**§ 1-339.17. Public sale; posting and publishing notice of sale of real property.**

(a) The notice of public sale of real property shall
(1) Be posted, ~~at the courthouse door~~ in the area designated by the clerk of superior court for the posting of notices in the county in which the property is situated, for thirty days immediately preceding the sale,
(2) And in addition thereto,
a. If a newspaper qualified for legal advertising is published in the county, the notice shall be published in such a newspaper once a week for at least four successive weeks, but
b. If no ~~such~~ newspaper qualified for legal advertising is published in the county, then notice shall be published once a week for at least four successive weeks in a newspaper having a general circulation in the county.

(b) When the notice of public sale is published in a newspaper,
(1) The period from the date of the first publication to the date of the last publication, both dates

inclusive, shall not be less than twenty-two days, including Sundays, and

(2) The date of the last publication shall be not more than 10 days preceding the date of the ~~sale.~~ sale in a sale by auction, or the date on which sealed bids are opened in a sale by sealed bid.

(c) When the real property to be sold is situated in more than one county, the provisions of subsections (a) and (b) of this section shall be complied with in each county in which any part of the property is situated.

(c1) When the public sale is a sale of timber by sealed bid, the notice shall also be given in writing, not less than 21 days before the date on which bids are opened, to a reasonable number of prospective timber buyers, which in all cases shall include the timber buyers listed in the office of the Division of Forest Resources for the county or counties in which the timber to be sold is located.

(d) In addition to the foregoing, the notice of public sale shall be otherwise posted or the sale shall be otherwise advertised as may be required by the judge or clerk pursuant to the provisions of G.S. 1-339.13(b)(2).

(e) If the sale is a sale of timber by sealed bid, the person holding the sale shall include in the report required by G.S. 1-339.24 an affidavit showing that the requirements of this section have been complied with and listing all the persons notified pursuant to subsection (c1) of this section."

Section 9. G.S. 1-339.18(a) reads as rewritten:

"(a) The notice of public sale of personal property, except in the case of perishable property as provided by G.S. 1-339.19, shall be posted, ~~at the courthouse door,~~ in the area designated by the clerk of superior court for the posting of notices, in the county in which the sale is to be held, for ten days immediately preceding the date of sale."

Section 10. G.S. 1-339.20(a) reads as rewritten:

"(a) A person authorized to hold a public sale by auction may postpone the sale to a day certain not later than six days, exclusive of Sunday, after the original date for the ~~sale~~ sale, and a person authorized to hold a public sale of timber by sealed bid may postpone the time for submitting and opening bids to a

date, time, and place certain not later than six days, exclusive of Sunday, after the original date for the opening of bids:

(1) When there are no bidders, or

(2) When, in his judgment, the number of prospective bidders at the sale is substantially decreased by inclement weather or by any casualty, or

(3) When there are so many other sales advertised to be held at the same time and place as to make it inexpedient and impracticable, in his judgment, to hold the sale on that day, or

(4) When he is unable to hold the sale because of illness or for other good reason, or

(5) When other good cause exists."

Section 11. G.S. 1-339.20(b) reads as rewritten:

"(b) Upon postponement of public sale the person authorized to hold the sale shall personally, or through his agent or attorney

(1) At the time and place advertised for the ~~sale,~~ sale or for the opening of sealed bids, publicly announce the postponement ~~thereof, and~~ thereof;

(2) On the same day, attach to or enter on the original notice of sale or a copy thereof posted ~~at the courthouse door~~, as provided in G.S. 1-339.17 in the case of real property or G.S. 1-339.18 in the case of personal property, a notice of the ~~postponement.~~ postponement; and

(3) In the case of a public sale of timber by sealed bid, give notice of postponement to each person who submitted a bid."

Section 12. G.S. 1-339.20(c) reads as rewritten:

"(c) The ~~posted~~ notice of postponement ~~shall~~ shall:

(1) State that the sale is postponed,

(2) ~~State~~ In the case of a sale by public auction, state the hour and date to which the sale is postponed,

(2a) In the case of a sale of timber by sealed bid, state the date, time, and place to which the opening of bids is postponed,

(3) State the reason for the postponement, and

(4) Be signed by the person authorized to hold the sale, or by his agent or attorney."

Section 13. G.S. 1-339.21 reads as rewritten:

"§ 1-339.21. Public ~~sale;~~ sale by auction; time of sale.

(a) A public sale by auction shall begin at the time designated in the notice of sale or as soon thereafter as practicable, but not later than one hour after the time fixed therefor unless it is delayed by other sales held at the same place.

(b) No public sale by auction shall commence before 10:00 o'clock A.M. or after 4:00 o'clock P.M.

(c) No public sale by auction shall continue after 4:00 o'clock P.M., except that in cities or towns of more than 5,000 inhabitants, as shown by the most recent federal census, sales of personal property may continue until 10:00 o'clock P.M."

Section 14. G.S. 1-339.22 reads as rewritten:

"§ 1-339.22. Public ~~sale;~~ sale by auction; continuance of uncompleted sale.

A public sale by auction commenced but not completed within the time allowed by G.S. 1-339.21 shall be continued by the person holding the sale to a designated time between 10:00 o'clock A.M. and 4:00 o'clock P.M. the next following day, other than Sunday. In case ~~such~~ a continuance becomes necessary, the person holding the sale shall publicly announce the time to which the sale is continued."

Section 15. G.S. 1-339.24(a) reads as rewritten:

"(a) The person holding a public sale shall, within five days after the date of the ~~sale,~~ sale if the sale was by auction, or within five days after the date on which bids were opened if the sale was a sale of timber by sealed bid, file a report thereof with the clerk of the superior court of the county where the proceeding for the sale is pending."

Section 16. G.S. 1-339.24(b) reads as rewritten:

"(b) The report shall be signed by the person authorized to hold the sale, or by his agent or attorney and shall show

(1) The title of the action or proceeding;

(2) The authority under which the person making the sale acted;

(3) ~~The~~ If the sale was by public auction, the date, hour and place of the sale;

(3a) If the sale was a sale of timber by sealed bid, the date, time, and place at which the sealed bids were

opened, the number of bids received, and the amount of each bid;

(4) A description of real property sold, by reference or otherwise, sufficient to identify it, and, if sold in parts, a description of each part so sold; and

(5) A description of personal property sold, sufficient to indicate the nature and quantity of the property sold to each purchaser;

(6) The names of the purchasers;

(7) The price at which the property, or each part thereof, was sold and that ~~such~~ this price was the highest bid therefor; and

(8) The date of the report."

Section 17. G.S. 1-339.24 is amended by adding a new subsection to read:

"(d) The report of a sale of timber by sealed bid shall include the information required by G.S. 1-339.13A(b) and G.S. 1-339.17(c1)."

Section 18. G.S. 1-339.25(a) reads as rewritten:

"(a) An upset bid is an advanced, increased or raised bid in a public sale by auction whereby a person offers to purchase real property theretofore sold, for an amount exceeding the reported sale price by ten percent (10%) of the first $1000 thereof plus five percent (5%) of any excess above $1000, but in any event with a minimum increase of $25, ~~such~~ the 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~~ the report; ~~such~~ the 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 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).~~ (b) of this section."

Section 19. G.S. 1-339.25 is amended by adding a new subsection to read:

"(e) The provisions of this section do not apply to public sales of timber by sealed bid."

Section 20. G.S. 1-339.26 reads as rewritten:

"**§ 1-339.26. Public ~~sale;~~ sale by auction; separate upset bids when real property sold in parts; subsequent procedure.**

When real property is sold at public sale by auction in parts, as provided by G.S. 1-339.9, the sale, and each subsequent resale, of any ~~such~~ part shall be subject to a separate upset bid; and, to the extent the judge or clerk of court having jurisdiction deems advisable, the sale of each ~~such~~ part shall thereafter be treated as a separate sale for the purpose of determining the procedure applicable thereto."

Section 21. The catch line of G.S. 1-339.27 reads as rewritten:

"**§ 1-339.27. Public ~~sale;~~ sale by auction; resale of real property; jurisdiction; procedure.**"

Section 22. G.S. 1-339.27(a) reads as rewritten:

"(a) When in a public sale by auction an upset bid is submitted to the clerk of the superior court, together with a compliance bond if one is required, a resale shall be ordered."

Section 23. G.S. 1-339.27(b) reads as rewritten:

"(b) In any case in which a judge has jurisdiction of the original ~~sale,~~ public sale by auction, he may provide by order that jurisdiction is retained for resale purposes, and in ~~such~~ that case when an upset bid is submitted, the judge having jurisdiction shall make the order of resale. In all cases where the judge does not retain jurisdiction of a public sale by auction for resale purposes, and in all cases where a public sale by auction is originally ordered by a clerk, the clerk shall make the order of resale and shall have jurisdiction of the proceeding for resale purposes. Whenever the original order of public sale by auction is made by the judge, the terms of any resale ordered by the clerk shall be consistent with terms of the original order, and the final order of confirmation shall be made by the judge having jurisdiction of the proceeding."

Section 24. G.S. 1-339.27(c) reads as rewritten:

"(c) Notice of any resale to be held because of an upset bid ~~shall~~ shall:

(1) Be posted, ~~at the courthouse door~~ in the area designated by the clerk of superior court for the posting of notices in the county in which the property is situated, for fifteen days immediately preceding the sale,

(2) And in addition thereto,

a. If a newspaper qualified for legal advertising is published in the county, the notice shall be published in such a newspaper once a week for at least two successive weeks, but

b. If no ~~such~~ newspaper qualified for legal advertising is published in the county, the notice shall be posted at three other public places in the county for fifteen days immediately preceding the sale."

Section 25. G.S. 1-339.27 is amended by adding a new subsection to read:

"(j) The provisions of this section do not apply to public sales of timber by sealed bid."

Section 26. G.S. 1-339.28(b) reads as rewritten:

"(b) No public sale of real property of a minor or incompetent originally ordered by a clerk may be consummated until confirmed both by the clerk and by ~~the~~ a resident superior court judge ~~of the district or the~~ of, or a judge regularly holding the courts ~~of~~ of, the ~~district.~~ district or set of districts as defined in G.S. 7A-41.1(a)."

Section 27. G.S. 1-339.28(c) reads as rewritten:

"(c) No public sale of real property sold at public auction may be confirmed until the time for submitting an upset bid, pursuant to G.S. 1-339.25, has expired."

Section 28. G.S. 1-339.28 is amended by adding a new subsection to read:

"(e) No public sale of timber sold by sealed bid shall be confirmed until the court determines that the highest bid is an adequate price for the timber sold and that sale to the highest bidder is in the best interest of the person or estate for whom the timber is being sold. In so doing, the court may consider any of the following factors:

(1) The appraisals obtained by the person who conducted the sale;
(2) The number and amounts of the other bids received;
(3) Comparable sales of similar timber within the relevant time period;
(4) Short-term market factors that depressed the price at the time of the sale;
(5) The likelihood of significantly increasing the price through another sale;
(6) The additional cost of conducting another sale;
(7) The effect on the person or estate for whom the timber is being sold of the delay that would result from conducting another sale; and
(8) Any other factors in evidence that the court considers relevant."

Section 29. G.S. 1-339.30(a) reads as rewritten:

"(a) If an order of public sale by auction requires the highest bidder to make a cash deposit at the sale, and he fails to make ~~such~~ the required deposit, the person holding the sale shall at the same time and place again offer the property for sale."

Section 30. G.S. 1-339.30 is amended by adding a new subsection to read:

"(a1) If an order of public sale of timber by sealed bid requires the highest bidder to make a cash deposit and the bidder fails to make the required deposit within the time specified in the order, the judge or clerk having jurisdiction may direct that the timber be sold to the person who submitted the next highest bid or may order a resale. The procedure for a resale is the same in every respect as is provided by this Article in the case of an original public sale."

Section 31. G.S. 1-339.30(d) reads as rewritten:

"(d) When the highest bidder at a public sale or resale of real property by auction fails to comply with his bid within ten days after the tender to him of a deed for the property or after a bona fide attempt to tender ~~such~~ the deed, the judge or clerk having jurisdiction may order a resale. The procedure for ~~such~~ a resale of real property is the same in every respect as is provided by this Article in the case of an original public sale of real property except that the provisions of G.S. 1-339.27 (c),

(d) and (e) apply with respect to the posting and publishing of the notice of ~~such~~ the resale."

Section 32. G.S. 1-339.30 is amended by adding a new subsection to read:

"(d1) When the highest bidder at a public sale or resale of timber by sealed bid fails to comply with his bid within 10 days after the tender to him of a deed for the timber or after a bona fide attempt to tender a timber deed, the judge or clerk having jurisdiction may direct that the timber be sold to the person who submitted the next highest bid or may order a resale. The procedure for a resale is the same in every respect as is provided by this Article in the case of an original public sale."

Section 33. G.S. 1-339.30(e) reads as rewritten:

"(e) A defaulting bidder at any sale or resale is liable on his bid, and in case a resale is had because of ~~such~~ his default, he shall remain liable to the extent that the final sale price is less than his ~~bid plus~~ bid, and for all costs of ~~such~~ the resale or resales."

Section 34. This act becomes effective December 1, 1997, and applies to all judicial sales ordered on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 197 A BILL TO BE ENTITLED AN ACT TO ESTABLISH A PROCEDURE FOR CONDUCTING JUDICIAL SALES OF TIMBER BY SEALED BID, AS RECOMMENDED BY THE GENERAL STATUTES 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.**

☐ 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 197
Proposed Committee Substitute H197-PCS8061

Short Title: Judicial Timber Sale/Sealed Bid. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROCEDURE FOR CONDUCTING JUDICIAL SALES OF TIMBER BY SEALED BID, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-339.3A reads as rewritten:

"**§ 1-339.3A. Judge or clerk may order public or private sale.**

The judge or clerk of court having jurisdiction has authority in his discretion to determine whether a sale of either real or personal property shall be a public or private ~~sale.~~ sale and whether a public sale of timber shall be by auction or by sealed bid. Any private sale conducted under an order issued prior to July 1, 1955 by a judge or clerk of court having jurisdiction is hereby validated as to the order that ~~such~~ the sale be a private sale."

Section 2. G.S. 1-339.8(a) reads as rewritten:

"(a) When an order of public sale directs the sales of separate tracts of real property situated in different counties, exclusive jurisdiction over ~~such~~ the sale remains in the superior or district court of the county where the proceeding, in which the order of sale was issued, is pending, but there shall be a separate advertisement, sale and report of sale with respect to the property in each county. In any such sale proceeding, the clerk of the superior court of the county where the original order of sale was issued, has jurisdiction with respect to the resale of separate tracts of property situated in other counties as well as in the clerk's own county, and when the

public sale is by auction an upset bid may be filed only with ~~such~~ that clerk, except in those cases where the judge retains resale jurisdiction pursuant to G.S. 1-339.27."

Section 3. G.S. 1-339.8(c) reads as rewritten:

"(c) ~~The sale,~~ When the public sale is by auction, the sale and each subsequent resale, of each ~~such~~ separate tract shall be subject to a separate upset bid; and to the extent deemed necessary by the judge or clerk of court of the county where the original order of sale was issued, the sale of each tract, after an upset bid thereon, shall be treated as a separate sale for the purpose of determining the procedure applicable thereto."

Section 4. G.S. 1-339.13(a) reads as rewritten:

"(a) Whenever a public sale is ordered, the order of sale shall

(1) Designate the person authorized to hold the sale;

(2) Direct that the property be sold at public auction to the highest ~~bidder;~~ bidder or, in the case of a sale of timber, direct that the timber be sold to the highest bidder and specify whether the sale is to be by public auction or by sealed bid;

(3) Describe real property to be sold, by reference or otherwise, sufficiently to identify it;

(4) Describe personal property to be sold, by reference or otherwise, sufficiently to indicate its nature and quantity;

(5) Designate, consistently with G.S. 1-339.6, the county and the place therein at which the sale is to be held; ~~and~~

(6) Prescribe the terms of sale, specifying the amount of the cash deposit, if any, to be made by the highest bidder at the ~~sale.~~ sale; and

(7) If the sale is to be a sale of timber by sealed bid, specify:

a. The minimum number of bids that must be submitted, which shall not be less than three, and

b. The time at which any cash deposit required of the highest bidder must be made, which shall not be more than three business days after the date on which the sealed bids are opened."

Section 5. G.S. 1-339.13(b) reads as rewritten:

"(b) The order of public sale may also, but is not required to

(1) State the method by which the property shall be sold, pursuant to G.S. 1-339.9;

(2) Direct any posting of the notice of sale or any advertisement of the sale, in addition to that required by G.S. 1-339.17 in the case of real property or G.S. 1-339.18 in the case of personal property, which the judge or clerk of the superior court deems ~~advantageous.~~ advantageous; and

(3) Specify the number of appraisals to be obtained pursuant to G.S. 1-339.13A."

Section 6. Chapter 1 of the General Statutes is amended by adding a new section to read:

"**§ 1-339.13A. Public sale of timber by sealed bid; appraisal, bid procedure.**

(a) When a sale of timber by sealed bid is ordered, the person holding the sale, before giving notice of the sale, shall:

(1) Obtain one or more appraisals of the timber to be sold;

(2) Determine the place at which and the manner and form in which sealed bids should be submitted;

(3) Determine the first date on which sealed bids will be accepted, which shall not be less than five days after the date on which the notice of sale is first published pursuant to G.S. 1-339.17; and

(4) Determine the date, time, and place at which sealed bids will be opened.

(b) Each appraisal obtained pursuant to subsection (a) of this section shall be made by a registered professional forester or other person qualified by training and experience to appraise the timber to be sold. Copies of all appraisals obtained pursuant to this section shall be included in the report required under G.S. 1-339.24. A person conducting an appraisal pursuant to this section, including a partnership, corporation, company, or other business of the appraiser, may not submit a bid on the timber which is the subject of the appraisal. An appraisal conducted pursuant to this section shall remain confidential. The contents of the appraisal shall not be divulged by the appraiser to any person other than the person holding the sale nor may the appraiser conduct an appraisal of the timber for any other person until after the sale is confirmed.

(c) All sealed bids received on or after the first date set for submitting bids and, at or before the time set for opening the bids, shall be opened publicly at that time at the place set for doing so. If the minimum number of bids is received and there is only one highest bid, that bid shall be announced at that time; the highest bidder is the purchaser, and all bidders shall immediately be notified of that fact. If the minimum number of bids is not received, or if two or more bids in the same amount are the highest bids, that fact shall be announced at that time, and all bidders shall immediately be notified of that fact; the person holding the sale shall then obtain a new order of sale."

Section 7. G.S. 1-339.15 reads as rewritten:

"**§ 1-339.15. Public sale; contents of notice of sale.**

The notice of public sale ~~shall~~ shall:

(1) Refer to the order authorizing the sale;

(2) ~~Designate~~ If the sale is to be by public auction, designate the date, hour and place of sale;

(2a) If the sale is to be a sale of timber by sealed bid, specify:

a. The date on which sealed bids will first be accepted;

b. The place or address at which sealed bids are to be submitted;

c. The manner and form in which sealed bids are to be submitted;
d. The time and place at which any sealed bids received will be opened; and
e. The minimum number of bids required, as determined pursuant to G.S. 1-339.13(a)(7);

(3) Describe real property to be sold, by reference or otherwise, sufficiently to identify it, and may add ~~such~~ any further description as will acquaint bidders with the nature and location of the property;

(4) Describe personal property to be sold sufficiently to indicate its nature and quantity, and may add ~~such~~ any further description as will acquaint bidders with the nature of the property;

(5) State the terms of the sale, specifying the amount of the cash deposit, if any, to be made by the highest bidder at the ~~sale; and~~ sale and, in the case of a sale by sealed bid, the date by which any deposit shall be made, as determined pursuant to G.S. 1-339.13(a)(7); and

(6) Include any other provisions required by the order of sale to be included therein."

Section 8. G.S. 1-339.17 reads as rewritten:

"**§ 1-339.17. Public sale; posting and publishing notice of sale of real property.**

(a) The notice of public sale of real property shall

(1) Be posted, ~~at the courthouse door~~ in the area designated by the clerk of superior court for the posting of notices in the county in which the property is situated, for thirty days immediately preceding the sale,

(2) And in addition thereto,

a. If a newspaper qualified for legal advertising is published in the county, the notice shall be published in such a newspaper once a week for at least four successive weeks, but

b. If no ~~such~~ newspaper qualified for legal advertising is published in the county, then notice shall be published once a week for at least four successive weeks in a newspaper having a general circulation in the county.

(b) When the notice of public sale is published in a newspaper,

(1) The period from the date of the first publication to the date of the last publication, both dates inclusive, shall not be less than twenty-two days, including Sundays, and

(2) The date of the last publication shall be not more than 10 days preceding the date of the ~~sale.~~ sale in a sale by auction, or the date on which sealed bids are opened in a sale by sealed bid.

(c) When the real property to be sold is situated in more than one county, the provisions of subsections (a) and (b) of this section shall be complied with in each county in which any part of the property is situated.

(c1) When the public sale is a sale of timber by sealed bid, the notice shall also be given in writing, not less than 21 days before the date on which bids are opened, to a reasonable number of prospective timber buyers, which in all cases shall include the timber buyers listed in the office of the Division of Forest Resources for the county or counties in which the timber to be sold is located.

(d) In addition to the foregoing, the notice of public sale shall be otherwise posted or the sale shall be otherwise advertised as may be required by the judge or clerk pursuant to the provisions of G.S. 1-339.13(b)(2).

(e) If the sale is a sale of timber by sealed bid, the person holding the sale shall include in the report required by G.S. 1-339.24 an affidavit showing that the requirements of this section have been complied with and listing all the persons notified pursuant to subsection (c1) of this section."

Section 9. G.S. 1-339.18(a) reads as rewritten:

"(a) The notice of public sale of personal property, except in the case of perishable property as provided by G.S. 1-339.19, shall be posted, ~~at the courthouse door,~~ in the area designated by the clerk of superior court for the posting of notices, in the county in which the sale is to be held, for ten days immediately preceding the date of sale."

Section 10. G.S. 1-339.20(a) reads as rewritten:

"(a) A person authorized to hold a public sale by auction may postpone the sale to a day certain not later than six days, exclusive of Sunday, after the original date for the ~~sale~~ sale, and a person authorized to hold a public sale of timber by sealed bid may postpone the time for submitting and opening bids to a date, time, and place certain not later than six days, exclusive of Sunday, after the original date for the opening of bids:

(1) When there are no bidders, or

(2) When, in his judgment, the number of prospective bidders at the sale is substantially decreased by inclement weather or by any casualty, or

(3) When there are so many other sales advertised to be held at the same time and place as to make it inexpedient and impracticable, in his judgment, to hold the sale on that day, or

(4) When he is unable to hold the sale because of illness or for other good reason, or

(5) When other good cause exists."

Section 11. G.S. 1-339.20(b) reads as rewritten:

"(b) Upon postponement of public sale the person authorized to hold the sale shall personally, or through his agent or attorney

(1) At the time and place advertised for the ~~sale,~~ sale or for the opening of sealed bids, publicly announce the postponement ~~thereof, and~~ thereof;

(2) On the same day, attach to or enter on the original notice of sale or a copy thereof posted ~~at the courthouse door~~, as provided in G.S. 1-339.17 in the case of real property or G.S. 1-339.18 in the case of personal property, a notice of the ~~postponement.~~ postponement; and

(3) In the case of a public sale of timber by sealed bid, give notice of postponement to each person who submitted a bid."

Section 12. G.S. 1-339.20(c) reads as rewritten:

"(c) The ~~posted~~ notice of postponement ~~shall~~ shall:

(1) State that the sale is postponed,

(2) ~~State~~ In the case of a sale by public auction, state the hour and date to which the sale is postponed,

(2a) In the case of a sale of timber by sealed bid, state the date, time, and place to which the opening of bids is postponed,

(3) State the reason for the postponement, and

(4) Be signed by the person authorized to hold the sale, or by his agent or attorney."

Section 13. G.S. 1-339.21 reads as rewritten:

"**§ 1-339.21. Public ~~sale;~~ sale by auction; time of sale.**

(a) A public sale by auction shall begin at the time designated in the notice of sale or as soon thereafter as practicable, but not later than one hour after the time fixed therefor unless it is delayed by other sales held at the same place.

(b) No public sale by auction shall commence before 10:00 o'clock A.M. or after 4:00 o'clock P.M.

(c) No public sale by auction shall continue after 4:00 o'clock P.M., except that in cities or towns of more than 5,000 inhabitants, as shown by the most recent federal census, sales of personal property may continue until 10:00 o'clock P.M."

Section 14. G.S. 1-339.22 reads as rewritten:

"**§ 1-339.22. Public ~~sale;~~ sale by auction; continuance of uncompleted sale.**

A public sale by auction commenced but not completed within the time allowed by G.S. 1-339.21 shall be continued by the person holding the sale to a designated time between 10:00 o'clock A.M. and 4:00 o'clock P.M. the next following day, other than Sunday. In case ~~such~~ a continuance becomes necessary, the person holding the sale shall publicly announce the time to which the sale is continued."

Section 15. G.S. 1-339.24(a) reads as rewritten:

"(a) The person holding a public sale shall, within five days after the date of the ~~sale,~~ sale if the sale was by auction, or within five days after the date on which bids were opened if the sale was a sale of timber by sealed bid, file a report thereof with the clerk of the superior court of the county where the proceeding for the sale is pending."

Section 16. G.S. 1-339.24(b) reads as rewritten:

"(b) The report shall be signed by the person authorized to hold the sale, or by his agent or attorney and shall show

(1) The title of the action or proceeding;

(2) The authority under which the person making the sale acted;
(3) ~~The~~ If the sale was by public auction, the date, hour and place of the sale;
(3a) If the sale was a sale of timber by sealed bid, the date, time, and place at which the sealed bids were opened, the number of bids received, and the amount of each bid;
(4) A description of real property sold, by reference or otherwise, sufficient to identify it, and, if sold in parts, a description of each part so sold; and
(5) A description of personal property sold, sufficient to indicate the nature and quantity of the property sold to each purchaser;
(6) The names of the purchasers;
(7) The price at which the property, or each part thereof, was sold and that ~~such~~ this price was the highest bid therefor; and
(8) The date of the report."

Section 17. G.S. 1-339.24 is amended by adding a new subsection to read:

"(d) The report of a sale of timber by sealed bid shall include the information required by G.S. 1-339.13A(b) and G.S. 1-339.17(c1)."

Section 18. G.S. 1-339.25(a) reads as rewritten:

"(a) An upset bid is an advanced, increased or raised bid in a public sale by auction whereby a person offers to purchase real property theretofore sold, for an amount exceeding the reported sale price by ten percent (10%) of the first $1000 thereof plus five percent (5%) of any excess above $1000, but in any event with a minimum increase of $25, ~~such~~ the 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~~ the report; ~~such~~ the 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 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).~~ (b) of this section."

Section 19. G.S. 1-339.25 is amended by adding a new subsection to read:

"(e) The provisions of this section do not apply to public sales of timber by sealed bid."

Section 20. G.S. 1-339.26 reads as rewritten:

"**§ 1-339.26. Public ~~sale;~~ sale by auction; separate upset bids when real property sold in parts; subsequent procedure.**

When real property is sold at public sale by auction in parts, as provided by G.S. 1-339.9, the sale, and each subsequent resale, of any ~~such~~ part shall be subject to a separate upset bid; and, to the extent the judge or clerk of court having jurisdiction deems advisable, the sale of each ~~such~~ part shall thereafter be treated as a separate sale for the purpose of determining the procedure applicable thereto."

Section 21. The catch line of G.S. 1-339.27 reads as rewritten:

"**§ 1-339.27. Public ~~sale;~~ sale by auction; resale of real property; jurisdiction; procedure.**"

Section 22. G.S. 1-339.27(a) reads as rewritten:

"(a) When in a public sale by auction an upset bid is submitted to the clerk of the superior court, together with a compliance bond if one is required, a resale shall be ordered."

Section 23. G.S. 1-339.27(b) reads as rewritten:

"(b) In any case in which a judge has jurisdiction of the original ~~sale,~~ public sale by auction, he may provide by order that jurisdiction is retained for resale purposes, and in ~~such~~ that case when an upset bid is submitted, the judge having jurisdiction shall make the order of resale. In all cases where the judge does not retain jurisdiction of a public sale by auction for resale purposes, and in all cases where a public sale by auction is originally ordered by a clerk, the clerk shall make the order of resale and shall have jurisdiction of the proceeding for resale purposes. Whenever the original order of public sale by auction is made by the judge, the terms of any resale ordered by the clerk shall be consistent with terms of the original order, and the final order of confirmation shall be made by the judge having jurisdiction of the proceeding."

Section 24. G.S. 1-339.27(c) reads as rewritten:

"(c) Notice of any resale to be held because of an upset bid ~~shall~~ shall:

(1) Be posted, ~~at the courthouse door~~ in the area designated by the clerk of superior court for the posting of notices in the county in which the property is situated, for fifteen days immediately preceding the sale,

(2) And in addition thereto,

a. If a newspaper qualified for legal advertising is published in the county, the notice shall be published in such a newspaper once a week for at least two successive weeks, but

b. If no ~~such~~ newspaper qualified for legal advertising is published in the county, the notice shall be posted at three other public places in the county for fifteen days immediately preceding the sale."

Section 25. G.S. 1-339.27 is amended by adding a new subsection to read:

"(j) The provisions of this section do not apply to public sales of timber by sealed bid."

Section 26. G.S. 1-339.28(b) reads as rewritten:

"(b) No public sale of real property of a minor or incompetent originally ordered by a clerk may be consummated until confirmed both by the clerk and by ~~the~~ a resident superior court judge ~~of the district or the~~ of, or a judge regularly holding the courts ~~of~~ of, the ~~district.~~ district or set of districts as defined in G.S. 7A-41.1(a)."

Section 27. G.S. 1-339.28(c) reads as rewritten:

"(c) No public sale of real property sold at public auction may be confirmed until the time for submitting an upset bid, pursuant to G.S. 1-339.25, has expired."

Section 28. G.S. 1-339.28 is amended by adding a new subsection to read:

"(e) No public sale of timber sold by sealed bid shall be confirmed until the court determines that the highest bid is an adequate price for the timber sold and that sale to the highest bidder is in the best interest of the person or estate for whom the timber is being sold. In so doing, the court may consider any of the following factors:

(1) The appraisals obtained by the person who conducted the sale;
(2) The number and amounts of the other bids received;
(3) Comparable sales of similar timber within the relevant time period;
(4) Short-term market factors that depressed the price at the time of the sale;
(5) The likelihood of significantly increasing the price through another sale;
(6) The additional cost of conducting another sale;
(7) The effect on the person or estate for whom the timber is being sold of the delay that would result from conducting another sale; and
(8) Any other factors in evidence that the court considers relevant."

Section 29. G.S. 1-339.30(a) reads as rewritten:

"(a) If an order of public sale by auction requires the highest bidder to make a cash deposit at the sale, and he fails to make ~~such~~ the required deposit, the person holding the sale shall at the same time and place again offer the property for sale."

Section 30. G.S. 1-339.30 is amended by adding a new subsection to read:

"(a1) If an order of public sale of timber by sealed bid requires the highest bidder to make a cash deposit and the bidder fails to make the required deposit within the time specified in the order, the judge or clerk having jurisdiction may direct that the timber be sold to the person who submitted the next highest bid or may order a resale. The procedure for a resale is the same in every respect as is provided by this Article in the case of an original public sale."

Section 31. G.S. 1-339.30(d) reads as rewritten:

"(d) When the highest bidder at a public sale or resale of real property by auction fails to comply with his bid within ten days after the tender to him of a deed for the property or after a bona fide attempt to tender ~~such~~ the deed, the judge or clerk having jurisdiction may order a resale. The procedure for ~~such~~ a resale of real property is the same in every respect as is provided by this Article in the case of an original public sale of real property except that the provisions of G.S. 1-339.27 (c),

(d) and (e) apply with respect to the posting and publishing of the notice of ~~such~~ the resale."

Section 32. G.S. 1-339.30 is amended by adding a new subsection to read:

"(d1) When the highest bidder at a public sale or resale of timber by sealed bid fails to comply with his bid within 10 days after the tender to him of a deed for the timber or after a bona fide attempt to tender a timber deed, the judge or clerk having jurisdiction may direct that the timber be sold to the person who submitted the next highest bid or may order a resale. The procedure for a resale is the same in every respect as is provided by this Article in the case of an original public sale."

Section 33. G.S. 1-339.30(e) reads as rewritten:

"(e) A defaulting bidder at any sale or resale is liable on his bid, and in case a resale is had because of ~~such~~ his default, he shall remain liable to the extent that the final sale price is less than his ~~bid plus~~ bid, and for all costs of ~~such~~ the resale or resales."

Section 34. This act becomes effective December 1, 1997, and applies to all judicial sales ordered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 355

Short Title: Waiver of Recording/Dist. Ct. (Public)

Sponsors: Representatives Hensley; Culpepper, R. Hunter, McCrary, and Neely.

Referred to: Judiciary II.

February 27, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A CIVIL TRIAL IN DISTRICT COURT WILL NOT BE REPORTED UNLESS A PARTY REQUESTS REPORTING IN WRITING OR THE COURT ORDERS REPORTING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-198(d) reads as rewritten:

"(d) Reporting of any trial ~~may be waived by consent of the parties.~~ is waived unless a party requests reporting in writing. Except as otherwise provided in subsection (e) of this section, a trial shall be reported if a party requests reporting in writing or if the court, in its discretion, orders that the trial be reported."

Section 2. This act becomes effective October 1, 1997.

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March 4, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 355—Waiver of Recording/District Court (Hensley)

Current Law: G.S. 7A-198 provides that the reporting of a civil trial in district court may be waived by the consent of the parties. This has been interpreted to require all civil trials in district court to be recorded. (There are currently no court reporters in district court. Rather, the cases are recorded and, if a transcript is required, one is prepared from the tape recording.)

Summary: House Bill 355 would amend G.S. 7A-198 to provide that the reporting of the trial in district court is automatically waived, unless a party requests reporting in writing or the court orders the trial to be reported.

The bill is a recommendation of the North Carolina Courts Commission.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 725, s. 11, made this section effective December 1, 1996, and applicable to offenses committed on or after that date.

§ 7A-198. Reporting of civil trials.

(a) Court-reporting personnel shall be utilized, if available, for the reporting of civil trials in the district court. If court reporters are not available in any county, electronic or other mechanical devices shall be provided by the Administrative Office of the Courts upon request of the chief district judge.

(b) The Administrative Office of the Courts shall from time to time investigate the state of the art and techniques of recording testimony, and shall provide such electronic or mechanical devices as are found to be most efficient for this purpose.

(c) If an electronic or other mechanical device is utilized, it shall be the duty of the clerk of the superior court or some other person designated by him to operate the device while a trial is in progress, and the clerk shall thereafter preserve the record thus produced, which may be transcribed, as required, by any person designated by the Administrative Office of the Courts. If stenotype, shorthand, or stenomask equipment is used, the original tapes, notes, discs, or other records are the property of the State, and the clerk shall keep them in his custody.

(d) Reporting of any trial may be waived by consent of the parties.

(e) Reporting will not be provided in trials before magistrates or in hearings to adjudicate and dispose of infractions in the district court.

(f) Appointment of a reporter or reporters for district court proceedings in each district court district shall be made by the chief district judge for that district. The compensation and allowances of reporters in each district shall be fixed by the chief district judge, within limits determined by the Administrative Officer of the Courts, and paid by the State.

(g) A party to a civil trial in district court may request a private agreement from the opposing party or parties to share equally in the cost of a court reporter to be selected from a list provided by the Administrative Office of the Courts. If the opposing party does not consent to share this cost, the requesting party may nevertheless pay to have a court reporter present to record the trial and, in the event that the opposing party appeals the case, that party shall reimburse the party providing the court reporter in full for the costs incurred for the court reporter's services and transcripts.

In the event that the recording device in a civil trial conducted without a court reporter fails for any reason to provide a reasonably accurate record of the trial for purposes of appeal, then the trial judge shall grant a motion for a new trial made by a losing party whose request pursuant to this section to share the cost of a court reporter was not consented to by the opposing party. (1965, c. 310, s. 1; 1969, c. 1190, s. 18; 1985, c. 764, s. 13; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1987, c. 384, s. 2; 1987 (Reg. Sess., 1988), c. 1037, s. 19; 1996, 2nd Ex. Sess., c. 18, s. 22.11.)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 355 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A CIVIL TRIAL IN DISTRICT COURT WILL NOT BE REPORTED UNLESS A PARTY REQUESTS REPORTING IN WRITING OR THE COURT ORDERS REPORTING.

☐ 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)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 292

Short Title: Town Managers/Dual Office Holding. (Public)

Sponsors: Representatives Hill, Redwine (Cosponsors); and Sutton.

Referred to: Judiciary II.

February 20, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW TOWN MANAGERS OF SMALL TOWNS TO HOLD CONCURRENTLY APPOINTIVE AND ELECTIVE OFFICES UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-147 reads as rewritten:

"**§ 160A-147. Appointment of city manager; dual office holding.**

(a) In cities whose charters provide for the council-manager form of government, the council shall appoint a city manager to serve at its pleasure. The manager shall be appointed solely on the basis of ~~his~~ the manager's executive and administrative qualifications. ~~He~~ The manager need not be a resident of the city or State at the time of ~~his~~ appointment. The office of city manager is hereby declared to be an office that may be held concurrently with other appointive (but not elective) offices pursuant to Article VI, Sec. 9, of the Constitution.

(b) Notwithstanding the provisions of subsection (a), a city manager may serve on a county board of education ~~which~~ that is elected on a non-partisan basis if the following criteria are met:

(1) The population of the city by which the city manager is employed does not exceed 10,000;

(2) The city is located in two counties; and

(3) The population of the county in which the city manager resides does not exceed 40,000.

(c) Notwithstanding the provisions of subsection (a), a city manager may hold elective office if the following criteria are met:

(1) The population of the city by which the city manager is employed does not exceed 3,000.

(2) The city manager is an elected official of a city other than the city by which the city manager is employed.

(d) For the purposes of this section, ~~The~~ population figures shall be according to the latest United States decennial figures issued at the time the second office is assumed. If census figures issued after the second office is assumed increase the city or county population beyond the limits of this ~~subsection,~~ section, the city manager may complete the term ~~on the county board of education which he~~ of elected office that the city manager is then serving."

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

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March 4, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 292-Town Manager/Dual Office Holding (Hill)

Current Law: Article VI, Sec. 9 of the North Carolina Constitution provides that no person may hold concurrently any combination of elective and appointive offices, except as provided by the General Assembly. G.S. 160A-147 provides the office of city manager may be held concurrently with other appointive, but not elective, offices.

Summary: House Bill 292 would allow a city manager to hold elective office if: (1) the population of the city where the city manager is employed does not exceed 3,000; (2) the elective office is in a city other than the city of employment.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

office, supported by evidence. State ex rel. Hyatt v. Hamme, 180 N.C. 684, 104 S.E. 174 (1920), decided under former Art. VI, § 8, Const. 1868, as rewritten in 1900.

Appeal from Judgment that Prosecuting Attorney Be Removed. — An appeal from judgment of superior court judge that a prosecuting attorney be removed for "willful misconduct or maladministration in office," etc., is upon questions of law and legal inference, if justified by the findings of fact supported by evidence. State ex rel. Hyatt v. Hamme, 180 N.C. 684, 104 S.E. 174 (1920), decided under former Art. VI, § 8, Const. 1868, as rewritten in 1900.

Cited in Brooks v. Edwards, 396 F. Supp. 662 (W.D.N.C. 1974); Broughton v. North Carolina, 717 F.2d 147 (4th Cir. 1983).

OPINIONS OF ATTORNEY GENERAL

Requirement that Applicant for Office Admit Existence of God Violates First Amendment of United States Constitution. — See Opinion of Attorney General to Mr. Clyde Smith, Deputy Secretary of State, 41 N.C.A.G. 727 (1972).

Sec. 9. Dual office holding.

(1) *Prohibitions.* It is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of authority inherent in the holding of multiple offices by an individual be avoided. Therefore, no person who holds any office or place of trust or profit under the United States or any department thereof, or under any other state or government, shall be eligible to hold any office in this State that is filled by election by the people. No person shall hold concurrently any two offices in this State that are filled by election of the people. No person shall hold concurrently any two or more appointive offices or places of trust or profit, or any combination of elective and appointive offices or places of trust or profit, except as the General Assembly shall provide by general law.

(2) *Exceptions.* The provisions of this Section shall not prohibit any officer of the military forces of the State or of the United States not on active duty for an extensive period of time, any notary public, or any delegate to a Convention of the People from holding concurrently another office or place of trust or profit under this State or the United States or any department thereof.

Cross References. — As to action by Attorney General when a person unlawfully holds office, acts to forfeit his office, etc., see § 1-515. As to eligibility of school committeemen and advisory council members to hold office, see § 115C-54.

History. — The provisions of this section are similar to those of Art. XIV, § 7, Const. 1868, as amended in 1872-1873, 1944 and 1962.

CASE NOTES

Editor's Note. — Most of the cases cited below were decided under former Art. XIV, § 7, Const. 1868, as amended.

Purpose. — The manifest intent of this section is to prevent double office holding, that is, that offices and places of public trust should not accumulate in any single person, and the superadded words of "places of trust or profit" were put in to avoid evasion in giving too technical a meaning to the preceding words. Doyle v. Aldermen of Raleigh, 89 N.C. 133 (1883), approved in Groves v. Barden, 169 N.C. 8, 84 S.E. 1042 (1915).

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **March 6, 1997**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ken Eudy	Capital Strategies
LAO Rupert	CJPL
Floyd Lewis	General Statutes Commission
[illegible]	AOC
C. D. Smith	CSC Franklin Co.
Zach Clayton	visitor w/ Rep. Kelly
[illegible]	NCATL
[illegible]	NCBA
John McMillan	Manning, Fulton & Skinner
Rob Schofield	NCJCDC
Deborah Ross	ACLU
DEWEY HILL	NC House
P. Ray Hall	General Statutes Commission
Andy Romanet	N.C.A.M.

MINUTES
HOUSE JUDICIARY II COMMITTEE

March 11, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on March 11, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Baddour, Berry, Bowie, Cansler, Creech, Culpepper, Decker, Gardner, Goodwin, Hackney, Hensley, Nesbitt, Redwine, Russell, Saunders, Shubert, Sutton, Weatherly and Wilkins. A list of visitors is attached.

The following bill was discussed:

HB-176 EQUINE ACTIVITIES/LIABILITY

Representative Ives was recognized to present the bill and answer questions of committee members. Mr. Tim Hovis, Committee Counsel, explained the bill and answered questions of committee members. A copy of the bill and bill explanation prepared by Mr. Hovis and Mr. Steve Rose, Staff Attorney, are attached.

Dr. Richard A. Mansmann, VMD, Ph.D., spoke in favor of the bill and answered questions of committee members.

Ms. Margie Rhodes, Ms. Donna Brown, Owner, Oakwood Stables, and Ms. Kathleen Young, a member of the Board of Directors for Helping Horse, spoke in support of the bill.

No action was taken on HB-176.

The meeting adjourned at 10:50 A.M.

Respectfully submitted

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 176

Short Title: Equine Activities/Duties and Liability. (Public)

Sponsors: Representatives Ives; Baker, Brown, Capps, Hall, Rayfield, Sherrill, Shubert, and Weatherly.

Referred to: Judiciary II.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY RESPONSIBILITIES FOR EQUINE 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.

"Equine Activity Liability Immunity.

"§ 106-810. Purpose; findings.

The General Assembly finds that persons who participate in equine 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. The General Assembly further finds, determines, and declares that this Article is necessary for the immediate preservation of the public peace, health, and safety. It is, therefore, the intent of the General Assembly to encourage equine activities by limiting the civil liability of those involved in such activities.

"§ 106-811. Definitions.

As used in this Article, the term:

(1) 'Engage in an equine activity' means participate in an equine activity, assist a participant in an equine activity, or assist an equine activity sponsor or equine professional. The term 'engage in an equine activity' does not include being a spectator at an

equine activity, except in cases in which the spectator places himself in an unauthorized area and in immediate proximity to the equine activity.

(2) 'Equine' means a horse, pony, mule, donkey, or hinny.

(3) 'Equine activity' means:

a. Riding an equine;

b. Participating in riding classes, therapeutic riding programs, or other classes in horsemanship;

c. Driving an equine;

d. Being a passenger on an equine or a passenger in a cart or other vehicle pulled by an equine;

e. Training an equine;

f. Boarding an equine;

g. Riding, inspecting, or evaluating an equine by a prospective purchaser or his agent;

h. Participating in equine shows, fairs, competitions, performances, or parades that involve any breed of equine and any of the equine disciplines, including, dressage, hunter and jumper horse shows, grand prix jumping, three-day events, combined training, rodeos, driving, pulling, cutting, polo, steeplechasing, English and western performance riding, endurance trail riding and western games, and hunting;

i. Participating in informal or impromptu equine activities including rides, trips, hunts, or other equine activities;

j. Hooftrimming or placing or replacing horseshoes on an equine;

k. Examining or administering medical treatment to an equine, or assisting with the examination or administration of medical treatment to an equine; and

l. Hauling, plowing, and other agricultural activities using equines.

(4) 'Equine activity sponsor' means an individual, group, club, partnership, or corporation, whether the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for an equine activity, including pony clubs; 4-H clubs; hunt clubs; riding clubs; school- and college-sponsored classes, programs, and activities; therapeutic riding programs. The term includes operators and promoters of equine facilities, including stables, clubhouses, ponyride strings, fairs, and arenas at which the activity is held.

(5) 'Equine professional' means a person engaged for compensation in:

a. Instructing a participant;

b. Renting an equine to a participant for the purpose of riding, driving, or being a passenger upon the equine;
c. Renting equipment or tack to a participant;
d. Examining or administering medical treatment to an equine; or
e. Hooftrimming or placing or replacing horseshoes on an equine.

(6) 'Inherent risks of equine activities' means those dangers or conditions which are an integral part of equine activities, including:
a. The propensity of an equine to behave in ways that may result in injury, harm, or death to persons on or around them;
b. The unpredictability of an equine'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 equines or objects; and
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 animal or not acting within his or her ability.

(7) 'Participant' means any person, whether amateur or professional, who engages in an equine activity, whether or not a fee is paid to participate in the equine activity.

"§ 106-812. Immunity from liability.

(a) Except as provided in subsection (b) of this section, an equine activity sponsor, an equine 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 equine 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 an equine activity sponsor, an equine professional, or any other person for injury, loss, damage, or death of the participant resulting from any of the inherent risks of equine activities.

(b) Nothing in subsection (a) of this section shall prevent or limit the liability of an equine activity sponsor, an equine professional, or any other person if the equine activity sponsor, equine 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 equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity and to safely manage the particular equine based on the participant's representations of his 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 which was known or should have been known to the equine activity sponsor, equine 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; or

(5) Intentionally injures the participant.

(c) Nothing in subsection (a) of this section shall prevent or limit the liability of an equine activity sponsor or an equine professional under liability provisions as set forth in the products liability laws.

"**§ 106-813. Warning required.**

(a) Every equine professional and every equine activity sponsor shall post and maintain signs which 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 equine professional or the equine activity sponsor conducts equine 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 an equine professional or by an equine activity sponsor for the providing of professional services, instruction, or the rental of equipment or tack or an equine to a participant, whether or not the contract involves equine activities on or off the location or site of the equine professional's or the equine 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, an equine activity sponsor or equine professional is not liable for an injury to or the death of a participant in equine activities resulting from the inherent risks of equine activities. Article 68, 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 an equine activity sponsor or equine 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: Rep. Charles B, Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel
Steve Rose, Staff Attorney

RE: House Bill 176-Equine Activities/Duties and Liability (Ives)

ouse Bill 176 adds a new Article to Chapter 106. It provides immunity from liability for personal injury to a participant in equine 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 equine activities and that the Article is necessary for preservation of public peace, health, and safety. States the intent of the General Assembly to encourage equine activities by limiting liability.

G.S. 106-811 - Contains various definitions. Defines "engage in an equine activity" as not including being a spectator unless the spectator places himself in an unauthorized area and in immediate proximity to the equine activity. "Equine activity" is riding and otherwise participating in programs involving horses. It also includes training, boarding, inspecting, participating in shows, fairs and other organized activities as well as informal activities, hoof trimming and horse shoeing, medical treatment, and agricultural activities. There are also definitions for "equine sponsor" and "equine professional." Sponsors include those conducting activities for profit, as well as nonprofit. Professionals include instructors, those who rent equines or equine equipment, those who administer medical treatment, and replacing horseshoes on an equine. The definition of "inherent risks of equine activities" includes those dangers which are an integral part of equine activities. "Participant" means any person engaging in equine activity, amateur or professional, regardless of whether a fee is paid.

G.S. 106-812 - Provides that an equine activity sponsor, an equine professional, or any other person, is not liable for personal injuries of a participant resulting from inherent risks of equine 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 equine 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 equine 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 an equine activity sponsor or professional is not liable for personal injuries of the participant resulting from the inherent risks of equine activities. Written contracts for the provision of equine services, instruction, or rental of equipment or an equine 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.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **March 11, 1997 10:00 A.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jerry Hartzell	Hartzell & Whiteman, 2626 Glenwood, Raleigh
BILL SCOGGIN	NCBA
David McLeod	NC Dept. of Ag.
H Cum Petty	NC Dept Agric - State Fair Horse Grapley
Colin MacNair	Buckhorn Farm, 2301 Richardson Rd., Apex N.C.
Bridget Gibbons MacNair	Buckhorn Farm, 2301 Richardson Rd. Apex 27502
Donna L. Brown	Oakwood Stables 2300 Brassfield Rd Rol
Linda Bo. Tracy	257 Summerwalk Circle Chapel Hill NC 27514
Richard A. Hansmann	North Carolina Horse Council P.O. Box 1575 Apex, NC 27502
Margie Rhodes	~~N.C. Horse Council~~ 4917 Guy-Johnston Rd Raleigh NC 27603
Beary Scarboro	NC Horse Council
Kay Harrington	N.C. Horse Council - Horse Show Manager
Nina L. Carter	Amateur Owner - 2530 Glenwood Ave Rol NC 27608
S Bullock	GHSP
Angie Harris	Commerce
Stewart Dickinson	Commerce
Kandy Jones	City of Charlotte
Kathleen Lyerly	Fairbrook Farm PO B 12281 Raleigh NC 27605
** J Carlyle Dodgen	NC Horse Council / Co-op Council of NC
** DWIGHT D EISENHOWER	MILITARY-INDUSTRIAL COMPLEX
Frank Knight	VYJ Services - Crime Control
GARY EICHELBERGER	CCPS
Laura Hartzell	MCIC
DS Martin	VMIC
Chris Cromer	NCATL
Cindy Ellen	NC Farm Bureau
Jana Ellis	NCSA

Bill Ives	NCGA
Ed Kelly	NCACC
VL McBride	NCSBLPD
Patricia Lawler	NCACC
Natalie Hawkins	Charlotte Chamber
Joe Haas	NCCSA
Jill Mills	NCATT

MINUTES
HOUSE JUDICIARY II COMMITTEE

March 11, 1997 1:00 P.M.

The North Carolina House of Representatives Judiciary II Committee met on March 11, 1997, at 1:00 P.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Berry, Bowie, Cansler, Culpepper, Decker, Gardner, McMahan, Nesbitt, Redwine, Russell, Saunders, Sutton and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-250 CHANGE TAG AGENT COMPENSATION
HB-374 MODIFY VICTIMS COMPENSATION ACT

Representative McMahan was recognized to explain HB-250 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Due to concerns of committee members, the bill was displaced until the Tuesday, March 18, 1997, meeting.

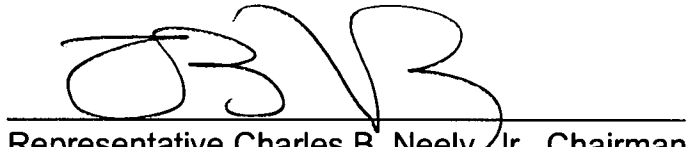
Representative Baddour was recognized to explain HB-374 and answer questions of committee members. A copy of the bill, fiscal note, handout and bill explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Mr. Gary Eichelberger, Director, Division of Victims and Justice Services, Department of Crime Control and Public Safety, spoke in support of the bill and answered questions of committee members.

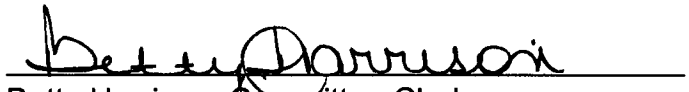
Representative Bowie moved for a favorable report; motion passed.

The meeting was adjourned at 1:50 P.M.

Respectfully submitted,



Representative Charles B. Neely, Jr., Chairman



Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 250

Short Title: Change Tag Agent Compensation. (Public)

Sponsors: Representatives McMahan, Bowie, Barbee, Crawford, Holmes, Miner; and Starnes.

Referred to: Transportation, if favorable, Judiciary II.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO INCLUDE THE COLLECTION OF AN EMISSIONS PENALTY IN THE LIST OF ITEMS FOR WHICH BRANCH AGENTS OF THE DIVISION OF MOTOR VEHICLES ARE COMPENSATED.

The General Assembly of North Carolina enacts:

Section 1. Section 155 of the 1993 Session Laws, as amended by Section 20.1 of Chapter 769 of the 1993 Session Laws and by Section 18.18 of Chapter 507 of the 1995 Session Laws (Reg. Sess., 1996), reads as rewritten:

"Sec. 155. The Division of Motor Vehicles of the Department of Transportation shall compensate a contractor with whom it has a contract under G.S. 20-63(h) at the rate of one dollar and twenty cents ($1.20) for each transaction performed in accordance with the requirements set by the Division. A transaction is any of the following activities:

(1) Issuance of a registration plate, a registration card, a registration renewal sticker, or a certificate of title.

(2) Issuance of a handicapped placard or handicapped identification card.

(3) Acceptance of an application for a personalized registration plate.

(4) Acceptance of a surrendered registration plate, registration card, or registration renewal sticker, or acceptance of an affidavit stating why a person cannot surrender a registration plate, registration card, or registration renewal sticker.

(5) Cancellation of a title because the vehicle has been junked.

(6) Acceptance of an application for, or issuance of, a refund for a fee or a tax, other than the highway use tax.

(7) Receipt of the civil penalty imposed by G.S. 20-309 for a lapse in financial responsibility or receipt of the restoration fee imposed by that statute.

(7a) Receipt of the civil penalty imposed by G.S. 20-183.8A for an emissions inspection violation.

(8) Acceptance of a notice of failure to maintain financial responsibility for a motor vehicle.

(9) Collection of the highway use tax.

Performance at the same time of any combination of the items that are listed within each subdivision or are listed within subdivisions (1) through (8) of this section is a single transaction. Performance of the item listed in subdivision (9) of this section in combination with any other items listed in this section is a separate transaction."

Section 2. This act becomes effective July 1, 1997.

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March 10, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 250-Change Tag Agent Compensation (McMahan)

House Bill 250 would add to the list of transactions for which branch agents of the Division of Motor Vehicles are compensated the collection of civil penalties for emission inspection violations. Under current law, the registration of a vehicle that was not inspected within 4 months of the required time cannot be renewed without payment of a civil penalty. The penalty is $100 if the vehicle is a pre-1981 vehicle and $250 if the vehicle is a 1981 or newer model.

House Bill 250 would become effective July 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

(4) The charged infraction is described in subdivision (a)(1) of this section, the vehicle is subject to a safety-only inspection, and the vehicle owner establishes in court that the vehicle was inspected after the citation was issued and within 30 days of the expiration date of the inspection sticker that was on the vehicle when the citation was issued.

(c) Felony. — A person who forges an inspection sticker commits a Class I felony. (1965, c. 734, s. 1; 1967, c. 692, s. 3; 1969, c. 179, s. 1; c. 620; 1973, cc. 909, 1322; 1975, c. 716, s. 5; 1979, 2nd Sess., c. 1180, s. 4; 1985, c. 764, s. 23; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1993 (Reg. Sess., 1994), c. 754, s. 1.)

§ 20-183.8A. Civil penalties against motorists for emissions violations.

The Division must assess a civil penalty against a person who owns or leases a vehicle that is subject to an emissions inspection and who does any of the following:

(1) Fails to have the vehicle inspected within four months after it is required to be inspected under this Part.

(2) Instructs or allows a person to tamper with an emission control device of the vehicle so as to make the device inoperative or fail to work properly.

(3) Incorrectly states the county of registration of the vehicle to avoid having an emissions inspection of the vehicle.

The amount of penalty is one hundred dollars ($100.00) if the vehicle is a pre-1981 vehicle and two hundred fifty dollars ($250.00) if the vehicle is a 1981 or newer model vehicle. As provided in G.S. 20-54, the registration of a vehicle may not be renewed until a penalty imposed under this subsection has been paid. (1993 (Reg. Sess., 1994), c. 754, ss. 1, 8.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 754, s. 15, made this section effective October 1, 1994.

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1996, in the second paragraph added the second sentence.

§ 20-183.8B. Civil penalties against license holders and suspension or revocation of license for emissions violations.

(a) Kinds of Violations. — The civil penalty schedule established in this section applies to emissions self-inspectors, emissions inspection stations, and emissions inspection mechanics. The schedule categorizes emissions violations into serious (Type I), minor (Type II), and technical (Type III) violations.

A serious violation is a violation of this Part or a rule adopted to implement this Part that directly affects the emission reduction benefits of the emissions inspection program. A minor violation is a violation of this Part or a rule adopted to implement this Part that reflects negligence or carelessness in conducting an emissions inspection or complying with the emissions inspection requirements but does not directly affect the emission reduction benefits of the emissions inspection program. A technical violation is a violation

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 374

Short Title: Modify Victims Compensation Act/AB. (Public)

Sponsors: Representatives Baddour; Bonner, Bowie, Braswell, Buchanan, Cole, Dedmon, Earle, Goodwin, Gulley, Hackney, Hardy, Hightower, R. Hunter, Jeffus, Luebke, McAllister, McCrary, Mercer, Miller, Moore, Morris, Mosley, Nesbitt, Rayfield, Redwine, Russell, Saunders, Sexton, Smith, Sutton, Warner, Warwick, Watson, Wilkins, and Yongue.

Referred to: Judiciary II.

March 3, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CRIME VICTIMS COMPENSATION ACT TO INCREASE THE ALLOWABLE EXPENSE FOR FUNERALS AND TO MAKE VICTIMS OF HIT AND RUN ACCIDENTS AND VICTIMS OF TERRORISM ELIGIBLE FOR COMPENSATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15B-2(1) reads as rewritten:

"(1) 'Allowable expense' means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, medically related property, and other remedial treatment and care.

Allowable expense includes a total charge not in excess of ~~two thousand dollars ($2,000)~~ three thousand five hundred dollars ($3,500) for expenses related to funeral, cremation, and burial, including transportation of a body, but excluding expenses for flowers, gravestone, and other items not directly related to the funeral service."

Section 2. G.S. 15B-2(5) reads as rewritten:

"(5) 'Criminally injurious conduct' means conduct ~~which~~ that by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, or would be so

punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this State. Criminally injurious conduct includes conduct ~~which~~ that amounts to an offense involving impaired driving as defined in ~~G.S. 20-4.01(24a)~~ G.S. 20-4.01(24a), and conduct that amounts to a violation of G.S. 20-166 if the victim was a pedestrian or was operating a vehicle moved solely by human power or a mobility impairment device. For purposes of this Chapter, a mobility impairment device is a device that is designed for and intended to be used as a means of transportation for a person with a mobility impairment, is suitable for use both inside and outside a building, and whose maximum speed does not exceed 12 miles per hour when the device is being operated by a person with a mobility impairment. Criminally injurious conduct ~~but~~ does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle when the conduct is punishable only as a violation of other provisions of Chapter 20 of the General Statutes. Criminally injurious conduct shall also include an act of terrorism, as defined in 18 U.S.C. § 2331, that is committed outside of the United States against a citizen of this State."

Section 3. No additional funds shall be appropriated to implement this act as provided in G.S. 15B-22.

Section 4. This act is effective when it becomes law and applies to claims arising from criminally injurious conduct that occurred on or after April 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 374 (First Edition)

SHORT TITLE: Modify Victims Compensation Act/AB

SPONSOR(S): Baddour

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES					
EXPENDITURES	No Additional Fiscal Impact (costs can be absorbed within current resources)				
POSITIONS:	-	-	-	-	-

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Division of Victims and Justice Services
Department of Crime Control & Public Safety

EFFECTIVE DATE: When Bill becomes law, for incidents on or after April 1, 1997

BILL SUMMARY: **H 374. MODIFY VICTIMS COMPENSATION ACT.** *TO AMEND THE CRIME VICTIMS COMPENSATION ACT TO INCREASE THE ALLOWABLE EXPENSE FOR FUNERALS AND TO MAKE VICTIMS OF HIT AND RUN ACCIDENTS AND VICTIMS OF TERRORISM ELIGIBLE FOR COMPENSATION.* The North Carolina Crime Victims Compensation Act provides for compensation for economic losses to innocent victims of criminally injurious conduct. Under current law, economic losses include expenses related to funeral/cremation/burial up to a maximum of $2,000. The definition of criminally injurious conduct specifies that motor vehicle related incidents other than those involving driving while impaired are not covered. The law also specifies that residents of North Carolina can apply for compensation related to incidents that occurred in other states, if those states do not have comparable compensation programs.

This bill makes three changes to GS 15B; (I) The $2,000 ceiling on expenses related to funeral/burial/cremation would be raised to $3,500; (II) Hit and Run Accidents, as defined in GS 20-166 would be considered criminally injurious conduct; and (III) Acts of terrorism against North Carolina citizens committed outside of the United States are also considered criminally injurious conduct so that innocent victims can file for compensation.

ASSUMPTIONS AND METHODOLOGY:
Section 3 of HB 374 specifies that no additional funds shall be appropriated to implement this act as provided in G.S. 15B-22. An increase in claims to the Crime Victims Compensation Fund does not automatically result in an increase in General Fund Appropriation. The Act does not create a right to receive compensation and if insufficient funds are available to process a claim, the claim is deferred.

In addition, it is unlikely this bill will increase claims beyond the current level of funding. The Fund carried over $1.97 Million in surplus funds from 1995-6 to 1996-7 in addition to its current state appropriation of $2.5 Million and receipts from the federal government and the Department of Correction Inmate Welfare and Prison Enterprises Funds.

Based on past experience with the Crime Victims Compensation Fund, the effect of raising the ceiling on funeral expenses is estimated to result in an additional 67 claims per year at an average cost of $1,013. Each dollar paid in claims draws down 40 cents in federal funds the following year, lowering the net cost to $40,723 per year. The effect of covering hit and run accidents that involve injury or death is estimated to generate an additional 9 claims per year, based on the frequency of hit and run accidents and the likelihood of a victim filing a claim. Using the average of all claims in 1995-96 of $2,548, the net cost of these claims after accounting for federal funds is projected to be $13,759. Finally,it is assumed that acts of terrorism outside the United States against citizens of North Carolina are rare events and no impact is expected.

Looking at all three sections of the bill, total net claims may increase $54,482. This increase should be easily absorbed within existing resources. It is also assumed that the administrative burden of these additional claims can be absorbed within existing resources.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Elisa Wolper
APPROVED BY: Tom Covington TomC
DATE: March 5, 1997

HOUSE BILL 374

This Bill changes three things:

This Bill Does:	This Bill Does Not:
Federal law requires that we make sure that our program provides compensation for Victims of Terrorism Acts. This is legislation that we must have to continue receiving a 40% match of federal funds for every North Carolina dollar spent by this program.	Require additional funds.
Increase the allowable funeral expenses from a maximum of $2,000 to a maximum of $3,500. The existing allowance of $2,000 has been the maximum since 1987. Current average for funerals in North Carolina is nearly $3,800.	Allow for payment of property damage/replacement.
This Bill allows those innocent victims of hit and run to be eligible for this program. Currently victims of hit and run along our roads are not eligible even though they are legitimate victims of crime.	

BILL SUMMARY: The North Carolina Crime Victims Compensation Act provides for compensation for economic losses to innocent victims of criminally injurious conduct. Under current law, economic losses include expenses related to funeral/cremation/burial up to a maximum of $2,000. The definition of criminally injurious conduct specifies that motor vehicle related incidents other than those involving driving while impaired are not covered. The law also specifies that residents of North Carolina can apply for compensation related to incidents that occurred in other states, if those states do not have comparable compensation programs.

This bill makes three changes to GS 15B; (I) The $2,000 ceiling on expenses related to funeral/burial/cremation would be raised to $3,500; (II) Hit and Run Accidents, as defined in GS 20-166 would be considered criminally injurious conduct; and (III) Acts of terrorism against North Carolina citizens committed outside of the United States are also considered criminally injurious conduct so that innocent victims can file for compensation.

ASSUMPTIONS AND METHODOLOGY:
An increase in claims to the Crime Victims Compensation Fund does not automatically result in an increase in General Fund Appropriation. The Act does not create a right to receive compensation and if insufficient funds are available to process a claim, the claim is deferred. Also, the Fund carried over $1.97 Million in surplus funds from 1995-6 to 1996-7 in addition to its current state appropriation of $2.5 Million and receipts from the federal government and the Department of Correction Inmate Welfare and Prison Enterprises Funds. For the purposes of this analysis, however, it is assumed that an increase in claims *will* result in a corresponding increase in appropriation.

Part I: Raise the Ceiling on Funeral Expenses
During calendar year 1995, the Crime Victims Compensation Fund paid claims for 133 funerals, 73 of which were over the $2,000 ceiling (after accounting for collateral payments such as insurance) and 40 of which were over $3,500. In 1996, 93 funeral claims were paid, 59 of them over $2,000 and 32 over $3,500. AVG FUN EXP: ALLOT $3800.00

Using the average of the past two years as a guide, an estimated 67 claims for funeral expenses can be expected to exceed the current maximum. During 1995-6, the average non-reimbursed amount per claim was $1,013. Raising the ceiling to $3,500 would be expected to cost this amount extra per claim. The total estimated cost would be $1,013 x 67 = $67,871. The Crime Victims Compensation Fund receives 40 cents in federal funding for every dollar paid in claims. The $67,871 payment would thus draw down $27,148 in federal revenues the following year.

Currently, there is an average 26 week delay between the filing of a claim and actual payment. Therefore, the earliest payments under this bill would be in January 1998. The first year's cost estimate is figured at 50% of $67,871, or $33,935.

Since this increase in allowable expenses would not be expected to increase the number of claims, no administrative costs are expected and no growth in the frequency of claims is included. However, inflationary adjustments of 3% are allowed for each of the years after 1998-99.

Part II: Cover Hit and Run Victims

The second part of the bill would add coverage for victims of hit and run accidents that did not involve impaired driving or other covered crimes. If after a hit and run accident the driver is found and charged, he may be charged with assault or manslaughter. These cases are already covered under the current act. Only those accidents where the charge is not changed would be newly affected. Current law classifies hit and run accidents that involve injury or death to an individual as felonies while those with only property damage are misdemeanors. For coverage by the Victims Compensation Fund only felony charges are relevant.

NO PROPERTY!

The Administrative Office of the Courts reports that in calendar year 1995 there were 533 defendants charged with felony hit and run (G.S. 20-166) and 79 convictions. While these two numbers are not directly comparable because of time lags between charges and conviction, each gives an estimate of an annual rate of charge/conviction for hit and run. The number of convictions probably understates the number of victims because in some cases no driver is identified. The number of charges probably overstates the number of victims because some of these charges will be dropped or changed. An average of these two numbers is used to project 306 annual hit-and-run victims. The National Association of Victims estimates roughly 3% of victims file a claim. According to this standard, 9 additional claims can be expected. The average claim paid to victims in 1995-96 was $2,548 for a total cost of $22,932. These payments would draw down $9,173 in federal dollars for a net state cost of $13,759.

It is assumed that the administrative burden of these additional claims can be absorbed within existing resources but an inflationary factor of 3% is used for years after 1998-99. As in Part I, each dollar of claims paid results in 40 cents in federal funds the following year.

Part III: Cover Terrorism

It is assumed that acts of terrorism outside the United States against citizens of North Carolina are rare events and no impact is expected.

TECHNICAL CONSIDERATIONS: None

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March 11, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: HB374 - Modify Victims Compensation Act/AB

Section 1 amends G.S. 15B-2(1) to allow the Victims Compensation Commission to pay up to $3,500 for expenses related to funeral, cremation and burial. The current limit is $2,000.

Section 2 amends G.S. 15B-2(5) in two ways. First, hit & run is added as a type of criminal conduct for which victims can be compensated **if** the victim is a pedestrian, operating a vehicle moved solely by human power or a mobility impairment device. This would not apply to victims in other motor vehicles. Second, an act of terrorism committed outside the United States against a citizen of this State, is added as compensable under this Act. This terrorism provision is required under federal law if the State is to continue to receive federal funds.

Section 3 provides that no additional funds shall be appropriated to implement the changes made in this bill.

Section 4 makes the bill effective when it becomes law and applies to claims arising from criminally injurious conduct that occurred on or after April 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 374 A BILL TO BE ENTITLED AN ACT TO AMEND THE CRIME VICTIMS COMPENSATION ACT TO INCREASE THE ALLOWABLE EXPENSE FOR FUNERALS AND TO MAKE VICTIMS OF HIT AND RUN ACCIDENTS AND VICTIMS OF TERRORISM ELIGIBLE FOR COMPENSATION.

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)

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **March 11, 1997 1:00 P.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Stobbie	NCBA
Gary Eichenberger	COOPE
Mark Kinett	V & J - CCPS
Jim Miller	NCATL
Charles Cromer	NCATL
Dick Taylor	NCAAP
Tom DeLong	Price Waterhouse, Charlotte, NC
Paul Lawler	Lawler Consulting

MINUTES
HOUSE JUDICIARY II COMMITTEE

March 18, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on March 18, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Berry, Bowie, Cansler, Creech, Culpepper, Decker, Gardner, Goodwin, Hackney, Hensley, McMahan, Nesbitt, Redwine, Russell, Saunders, Shubert, Sutton, Weatherly and Wilkins. A list of visitors is attached.

The following bill was discussed:

HB-147/OUTLAW DOG FIGHTS

Representative Weatherly was recognized the present the bill and answer questions of committee members. A copy of the bill and bill explanation prepared by Susan Hayes, Committee Counsel, are attached.

Representative Decker was recognized to send forth an amendment and moved for adoption; motion passed. A copy of the amendment is attached.

Sheriff B. J. Barnes, Guilford County Sheriff's Department, showed members a video of a dog fight and answered questions of committee members.

Ms. Kathy Hartley, Animal Control Officer, Durham County; Ron Simmons, Bureau of Animal Control, Mecklenburg County; Ms. Patrice Roesler, N. C. Association of County Commissioners, and Eddie Caldwell, Sheriff's Association, spoke in support of the bill and answered questions of committee members.

Representative Neely appointed the following subcommittee to study House Bill 147:

Representative Sutton, Chair
Representative Russell
Representative Saunders

Representative Neely appointed the following subcommittee to study House Bill 176:

Representative Culpepper, Chair
Representative Nesbitt
Representative Shubert

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 147

Short Title: Outlaw Dog Fights. (Public)

Sponsors: Representatives Weatherly; Adams, Aldridge, Allred, Barbee, Boyd-McIntyre, Brawley, Brown, Clary, Culp, Decker, Dickson, Eddins, Gray, Gulley, Hardy, Hensley, Insko, Kiser, McComas, Rayfield, Shubert, Starnes, Sutton, G. Wilson, and Yongue.

Referred to: Judiciary II.

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE FELONY OFFENSE OF DOG FIGHTING AND BAITING.

The General Assembly of North Carolina enacts:

Section 1. Article 47 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-362.2. Dog fighting and baiting.**

(a) A person who instigates, promotes, conducts, is employed at, provides a dog for, allows property under his ownership or control to be used for, or profits from an exhibition featuring the fighting or baiting of a dog is guilty of a Class I felony. A lease of property that is used or is intended to be used for an exhibition featuring the fighting or baiting of a dog is void, and a lessor who knows this use is made or is intended to be made of his property is under a duty to evict the lessee immediately.

(b) A person who owns, possesses, or trains a dog with the intent that the dog be used in an exhibition featuring the fighting or baiting of that dog is guilty of a Class I felony.

(c) A person who participates as a spectator at an exhibition featuring the fighting or baiting of a dog is guilty of a Class I felony.

(d) A person who commits a second or subsequent offense under subsection (a) of this section within three years after being convicted of any offense under this section is guilty of a Class H felony."

Section 2. G.S. 14-362.1 reads as rewritten:

"**§ 14-362.1. Animal ~~fights, other than cock fights, and animal baiting.~~ fights and baiting, other than cock fights, dog fights and dog baiting.**

(a) A person who instigates, promotes, conducts, is employed at, provides an animal for, allows property under his ownership or control to be used for, or profits from an exhibition featuring the fighting or baiting of an animal, other than a ~~cock,~~ cock or a dog, is guilty of a Class 2 misdemeanor. A lease of property that is used or is intended to be used for an exhibition featuring the fighting or baiting of an animal, other than a ~~cock,~~ cock or a dog, is void, and a lessor who knows this use is made or is intended to be made of his property is under a duty to evict the lessee immediately.

(b) A person who owns, possesses, or trains an animal, other than a ~~cock,~~ cock or a dog, with the intent that the animal be used in an exhibition featuring the fighting or baiting of that animal or any other animal is guilty of a Class 2 misdemeanor.

(c) A person who participates as a spectator at an exhibition featuring the fighting or baiting of an animal, other than a ~~cock,~~ cock or a dog, is guilty of a Class 2 misdemeanor.

(d) A person who commits an offense under subsection (a) within three years after being convicted of an offense under this section is guilty of a Class I felony.

(e) This section does not prohibit the lawful taking or training of animals under the jurisdiction and regulation of the Wildlife Resources Commission."

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

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March 18, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: HB147 - Outlaw Dog Fights

Section 1 of HB147 creates a new G.S. 14-362.2 that would increase the penalty for any person who instigates, promotes, conducts, is employed at, provides a dog for, allows property to be used for, or profits from a dog fight from a Class 2 misdemeanor to a Class I felony. A conviction for 2 or more offenses within 3 years would increase the penalty for the second and subsequent offenses to a Class H felony. Under current law, G.S. 14-362.1 contains a Class 2 misdemeanor for the same conduct for all animals except cocks, with the penalty for a second or subsequent offense within 3 years being a Class I felony.

This bill also increases the penalty for any person who owns, possesses, or trains a dog with the intent that the dog be used in fighting and also any person who is a spectator at a dog fight from a Class 2 misdemeanor to a Class I felony.

As with G.S. 14-362.1, the bill places a duty upon a lessor to evict a tenant who is using or intends to use the rental property for dog fights.

Section 2 amends the existing G.S. 14-362.1 to remove dog fights from that statute.

Section 3 makes this act effective December 1, 1997 and applies to offenses on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 147

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

H147-ASA-002 Page 1 of __

Date_____,1997

Comm. Sub. []
Amends Title []

1 moves to amend the bill on page 2, line 22,
2 by
3
4 inserting the word "committed" after the word "offenses".
5

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **March 18, 1997 10:00 A.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Dulley	DA
Mike S. Smith	NBC-17
Leslie F. Brady	Durham County Attorneys' Office
B A Barnes	Co. Wide Court Sheriff
Dena Barnes	
Susan Lewis	Guilford County Sheriff Office
Susan Sturgis	Independent Weekly
Don Simons	CHARLOTTE ANIMAL CONTROL
John Confessore	1305 McConnell Dr. 27408
Howard Hold	2516 Lakeshore Dr. Greensboro, N.C. 27407
Ray Hudnell	Wilson Co. Health Dept.
L. Eric Patterson, MD	" " " "
Stan Boggs	Durham Co. Animal Control
Cathy Hartley	Durham Co. Animal Control
Lisa Mann	Atty
Jeli Moore	
Nancy B. Rich	Justice for Animals, PO Box 33051 Raleigh NC 27636
Joyce Mills	justice for Animals, 2620 Davis ST. Ral NC 27608
ANGELA V. SIMMONS	RALEIGH POLICE DEPT. (POLICE OFFICER) 110 S. Dawson St
Deborah Ross	ACLU
Jerry Arrowood	DMV ENF.
Lou Cummins	APS of Orange County 1088 airport Rd. CH 27514
Pat Sanford	APS of Orange County
Martha Livengood	YAIO/DCA
[illegible]	NCBA
Charles Connor	NCATL
Andy Romanet	N.C.L.M.

Eddie Caldwell	NCSA/NCLEOA
Patricia Reuben	NCAE
Bo Dempster	Poyner & Spruill
Leanne Winner	EANCS
REGINALD R. HOLLEY	DOA - YAIO
Marilyn Edgerton	Youth Advocacy

MINUTES
HOUSE JUDICIARY II COMMITTEE

March 18, 1997 1:00 P.M.

The North Carolina House of Representatives Judiciary II Committee met on March 18, 1997, at 1:00 P.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Berry Bowie, Cansler, Creech, Culpepper, Gardner, Goodwin, Hackney, Hensley, McMahan, Redwine, Russell, Saunders, Shubert, Sutton and Weatherly. A list of visitors is attached.

The following bills were discussed:

HB-250 CHANGE TAG AGENT COMPENSATION
HB-406 CURFEW FOR PERSONS UNDER 18
HB-477 CPA EXAM AND RECORDS

Representative McMahan was recognized to answer questions of committee members on HB-250.

Representative Sutton moved for a favorable report and that the bill be re-referred to the Committee on Appropriations; motion passed.

Representative Baddour was recognized to explain HB-406 and answer questions of committee members. A copy of the bill and bill explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Representative Baddour was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Russell moved the amendment be incorporated into a committee substitute bill, with a favorable report as to the committee substitute bill, unfavorable as to original bill; motion passed.

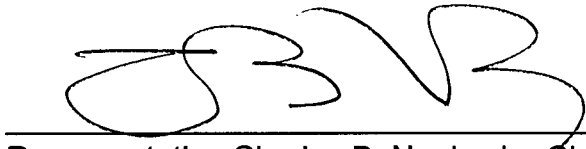
Representative Cansler was recognized to explain HB-477 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Mr. Bob Brooks, Executive Director, and Mr. Noel Allen, Attorney, North Carolina State Board of Certified Public Accountants Examiners, answered questions of committee members.

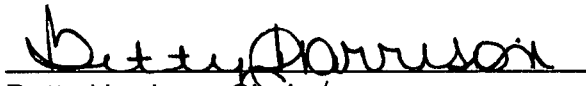
Representative Berry moved for a favorable report; motion passed.

The meeting was adjourned at 1:45 P.M.

Respectfully submitted,



Representative Charles B. Neely, Jr., Chairman



Betty Harrison, Clerk

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 250 A BILL TO BE ENTITLED AN ACT TO INCLUDE THE COLLECTION OF AN EMISSIONS PENALTY IN THE LIST OF ITEMS FOR WHICH BRANCH AGENTS OF THE DIVISION OF MOTOR VEHICLES ARE COMPENSATED.

☐ With a favorable report.

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

☐ 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 406

Short Title: Curfew for Persons Under 18. (Public)

Sponsors: Representatives Baddour and Russell (Cosponsors); Aldridge, Bonner, Bowie, Braswell, Dedmon, Earle, Goodwin, R. Hunter, Hurley, Jarrell, Jeffus, Mercer, Moore, Morris, Mosley, Preston, Redwine, Saunders, Tolson, Warwick, G. Wilson, and Yongue.

Referred to: Judiciary II.

March 5, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW CITIES AND COUNTIES TO ADOPT ORDINANCES THAT IMPOSE A CURFEW ON PERSONS UNDER THE AGE OF EIGHTEEN.

The General Assembly of North Carolina enacts:

Section 1. Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-198. Curfews.**

A city may by ordinance impose a curfew on persons under the age of 18."

Section 2. Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-142. Curfews.**

A county may by ordinance impose a curfew on persons under the age of 18."

Section 3. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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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

March 18, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: HB406 - Curfew for Persons Under 18

House Bill 406 gives cities and counties the authority to enact ordinances imposing a curfew on persons under the age of 18. This act becomes effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

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March 18, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: HB406 - Curfew for Persons Under 18

House Bill 406 gives cities and counties the authority to enact ordinances imposing a curfew on persons under the age of 18. This act becomes effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

ARTICLE 8.

Delegation and Exercise of the General Police Power.

§ 160A-174. General ordinance-making power.

(a) A city may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances.

(b) A city ordinance shall be consistent with the Constitution and laws of North Carolina and of the United States. An ordinance is not consistent with State or federal law when:

(1) The ordinance infringes a liberty guaranteed to the people by the State or federal Constitution;

(2) The ordinance makes unlawful an act, omission or condition which is expressly made lawful by State or federal law;

(3) The ordinance makes lawful an act, omission, or condition which is expressly made unlawful by State or federal law;

(4) The ordinance purports to regulate a subject that cities are expressly forbidden to regulate by State or federal law;

(5) The ordinance purports to regulate a field for which a State or federal statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation;

(6) The elements of an offense defined by a city ordinance are identical to the elements of an offense defined by State or federal law.

The fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall not preclude city ordinances requiring a higher standard of conduct or condition. (1971, c. 698, s. 1.)

Cross References. — As to limitations on enactment of Sunday-closing ordinances, see § 160A-191.

Legal Periodicals. — For article, "Regulating Obscenity Through the Power to Define and Abate Nuisances," see 14 Wake Forest L. Rev. 1 (1978).

For comment, "Municipal Tort Liability for Negligent Failure to Provide Adequate Police Protection," see 20 Wake Forest L. Rev. 897 (1984).

CASE NOTES

I. In General.
II. Sunday Ordinances.
III. Other Specific Ordinances.

I. IN GENERAL.

Editor's Note. — Many of the cases cited below were decided under former similar provisions.

Through this section and § 160A-186 the legislature has delegated to the municipalities a part of its police power, which may be exercised to protect or promote the health, morals, order, safety and general welfare of society. Town of Atlantic Beach v. Young, 307 N.C. 422, 298 S.E.2d 686, appeal dismissed, 462 U.S. 1101, 103 S. Ct. 2446, 77 L. Ed. 2d 1328 (1983).

Power to Enact Ordinances. — Established municipal authorities may enact such ordinances as are promotive of the peace and good order of the town, the limitation being that the regulations

Sec.
160A-112 through 160A-115. [Reserved.]

Article 6.

Elections.

160A-116 through 160A-127. [Repealed.]
160A-128 through 160A-145. [Reserved.]

Article 7.

Administrative Offices.

Part 1. Organization and Reorganization of City Government.

160A-146. Council to organize city government.

Part 2. Administration of Council-Manager Cities.

160A-147. Appointment of city manager; dual office holding.
160A-148. Powers and duties of manager.
160A-149. Acting city manager.
160A-150. Interim city manager.
160A-151. Mayor and councilmen ineligible to serve or act as manager.
160A-152. Applicability of Part.
160A-153, 160A-154. [Reserved.]

Part 3. Administration of Mayor-Council Cities.

160A-155. Council to provide for administration in mayor-council cities.
160A-156. Acting department heads.
160A-157. Interim department heads.
160A-158. Mayor and councilmen ineligible to serve or act as heads of departments.
160A-159. Applicability of Part.
160A-160, 160A-161. [Reserved.]

Part 4. Personnel.

160A-162. Compensation.
160A-163. Retirement benefits.
160A-164. Personnel rules.
160A-165. Personnel board.
160A-166. Participation in Social Security Act.
160A-167. Defense of employees and officers; payment of judgments.
160A-168. Privacy of employee personnel records.
160A-169. City employee political activity.
160A-170. [Reserved.]

Part 5. City Clerk.

Sec.
160A-171. City clerk; duties.
160A-172. Deputy clerk.

Part 6. City Attorney.

160A-173. City attorney; appointment and duties.

Article 8.

Delegation and Exercise of the General Police Power.

160A-174. General ordinance-making power.
160A-175. Enforcement of ordinances.
160A-176. Ordinances effective on city property outside limits.
160A-176.1. Ordinances effective in Atlantic Ocean.
160A-176.2. Ordinances effective in Atlantic Ocean.
160A-177. Enumeration not exclusive.
160A-178. Regulation of solicitation campaigns, flea markets and itinerant merchants.
160A-179. Regulation of begging.
160A-180. Regulation of aircraft overflights.
160A-181. Regulation of places of amusement.
160A-182. Abuse of animals.
160A-183. Regulation of explosive, corrosive, inflammable, or radioactive substances.
160A-184. Noise regulation.
160A-185. Emission of pollutants or contaminants.
160A-186. Regulation of domestic animals.
160A-187. Possession or harboring of dangerous animals.
160A-188. Bird sanctuaries.
160A-189. Firearms.
160A-190. Pellet guns.
160A-191. Limitations on enactment of Sunday-closing ordinances.
160A-192. [Repealed.]
160A-193. Abatement of public health nuisances.
160A-194. Regulating and licensing businesses, trades, etc.
160A-195. Regulating speed of trains.
160A-196. Sewage tie-ons.
160A-197. Anti-Apartheid requirements.
160A-198 through 160A-205. [Reserved.]

Part 7. County Attorney.

§ 153A-114. Appointment; duties.

The board of commissioners shall appoint a county attorney to serve at its pleasure and to be its legal adviser. (1973, c. 822, s. 1.)

§§ 153A-115 to 153A-120: Reserved for future codification purposes.

ARTICLE 6.

Delegation and Exercise of the General Police Power.

§ 153A-121. General ordinance-making power.

(a) A county may by ordinance define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the county; and may define and abate nuisances.

(b) This section does not authorize a county to regulate or control vehicular or pedestrian traffic on a street or highway under the control of the Board of Transportation, nor to regulate or control any right-of-way or right-of-passage belonging to a public utility, electric or telephone membership corporation, or public agency of the State. In addition, no county ordinance may regulate or control a highway right-of-way in a manner inconsistent with State law or an ordinance of the Board of Transportation.

(c) This section does not impair the authority of local boards of health to adopt rules and regulations to protect and promote public health. (1963, c. 1060, ss. 1, 11/2; 1965, cc. 388, 567, 1083, 1158; 1967, c. 495, s. 2; 1969, c. 36, s. 1; 1971, c. 702, ss. 1-3; 1973, c. 507, s. 5; c. 822, s. 1.)

Local Modification. — Orange: 1991, c. 246, s. 5.

Legal Periodicals. — For article on local legislation in the General Assembly, discussing former § 153-9(55), see 45 N.C.L. Rev. 340 (1967).

For article, "Regulating Obscenity Through the Power to Define and Abate Nuisances," see 14 Wake Forest L. Rev. 1 (1978).

For survey of 1983 developments in property law, see 62 N.C.L. Rev. 1346 (1984).

CASE NOTES

***Editor's Note.** — The cases cited below were decided under former § 153-9.*

Former § 153-9(55) Was a Home Rule Statute. — Former § 153-9(55), authorizing boards of county commissioners to adopt ordinances for the better government of the county, was a Home Rule statute, applicable throughout the State. It enabled the county commissioners of every county to enact ordinances in the exercise of the general police power within the prescribed territory, just as other statutes enable the governing bodies of cities and towns to enact ordinances in the exercise of the general police powers within their corporate limits. Whitney Stores, Inc. v. Clark, 277 N.C. 322, 177 S.E.2d 418 (1970).

And a General Law. — Former

Sec.
153A-77. Authority of boards of commissioners in certain counties over commissions, boards, agencies, etc.
153A-77.1. Single portal of entry.
153A-78 to 153A-80. [Reserved.]

Part 2. Administration in Counties Having Managers.

153A-81. Adoption of county-manager plan; appointment or designation of manager.
153A-82. Powers and duties of manager.
153A-83. Acting county manager.
153A-84. Interim county manager.
153A-85, 153A-86. [Reserved.]

Part 3. Administration in Counties Not Having Managers.

153A-87. Administration in counties not having managers.
153A-88. Acting department heads.
153A-89. Interim department heads.
153A-90, 153A-91. [Reserved.]

Part 4. Personnel.

153A-92. Compensation.
153A-93. Retirement benefits.
153A-94. Personnel rules; office hours, workdays, and holidays.
153A-95. Personnel board.
153A-96. Participation in the Social Security Act.
153A-97. Defense of officers, employees and others.
153A-98. Privacy of employee personnel records.
153A-99. County employee political activity.
153A-100. [Reserved.]

Part 5. Board of Commissioners and Other Officers, Boards, Departments, and Agencies of the County.

153A-101. Board of commissioners to direct fiscal policy of the county.
153A-102. Commissioners to fix fees.
153A-103. Number of employees in offices of sheriff and register of deeds.
153A-104. Reports from officers, employees, and agents of the county.
153A-105 to 153A-110. [Reserved.]

Part 6. Clerk to the Board of Commissioners.

Sec.
153A-111. Appointment; powers and duties.
153A-112, 153A-113. [Reserved.]

Part 7. County Attorney.

153A-114. Appointment; duties.
153A-115 to 153A-120. [Reserved.]

Article 6.

Delegation and Exercise of the General Police Power.

153A-121. General ordinance-making power.
153A-122. Territorial jurisdiction of county ordinances.
153A-123. Enforcement of ordinances.
153A-124. Enumeration not exclusive.
153A-125. Regulation of solicitation campaigns, flea markets and itinerant merchants.
153A-126. Regulation of begging.
153A-127. Abuse of animals.
153A-128. Regulation of explosive, corrosive, inflammable, or radioactive substances.
153A-129. Firearms.
153A-130. Pellet guns.
153A-131. Possession or harboring of dangerous animals.
153A-132. Removal and disposal of abandoned and junked motor vehicles.
153A-132.1. To provide for the removal and disposal of trash, garbage, etc.
153A-132.2. Regulation, restraint and prohibition of abandonment of junked motor vehicles.
153A-133. Noise regulation.
153A-134. Regulating and licensing businesses, trades, etc.
153A-135. Regulation of places of amusement.
153A-136. Regulation of solid wastes.
153A-137. Cable television franchises.
153A-138. Registration of mobile homes, house trailers, etc.
153A-139. Regulation of traffic at parking areas and driveways.
153A-140. Abatement of public health nuisances.
153A-141. Anti-Apartheid requirements.
153A-142 to 153A-145. [Reserved.]

§ 14-288.12. Powers of municipalities to enact ordinances to deal with states of emergency.

(a) The governing body of any municipality may enact ordinances designed to permit the imposition of prohibitions and restrictions during a state of emergency.

(b) The ordinances authorized by this section may permit prohibitions and restrictions:

(1) Of movements of people in public places;

(2) Of the operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate;

(3) Upon the possession, transportation, sale, purchase, and consumption of alcoholic beverages;

(4) Upon the possession, transportation, sale, purchase, storage, and use of dangerous weapons and substances, and gasoline; and

(5) Upon other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency.

The ordinances may delegate to the mayor of the municipality the authority to determine and proclaim the existence of a state of emergency, and to impose those authorized prohibitions and restrictions appropriate at a particular time.

(c) This section is intended to supplement and confirm the powers conferred by G.S. 160A-174(a), and all other general and local laws authorizing municipalities to enact ordinances for the protection of the public health and safety in times of riot or other grave civil disturbance or emergency.

(d) Any ordinance of a type authorized by this section promulgated prior to June 19, 1969 shall, if otherwise valid, continue in full force and effect without reenactment.

§ 14-288.13. Powers of counties to enact ordinances to deal with states of emergency.

(a) The governing body of any county may enact ordinances designed to permit the imposition of prohibitions and restrictions during a state of emergency.

(b) The ordinances authorized by this section may permit the same prohibitions and restrictions to be imposed as enumerated in G.S. 14-288.12(b). The ordinances may delegate to the chairman of the board of county commissioners the authority to determine and proclaim the existence of a state of emergency, and to impose those authorized prohibitions and restrictions appropriate at a particular time.

(c) No ordinance enacted by a county under the authority of this section shall apply within the corporate limits of any municipality, or within any area of the county over which the municipality has jurisdiction to enact general police-power ordinances, unless the municipality by resolution consents to its application.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 406 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Baddour
)
Sen.)

moves to amend the bill on page 1, line 9

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"A city may by ordinance impose a curfew on persons of any age less than 18."

and on page 1, line 13

by rewriting the line to read:

"A county may by ordinance impose a curfew on persons of any age less than 18."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 406 A BILL TO BE ENTITLED AN ACT TO ALLOW CITIES AND COUNTIES TO ADOPT ORDINANCES THAT IMPOSE A CURFEW ON PERSONS UNDER THE AGE OF EIGHTEEN.

☐ 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 406
Proposed Committee Substitute H406-PCS1160

Short Title: Curfew for Persons Under 18. (Public)

Sponsors:

Referred to:

March 5, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW CITIES AND COUNTIES TO ADOPT ORDINANCES THAT IMPOSE A CURFEW ON PERSONS UNDER THE AGE OF EIGHTEEN.

The General Assembly of North Carolina enacts:

Section 1. Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-198. Curfews.**

A city may by ordinance impose a curfew on persons of any age less than 18."

Section 2. Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-142. Curfews.**

A county may by ordinance impose a curfew on persons of any age less than 18."

Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 477

Short Title: CPA Exam and Records/AB. (Public)

Sponsors: Representative Cansler.

Referred to: Judiciary II.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STATE BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS TO ADMINISTER COMPUTER-BASED EXAMINATIONS AND TO KEEP CERTAIN RECORDS CONFIDENTIAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93-12(4) reads as rewritten:

"(4) To hold ~~written or oral~~ written, oral, and computer-based examinations of applicants for certificates of qualification at least once a year, or more often, as may be deemed necessary by the Board."

Section 2. Chapter 93 of the General Statutes is amended by adding a new section to read:

"**§ 93-12.2. Board records are confidential.**

Records, papers, and other documents containing information collected or compiled by the Board, its members, or employees, as a result of a complaint, investigation, inquiry, or interview in connection with an application for examination, certification, or registration, or in connection with a certificate holder's professional ethics and conduct, shall not be considered public records within the meaning of Chapter 132 of the General Statutes. Any notice or statement of charges against a certificate holder or applicant, or any notice to a certificate holder or applicant of a hearing to be held by the Board is a public record, even though it may contain information collected and compiled as a result of a complaint, investigation, inquiry, or interview conducted by the Board. If any record, paper, or other document containing information collected and compiled by the Board is admitted into

evidence in a hearing held by the Board, it shall then be a public record within the meaning of Chapter 132 of the General Statutes."

Section 3. 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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March 17, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 477—CPA Exam and Records (Cansler)

Section 1 of House Bill 477 amends G.S. 93-12 to authorize the Board of Certified Public Accountant Examiners to administer computer-based exams for qualification as a certified public accountant. The current statute authorizes only written or oral exams.

Section 2 adds G.S. 93-12.2 to provide that documents compiled by the Board as a result of an investigation, interview for examination, certification or registration, or in connection with a certificate holder's ethics or conduct are not public records. A notice or statement of charges or of a hearing is, however, a public record. If confidential information is admitted into evidence in a hearing, the information becomes a public record.

The bill is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Provided, that he register with the State Board of Certified Public Accountant Examiners and comply with its rules regarding such registration. (1925, c. 261, s. 10; 1993, c. 518, s. 7.)

§ 93-11. Not applicable to officers of State, county or municipality.

Nothing herein contained shall be construed to restrict or limit the power or authority of any State, county or municipal officer or appointee engaged in or upon the examination of the accounts of any public officer, his employees or appointees. (1925, c. 261, s. 12.)

§ 93-12. Board of Certified Public Accountant Examiners.

The name of the State Board of Accountancy is hereby changed to State Board of Certified Public Accountant Examiners and said name State Board of Certified Public Accountant Examiners is hereby substituted for the name State Board of Accountancy wherever the latter name appears or is used in Chapter 93 of the General Statutes. Said Board is created as an agency of the State of North Carolina and shall consist of seven members to be appointed by the Governor, five persons to be holders of valid and unrevoked certificates as certified public accountants issued under the provisions of this Chapter and two persons who are not certified public accountants who shall represent the interest of the public at large. Members of the Board shall hold office for the term of three years and until their successors are appointed. Appointments to the Board shall be made under the provisions of this Chapter as and when the terms of the members of the present State Board of Accountancy expire; provided, that all future appointments to said Board shall be made for a term of three years expiring on the thirtieth day of June. All Board members serving on June 30, 1980, shall be eligible to complete their respective terms. No member appointed to a term on or after July 1, 1980, shall serve more than two complete consecutive terms. The powers and duties of the Board shall be as follows:

(1) To elect from its members a president, vice-president and secretary-treasurer. The members of the Board shall receive compensation and reimbursement for travel expenses in accordance with G.S. 93B-5.

(2) To employ legal counsel, clerical and technical assistance and to fix the compensation therefor, and to incur such other expenses as may be deemed necessary in the performance of its duties and the enforcement of the provisions of this Chapter. Upon request the Attorney General of North Carolina will advise the Board with respect to the performance of its duties and will assign a member of his staff, or approve the employment of counsel, to represent the Board in any hearing or litigation arising under this Chapter. The Board may, in the exercise of its discretion, cooperate with similar boards of other states, territories and the District of Columbia in activities designed to bring about uniformity in standards of admission to the public practice of accountancy by certified public accountants, and may employ a uniform system of preparation of examinations to be given to candidates for certificates as certified public accountants,

§ 93-12(5) is set out twice. See notes.

including the services and facilities of the American Institute of Certified Public Accountants, or of any other persons or organizations of recognized skill in the field of accountancy, in the preparation of examinations and assistance in establishing and maintaining a uniform system of grading of examination papers, provided however, that all examinations given by said Board shall be adopted and approved by the Board and that the grade or grades given to all persons taking said examinations shall be determined and approved by the Board.

(3) To formulate rules for the government of the Board and for the examination of applicants for certificates of qualification admitting such applicants to practice as certified public accountants.

(4) To hold written or oral examinations of applicants for certificates of qualification at least once a year, or more often, as may be deemed necessary by the Board.

(5) **(Effective until January 1, 1997)** To issue certificates of qualification admitting to practice as certified public accountants, each applicant who, having the qualifications herein specified, shall have passed an examination to the satisfaction of the Board, in "accounting theory," "accounting practice," "auditing," "business law," and other related subjects.

Any person shall be eligible to take the examination given by the Board, or to receive a certificate of qualification to practice as a certified public accountant, who is a citizen of the United States, has declared the intention of becoming a citizen, is a resident alien, or is a citizen of a foreign jurisdiction which extends to citizens of this State like or similar privileges to be examined or certified, is 18 years of age or over, is of good moral character, and submits evidence satisfactory to the Board that:

a. He holds a bachelor's degree from a college or university accredited by one of the regional accrediting associations or from a college or university determined by the Board to have standards substantially equivalent to a regionally accredited institution, and

b. His degree studies included a concentration in accounting as defined by the Board or that he supplemented his degree studies with courses that the Board determines to be substantially equivalent to a concentration in accounting, and

c. Satisfactory evidence of the completion of two years in an accredited college or university or its equivalent with a concentration in accounting as defined by the Board and two years experience in the practice of public accountancy under the direct supervision of a certified public accountant, in addition to other experience requirements in this section, may be substituted for a bachelor's degree.

Provided, however, the Board may, in its discretion, waive the education requirement of any candidate if the Board is satisfied from the result of a special written

§ 93-12(5) is set out twice. See notes.

examination given the candidate by the Board to test his educational qualifications that he is as well equipped, educationally, as if he met the education requirements specified above. The Board may provide by regulation for the general scope of such examinations and may obtain such advice and assistance as it deems appropriate to assist it in preparing, administering and grading such special examinations.

Such applicant, in addition to passing the examination given by the Board, shall have the endorsement as to his eligibility of three certified public accountants who currently hold licenses in any state or territory of the United States or the District of Columbia and shall have had either:

a. Two years experience in the field of accounting under the direct supervision of a certified public accountant who currently holds a valid license in any state or territory of the United States or the District of Columbia, or

b. Five years experience teaching accounting in a four-year college or university accredited by one of the regional accrediting associations or in a college or university determined by the Board to have standards substantially equivalent to a regionally accredited institution; or

c. Five years experience in the field of accounting; or five years experience teaching college transfer accounting courses at a community college or technical institute accredited by one of the regional accrediting associations; or

d. Any combination of such experience determined by the Board to be substantially equivalent to the foregoing.

A Master's or more advanced degree in accounting, tax law, economics, business administration, or the equivalent thereof, or a law degree with emphasis in taxation or accounting from an accredited college or university may be substituted for one year of experience. The Board may permit persons otherwise eligible to take its examinations and withhold certificates until such person shall have had the required experience.

(5) **(Effective January 1, 1997)** To issue certificates of qualification admitting to practice as certified public accountants, each applicant who, having the qualifications herein specified, shall have passed an examination to the satisfaction of the Board, in "accounting," "auditing," "business law," and other related subjects.

A person is eligible to take the examination given by the Board, or to receive a certificate of qualification to practice as a certified public accountant, who is a citizen of the United States, has declared the intention of becoming a citizen, is a resident alien, or is a citizen of a foreign jurisdiction which extends to citizens of this State like or similar privileges to be examined or certified, is 18 years of age or over, is of good moral character, and submits evidence satisfactory to the Board that:

§ 93-12(5) is set out twice. See notes.

a. He holds a bachelor's degree from a college or university accredited by one of the regional accrediting associations or from a college or university determined by the Board to have standards substantially equivalent to a regionally accredited institution, and

b. His degree studies included a concentration in accounting as defined by the Board or that he supplemented his degree studies with courses that the Board determines to be substantially equivalent to a concentration in accounting.

c. Repealed by Session Laws 1991, c. 214, s. 1, effective January 1, 1997.

Provided, however, the Board may, in its discretion, waive the education requirement of any candidate if the Board is satisfied from the result of a special written examination given the candidate by the Board to test his educational qualifications that he is as well qualified as if he met the education requirements specified above. The Board may provide by regulation for the general scope of such examinations and may obtain such advice and assistance as it deems appropriate to assist it in preparing, administering and grading such special examinations.

Such applicant, in addition to passing the examination given by the Board, shall have the endorsement as to his eligibility of three certified public accountants who currently hold licenses in any state or territory of the United States or the District of Columbia and shall have had either:

a. Two years experience in the field of accounting under the direct supervision of a certified public accountant who currently holds a valid license in any state or territory of the United States or the District of Columbia, or

b. Five years experience teaching accounting in a four-year college or university accredited by one of the regional accrediting associations or in a college or university determined by the Board to have standards substantially equivalent to a regionally accredited institution; or

c. Five years experience in the field of accounting; or five years experience teaching college transfer accounting courses at a community college or technical institute accredited by one of the regional accrediting associations; or

d. Any combination of such experience determined by the Board to be substantially equivalent to the foregoing.

A Master's or more advanced degree in accounting, tax law, economics, business administration, or the equivalent thereof, or a law degree with emphasis in taxation or accounting from an accredited college or university may be substituted for one year of experience. The Board may permit persons otherwise eligible to take its examinations and withhold certificates until such person shall have had the required experience.

(6) In its discretion to grant certificates of qualification admitting to practice as certified public accountants such appli-

§ 93-12(5) is set out twice. See notes.

cants who shall be the holders of valid and unrevoked certificates as certified public accountants, or the equivalent, issued by or under the authority of any state, or territory of the United States or the District of Columbia, when in the judgment of the Board the requirements for the issuing or granting of such certificates or degrees are substantially equivalent to the requirements established by this Chapter: Provided, however, that the state or political subdivision of the United States upon whose certificate the reciprocal action is based grants the same privileges to holders of certificates as certified public accountants issued pursuant to the provisions of this Chapter. The Board, by general rule, may grant temporary permits to applicants under this subsection pending their qualification for reciprocal certificates.

(7) To charge for each examination provided for in this Chapter a fee not exceeding two hundred dollars ($200.00). This fee shall be payable to the secretary-treasurer of the Board by the applicant at the time of filing application. In no case shall the examination fee be refunded, unless in the discretion of the Board the applicant shall be deemed ineligible for examination.

(7a) To charge for each initial certificate of qualification provided for in this Chapter a fee not exceeding seventy-five dollars ($75.00).

(7b) To require an annual registration of each firm and to charge an annual registration fee not to exceed two hundred dollars ($200.00) for each firm with one office, and a fee not to exceed twenty-five dollars ($25.00) for each additional North Carolina office of the firm, to defray the administrative costs of accounting practice review programs. The Board may charge an annual fee not to exceed twenty-five dollars ($25.00) for each firm application for exemption from the accounting practice review program.

(8) To require the renewal of all certificates of qualification annually on the first day of July, and to charge an annual renewal fee not to exceed fifty dollars ($50.00).

(8a) To require the registration of certified public accountant firms which have offices both within and outside of North Carolina, and the payment by such firms of an annual registration fee based on the total number of partners in each such firm, but not to exceed two thousand five hundred dollars ($2,500) per firm per year.

(8b) To formulate rules and regulations for the continuing professional education of all persons holding the certificate of certified public accountant, subject to the following provisions:

a. After January 1, 1983, any person desiring to obtain or renew a certificate as a certified public accountant must offer evidence satisfactory to the Board that such person has complied with the continuing professional education requirement approved by the Board. The Board may grant a conditional license for not more than 12 months for persons who are being licensed for

§ 93-12(5) is set out twice. See notes.

the first time, or moving into North Carolina, or for other good cause, in order that such person may comply with the continuing professional education requirement.

b. The Board shall promulgate rules and regulations for the administration of the continuing professional education requirement with a minimum number of hours of 20 and a maximum number of hours of 40 per year, and the Board may exempt persons who are retired or inactive from said continuing professional education requirement. The Board may also permit any certified public accountant to accumulate hours of continuing professional education in any calendar year of as much as two additional years annual requirement in advance of or subsequent to the required calendar year.

c. Any applicant who offers satisfactory evidence on forms promulgated by the Board that he has participated in a continuing professional education program of the type required by the Board shall be deemed to have complied with this section.

(8c) The Board may formulate rules and regulations for report review and peer review of audits, reviews, compilations, and other reports issued on financial information in the public practice of accountancy of all firms, as herein defined, subject to the following provisions:

a. After June 30, 1992, any firm desiring to obtain or maintain a registration as a firm must offer satisfactory evidence to the Board that such firm has complied with the peer review and report review requirements approved by the Board; provided, however, that the Board shall give to every firm subject to this section not less than 12 months advance notice of each peer review and report review required of the firm.

b. The Board may grant a conditional registration for not more than 24 months for firms which are being registered for the first time, or moving into North Carolina, or for other good cause, in order that such firm may comply with the report review and peer review requirements, and in order that the Board may develop a system of review rotation among the various firms that must comply with this section.

c. The peer review and report review shall be valid for a minimum of three years subject to the power of the Board to require remedial action by any firm with a deficiency in the review according to the rules established by the Board.

d. The Board shall promulgate rules and regulations for the administration of the report review and peer review requirements and the Board shall exempt firms that show to the satisfaction of the Board that they are not engaged in the public practice of accountancy or that the scope of their practice does not come within the peer review and report review guidelines established by the Board.

§ 93-12(5) is set out twice. See notes.

e. Any firm that offers satisfactory evidence to the Board that the firm has satisfactorily participated in a successfully completed a peer review or a report review of the type required by the Board shall be deemed to have complied with this section and the Board shall promulgate rules and regulations for the administration of this procedure.

f. For purposes of this section, a firm means an entity individual proprietorship, partnership or professional association through which one or more certificate holder engages in the public practice of accountancy through an office or offices.

(9) Adoption of Rules of Professional Conduct; Disciplinary Action. — The Board shall have the power to adopt rules of professional ethics and conduct to be observed by certified public accountants in this State. The Board shall have the power to revoke, either permanently or for a specified period, any certificate issued under the provisions of this Chapter to a certified public accountant or to censure the holder of any such certificate or to assess a civil penalty not to exceed one thousand dollars ($1,000) for any one or combination of the following causes:

a. Conviction of a felony under the laws of the United States or of any state of the United States.

b. Conviction of any crime, an essential element of which is dishonesty, deceit or fraud.

c. Fraud or deceit in obtaining a certificate as a certified public accountant.

d. Dishonesty, fraud or gross negligence in the public practice of accountancy.

e. Violation of any rule of professional ethics and professional conduct adopted by the Board.

Any disciplinary action taken shall be in accordance with the provisions of Chapter 150B of the General Statutes. Any civil penalty assessed under this section shall be collected by the Board and transferred to the State Treasurer for use in the General Fund.

(10), (11) Repealed by Session Laws 1993, c. 518, s. 8, effective July 24, 1993.

(12) To submit annually on or before the first day of May to the Secretary of Revenue the names of all persons who have qualified under this Chapter as certified public accountants. Privilege license issued under G.S. 105-41 shall designate whether such license is issued to a certified public accountant or an accountant.

(13) The Board shall keep a complete record of all its proceedings and shall annually submit a full report to the Governor.

(14) All fees collected on behalf of the Board and all receipts of every kind and nature, as well as the compensation paid the members of the Board and the necessary expenses incurred by them in the performance of the duties imposed upon them, shall be reported annually to the State Treasurer. All fees and other moneys received by the Board

93-12(5) is set out twice. See

pursuant to the p ns
kept in a separate by t
held and expended for
necessary to the discharge
enforce the provisions of th
by the Board shall be char
(15) Any certificate of qualifica
of this Chapter, or issued
157 of the Public Laws of
failure of the holder to ren
fee therefor to the State
days after demand for su
made by the State Board
(16) To apply to the courts, in
to prevent violations of t
rules adopted pursuant
grant injunctive relief reg
ecution or any other acti
violation. A single viol
injunctive relief under th

1939, c. 218, s. 1; 1951,
1959, c. 1188; 1961, c.
476, s. 193; c. 1331, s. 3;
s. 69; 1977, c. 804, ss. 1,
Sess., c. 1087, ss. 1, 2;
1985, c. 149; 1987, c. 353
c. 214, s. 1; 1991 (Reg.
518, s. 8; 1995, c. 137,

Subdivision (5) Set Ou
The first version of subdivi
above is effective until January
1997. The second version of subdivisio
(5) set out above is effective January 1
1997, on.

Cross References. — As to privileg
see § 105-41.

Editor's Note. — As of January
2001, the first subdivisions a and b
subdivision (5) are repealed by Sessio
Laws 1991, c. 214, s. 2, and new sub
visions a1 and b1 are added. The r
subdivisions will read as follows:

"a1. The candidate has completed
total of 150 college semester hours,
has completed a minimum of 120 colle
semester hours with a concentration
accounting, which include a bachel
degree at a college or university de
mined by the Board to have standa
substantially equivalent to a region
accredited institution, and

"b1. The candidate's total
secondary school education includ
concentration in accounting, as de
by the Board, or degree studies
supplemented with courses determ

s set out twice. See notes.

suant to the provisions of the General Statutes shall be kept in a separate fund by the treasurer of the Board, to be held and expended only for such purposes as are proper and necessary to the discharge of the duties of the Board and to enforce the provisions of this Chapter. No expense incurred by the Board shall be charged against the State.

(15) Any certificate of qualification issued under the provisions of this Chapter, or issued under the provisions of Chapter 157 of the Public Laws of 1913, shall be forfeited for the failure of the holder to renew same and to pay the renewal fee therefor to the State Board of Accountancy within 30 days after demand for such renewal fee shall have been made by the State Board of Accountancy.

(16) To apply to the courts, in its own name, for injunctive relief to prevent violations of this Chapter or violations of any rules adopted pursuant to this Chapter. Any court may grant injunctive relief regardless of whether criminal prosecution or any other action is instituted as a result of the violation. A single violation is sufficient to invoke the injunctive relief under this subdivision. (1925, c. 261, s. 11; 1939, c. 218, s. 1; 1951, c. 844, ss. 4-9; 1953, c. 1041, s. 20; 1959, c. 1188; 1961, c. 1010; 1971, c. 738, ss. 1-3; 1973, c. 476, s. 193; c. 1331, s. 3; 1975, c. 107; 1975, 2nd Sess., c. 983, s. 69; 1977, c. 804, ss. 1, 2; 1979, c. 750, ss. 6-10; 1979, 2nd Sess., c. 1087, ss. 1, 2; 1981, c. 10; 1983, c. 185, ss. 4-11; 1985, c. 149; 1987, c. 353; c. 827, ss. 1, 79; 1989, c. 624; 1991, c. 214, s. 1; 1991 (Reg. Sess., 1992), c. 1011, s. 6; 1993, c. 518, s. 8; 1995, c. 137, s. 1.)

Subdivision (5) Set Out Twice. — The first version of subdivision (5) set out above is effective until January 1, 1997. The second version of subdivision (5) set out above is effective January 1, 1997.

Cross References. — As to privilege tax, see § 105-41.

Editor's Note. — As of January 1, 2001, the first subdivisions a and b of subdivision (5) are repealed by Session Laws 1991, c. 214, s. 2, and new subdivisions a1 and b1 are added. The new subdivisions will read as follows:

"a1. The candidate has completed a total of 150 college semester hours, or, has completed a minimum of 120 college semester hours with a concentration in accounting, which include a bachelor's degree at a college or university determined by the Board to have standards substantially equivalent to a regionally accredited institution, and

"b1. The candidate's total post-secondary school education included a concentration in accounting, as defined by the Board, or degree studies were supplemented with courses determined by the Board to be substantially equivalent to a concentration in accounting."

Effect of Amendments. — Session Laws 1991, c. 214, s. 1, effective January 1, 1997, in subdivision (5), substituted "accounting" for "accounting theory, accounting practice" in the introductory paragraph, substituted "A person is" for "From and after July 1, 1961, any person shall be" at the beginning of the second paragraph, deleted "and" from the end of the first subdivision b, repealed the first subdivision c, relating to completion of formal education and experience, and substituted "qualified" for "equipped, educationally" in the first undesignated paragraph following the repealed subdivision c.

The 1995 amendment, effective October 1, 1995, and applicable to any violation committed on or after that date, added subdivision (16).

Legal Periodicals. — For note on equal protection and residence requirements, see 49 N.C.L. Rev. 753 (1971).

For survey of 1978 constitutional law, see 57 N.C.L. Rev. 958 (1979).

MEMORANDUM REGARDING THE NEED FOR CPA BOARD INVESTIGATIVE RECORD PROTECTION:
March 18, 1997

1. **Despite an existing exemption, there is a need for statutory clarity.** There is likely a current exemption from the Public Records Act (NC Gen. Stat. Chapter 132) for the investigative files of the CPA Board (as well as most other Occupational Licensing Boards). NC Gen. Stat. §132-1.1 specifically excludes confidential communications by legal counsel to public board or agency and state tax information from public disclosure. The Public Records Act also exempts investigative records belonging to law enforcement bodies (ostensibly including the CPA Board which is authorized to investigate breaches of the Accountancy Law - violation of which is a misdemeanor). Further, NC Gen. Stat. § 143-318.18 (Open Meetings Law Exceptions) excludes any board such as the CPA Board "authorized to investigate, examine, or determine the character and other qualifications of applicants for professional or occupational licenses or certificates or to take disciplinary actions against persons holding such licenses or certificates, (i) while preparing, approving, administering, or grading examinations or (ii) while meeting with respect to an individual applicant for or holder of such a license or certificate." Similarly, the Open Meetings law provides that minutes of such investigative meetings are not subject to disclosure "so long as public inspection would frustrate the purpose of a closed session." Additionally, the Administrative Procedures Act provides for discovery during Contested Cases that would be rendered meaningless if all the contents of the investigative file could be obtained as public records without the protections and procedure under Chapter 150B-39: "(b) Upon a request for an identifiable agency record involving a material fact in a contested case, the agency shall promptly provide the record to a party, unless the record relates solely to the agency's internal procedures or is exempt from disclosure by law."

Unfortunately, this very defensible analysis is ostensibly weakened by two factors: The Public Records Act, out of context, does not provide unambiguous authority to the CPA Board to refuse to disclose investigative files. Since the act contains severe civil and criminal sanctions against any public official who violates it, the lack of a clear-cut authorization can impair the Board's ability to develop cases. Second, the very existence of numerous explicit exemptions for other Boards and agencies suggests that a clearly annunciated exemption is advisable. Presently, numerous other occupational licensing boards and regulatory authorities have clear public record exemptions in their respective statutes. The licensed subjects range from physicians, lawyers, dentists, psychologists, fee-based professional pastoral counsellors, third party administrators, foreign legal consultants, geologists, and refrigeration contractors to banks, savings and loan associations, utilities and insurance companies.

2. **Regardless of the policy considerations behind other exemptions, the public policy considerations in favor of excluding the CPA Board's investigative files are unique and compelling.** First, the statutes already prohibit any public official from disclosing anyone's "tax information." Indeed, NC Gen. Stat. §105-259 (Secrecy required of public officials; penalty for violation) subjects any official who discloses anyone's tax information to criminal prosecution as well as termination of employment. Other statutes, including the Public Records Act, itself, reiterate the right to privacy regarding tax and other financial information. (See, for example, NC Gen. Stat.§ 160A-208.1 (re Cities) and NC Gen. Stat. §153A-148.1 (re Counties) providing

that disclosure of certain tax information is prohibited) Also, the state's Financial Privacy law (NC Gen. Stat. Chapter 53B-1, et seq) states a general policy in favor of non-disclosure of private financial information by any financial institution. Likewise, federal privacy laws restrict such disclosures.

Second, the risk to a complaining client of making personal tax and financial records into "public records" has a significant chilling effect upon potential complaints to the CPA Board from clients who have been harmed by incompetent or dishonest CPAs. A private individual or corporation should not be forced to disclose confidential tax or financial records that are otherwise so vigorously protected by other statutes.

Third, investigative files that do not proceed to contested cases or are not resolved by consent often contain unsubstantiated hearsay including anonymous slander that could be quite prejudicial to innocent parties. The State's Administrative Procedures Act as well as the Public Records Act require that actions resolving all such cases must be public records. But public access to closed frivolous, unfounded and even malicious complaints advances no public interest while allowing anonymous persons to accomplish via the Public Records laws wrong which would be illegal under the laws of slander.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 477 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE STATE BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS TO ADMINISTER COMPUTER-BASED EXAMINATIONS AND TO KEEP CERTAIN RECORDS CONFIDENTIAL.

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)

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

March 18, 1997 1:00 P.M. — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert N. Brooks	N.C. State Bd of CPA Examiners
	PO Box 12827 Raleigh 27605
Noel L. Allen	same
Vaughan Breeden	CHRen
Ken Eudy	Capital Strategies
Benny Scarboro	NC House Council
Leann M Killian	Moore - Van Allen
[illegible]	NCBA
Bill Scoggin	NCBA
Fred Taylor	WRAL-TV
Reginald R. Holley	DOA - YAIO
Martha Livengood	Youth Advocacy & Involvement Office
Richard A. Mansmann	NC Horse Council
Thomas Parsons	
Cynthia S Parsons	
Josh Fortwengler	
Emily Fortwengler	
Adam Fortwengler	
Hannah Fortwengler	
Leah Parsons	

MINUTES
HOUSE JUDICIARY II COMMITTEE

March 20, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on March 20, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Kiser, Vice-Chairman, called the meeting to order.

Those in attendance were Representatives Kiser, Baddour, Bowie, Cansler, Creech, Culpepper, Decker, Gardner, Goodwin, Hackney, Hensley, McMahan, Nesbitt, Redwine, Russell, Saunders, Shubert, Wilkins and Wilson. A list of visitors is attached.

The members were provided with a Report of Action dated March 20, 1997, from the J-II Subcommittee on Structured Sentencing. A copy of this report is attached.

The following bills were discussed:

HB-158 PRISON OFFENSES/INCREASE PENALTY
HB-159 PRISON ESCAPE PENALTIES
HB-187 AMEND PRIOR RECORD CALCULATIONS
HB-212 CLARIFY COMMUNITY-BASED CORRECTIONS

Representative Brawley was recognized to explain HB-212 and answer questions of committee members.

Representative Culpepper was recognized to send forth an amendment and moved it be adopted; motion passed.

Representative Nesbitt moved the amendment be incorporated into a committee substitute bill, with a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

Representative Bowie was recognized to Chair so Representative Kiser could present House Bills 158 and 159.

Representative Kiser explained HB-158 and answered questions of committee members. A copy the bill and handout are attached.

Representative Creech moved for a favorable report; motion passed.

Representative Kiser explained HB-159 and answered questions of committee members. A copy of the bill, bill explanation prepared by Mr. Tim Hovis, Committee Counsel, and handout are attached.

Representative Nesbitt moved for a favorable report; motion passed.

Representative Bowie was recognized to present HB-187. A copy of the bill and bill explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Representative Bowie sent forth a proposed committee substitute. Representative Nesbitt moved it be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute is attached.

Mr. John Madler, Associate Director for Policy Analysis, North Carolina Sentencing and Policy Advisory Commission, answered questions of committee members.

Due to concerns of the committee, Representative Nesbitt moved HB-187 be re-referred to the J-II Subcommittee on Structured Sentencing; motion passed.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison

Betty Harrison, Clerk

J-II Subcommittee on Structured Sentencing

Report of Action to Full Committee on J-II

March 20, 1997

The J-II Subcommittee has met and reviewed the following bills and reports recommendations as outlined below:

House Bill 158 - Recommendation: Favorable Report

House Bill 159 - Recommendation: Favorable Report

House Bill 173 - Recommendation: Unfavorable Report

House Bill 174 - Recommendation: Favorable Report

House Bill 187 - Recommendation: Adoption of Committee Substitute with Favorable Report

House Bill 212 - Recommendation: Favorable Report

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 212

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

H212-ARG-001 Page 1 of __

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

moves to amend the bill on page 1, line 13,
by rewriting the line to read:
"Parole a ~~program~~ Program of Intensive ~~Probation and Parole~~
Supervision. This ~~program~~ Program shall";

and on page 1, lines 17-18,
by rewriting the lines to read:
"restitution plan, or other plan of rehabilitation. The ~~intensive~~
~~probation and parole program~~ Intensive Supervision Program shall be
available to both felons and misdemeanants. Each ;

and on page 4, line 5,
by deleting the word "Probation" and substituting the following:
~~Probation~~ Supervision ;

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 212 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.

☐ 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 212
Proposed Committee Substitute H212-PCSA243

Short Title: Clarify Community-Based Corrections. (Public)

Sponsors:

Referred to:

February 17, 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~~ Program of Intensive ~~Probation and Parole.~~ Supervision. This ~~program~~ 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 program~~ Intensive 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 158

Short Title: Commit Offenses in Prison/Up Penalty. (Public)

Sponsors: Representatives Kiser; Allred, Baddour, Baker, Barbee, Brawley, Brown, Cansler, Capps, Carpenter, Clary, Culp, Davis, Dedmon, Gardner, Grady, Gulley, Hall, Hardy, Howard, Justus, Moore, Morris, Owens, Rayfield, Sexton, Starnes, and Thompson.

Referred to: Judiciary II.

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR CERTAIN OFFENSES COMMITTED WHILE IN PRISON.

The General Assembly of North Carolina enacts:

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

"(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~~ H felony."

Section 2. G.S. 148-46.1 reads as rewritten:

"§ 148-46.1. Inflicting or assisting in infliction of self injury to prisoner resulting in incapacity to perform assigned duties.

Any person serving a sentence or sentences within the State prison system who, during the term of such imprisonment, willfully and intentionally inflicts upon himself any injury resulting in a permanent or temporary incapacity to perform work or duties assigned to him by the State Department of Correction, or any prisoner who aids or abets any other prisoner in the commission of such offense, shall be punished as a Class ~~I~~ H felon."

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

HOUSE BILL 158

COMMIT OFFENSES IN PRISON/INCREASE PENALTY

ISSUE: *Possessing controlled substance on the premises of a penal institution or local confinement facility* and *inflicting or assisting in infliction of self injury to prisoner resulting in incapacity to perform assigned duties* are Class I felonies. An active sentence is not authorized for the first three prior record levels in Class I. This means that in some cases the judge cannot impose additional active prison time for these offenses.

APPROACH: This bill reclassifies *possessing controlled substance on the premises of a penal institution or local confinement facility* (G.S. 90-95(e)(9)) and *inflicting or assisting in infliction of self injury to prisoner resulting incapacity to perform assigned duties* (G.S. 148-46.1) to Class H. This gives the judge the option of imposing an active sentence in every case.

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts
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*

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

Numbers shown are in months and represent the range of <u>minimum</u> sentences.

IMPACT: There were no convictions for these offenses in 1994; therefore, this legislation is projected to have no impact on state prison populations.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 158 A BILL TO BE ENTITLED AN ACT TO INCREASE THE PENALTY FOR CERTAIN OFFENSES COMMITTED WHILE IN PRISON.

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 159

Short Title: Escape from Prison/Reclassify Offenses. (Public)

Sponsors: Representatives Kiser; Baddour, Baker, Barbee, Brawley, Brown, Cansler, Capps, Carpenter, Clary, Culp, Davis, Dedmon, Gardner, Goodwin, Grady, Gulley, Hall, Hardy, Howard, Justus, Moore, Morris, Owens, Rayfield, Sexton, Starnes, and Thompson.

Referred to: Judiciary II.

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO RECLASSIFY CERTAIN OFFENSES RELATED TO ESCAPE FROM CORRECTIONAL FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-255 reads as rewritten:

"**§ 14-255. Escape of working prisoners from custody.**

If any prisoner removed from the local confinement facility or satellite jail/work release unit of a county pursuant to G.S. 162-58 shall escape from the person having him in custody or the person supervising him, he shall be guilty of a Class ~~3~~ 1 misdemeanor."

Section 2. G.S. 14-256 reads as rewritten:

"**§ 14-256. Prison breach and escape from county or municipal confinement facilities or officers.**

If any person shall break any prison, jail or lockup maintained by any county or municipality in North Carolina, being lawfully confined therein, or shall escape from the lawful custody of any superintendent, guard or officer of such prison, jail or lockup, he shall be guilty of a Class 1 misdemeanor, except that the person is guilty of a Class ~~I~~ H felony if:

(1) He has been convicted of a felony and has been committed to the facility pending transfer to the State prison system; or

(2) He is serving a sentence imposed upon conviction of a felony."

Section 3. G.S. 148-45 reads as rewritten:

"**§ 148-45. Escaping or attempting escape from State prison system; failure of conditionally and temporarily released prisoners and certain youthful offenders to return to custody of Department of Correction.**

(a) Any person in the custody of the Department of Correction in any of the classifications hereinafter set forth who shall escape from the State prison system, shall for the first such offense, except as provided in subsection (g) of this section, be guilty of a Class ~~I felony~~ 1 misdemeanor:

(1) A prisoner serving a sentence imposed upon conviction of a misdemeanor;

(2) A person who has been charged with a misdemeanor and who has been committed to the custody of the Department of Correction under the provisions of G.S. 162-39;

(3) Repealed by Session Laws 1985, c. 226, s. 4.

(4) A person who shall have been convicted of a misdemeanor and who shall have been committed to the Department of Correction for presentence diagnostic study under the provisions of G.S. 15A-1332(c).

(b) Any person in the custody of the Department of Correction, in any of the classifications hereinafter set forth, who shall escape from the State prison system, shall, except as provided in subsection (g) of this section, be punished as a Class ~~I~~ H felon.

(1) A prisoner serving a sentence imposed upon conviction of a felony;

(2) A person who has been charged with a felony and who has been committed to the custody of the Department of Correction under the provisions of G.S. 162-39;

(3) Repealed by Session Laws 1985, c. 226, s. 5.

(4) A person who shall have been convicted of a felony and who shall have been committed to the Department of Correction for presentence diagnostic study under the provisions of G.S. 15A-1332(c); or

(5) Any person previously convicted of escaping or attempting to escape from the State prison system.

(c) Repealed by Session Laws 1979, c. 760, s. 5.

(d) Any person who aids or assists other persons to escape or attempt to escape from the State prison system shall be guilty of a Class 1 misdemeanor.

(e) Repealed by Session Laws 1983, c. 465, s. 5.

(f) Any person convicted of an escape or attempt to escape classified as a felony by this section shall be immediately classified and treated as a convicted felon even if such person has time remaining to be served in the State prison system on a sentence or sentences imposed upon conviction of a misdemeanor or misdemeanors.

(g) (1) Any person convicted and in the custody of the North Carolina Department of Correction and ordered or otherwise assigned to work under the work-release program, G.S. 148-33.1, or any

convicted person in the custody of the North Carolina Department of Correction and temporarily allowed to leave a place of confinement by the Secretary of Correction or his designee or other authority of law, who shall fail to return to the custody of the North Carolina Department of Correction, shall be guilty of the crime of escape and subject to the applicable provisions of this section and shall be deemed an escapee. For the purpose of this subsection, escape is defined to include, but is not restricted to, willful failure to return to an appointed place and at an appointed time as ordered.

(2) If a person, who would otherwise be guilty of a first violation of G.S. 148-45(g)(1), voluntarily returns to his place of confinement within 24 hours of the time at which he was ordered to return, such person shall not be charged with an escape as provided in this section but shall be subject to such administrative action as may be deemed appropriate for an escapee by the Department of Correction; said escapee shall not be allowed to be placed on work release for a four-month period or for the balance of his term if less than four months; provided, however, that if such person commits a subsequent violation of this section then such person shall be charged with that offense and, if convicted, punished under the provisions of this section."

Section 4. This act becomes effective December 1, 1997, and applies to offenses committed 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.

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March 19, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 159—Escape from Prison/Reclassify Offenses (Kiser)

House Bill 159 is a recommendation of the North Carolina Sentencing Commission. The bill reclassifies escape from prison and escape from jail offenses to give the judge the option of imposing an active sentence in every case. Under current law, the majority of these offenses are classified as Class I felonies. A Class I felony does not always give the judge the option of imposing additional active time.

Section 1 of the bill amends G.S. 14-255, Escape of working prisoners from custody, to increase the penalty from a Class 3 misdemeanor to a Class 1 misdemeanor for escape from a jail while on work detail.

Section 2 of the bill increases the penalty from a Class I felony to a Class H felony for escape from a jail while (1) pending transfer to the State prison system for conviction of a felony or (2) serving a sentence imposed upon conviction of a felony.

Section 3 of the bill decreases the penalty from a Class I felony to a Class 1 misdemeanor for a first offense of escape from the State prison system while serving a sentence imposed upon the conviction of a misdemeanor. By decreasing the punishment from a Class I felony to a Class 1 misdemeanor, the judge always has the option of imposing additional active time for the offense. (A judge has the option in all Class 1 misdemeanors of imposing additional active time. Depending upon the defendant's prior record, the judge may not have the option of imposing additional active time for a Class I felony.)

Section 3 of the bill also increases the penalty from a Class I felony to a Class H felony for escape from the State prison system while serving a sentence imposed upon the conviction of a felony or for a second or subsequent escape from the State prison system.

The bill would become effective December 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

HOUSE BILL 159

ESCAPE FROM PRISON/RECLASSIFY OFFENSES

ISSUE: *Escapes from prison or jail* are now Class I felonies. An active sentence is not authorized for the first three prior record levels in Class I. This means that in some cases the court cannot impose additional active prison time for this offense.

APPROACH: This bill reclassifies *escape from prison* offenses to Class H and *escape from jail* offenses to misdemeanor Class 1. This gives the judge the option of imposing an active sentence in every case.[1]

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

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	27	30	32	31	33	34	33	34	32

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

** Too soon after implementation to have any measurable impact

---

[1]For Class 1 misdemeanors, an active sentence is authorized in Prior Conviction Levels II and III. An offender serving a sentence in jail for a misdemeanor conviction will have at least one prior conviction and would be in Prior Conviction Level II or higher.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 159 A BILL TO BE ENTITLED AN ACT TO RECLASSIFY CERTAIN OFFENSES RELATED TO ESCAPE FROM CORRECTIONAL FACILITIES.

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 187

Short Title: Amend Prior Record Level Calculations. (Public)

Sponsors: Representative Bowie.

Referred to: Judiciary II.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATIONS TO PROVIDE THAT MULTIPLE PRIOR CONVICTIONS ARISING OUT OF SEPARATE TRANSACTIONS SHALL BE USED IN CALCULATING PRIOR RECORD LEVELS IF THOSE CONVICTIONS ARE NOT TRANSACTIONALLY RELATED OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1340.14(d) reads as rewritten:

"(d) Multiple Prior Convictions Obtained in One Court Week. -- For purposes of determining the prior record level, if an offender is convicted of more than one offense in a single superior court during one calendar week, or in a single session of district court, only the conviction for the offense with the highest point total is used. ~~If an offender is convicted of more than one offense in a single session of district court, only one of the convictions is used.~~ However, if at the time of sentencing for those convictions that court found that the offenses were not transactionally related pursuant to G.S. 15A-1340.15(c) or G.S. 15A-1340.22(c), each conviction is used for purposes of determining the prior record level."

Section 2. G.S. 15A-1340.15 is amended by adding a new subsection to read:

"(c) Transactionally Related Convictions. -- Unless otherwise specified by the court, if an offender is convicted of more than one offense in a single superior court during one calendar week, or in a single session of district court, those offenses are transactionally related. At the time of conviction the State may move the court to

find that the current offenses are not transactionally related. The State must prove by a preponderance of the evidence that the current offenses are not transactionally related. In determining whether offenses are not transactionally related, the following factors are relevant but not dispositive: whether the offenses were of the same or similar character, based on the same act or transaction, based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or whether the offenses were committed at a single time or in temporally continuous actions. An offense that threatens or results in bodily injury or death is not transactionally related. For purposes of this subsection, the offenses of first-degree rape (G.S. 14-27.2), second-degree rape (G.S. 14-27.3), first-degree sexual offense (G.S. 14-27.4), second-degree sexual offense (G.S. 14-27.5) and intercourse and sexual offenses with certain victims (G.S. 14-27.7) are deemed to result in bodily injury. The judgment shall contain the finding."

Section 3. G.S. 15A-1340.21(d) reads as rewritten:

"(d) Multiple Prior Convictions Obtained in One Court Week. -- For purposes of this section, if an offender is convicted of more than one offense in a single session of district court, or in a single week of superior court or of a court in another jurisdiction, only one of the convictions may be used to determine the prior conviction level. However, if at the time of sentencing for those convictions that court found that the offenses were not transactionally related pursuant to G.S. 15A-1340.15(c) or G.S. 15A-1340.22(c), each conviction is used for purposes of determining the prior conviction level."

Section 4. G.S. 15A-1340.22 is amended by adding a new subsection to read:

"(c) Transactionally Related Convictions. -- Unless otherwise specified by the court, if an offender is convicted of more than one offense in a single session of district court, or in a single week of superior court or of a court in another jurisdiction, those offenses are transactionally related. At the time of conviction the State may move the court to find that the current offenses are not transactionally related. The State must prove by a preponderance of the evidence that the current offenses are not transactionally related. In determining whether offenses are not transactionally related, the following factors are relevant but not dispositive: whether the offenses were of the same or similar character, based on the same act or transaction, based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or whether the offenses were committed at a single time or in temporally continuous actions. An offense that threatens or results in bodily injury or death is not transactionally related. For purposes of this subsection, the offenses of first-degree rape (G.S. 14-27.2), second-degree rape (G.S. 14-27.3), first-degree sexual offense (G.S. 14-27.4), second-degree sexual offense (G.S. 14-27.5), and intercourse and sexual offenses with certain victims (G.S. 14-27.7) are deemed to result in bodily injury. The judgment shall contain the finding."

Section 5. This act becomes effective December 1, 1997, and applies to offenses sentenced on or after that date.

North Carolina General Assembly
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February 25, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: House Bill 187 - Amend Prior Record Level Calculations

House Bill 187 is a recommendation from the NC Sentencing and Policy Advisory Commission. The bill makes several changes in the calculation of prior record levels.

Sections 1 and 3 amend G.S. 15A-1340.14(d) and 15A-1340.21(d) respectively, to provide that convictions for multiple offenses in one superior court in one week, or in one district court session may be counted individually in determining the prior record level, if at the time of sentencing the court found that the offenses were not transactionally related.

Sections 2 and 4 amend G.S. 15A-1340.15 and 15A-1340.22 respectively, by adding a new subsection (c) to each statute. These new subsections define "Transactionally Related Convictions" as follows. Unless the court specifies otherwise, convictions of more than one offense in a single superior court during one calendar week or in a single session of district court, are transactionally related. At the time of conviction, the State may request that the court find, by preponderance of the evidence, that the convictions are NOT transactionally related. In determining whether the offenses are transactionally related the court must consider whether the offenses were of similar character; based on the same act or transaction; based on two or more acts or transactions connected as parts of a common scheme; or committed at a single time or in temporally continuous actions. Specifically, any offense that threatens or results in bodily injury or death is not transactionally related. Also, first and second degree rape and sexual offense, and intercourse or sex offenses with certain victims are deemed to result in bodily injury for this purpose. The sentencing court's judgment must contain its finding as to whether the multiple offenses were transactionally related.

Section 5 applies this act to offenses sentenced on or after December 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

HOUSE BILL 187

AMEND PRIOR RECORD CALCULATIONS

ISSUE: Under current law, if an offender is convicted of multiple prior convictions in a single week of superior court or in a single session of district court, only the most serious conviction is counted for purposes of determining the offender's prior record level.

APPROACH: For purposes of determining the prior record level, this bill counts each prior conviction separately if the previous court found at the time of sentencing that the offense was not transactionally related to the other offenses sentenced during the same week of court. The state must move the court to make this finding. This bill further requires that prior convictions involving death or bodily injury (including certain sex offenses) be counted as separate transactions.

IMPACT:

ADDITIONAL INMATES: END OF FISCAL YEAR									
98**	99	0	1	2	3	4	5	6	7
0	115	243	399	508	603	668	735	784	834

* 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 187
Proposed Committee Substitute H187-CSSA-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Amend Prior Record Level Calculations. (Public)

Sponsors:

Referred to: Judiciary II.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATIONS TO PROVIDE THAT MULTIPLE PRIOR CONVICTIONS ARISING OUT OF SEPARATE TRANSACTIONS SHALL BE USED IN CALCULATING PRIOR RECORD LEVELS IF THOSE CONVICTIONS ARE NOT TRANSACTIONALLY RELATED OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1340.14(d) reads as rewritten:

"(d) Multiple Prior Convictions Obtained in One Court Week. -- For purposes of determining the prior record level, if an offender is convicted of more than one offense in a single superior court during one calendar week, or in a single session of district court, only the conviction for the offense with the highest point total is used. ~~If an offender is convicted of more than one offense in a single session of district court, only one of the convictions is used.~~ However, if at the time of sentencing for those convictions that court found that the offenses were not transactionally related pursuant to G.S. 15A-1340.15(c) or G.S. 15A-1340.22(c), each conviction is used for purposes of determining the prior record level."

Section 2. G.S. 15A-1340.15 is amended by adding a new subsection to read:

"(c) Transactionally Related Convictions. -- Unless otherwise specified by the court, if an offender is convicted of more than one offense in a single superior court during one calendar week, or in a single session of district court, those offenses are transactionally related. At the time of conviction the State may move the court to find that the current offenses are not transactionally related. The State must prove by a preponderance of the evidence that the current offenses are not transactionally related. In determining whether offenses are not transactionally related, the following factors are relevant but not dispositive: whether the offenses were of the same or similar character, based on the same act or transaction, based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or whether the offenses were committed at a single time or in temporally continuous actions. If the State requests a finding for an offense that threatens or results in bodily injury or death, the court must find that offense not transactionally related. For purposes of this subsection, the offenses of first-degree rape (G.S. 14-27.2), second-degree rape (G.S. 14-27.3), first-degree sexual offense (G.S. 14-27.4), second-degree sexual offense (G.S. 14-27.5) and intercourse and sexual offenses with certain victims (G.S. 14-27.7) are deemed to result in bodily injury. The judgment shall contain the finding."

Section 3. G.S. 15A-1340.21(d) reads as rewritten:

"(d) Multiple Prior Convictions Obtained in One Court Week. -- For purposes of this section, if an offender is convicted of more than one offense in a single session of district court, or in a single week of superior court or of a court in another jurisdiction, only one of the convictions may be used to determine the prior conviction level. However, if at the time of sentencing for those convictions that court found that the offenses were not transactionally related pursuant to G.S. 15A-1340.15(c) or G.S. 15A-1340.22(c), each conviction is used for purposes of determining the prior conviction level."

Section 4. G.S. 15A-1340.22 is amended by adding a new subsection to read:

"(c) Transactionally Related Convictions. -- Unless otherwise specified by the court, if an offender is convicted of more than one offense in a single session of district court, or in a single week of superior court or of a court in another jurisdiction, those offenses are transactionally related. At the time of

conviction the State may move the court to find that the current offenses are not transactionally related. The State must prove by a preponderance of the evidence that the current offenses are not transactionally related. In determining whether offenses are not transactionally related, the following factors are relevant but not dispositive: whether the offenses were of the same or similar character, based on the same act or transaction, based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or whether the offenses were committed at a single time or in temporally continuous actions. If the State requests a finding for an offense that threatens or results in bodily injury or death, the court must find that offense not transactionally related. For purposes of this subsection, the offenses of first-degree rape (G.S. 14-27.2), second-degree rape (G.S. 14-27.3), first-degree sexual offense (G.S. 14-27.4), second-degree sexual offense (G.S. 14-27.5), and intercourse and sexual offenses with certain victims (G.S. 14-27.7) are deemed to result in bodily injury. The judgment shall contain the finding."

Section 5. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

March 20, 1997 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BILL SCOGGIN	NC BAR ASSOC.
John Madler	Sentencing Commission
Patrice Roesler	NCACE
Roslyn Savitt	NC Coalition Against Dom. Viol.
JEFF MARTIN	DIV. MHDDSAS
Benny Scarbro	WS PEPA
Gary Walker	ALLTEL
Jill Miller	NCATL
Charles Cromer	NCATL
Jeremy W. Wells	NC Natl Heritage Trust
CHRISTOPHER E. MCCLURE	NCAIA
DANIEL GROSS	AIA (NATL. HEADQUARTERS)
TIM KENT	American Institute of Architects
BILL MONROE	AIA
Rob Lubitz	Sent Commission
Bill Taylor	NCATL
Lou Rubbert	CYPC
R. Gaul Williams	NCMBA
Sonni Schmidt	NCJCDC

MINUTES
HOUSE JUDICIARY II COMMITTEE

March 25, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on March 25, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Berry, Bowie, Cansler, Creech, Culpepper, Goodwin, Hackney, Hensley, Nesbitt, Redwine, Russell, Saunders, Shubert, Sutton and Wilkins. A list of visitors is attached.

The following bill was discussed:

HB-407 UNIFORM FRADULENT TRANSFER ACT

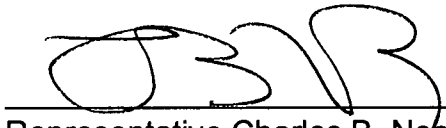
Representative Baddour was recognized to present the bill and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Mr. Jerry Hartzell, Attorney, North Carolina Bar - Business Law Section, Professor Charles Lewis, Campbell University Law School, and Mr. John McCabe, Legal Director, Uniform Law Commission, explained the bill and answered questions of committee members. A copy of their handouts are attached.

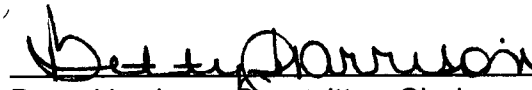
No action was taken on House Bill 407.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,



Representative Charles B. Neely, Jr., Chairman



Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 407*

Short Title: Uniform Fraudulent Transfer Act. (Public)

Sponsors: Representatives Baddour and Culpepper (Cosponsors).

Referred to: Judiciary II.

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, noncollusive 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 actual 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 or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) In determining actual 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; and
(11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

"**§ 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 fraudulent 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 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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March 23, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 407—Uniform Fraudulent Transfer Act (Baddour, Culpepper)

House Bill 407 would enact the Uniform Fraudulent Transfer Act (UFTA). UFTA was drafted by the National Conference of Commissioners on Uniform State Laws and approved by the group in 1984. 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.

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. 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.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

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.

House Bill 407 becomes effective October 1, 1997 and applies to transfers made on or after that date.

1983, except that all income received on or after January 1, 1983, but before July 1, 1983, from a tenancy by the entirety created before January 1, 1983, is considered to have been received by the husband and is reportable by him unless each spouse, by agreement, elects to report one-half (½) the income or loss from the property for the period January 1, 1983, to July 1, 1983."

Legal Periodicals. — For article discussing the "doctrine of color of title in North Carolina," see 13 N.C. Cent. L.J. 123 (1982). For article analyzing North Carolina's tenancy by the entirety reform legislation of 1982, see 5 Campbell L. Rev. 1 (1982). For survey of 1982 law relating to family law, see 61 N.C.L. Rev. 1155 (1983).

For comment discussing the status of the presumption of purchase money resulting trust for wives in light of Mims v. Mims, 305 N.C. 41, 286 S.E.2d 779 (1982), see 61 N.C.L. Rev. 576 (1983).

CASE NOTES

This section expressly changes the common-law incidents of tenancy by the entirety for all real property acquired on and after January 1, 1983. Boyce v. Boyce, 60 N.C. App. 685, 299 S.E.2d 805, cert. denied, 308 N.C. 190, 302 S.E.2d 242 (1983).

§ 39-14: Repealed by Session Laws 1943, c. 543.

ARTICLE 3.

Fraudulent Conveyances.

§ 39-15. Conveyance with intent to defraud creditors void.

For avoiding and abolishing feigned, covinous and fraudulent gifts, grants, alienations, conveyances, bonds, suits, judgments and executions, as well of lands and tenements as of goods and chattels, which may be contrived and devised of fraud, to the purpose and intent to delay, hinder and defraud creditors and others of their just and lawful actions and debts, every gift, grant, alienation, bargain and conveyance of lands, tenements and hereditaments, goods and chattels, by writing or otherwise, and every bond, suit, judgment and execution, at any time had or made, to or for any intent or purpose last before declared and expressed, shall be deemed and taken (only as against that person, his heirs, executors, administrators and assigns, whose actions, debts, accounts, damages, penalties and forfeitures, by such covinous or fraudulent devices and practices aforesaid, are, shall, or might be in anywise disturbed, hindered, delayed or defrauded) to be utterly void and of no effect; any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding; and in all actions by creditors to set aside gifts, grants, alienations and conveyances of lands and tenements and judgments purporting to be liens on the same on the ground that such gifts, grants, alienations, conveyances and judgments are feigned, covinous and fraudulent hereunder, it shall be no defense to the action to allege and prove that the lands and tenements alleged to be so conveyed or encumbered do not exceed in value the homestead allowed by law as an exemption: Provided, that nothing in this section shall be construed to authorize the sale under execution or other final process, obtained on any debt

during the continuance of the homestead, of any interest in such land as may be exempt as a homestead. (50 Edw. III, c. 6; 13 Eliz., c. 5, s. 2; 1715, c. 7, s. 4; R.C., c. 50, s. 1; Code, s. 1545; 1893, c. 78; Rev., s. 960; C.S., s. 1005.)

Cross References. As to registration of conveyances, contracts to convey, and leases of land, see § 47-18. As to preferences in deeds of trust or deeds of assignment for benefit of creditors, see § 23-1 et seq. As to arrest and bail in action for fraud on creditors, see § 1-410, subdivision (5). As to attachment in action for fraud, see § 1-440.1 et seq.

Legal Periodicals. — For a discussion of the constructive trust as a remedy for the defrauded creditor, see 45 N.C.L. Rev. 424 (1967). For an analysis and comparison of the law of fraudulent conveyances in North Carolina with the Uniform Fraudulent Conveyances Act, see 50 N.C.L. Rev. 873 (1972). For article on North Carolina's new Exemption Act, see 17 Wake Forest L. Rev. 865 (1981).

CASE NOTES

I. General Consideration.
II. What Conveyances Fraudulent.
  A. In General.
  B. Intent.
  C. Badges of Fraud.
III. Rights and Liabilities of Parties and Purchasers.
IV. Rights and Remedies of Creditors.

I. GENERAL CONSIDERATION.

This section is a substantial reenactment of the statute 13 Eliz., c. 5, s. 2. Bank of New Hanover v. Adrian, 116 N.C. 537, 21 S.E. 792 (1895).

Prior to enactment of this section it was necessary to invoke the aid of a court of equity to have a deed declared void for fraud, and where, under a statutory provision, deeds were pronounced void as against creditors in order to secure a formal declaration of their invalidity, the moving party must have asked for relief that would have been formerly administered solely in a court of equity. Farthing v. Carrington, 116 N.C. 315, 22 S.E. 9 (1895).

At an early period in the judicial history of this State, it was held that courts of law might hear evidence and pass even incidentally upon the question whether a deed was fraudulent under 13 Eliz. Logan v. Simmons, 18 N.C. 13 (1834); Lee v. Flannagan, 29 N.C. 471 (1847); Hardy & Bro. v. Skinner, 31 N.C. 191 (1848); Helms v. Green, 105 N.C. 251, 11 S.E. 470 (1890).

The statute of 13 Eliz., is declaratory of the common law so far as regards existing creditors; in this sense the statute is sometimes spoken of as being in affirmance of the common law. The remedy given to subsequent creditors rests entirely upon the enactment of the statute. Long v. Wright, 48 N.C. 290 (1856).

Section Applies to State. — The statute dealing with fraudulent conveyances applies to the State as well as to individuals, and the State cannot rely on its prerogative. Hoke v. Henderson, 14 N.C. 12 (1831).

It applies to voluntary conveyances of personalty, as well as realty, as against creditors. Garrison v. Brice, 48 N.C. 85 (1855).

It Prevents Passing of Any Estate. — This section makes fraudulent conveyances absolutely void, and in that way prevents the passing of any estate whatever, as against creditors of the grantor. Flynn v. Williams, 29 N.C. 32 (1846).

It Applies Only to Conveyances Made by Debtor. — The section operating, as it does, to wholly avoid the conveyances coming within its purview, it can be applied only to conveyances made by the debtor himself. Gowing v. Rich, 23 N.C. 553 (1841); United States v. Haddock, 144 F. Supp. 720 (E.D.N.C. 1956).

Mortgagor Considered Owner. — In expounding the statute against fraudulent conveyances, the mortgagor is considered the owner of the estate, and the mortgagee but an encumbrancer. Wall v. White, 14 N.C. 105 (1831).

Applied in Purvis v. W N.C. 262, 77 S.E.2d 682 (19 Purchasers, Inc. v. Aircraf 101 F.R.D. 779 (W.D.N.C.

Cited in Askew v. Inte Co., 195 N.C. 456, 142 S.E Vollers Co. v. Todd, 212 N S.E. 84 (1937); New Amster v. Waller, 301 F.2d 839 (4t New Amsterdam Cas. Co. v F.2d 20 (4th Cir. 1963); Pi Co. v. Northwestern Bank, 444, 181 S.E.2d 799 (197 Whitley, 39 N.C. App. 66 627 (1979).

II. WHAT CONVEY FRAUDULEN

A. In Genera

Rule Stated. — The pr deduced from the autho fraudulent conveyances, a conveyance is voluntary, ar retains property fully s available to pay his debts and there is no actual inte the conveyance is valid. (2) ance is voluntary, and the not retain property fully available to pay his debts it is invalid as to creditors; be impeached by subsequ without proof of the existen the time of its execution wh and when this is establi conveyance avoided, subs itors are let in and the pr jected to the payment generally. (3) If the convey tary and made with the upon the part of the gran creditors, it is void, a fraudulent intent is not p by the grantee, and altho sufficient and available t debts is retained. (4) If the upon a valuable considera with the actual intent to itors upon the part of the not participated in by the which intent he had no not (5) If the conveyance is up consideration, but made w intent to defraud creditors the grantor, participate grantee or of which he h void. Aman v. Walker, 16 S.E. 162 (1914); North Bank v. Evans, 35 N.C. S.E.2d 379 (1978), re grounds, 296 N.C. 374, 2 (1979); Nytco Leasi

Chapters 38 through 41

the claim of a prior creditor; as against subsequent creditors, whether the conveyance is fraudulent or not depends upon the bona fides of the transaction, and the question is one of intent, to be passed on by the jury. Clement v. Cozart, 109 N.C. 173, 13 S.E. 862 (1891). See § 39-17 and note.

Action Commenced Prior to Transfer of Assets. — A creditor beginning an action prior to the transfer of assets by defendant is entitled to attack the transfer as fraudulent as to him, although he does not obtain judgment against the defendant until after the transfer of the assets has been accomplished. Nytco Leasing, Inc. v. Southeastern Motels, Inc., 40 N.C. App. 120, 252 S.E.2d 826 (1979).

Surety on Bond. — The liability of a principal to indemnify a surety on a bond is an existing liability at the time the bond is executed, within the rule that a conveyance with intent to defraud creditors is void as to existing obligations. Graeber v. Sides, 151 N.C. 596, 66 S.E. 600 (1909).

Void in Part, Void in Toto. — If only a part of the consideration of a deed is fraudulent against creditors, the whole deed is void. Hafner v. Irwin, 23 N.C. 490 (1841).

When Trustee in Bankruptcy May Have Conveyance Set Aside. — A trustee in bankruptcy is entitled to have a fraudulent conveyance set aside and to recover the property transferred, if any creditor of the bankrupt would be entitled to do so. Cox v. Wall, 132 N.C. 730, 44 S.E. 635 (1903).

§ 39-16. Conveyance with intent to defraud purchasers void.

Every conveyance, charge, lease or encumbrance of any lands or hereditaments, goods and chattels, if the same be made with the actual intent in fact to defraud such person who has purchased or shall purchase in fee simple or for lives or years the same lands or hereditaments, goods and chattels, or to defraud such as shall purchase any rent or profit out of the same, shall be deemed utterly void against such person and others claiming under him who shall purchase for the full value thereof the same lands or hereditaments, goods and chattels, or rents or profits out of the same, without notice before and at the time of his purchase of the conveyance, charge, lease or encumbrance, by him alleged to have been made with intent to defraud; and possession taken or held by or for the person claiming under such alleged fraudulent conveyance, charge, lease or encumbrance shall be always deemed and taken as notice in law of the same. (27 Eliz., c. 4, s. 2; 1840, c. 28, ss. 1, 2; R.C., c. 50, s. 2; Code, s. 1546; Rev., s. 961; C.S., s. 1006.)

Cross References. — As to registration, see the Connor Act, §§ 47-17, 47-18, 47-19, and 47-20.

Legal Periodicals. — For an analysis and comparison of the law of fraudulent conveyances in North Carolina with the Uniform Fraudulent Conveyances Act, see 50 N.C.L. Rev. 873 (1972). For an article on North Carolina's new Exemption Act, see 17 Wake Forest L. Rev. 865 (1981).

CASE NOTES

The statute 27 Elizabeth, from which this section is derived, enacts that conveyances of land, made with intent to defraud purchasers, shall only, as against purchasers for good consideration, be void. Under the act it was, of course, held that notice of the fraudulent deed did not impeach the title of the purchaser, because the bad faith of the deed vitiated it, and, with notice of the deed, the purchaser had also notice of the fraud. The legislature thought proper in 1840 to alter this, and to declare that no person shall be deemed a purchaser unless he purchased the land for the full value thereof, without notice, at the time

of his purchase, of the con
alleged to be fraudulent.
30 N.C. 340 (1848). See
opinion in Bank of Ne
Adrian, 116 N.C. 537, 21

Section Construed tration Act. — This sectio istration Act (§§ 47-17 both intended to prevent f be construed together wi Austin v. Staten, 126 N.C 338 (1900).

First Bona Fide Pur Vendor or Vendee Pro statute of 27 Elizabeth b for the benefit of purcha bona fide purchaser, whe fraudulent vendor or ven its operation. Hoke v. H N.C. 12 (1831).

Equity Will Not Depr Advantage. — No one has consideration of a court of rior to those of a purch notice; and there is no case court has interfered to d purchaser of a legal advan Black, 41 N.C. 321 (1849).

"Purchaser" Defined. "purchaser" is not used in its technical sense for one an estate by his own ac received in its popular denoting one who buys for m we think, buys fairly and fair price. Fullenwider v. N.C. 420 (1839).

Good faith and a fai requisite to constitute a g Fullenwider v. Roberts, (1839).

What Is Full Value. — purchaser must now, as bef 1885, still be a bona fide p for full value. We do not me he should have paid every d was worth, but he should reasonably fair price, su indicate fair dealing and gestive of fraud. Austin v N.C. 783, 36 S.E. 338 (190

Purchase for "a Pett When the consideration is "petty" sum as compared t the land would not help a s head of a first conveyance v. Roberts, 20 N.C. 420 (1

One-Half or Two-Thir Under this section a man c to be a purchaser for a sideration who gives for more than one half or two

the plaintiff's deed, and to defeat it, if he can, by establishing fraud. Austin v. Staten, 126 N.C. 783, 36 S.E. 338 (1900).

§ 39-17. Voluntary conveyance evidence of fraud as to existing creditors.

No voluntary gift or settlement of property by one indebted shall be deemed or taken to be void in law, as to creditors of the donor or settler prior to such gift or settlement, by reason merely of such indebtedness, if property, at the time of making such gift or settlement, fully sufficient and available for the satisfaction of his then creditors, be retained by such donor or settler; but the indebtedness of the donor or settler at such time shall be held and taken, as well with respect to creditors prior as creditors subsequent to such gift or settlement, to be evidence only from which an intent to delay, hinder or defraud creditors may be inferred; and in any trial shall, as such, be submitted by the court to the jury, with such observations as may be right and proper. (1840, c. 28, ss. 3, 4; R.C., c. 50, s. 3; Code, s. 1547; Rev., s. 962; C.S., s. 1007.)

Legal Periodicals. — For an analysis and comparison of the law of fraudulent conveyances in North Carolina with the Uniform Fraudulent Conveyances Act, see 50 N.C.L. Rev. 873 (1972). For article on North Carolina's new Exemption Act, see 17 Wake Forest L. Rev. 865 (1981).

CASE NOTES

I. General Consideration.
II. Pleading and Practice.

I. GENERAL CONSIDERATION.

Section Applies Only to Gifts Inter Vivos. — This section makes a qualification in the maxim "A man must to just before he is generous" in cases where the donor, at the time of the gift retained property, fully sufficient and available for the satisfaction of all of his then creditors. But this modification is confined to gifts inter vivos. In respect to legacies, or gifts by will, there has been no modification of the maxim; on the contrary, the legislation upon the subject tends to enforce a strict adherence to it, and the assent of an executor to a legacy, before he has paid all of the debts of the testator, is void as to creditors. Pullen v. Hutchins, 67 N.C. 428 (1872).

Voluntariness of Conveyance. — A conveyance is voluntary when it is not for value, i.e., when the purchaser does not pay a reasonably fair price such as would indicate unfair dealing and be suggestive of fraud. Nytco Leasing, Inc. v. Southeastern Motels, Inc., 40 N.C. App. 120, 252 S.E.2d 826 (1979).

When Voluntary Deed Void Per Se. — A voluntary deed of land or other property made to a son by a father unable to pay his debts is void per se as to creditors, indeed, such a deed to any person is void, and such a deed appearing, the court declares it void in law. McCanless v. Flinchum, 89 N.C. 373 (1883); Hobbs v. Cashwell, 152 N.C. 183, 67 S.E. 495 (1910).

It is a well-settled rule of law in this State that no voluntary deed can be upheld as against creditors, when the bargainor is unable to pay his debts at the time of the execution of the deed. McCanless v. Flinchum, 89 N.C. 373 (1883); Hobbs v. Cashwell, 152 N.C. 183, 67 S.E. 495 (1910).

Protection for All Creditors. — One need not be a judgment creditor to be entitled to the protection of this section. Nytco Leasing, Inc. v. Southeastern Motels, Inc., 40 N.C. App. 120, 252 S.E.2d 826 (1979).

Rights of Prior and Subsequent Creditors. — The controlling principle is stated in Aman v. Walker, 165 N.C. 224, 81 S.E. 162 (1914), as follows: "If the conveyance is voluntary, and the grantor did not retain property fully sufficient and available to pay his debts then

has not been paid, this is evidence tending to show an intent to delay, hinder, and defraud creditors sufficient to carry the case to the jury for its determination of the issue, and a judgment of nonsuit is improperly granted. Virginia-Carolina Laundry Supply Corp. v. Scott, 267 N.C. 145, 148 S.E.2d 1 (1966).

When Question of Fraud for Jury. — This section only requires the question of fraud to be submitted to a jury in cases where property fully sufficient and available to pay all creditors is retained by the donor. Black v. Sanders, 46 N.C. 67 (1853). See Sturdivant v. Davis, 31 N.C. 365 (1849).

Retention of Sufficient Property Is Question for Jury. — It is a question of fact for the determination of the jury, whether the donor had retained property amply sufficient to pay his creditors at the time of his making a gift, within the intent and meaning of the section, which determines the validity of the transaction. Garland v. Arrowood, 177 N.C. 371, 99 S.E. 100 (1919).

Effect of Decree. — When the court under this section has declared a voluntary conveyance void as to the plaintiff, and decreed that it be "set aside, revoked, rescinded, and annulled," it is avoided only as between the parties to the action. Sturges v. Portis Mining Co., 206 F. 534 (E.D.N.C. 1934).

§ 39-18. Marriage settlements void as to existing creditors.

Every contract and settlement of property made by any man and woman in consideration of a marriage between them, for the benefit of such man or woman, or of their issue, whether the same be made before or after marriage, shall be void as against creditors of the parties making the same respectively, existing at the time of such marriage if the same is antenuptial, or at the time of making such contract or settlement if the same is postnuptial. (1785, c. 238, s. 2; R.C., c. 37, s. 25; 1871-2, c. 193, s. 11; Code, ss. 1270, 1820; Rev., s. 963; C.S., s. 1008.)

Cross References. — As to statutes concerning married persons generally, see § 52-1 et seq.

Legal Periodicals. — For article on North Carolina's new Exemption Act, see 17 Wake Forest L. Rev. 865 (1981).

CASE NOTES

Gifts between Husband and Wife. — All gifts from a husband to his wife are good inter se, and against all persons claiming under them; and good against all persons, if he is not in debt at the time; but such gifts are voidable as to existing creditors, if their rights are not secured. Walton v. Parish, 95 N.C. 259 (1886). See note to § 39-17.

Husband May Surrender Curtesy Initiate. — Since the Act of 1848, a husband has the right to surrender his estate as tenant by the curtesy initiate and let it merge in the reversion of his wife, who, with the assent of her husband, may sell the same and receive the whole of the purchase money. Teague v. Downs, 69 N.C. 280 (1873). See § 29-4 which abolishes curtesy.

§ 39-19. Purchasers for value and without notice protected.

Nothing contained in the preceding sections shall be construed to impeach or make void any conveyance, interest, limitation of use or uses, of or in any lands or tenements, goods or chattels, bona fide made, upon and for good consideration, to any person not having notice of such fraud. (13 Eliz., c. 5, s. 6; 1785, c. 7, s. 6; R.C., c. 50, s. 4; Code, s. 1548; Rev., s. 964; C.S., s. 1009.)

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and comparison of the law of fr
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Uniform Fraudulent Conveyar

Section Is Intended as Pr
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claiming the title from him,
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from being impeached and m
Young v. Lathrop, 67 N.C. 63
Rep. 603 (1872). See Cox. v.
N.C. 730, 44 S.E. 635 (1903).

How Grantee May Pro
Title. — When a grantor execut
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of his grantor. Cansler v. Cobb
30 (1877); Saunders v. Lee, 10
S.E. 590 (1888); Morgan v. B
N.C. 743, 44 S.E. 639 (1903).

Bona Fide Purchase
Fraudulent Vendor Gets G
— Under this section a pur
value and without notice of
gets good title by conveyance
from a fraudulent vendor. Peo
& Trust Co. v. Mackorell, 195
143 S.E. 518 (1928).

Bona Fide Purchas
Fraudulent Grantee befo
tion Sale. — Where a
grantee of land conveyed it to
purchaser for value without n
fraud, after a creditor of the
grantor had obtained a judgm
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to be void because made with a fraudulent intent. Cox v. Wall, 132 N.C. 730, 44 S.E. 635 (1903).

Burden of Proving Consideration and Lack of Notice. — When a deed is made with a fraudulent intent, the law condemns it and pronounces it void, and it remains void, of course, until it is shown for some reason to be valid. Nothing else appearing, it is void, and he who claims under it must aver and prove whatever is necessary to sustain its validity. The burden is on the purchaser, therefore, to show, under the statute, that he purchased not only for value, but without notice. Cox v. Wall, 132 N.C. 730, 44 S.E. 635 (1903), distinguishing Lassiter v. Davis, 64 N.C. 498 (1870); Reiger v. Davis, 67 N.C. 185 (1872). See Morgan v. Bostic, 132 N.C. 743, 44 S.E. 639 (1903).

Cited in Threlkeld v. Malcragson Land Co., 198 N.C. 186, 151 S.E. 99 (1930).

§ 39-20. Bona fide purchaser of mortgaged property not affected by illegal consideration of note secured.

No conveyance or mortgage, made to secure the payment of any debt or the performance of any contract or agreement, shall be deemed void as against any purchaser for valuable or other good consideration of the estate or property conveyed, sold, mortgaged or assigned, by reason that the consideration of such debt, contract or agreement is forbidden by law, if such purchaser, at the time of his purchase, did not have notice of the unlawful consideration of such debt, contract or agreement. (1842, c. 70; R.C., c. 50, s. 5; Code, s. 1549; Rev., s. 965; C.S., s. 1010.)

Cross References. — As to registration of conveyances affecting validity thereof, see § 47-18.

Legal Periodicals. — For article on North Carolina's new Exemption Act, see 17 Wake Forest L. Rev. 865 (1981).

CASE NOTES

When Some of Debts Secured Are Fictitious. — A purchaser for value without notice, under a deed in trust in which some of the debts secured are fictitious, gets a good title, even against the creditors of the fraudulent trustor. McCorkle v. Earnhardt, 61 N.C. 300 (1867).

Mortgage Note Tainted with Usury. — This section does not purport to protect the innocent holder of a mortgage note which is tainted with usury, but the "purchaser of the estate or property" at the sale under the mortgage, who buys without notice of the usurious taint in the debt secured. The only case in our reports that seems to mitigate against the otherwise uniform tenor of the decisions on this subject is Coor v. Spicer, 65 N.C. 401 (1871), which held that a mortgage given to secure an usurious bond might be enforced in the hands of an innocent purchaser for value. The case recognizes the general rule, but takes mortgages out of it upon the supposed wording of the section. Aside from the fact that it is held expressly otherwise in the latter case of Moore v. Woodward, 83 N.C. 531 (1880), an examination of the section will show that Coor v. Spicer was a palpable inadvertence. Ward v. Sugg, 113 N.C. 489, 18 S.E. 717 (1893).

Where a deed of trust is made to secure certain specified debts, one of which is tainted with usury, and a purchaser buys at the trustee's sale for a valuable consideration without notice of the illegality of the consideration of the said debt, his title is not affected thereby. McNeill v. Riddle, 66 N.C. 290 (1872).

§ 39-21. Bona
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Rev., s. 966; C.S., s.

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§ 39-22. Person
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(1855).

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§ 39-21. Bona fide purchaser of fraudulently conveyed property treated as creditor.

Purchasers of estates previously conveyed in fraud of creditors or purchasers shall have like remedy and relief as creditors might have had before the sale and purchase. (R.C., c. 50, s. 6; Code, s. 1550; Rev., s. 966; C.S., s. 1011.)

Legal Periodicals. — For article on North Carolina's new Exemption Act, see 17 Wake Forest L. Rev. 865 (1981).

§ 39-22. Persons aiding debtor to remove to defraud creditors liable for debts.

If any person removes or aids and assists in removing any debtor out of any county in which he has resided for the space of six months, or more, with the intent, by such removing, aiding or assisting, to delay, hinder or defraud the creditors, or any of them, of such debtor, the person so removing, aiding or assisting therein, and his executors or administrators, shall be liable to pay all the debts which the debtor removed may justly owe in the county from which he was so removed; and the same may be recovered by the creditors, their executors or administrators, by a civil action. (1820, c. 1063; R.C., c. 50, s. 14; Code, s. 1551; Rev., s. 1939; C.S., s. 1012).

Legal Periodicals. — For article on North Carolina's new Exemption Act, see 17 Wake Forest L. Rev. 865 (1981).

CASE NOTES

What Constitutes Aid and Assistance. — Aid or assistance is the doing of some act whereby the party is enabled, or it is made easier for him, to do the principal act, or effect some primary purpose. L.M. Wiley & Co. v. McRee, 47 N.C. 349 (1855).

Where a party persuades a debtor, who is temporarily absent from the county of his residence, not to go back into that county, but to go to distant parts, and promises, if he will do so, to send his property from his residence to him, and does afterwards send such property to him, and aids him with money to abscond from where he then is, and goes part of the way with him, for the purpose of defrauding his creditors, he is liable under the section. Moore v. Rogers, 48 N.C. 90 (1855).

Aid Consisting Mainly in Words. — There is no distinction between frauds consisting mainly in acts, and those which consist mainly in words, the criterion of the plaintiff's right of action and the defendant's liability being that the plaintiff should have been damaged in consequence of the fraud of the defendant. March v. Wilson, 44 N.C. 143 (1852).

Mere Advice Insufficient. — Simply advising a debtor to run away, though the advice be given to delay, etc., is not equivalent to aiding and assisting, and will not sustain an action under the statute against the fraudulent removing of debtors. L.M. Wiley & Co. v. McRee, 47 N.C. 349 (1855).

Carrying Debtor to Railway Station. — Where a party, with his horse and buggy, carried a debtor to a railroad station, and there procured the money to enable him to leave the State, with the intent to assist him in the purpose of avoiding his creditors, it was held to be a fraudulent removal within this section. Moffit v. Burgess, 53 N.C. 342 (1861).

Property Not Carried Entirely Out of County. — Where a debtor removes out of a county with intent to defraud his creditors, a person who, knowing of such intent, helps him by carrying him or his property a part of the way in order to assist him in getting him out of the

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March 18, 1997

J. Jerome Hartzell, Esq.
Hartzell & Whiteman
2626 Glenwood Ave., Ste. 500
Raleigh, NC 27608

Re: Uniform Fraudulent Transfer Act

Dear Mr. Hartzell:

I thank you for asking me to share with the members of the North Carolina Legislature my views on the desirability of the adoption of the Uniform Fraudulent Transfer Act. Regrettably, for personal reasons too tedious to detail, I must decline your kind invitation to testify at the hearing in the matter scheduled for next Tuesday. Nevertheless, for whatever its weight, I would like to register my strong support of this proposed legislation, and I hope that you will communicate my views at this hearing.

I do not wish to impose unduly on the legislators' valuable time and attention, and so I will refrain from any comments on specific shortcomings of G.S. 39-15 (which retains even the language of the ancient Statute of 13 Elizabeth (1570) from which it was drawn) that the Uniform Fraudulent Transfer Act promises to remedy. These matters will, I am sure, more than adequately have been addressed by both competent and experience practitioners and learned and respected academic authorities. From the vantage point of one who taught Debtor and Creditor Law at the Duke Law School for forty-three years (1953 - 1996) and who enjoyed the opportunity closely and critically to observe the development of law and practice in this area in both North Carolina and the country at large during this period, however, I feel constrained to urge the Legislature promptly to enact the UFTA.

First, the Uniform Fraudulent Transfer Act is the end-product of many years of work by a body of dedicated experts who have sought to rationalize existing law by conforming it more closely to business conditions and needs, and in both theory and practice, the UFTA better serves the legitimate interests of the citizens of North Carolina than does G.S 39-15. The UFTA also clearly is the 'wave of the future,' in that it has already been enacted in a majority of the States (including most of the commercially important ones with which for competitive reasons North Carolina should strive to keep in step), and it is being studied and considered for adoption in most of the others. Finally, the UFTA will, I respectfully predict, owing to these practical considerations, sooner or later, inevitably be enacted in North Carolina to replace the demonstrably obsolescent G.S 39-15 -- and so one reasonably may ask, "if eventually, why not now?".

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Parenthetically, I am reminded that the instant situation strongly resembles the situation almost exactly forty years ago when the North Carolina Legislature was similarly being urged by many practitioners and academics (myself included) to commence the study of the recently promulgated Uniform Commercial Code -- a similarly carefully crafted reworking and refinement of a body of law that had grown obsolete and unresponsive to the changed conditions in the business community over the years -- with a view to its possible adoption . At that time, too, the proposed legislation already had been adopted or was being considered for adoption by the legislatures of most of the other States and gave fair promise of eventually becoming the universal 'law of the land'. Presciently recognizing the important commercial implications of the matter, the North Carolina Legislature submitted the UCC for thorough-going analysis and recommended action to the General Statutes Commission. And the rest, as they say, is history.

Today, I am sure, no one questions the wisdom of the Legislature's prudent approach to the proposed adoption of the Uniform Commercial Code. And I hope and trust that the Legislature will respond in similarly farsighted fashion to the current proposed adoption of the Uniform Fraudulent Transfer Act.

Thank you again for inviting my views in this matter, which I hope have been helpful. If I can be of further assistance, please do not hesitate to let me know.

Sincerely,

Melvin G. Shimm

The attached comments were prepared by three lawyers appointed by the Bankruptcy Section and Business Law Section of the North Carolina Bar Association: Douglas R. Ghidina, Jerry Hartzell and Joseph B.C. Kluttz. The comments were prepared for the purpose of identifying the extent to which the Uniform Fraudulent Transfer Act would change North Carolina law.

INTRODUCTORY COMMENT

Prior to enactment of the Uniform Fraudulent Transfer Act (the "UFTA"), the statutory law of fraudulent conveyances in North Carolina was governed by N.C. Gen. Stat. § 39-15, which in turn was a substantial reenactment of the Statute of 13 Elizabeth (1570). See Bank of New Hanover v. Adrian, 116 N.C. 537, 21 S.E. 792 (1895). As a reenactment of Elizabethan law, the statute was written in archaic language and was difficult to interpret.

In 1914 the North Carolina Supreme Court clarified fraudulent conveyance law in Aman v. Walker, 165 N.C. 224, 815 S.E. 162 (1914), by articulating five distinct rules governing recovery under N.C. Gen. Stat. § 39-15. Most published decisions after that date used Aman v. Walker as their point of reference in deciding fraudulent conveyance issues under North Carolina law. Prior to enactment of the UFTA, however, fraudulent law in North Carolina was developed by a series of ad hoc appellate decisions that are not altogether uniform or consistent.

The UFTA was drafted by the National Conference of Commissioners on Uniform State Laws (the "NCCUSL") and approved by that organization in 1984. It subsequently was approved by the American Bar Association in 1985. It is the modern successor to the Uniform Fraudulent Conveyance Act, which was promulgated by the NCCUSL in 1918. Among other changes from the old act, the UFTA was broadened to make clear that it reaches transfers of personal as well as real property. The UFTA further is intended to function more congruently with the Uniform Commercial Code (codified as Chapter 25 of the North Carolina General Statutes) and the United States Bankruptcy Code (Title 11, U.S. Code).

While there are a number of differences between the UFTA and the old Uniform Fraudulent Conveyance Act, there are a number of close parallels, and interpretations of the Uniform Fraudulent Conveyance Act can be useful in understanding the intent of the various provisions of the UFTA. A 1972 note by E. Cader Howard that appeared in the North Carolina Law Review comparing the Uniform Fraudulent Conveyance Act with North Carolina law therefore is of special relevance in considering the changes effected by enactment of the UFTA in North Carolina. Note, "The Law of Fraudulent Conveyances in North Carolina: An Analysis and Comparison With the Uniform Fraudulent Conveyances Act," 50 N.C. L. Rev. 872 (1972).

For purposes of the North Carolina comments that follow, the rules articulated by Aman v. Walker are identified as the respective "principles"; and the note by E. Cader Howard is cited as "Howard," with appropriate page references to the North Carolina Law Review.

North Carolina Comment to UFTA § 1 (Definitions)

The definitions of "affiliate," "relative" and "insider" in subsections (1), (7) and (11) relate to liability for transfers to insiders described in section 5(b). Section 5(b) had no counterpart under prior North Carolina law and, accordingly, these definitions have no prior North Carolina equivalent insofar as fraudulent conveyance law is concerned.

The definition of "asset" in subsection (2) excludes property to the extent it is encumbered by a lien, is generally exempt from the claims of creditors or is held as entireties property. The intent of this definition is that only those transfer that adversely affect unsecured creditors can occasion liability. This is consistent with prior North Carolina law, which disregarded transfers of assets that were entireties property, L & M Gas Co. v. Leggett, 273 N.C. 547, 553, 161 S.E.2d 23, 27-28 (1968), or were subject to a resulting trust, Kelly Springfield Tire Co. v. Lester, 190 N.C. 411, 415, 130 S.E. 45, 47 (1925).

The definition of "claim" in subsection (3) is broad and includes potential liability on contingent claims. This seems consistent with prior North Carolina law: Rule 18(b), N.C. R. Civ. P., allows a claim for fraudulent conveyance to be joined with a claim to establish the indebtedness that provides the foundation for the fraudulent conveyances claim. Subsections (4), (5) and (6) (providing definitions of "creditor," "debt" and "debtor") are based on the definition of "claim."

The definition of "transfer" in subsection (12) is broad; this breadth appear to be consistent with prior North Carolina law. See Howard, 50 N.C. L. Rev. at 876-77 (1972).

The remaining definitions (of "lien," "valid lien," "person" and "property" in subsections (8), (13), (9) and (10)) appear to be straightforward. Prior North Carolina fraudulent conveyance law does not appear to have concerned itself with defining or explaining these terms.

North Carolina Comment To UFTA § 2 (Insolvency)

The drafters of the Uniform Fraudulent Conveyance Act identified confusion about the concept of insolvency as one of the three basic uncertainties in then-existing fraudulent conveyance law. See Prefatory Note to Uniform Fraudulent Conveyance Act; Howard, 50 N.C. L. Rev. at 875. Section 2, in conjunction with the definitions of "asset" and "debt" (and the various definitions that are employed in connection with those terms), appears to eliminate this uncertainty. There seems to be little substantive change to North Carolina law, although uncertainty as to the meaning of North Carolina law makes this conclusion debatable.

North Carolina fraudulent conveyance cases have long determined solvency by contrasting a person's assets with his liabilities, and has rejected a test concerning whether

the person is able to pay his debts in the ordinary course of business. Silver Valley Mining Co. v. North Carolina Smelting Co., 119 N.C. 417, 418-19, 25 S.E. 954, 954-55 (1896); Unaka and City National Bank of Johnson City, Tennessee v. Lewis, 201 N.C. 148, 153, 159 S.E. 312, 314 (1931). But see Sample v. Jackson, 223 N.C. 335, 339, 26 S.E.2d 876, 879 (1943) (dictum) (stating that the North Carolina test is ability to pay debts). Also cf. N.C. Gen. Stat. § 25-1-201(23) (UCC definition of "insolvent" is a person who "has ceased to pay his debts in the ordinary course of business.")

Under former North Carolina fraudulent conveyance law, "insolvency" may not have been an element of a fraudulent conveyance so much as solvency (the retention of property "fully sufficient" for the satisfaction of creditors) was a defense. See N.C. Gen. Stat. § 39-17; Howard, 50 N.C. L. Rev. at 882-85. But see Virginia-Carolina Laundry Supply Corp. v. Scott, 267 N.C. 145, 150, 148 S.E.2d 1, 4 (1966) (holding it was an attacking creditor's burden to demonstrate that transferor was insolvent). Whether a debtor had retained property "fully sufficient" to satisfy his creditors was a jury issue; the courts generally took a case-by-case approach and allowed juries to consider all relevant factors. Garland v. Arrowood, 177 N.C. 371, 373, 99 S.E. 100, 102 (1919). Cf. Williams v. Hughes, 136 N.C. 58, 48 S.E. 518 (1904) (property retained held as a matter of law not to be fully sufficient). Rules for determining whether retained property was "fully sufficient" did emerge: exempt property was not to be considered; contingent liabilities were to be valued at the amount of the debtor's probable ultimate liability. Williams v. Hughes, supra; Shuford v. Cook, 169 N.C. 52, 55, 85 S.E. 142, 144 (1915).

Subsection (b) creates a presumption that a person not generally paying his debts is insolvent. There appear to be no North Carolina fraudulent conveyance cases that have recognized such a presumption, subsection (b) is consistent with North Carolina definitions of insolvency in some other contexts. See N.C. Gen. Stat. § 25-1-201(23) (UCC definition of insolvency); N.C. Gen. Stat. § 58-30-10(13) (definition of insolvency for purposes of laws dealing with insolvent insurance companies); N.C. Gen. Stat. § 53-1(3) (statute dealing with bank insolvency and including bank's inability to meet deposit liabilities within definition).

The definition of insolvency as it relates to partnerships (subsection (c)) appears to be without precedent in North Carolina fraudulent conveyance law, but follows from the concept of a partnership as an association of partners each of whom is liable for the partnership's debts. See N.C. Gen. Stat. § 59-45. Outside the context of fraudulent conveyance law, North Carolina has considered a partnership to be insolvent when the debts of the partnership have exceeded the assets of the partnership itself. Farmer v. Head, 175 N.C 273, 275-76, 95 S.E 567, 568 (1918).

No North Carolina cases have been located addressing the exclusion of assets that have been the subject of fraudulent transfers (subsection (d)) and the exclusion of debts to the extent they are secured (subsection (e)).

North Carolina Comment to UFTA § 3 (Value)

Subsection (a) concerns itself with what constitutes "value." The term, qualified with adjectives (principally "reasonably equivalent value") appears throughout sections 4, 5 and 8. Two actions are stated to constitute the giving of "value": transfers of property and securing or satisfying prior debt.

Prior North Carolina law has dealt with what constitutes "full value" or "good consideration," terms that were employed in former N.C. Gen. Stat. §§ 39-16 and -19. The inquiry has generally focused on the amount of consideration, however, rather than on its character. Two types of consideration that have been analyzed in prior law are prior indebtedness (so-called "antecedent debt") and unfulfilled ("executory") promises. As to antecedent debt, prior North Carolina law laid down the same rule as that set out in subsection (a): antecedent debt qualified as consideration. See Fowle v. McLean, 168 N.C. 537, 541, 84 S.E. 852, 854 (1915). See also Howard, 50 N.C. L. Rev. at 880-81.

Executory promises of support constituted consideration under prior North Carolina law, subject to a number of exceptions and limits. Services furnished to relatives were presumed to be gratuitous; the relationship of the parties could go far toward raising a presumption that a transfer involved fraudulent intent. See Howard, 50 N.C. L. Rev. at 881-82. Subsection (a) excludes from the definition of value unperformed promises to furnish support, subject only to an exception for a promise made in the ordinary course of the provisor's business. This blanket exclusion represents a change from prior North Carolina law.

Subsection (a) does not expressly address unperformed promises other than to furnish support. However one of the UFTA drafters' comments indicate that subsection (a) was intended to follow the a number of cited cases, some of which recognize unperformed promises (other than for support) as constituting value. See Official Comment 4 to UFTA § 3.

Subsection (b) rejects the so-called "Durrett" rule. See Durrett v. Washington National Ins. Co., 621 F.2d 201 (5th Cir. 1980) (dealing with the Bankruptcy Act provision analogous to Bankruptcy Code § 548(a)(2)); Official Comment 5 to UFTA § 3. The Durrett rule has since been rejected by the United States Supreme Court. BFP v. Resolution Trust Corp., 511 U.S. 531 (1994). There is no North Carolina law on this subject. However subsection (b) is consistent with the philosophy of North Carolina's unique part 6 of Article 9 of the UCC (N.C. Gen. Stat. § 25-9-601 et seq.), which adopts a conclusive presumption that a sale conducted in a certain manner is commercially reasonable.

North Carolina Comment to UFTA § 4

The reference to "obligation incurred" in subsection 4(a) represents a change from prior North Carolina law, and reflects a recognition that a debtor can harm creditors by incurring a fraudulent debt as well as by making a fraudulent transfer.

Except for the change described in the preceding sentence, subsection 4(a)(1) does not change fraudulent transfer law in North Carolina. Under prior law, once a creditor had shown actual fraud on the part of the debtor, the transfer was void whether the creditor's claim was in existence at the time of the transaction or arose subsequently. See generally Howard, 50 N.C. L. Rev. at 887. Subsection 4(a)(1) is subject to an important limitation: under subsection 8(a) of the UFTA, a transfer or obligation is not voidable under subsection 4(a)(1) against a person who took in good faith and for a reasonably equivalent value. With that limitation, subsection 4(a)(1) is consistent with prior North Carolina law. N.C. Gen. Stat. § 39-19; Aman v. Walker, 165 N.C. 224, 227, 81 S.E. 162, 164 (1914) (principle four).

Subsection 4(a)(2)(i) is intended to address transactions for less than "reasonably equivalent value" that leave a debtor undercapitalized (see Official Comment 4 to UFTA § 4) and applies both to present and subsequent creditors. It should be contrasted with subsection (a) of section 5 of the UFTA, which addresses transactions for less than "reasonably equivalent value" made when a debtor is or becomes "insolvent" but which applies only to creditors whose claims arose before the transaction.

Prior North Carolina law invalidated transactions for less than a "reasonably fair price" when the debtor failed "to retain property fully sufficient and available to pay his debts then existing." Aman v. Walker, 165 N.C. 224, 227, 18 S.E. 162, 164 (1914) (principle two). The rule clearly applied to transactions occurring when a debtor was "insolvent" in a "balance sheet" sense. See North Carolina Comment to UFTA § 2, supra. Under prior law a subsequent creditor could use the fact that a conveyance left a business with "unreasonably small capital" as evidence of fraud, but the creditor nevertheless would have to prove actual fraudulent intent in order to void the conveyance. Howard, 50 N.C. L. Rev. at 888. Without proof of actual fraudulent intent, however, North Carolina fraudulent transfer law probably did not reach transactions that rendered a debtor undercapitalized without regard to solvency, and subsection (a)(2)(i) therefore creates a new class of transactions subject to challenge that probably did not exist under prior law.

Subsection 4(a)(2)(ii) refers to transactions causing a debtor to incur debts beyond the debtor's ability to pay as they become due. As noted, under prior law when a debtor engaged in a transaction for less than a "reasonably fair price" and failed "to retain property fully sufficient and available to pay his creditors then existing," the transaction generally was voidable only by a creditor whose claim was in existence as of the time of the transaction in question. See North Carolina Comment to UFTA section 5, infra. To the extent subsection 4(a)(2) can be construed to apply to transactions that might have fallen within the rule of the

second principle of Aman v. Walker, subsection 4(a)(2) broadens prior law since it can be invoked "whether the creditor's claim arose before or after" the transaction.

Subsection 4(b) is a non-exclusive list of "badges of fraud" that can be considered in establishing a debtor's actual fraudulent intent within the meaning of subsection 4(a)(1). North Carolina law has long recognized "badges of fraud" in fraudulent conveyance litigation, see, e.g., Peebles v. Horton, 64 N.C. 374, 377 (1870), and decisions have identified several of the factors enumerated in subsection 4(a)(i). Among these factors are close family relationship (Wurlitzer Dist. Corp. v. Schofield, 44 N.C. App. 520, 529, 261 S.E.2d 688, 694 (1980), Nytco Leasing, Inc. v. Southeastern Motels, Inc., 40 N.C. App. 120, 130, 252 S.E.2d 826, 833 (1979), Unaka & City Nat'l Bank v. Lewis, 201 N.C. 148, 156, 159 S.E. 312, 316-17 (1931), Peeler v. Peeler, 109 N.C. 628, 634, 14 S.E. 59, 62 (1891)); retention of possession (Piedmont Sav. Bank v. Levy, 138 N.C. 274, 50 S.E. 657 (1905)); secrecy (Reiger v. Davis, 67 N.C. 185, 189 (1872)); and pending litigation (Helms v. Green, 105 N.C. 251, 262, 11 S.E. 470, 474 (1890). Under prior law certain combinations of "badges of fraud" could give rise to a rebuttable presumption of fraudulent intent. Howard, 50 N.C. L. Rev. at 891-893. According to the Official Comment to UFTA subsection 4(b), however, proof of the existence of any one or more of the factors enumerated in subsection (b) may be relevant evidence as to the debtor's actual intent but does not create a presumption that the debtor has engaged in a fraudulent transaction.

North Carolina Comment to UFTA § 5

As in subsection 4(a), subsection 5(a) adds "obligations incurred" as potential subjects of fraudulent transfer law. In other respects subsection 5(a) corresponds to principle two of Aman v. Walker, 165 N.C. 224, 227, 81 S.E. 162, 164 (1914), which invalidated conveyances for less than a "reasonably fair price" where the debtor "did not retain property fully sufficient and available to pay his debts then existing." Subsection 5(a) is narrower than prior law in one respect, however. The former rule gave standing to challenge a transaction only to creditors with claims in existence at the time of the transaction that remained unpaid, see Powell Bros. v. McMullan Lumber Co., 153 N.C. 52, 58, 68 S.E. 926, 928-29 (1910), but once the transaction was voided, subsequent creditors could participate in the redistribution of assets recovered. Subsection 5(a), however, states only that the defined category of transactions "is fraudulent as to a creditor whose claim arose before" the transaction.

The effect of subsection 5(b) is to create a cause of action for "insider preferences" roughly comparable to similar claims under § 547 of the United States Bankruptcy Code (11 U.S.C. § 547). This has no counterpart under prior North Carolina law.

North Carolina Comment To UFTA § 6 (When Transfer Is Made)

The provisions of subsection (1) provide a general rule that is consistent with the rule found in bankruptcy law, see 11 U.S.C. §§ 548(d), 547(e)(1), and with the insolvency law North Carolina applies to insurance companies, see N.C. Gen. Stat. § 58-30-140(b).

Subsection (4), providing that a transfer does not become effective until the debtor has rights in the collateral, mirrors the comparable provision in Article 9 of the UCC, N.C. Gen. Stat. § 25-9-203(1)(c)).

North Carolina Comment To UFTA § 7 (Remedies of Creditors)

The remedies provided in section 7 are cumulative and are not exclusive. Section 7(a)(1)'s remedy of avoiding the fraudulent transfer is consistent with prior North Carolina fraudulent conveyance law, which was derived from the Statute of 13 Elizabeth.

Attachment and other pre-judgment remedies or relief under subsections 7(a)(2) and 7(a)(3) are subject to applicable due process protections. They also are subject to the substantive and procedural requirements separately provided for those remedies under applicable law. See, e.g., N.C. Gen. Stat. § 1-440.1, et seq., N.C. R. Civ. P. 65, N.C. Gen. Stat. § 1-485, et seq., and N.C. Gen. Stat. § 1-501, et seq.

Any request for pre-judgment or post-judgment relief against a transferee under subsections 7(a)(3) or 7(b), or against an asset in the hands of a transferee, necessarily requires due process as to the transferee. For example, such a transferee has a right to notice and an opportunity to appear and assert the defenses and protections available under section 8. This is consistent with prior North Carolina law, which also required that the transferee be given notice of a fraudulent conveyance action. See, e.g., Dawson Bank v. Harris, 84 N.C. 206, 212 (1881).

North Carolina Comment To UFTA § 8 (Defenses, Liability of Transferee)

Subsection 8(a) is consistent with former fraudulent conveyance law in North Carolina. See, e.g., former N. C. Gen. Stat. § 39-19; Aman v. Walker, 165 N.C. 224, 81 S.E.2d 162 (1914) (principle four). A transferee has the burden of establishing good faith and the reasonable equivalence of the consideration exchanged. Section 8(b) restricts a complaining creditor to relief equal to the lesser of the amount of his claim or the value of the property transferred, and in this respect is comparable to section 550(a) of the Bankruptcy Code, 11 U.S.C. § 550(a). Unlike former N.C. Gen. Stat. § 39-15, which provided only for avoidance of a conveyance in its entirety, subsection 8(b) establishes limits on a transferee's liability.

Subsection 8(c) is significant if the value of an asset has changed while in the hands of a transferee. As a matter of equity, when a transferee has enhanced the asset's value through improvements, the transferee should be entitled to retain the value of that increase despite avoidance of the transfer. Similarly, when a transferee has decreased the value (for example, by mining, harvesting timber or removing pre-existing improvements or fixtures), the transferee should be liable for the reduction. Subsection 8(c) allows a court, through application of equitable principles, to allocate post-transfer changes in value among the competing parties, which was not an issue specifically addressed under prior North Carolina statute or case law.

Subsection 8(d) provides that, when a transfer is avoided, a good faith transferee who gave less than reasonably equivalent value does not forfeit the value of the consideration given. It is an adaptation of section 548(c) of the Bankruptcy Code, 11 U.S.C. § 548(c), and preserves for a transferee specific rights in the property to the extent of actual value given. North Carolina's former fraudulent conveyance statutes did not provide similar protections for a good faith transferee, nor had the North Carolina courts addressed this issue.

Subsection 8(f) allows insiders certain additional defenses for transfers otherwise avoidable under subsection 5(b), which effectively balances that section's refusal to allow an insider's antecedent debt to qualify as reasonably equivalent value. It is derived from section 547(c) of the Bankruptcy Code, 11 U.S.C. § 547(c). The foundation of each of these defenses to "preferential" payment of insider debts -- new value, ordinary course of business or financial affairs, and contemporaneous provision of value given in good faith to rehabilitate -- is that encouraging normalized dealings with a financially distressed debtor may help that debtor avoid insolvency, receivership or bankruptcy, which is in the best interests of all creditors.

North Carolina Comment To UFTA § 9 (Limitations)

The UFTA's limitations provisions make some change to the limitations period previously prescribed under North Carolina law. Under prior law, the limitations period applicable to fraudulent conveyances was three years and the limitations period began to run as of the time when the fraud was known or should have been discovered by the aggrieved party. Cowart v. Whitley, 39 N.C. App. 662, 664, 251 S.E.2d 627, 629 (1979).

The UFTA provides for three limitations periods. As to transfers made with actual intent to defraud, there is a four year statute that accrues upon the date of transfer, but with a proviso that an aggrieved party shall have a minimum limitations period of one year from the date the transfer was or reasonably could have been discovered. As to claims based on a transfer in which the debtor does not receive reasonably equivalent value, the limitations period is four years from the date of transfer. The limitations period for a transfer to an insider in payment of an antecedent debt is one year.

The introductory language of this section, which speaks in terms of a cause of action being "extinguished," is intended to indicate that lapse of the statutory period bars the right as well as the remedy. Thus, the discovery rule of N.C. Gen. Stat. § 1-52(9) would not apply to claims within subsections (b) or (c), even if such claims were made under circumstances such that N.C. Gen. Stat. § 1-52(9) would otherwise apply.

The defense of laches is available in appropriate cases. See UFTA § 10.

North Carolina Comment To UFTA § 10 (Supplementary Provisions)

This section is derived in part from section 1-103 of the Uniform Commercial Code, N.C. Gen. Stat. § 25-1-103.

According to the drafters' comment to this section, the defense of laches (which does not appear in UCC § 1-103) has been specifically added to the UFTA "in recognition of the particular appropriateness of the application of this equitable doctrine to an untimely action to avoid a fraudulent transfer." See Official Comment to UFTA § 10.

North Carolina Comment To UFTA § 11 (Uniformity)

A uniformity provision such as this appears in over two dozen uniform acts adopted in North Carolina. See, e.g., N.C. Gen. Stat. § 25-1-102(2)(c) (Uniform Commercial Code). The North Carolina courts have occasionally cited such a provision in connection with their construction of a uniform act. North Carolina Reinsurance Facility v. North Carolina Ins. Guaranty Ass'n., 67 N.C. App. 359, 372, 313 S.E.2d 253, 262 (1984) (applying N.C. Gen. Stat. § 58-155.17).

North Carolina Comment To UFTA § 13 (Repealer)

The Uniform Fraudulent Transfer Act will displace current fraudulent conveyance law in Article 3 of Chapter 39 of the General Statutes.

The insurance law contains its own provisions concerning fraudulent transfers by insurance companies within one year prior to insolvency. See N.C. Gen. Stat. § 58-30-140. This statute, based on the comparable provision in bankruptcy law (11 U.S.C. § 548), complements general fraudulent conveyance law and concerns itself solely with transfers made within one year prior to the filing of a petition for liquidation or rehabilitation of an insurance company. N.C. Gen. Stat. § 58-30-140 is not affected by the enactment of the UFTA.

Other references to fraudulent conveyances or transfers are found in Rule 18(b) of the Rules of Civil Procedure; in N.C. Gen. Stat. §§ 25-2-402(b) and 25-2A-308(2) (sales and leases under the UCC); and in N.C. Gen. Stat. § 105-242 (dealing with the time within which judgments for taxes are enforceable). None of these statutes will be affected by the enactment of the UFTA.

A Few Facts About
THE UNIFORM FRAUDULENT TRANSFER ACT

PURPOSE: Providing a creditor with the capacity to procure assets a debtor has transferred to another person to keep them from being used to satisfy the debt.

ORIGIN: The Uniform Fraudulent Transfer Act, completed by the Uniform Law Commissioners in 1984, revises the Uniform Fraudulent Conveyance Act of 1918.

ENDORSED BY: American Bar Association

STATE ADOPTIONS:

Alabama
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Hawaii
Idaho
Illinois
Indiana
Iowa
Maine
Massachusetts
Minnesota
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Dakota
Texas
Utah
Vermont
Washington
West Virginia
Wisconsin

1997 INTRODUCTIONS:

Kansas
Mississippi

For any further information regarding the Uniform Fraudulent Transfer Act, please contact John McCabe or Katie Robinson at 312-915-0195.

(2/10/97)

FRAUDULENT CONVEYANCES AND THE UNIFORM ACT

Three Generations Of Fraudulent Conveyance Law

- the Statute of 13 Elizabeth (1570)
  basis for old U.S. law and North Carolina's current law

- the Uniform Fraudulent Conveyance Act (1918)
  ultimately adopted in 25 states; replaced by UFTA.

- the Uniform Fraudulent Transfer Act ("UFTA") (1984)
  adopted by 36 states and District of Columbia
  similar to rules applied by bankruptcy law

Extent Of UFTA Change To Current North Carolina Law

- major points: slight change
  transfers intended to defraud creditors-- no change
  transfers not for "reasonably equivalent value"-- no change
  transfers to insider for old debt-- new

- prominent technical changes
  who can object-- creditors-at-the-time vs. subsequent creditors
  covers "obligations" as well as "transfers"
  statute of limitations

- numerous clarifications, definitions

Reasons For Adopting UFTA In North Carolina

- make law consistent and uniform
  match law in majority of other states
  match bankruptcy law

- make law clear
  present statutes meaningless
  case law difficult to interpret, sometimes inconsistent

§ 39-15. Conveyance with intent to defraud creditors void.

For avoiding and abolishing feigned, covinous and fraudulent gifts, grants, alienations, conveyances, bonds, suits, judgments and executions, as well of lands and tenements as of goods and chattels, which may be contrived and devised of fraud, to the purpose and intent to delay, hinder and defraud creditors and others of their just and lawful actions and debts, every gift, grant, alienation, bargain and conveyance of lands, tenements and hereditaments, goods and chattels, by writing or otherwise, and every bond, suit, judgment and execution, at any time had or made, to or for any intent or purpose last before declared and expressed, shall be deemed and taken (only as against that person, his heirs, executors, administrators and assigns, whose actions, debts, accounts, damages, penalties and forfeitures, by such covinous or fraudulent devices and practices aforesaid, are, shall, or might be in anywise disturbed, hindered, delayed or defrauded) to be utterly void and of no effect; any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding; and in all actions by creditors to set aside gifts, grants, alienations and conveyances of lands and tenements and judgments purporting to be liens on the same on the ground that such gifts, grants, alienations, conveyances and judgments are feigned, covinous and fraudulent hereunder, it shall be no defense to the action to allege and prove that the lands and tenements alleged to be so conveyed or encumbered do not exceed in value the homestead allowed by law as an exemption: Provided, that nothing in this section shall be construed to authorize the sale under execution or other final process, obtained on any debt during the continuance of the homestead, of any interest in such land as may be exempt as a homestead. (50 Edw. III, c. 6; 13 Eliz., c. 5, s. 2; 1715, c. 7, s. 4; R.C., c. 50, s. 1; Code, s. 1545; 1893, c. 78; Rev., s. 960; C.S., s. 1005.)

(B) The term "child support" has the meaning given such term in section 459(i) of the Social Security Act (42 U.S.C. 659(i)).

(c) PAYMENT OF MILITARY RETIRED PAY IN COMPLIANCE WITH CHILD SUPPORT ORDERS.—

(1) DATE OF CERTIFICATION OF COURT ORDER.—Section 1408 of title 10, United States Code, as amended by section 362(c)(4) of this Act, is amended—

(A) by redesignating subsections (i) and (j) as subsections (j) and (k), respectively; and

(B) by inserting after subsection (h) the following new subsection:

"(i) CERTIFICATION DATE.—It is not necessary that the date of a certification of the authenticity or completeness of a copy of a court order for child support received by the Secretary concerned for the purposes of this section be recent in relation to the date of receipt by the Secretary.".

(2) PAYMENTS CONSISTENT WITH ASSIGNMENTS OF RIGHTS TO STATES.—Section 1408(d)(1) of such title is amended by inserting after the first sentence the following new sentence: "In the case of a spouse or former spouse who, pursuant to section 408(a)(3) of the Social Security Act (42 U.S.C. 608(a)(4)), assigns to a State the rights of the spouse or former spouse to receive support, the Secretary concerned may make the child support payments referred to in the preceding sentence to that State in amounts consistent with that assignment of rights.".

(3) ARREARAGES OWED BY MEMBERS OF THE UNIFORMED SERVICES.—Section 1408(d) of such title is amended by adding at the end the following new paragraph:

"(6) In the case of a court order for which effective service is made on the Secretary concerned on or after the date of the enactment of this paragraph and which provides for payments from the disposable retired pay of a member to satisfy the amount of child support set forth in the order, the authority provided in paragraph (1) to make payments from the disposable retired pay of a member to satisfy the amount of child support set forth in a court order shall apply to payment of any amount of child support arrearages set forth in that order as well as to amounts of child support that currently become due.".

(4) PAYROLL DEDUCTIONS.—The Secretary of Defense shall begin payroll deductions within 30 days after receiving notice of withholding, or for the first pay period that begins after such 30-day period.

→ SEC. 364. VOIDING OF FRAUDULENT TRANSFERS.

Section 466 (42 U.S.C. 666), as amended by section 321 of this Act, is amended by adding at the end the following new subsection:

"(g) LAWS VOIDING FRAUDULENT TRANSFERS.—In order to satisfy section 454(20)(A), each State must have in effect—

"(1)(A) the Uniform Fraudulent Conveyance Act of 1981;

"(B) the Uniform Fraudulent Transfer Act of 1984; or

"(C) another law specifying indicia of fraud which create a prima facie case that a debtor transferred income or property to avoid payment to a child support creditor, which the

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Secretary finds affords comparable rights to child support creditors; and

"(2) procedures under which, in any case in which the State knows of a transfer by a child support debtor with respect to which such a prima facie case is established, the State must—

"(A) seek to void such transfer; or

"(B) obtain a settlement in the best interests of the child support creditor.".

SEC. 365. WORK REQUIREMENT FOR PERSONS OWING PAST-DUE CHILD SUPPORT.

(a) IN GENERAL.—Section 466(a) (42 U.S.C. 366(a)), as amended by sections 315, 317, and 323 of this Act, is amended by inserting after paragraph (14) the following new paragraph:

"(15) PROCEDURES TO ENSURE THAT PERSONS OWING PAST-DUE SUPPORT WORK OR HAVE A PLAN FOR PAYMENT OF SUCH SUPPORT.—

"(A) IN GENERAL.—Procedures under which the State has the authority, in any case in which an individual owes past-due support with respect to a child receiving assistance under a State program funded under part A, to issue an order or to request that a court or an administrative process established pursuant to State law issue an order that requires the individual to—

"(i) pay such support in accordance with a plan approved by the court, or, at the option of the State, a plan approved by the State agency administering the State program under this part; or

"(ii) if the individual is subject to such a plan and is not incapacitated, participate in such work activities (as defined in section 407(d)) as the court, or, at the option of the State, the State agency administering the State program under this part, deems appropriate.

"(B) PAST-DUE SUPPORT DEFINED.—For purposes of subparagraph (A), the term 'past-due support' means the amount of a delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living.".

(b) CONFORMING AMENDMENT.—The flush paragraph at the end of section 466(a) (42 U.S.C. 666(a)) is amended by striking "and (7)" and inserting "(7), and (15)".

SEC. 366. DEFINITION OF SUPPORT ORDER.

Section 453 (42 U.S.C. 653) as amended by sections 316 and 345(b) of this Act, is amended by adding at the end the following new subsection:

"(p) SUPPORT ORDER DEFINED.—As used in this part, the term 'support order' means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing State, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement,

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

March 25, 1997 10:00 A.M. — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Floyd M. Lewis	General Statutes Commission
John Madler	Sentencing Commission
Eric Zogry	" "
Bay (Hall)	General Statutes Commission
DOUGLAS GHALYNA	MOORE & VAN ALLEN (NCBA Bkrtcy Section)
Bill Scoggin	NCBA
Leigh House	Coun of DA's
Rob Shofner	NCACDC
Jeff Miller	NCATL
Will Daigh	NCAJ

MINUTES
HOUSE JUDICIARY II COMMITTEE

March 25, 1997 1:00 P.M.

The North Carolina House of Representatives Judiciary II Committee met on March 25, 1997, at 1:00 P.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Bowie, Berry, Cansler, Creech, Culpepper, Gardner, Goodwin, Hackney, Russell, Saunders and Shubert. A list of visitors is attached.

The following bills were discussed:

HB-114 REPEAL BULK TRANSFERS
HB-407 UNIFORM FRADULENT TRANSFER ACT

Discussion continued on House Bill 407.

No action was taken on House Bill 407.

Representative Culpepper was recognized to review HB-114.

Professor Charles Lewis, Campbell University Law, and Mr. Mack Sperling, Attorney, answered questions of committee members.

No action was taken on House Bill 114.

The meeting was adjourned at 1:50 P.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **March 25, 1997 1:00 P.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Eric Zogry	Sentencing Commission
P. Ray Heell	General Statutes Commission
Mack Sperling	" " "
Charles C. Lewis	" " "
Dick Taylor	NCATL
Floyd Lewis	General Statutes Commission
Roslyn Sweatt	NC Coalition Against Dom. Viol.
John Madden	Sentencing Commission
Anne Wine	NCBA
Bill Scoggin	NCBA
Rob Schofield	NCJCDC
Charles Cramer	NCATL

MINUTES
HOUSE JUDICIARY II COMMITTEE

March 27, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on March 27, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Berry, Bowie, Cansler, Culpepper, Decker, Goodwin, Hackney, Hensley, McMahan, Nesbitt, Redwine, Russell, Saunders, Shubert, Sutton and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-151 CHILD FATALITY TASK FORCE RECORDS
HB-333 CLARIFY ATTORNEY-IN-FACT GIFTS

Representative Insko was recognized to present House Bill 151 and answer questions of committee members. A copy of the bill and bill explanation prepared by Susan Hayes, Committee Counsel, are attached.

Representative Insko provided members with a handout from the North Carolina Child Fatality Task Force. A copy of this handout is attached.

Patrice Roseler, North Carolina Association of County Commissioners, answered questions of committee members.

No action was taken on House Bill 151.

Representative Neely assigned the following subcommittee to study House Bill 151:

Representative Hackney, Chair
Representative Bowie

Representative Culpepper was recognized to explain House Bill 333 and answer questions of committee members. A copy of the bill and bill explanation prepared by Tim Hovis, Committee Counsel, are attached.

Sandra Byrd, Chair, Bar Association Legislative Committee, answered questions of committee members.

No action was taken on House Bill 333.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 151

Short Title: Child Fatality Task Force Confidential Records. (Public)

Sponsors: Representatives Easterling; Adams, Alexander, Baddour, Clary, Cunningham, Dickson, H. Hunter, Insko, McCrary, Moore, Morris, Mosley, Nye, Smith, Wainwright, Warner, Wright, and Yongue.

Referred to: Human Resources.

February 13, 1997

A BILL TO BE ENTITLED

AN ACT RECOMMENDED BY THE CHILD FATALITY TASK FORCE TO BROADEN THE ACCESS TO CONFIDENTIAL RECORDS FOR THE PURPOSES OF CHILD FATALITY REVIEW AND PREVENTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-578 reads as rewritten:

"**§ 143-578. Access to records.**

(a) The Chair of the State Team, a Local Team, or the Task Force during its existence, may make a written demand for any information or reports, whether or not confidential, that may in the Chair's opinion be relevant to a review of a child's death or maltreatment pursuant to this Article. Upon the Chair's request, and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. Any public or private agency or individual acting in good faith in providing this access is immune from any civil or criminal liability that might otherwise be incurred or imposed. The State Team, the Local Teams, and the Task Force during its existence, shall have access to all medical records, hospital records, and records maintained by this State, any county, or any local agency as necessary to carry out the purposes of this Article, including police investigations data, medical examiner investigative data, health records, mental health records, and social services records. The State Team, the Task Force, and the Local Teams shall not, as part of the reviews authorized under this Article, contact,

question, or interview the child, the parent of the child, or any other family member of the child whose record is being reviewed. Any member of a Local Team may share, only in an official meeting of that Local Team, any information available to that member that the Local Team needs to carry out its duties.

(a1) The Chair of the State Team, a Local Team, or the Task Force during its existence, may issue subpoenas for records authorized pursuant to subsection (a) of this section. Subpoenas issued pursuant to this subsection shall be served in the manner and for the same fees as provided by law. The superior court of the county in which the State Team, a Local Team, or the Task Force meets shall, on application of its Chair or executive director, enforce the production and examination of subpoenaed records.

(b) Meetings of the State Team and the Local Teams are not subject to the provisions of Article 33C of Chapter 143 of the General Statutes. However, the Local Teams may hold periodic public meetings to discuss, in a general manner not revealing confidential information about children and families, the findings of their reviews and their recommendations for preventive actions. Minutes of all public meetings, excluding those of executive sessions, shall be kept in compliance with Article 33C of Chapter 143 of the General Statutes. Any minutes or any other information generated during any executive session shall be sealed from public inspection.

(c) All otherwise confidential information and records acquired by the State Team, the Local Teams, and the Task Force during its existence, in the exercise of their duties are confidential; are not subject to discovery or introduction into evidence in any proceedings; and may only be disclosed as necessary to carry out the purposes of the State Team, the Local Teams, and the Task Force. In addition, all otherwise confidential information and records created by a Local Team in the exercise of its duties are confidential; are not subject to discovery or introduction into evidence in any proceedings; and may only be disclosed as necessary to carry out the purposes of the Local Team. No member of the State Team, a Local Team, nor any person who attends a meeting of the State Team or a Local Team, may testify in any proceeding about what transpired at the meeting, about information presented at the meeting, or about opinions formed by the person as a result of the meetings. This subsection shall not, however, prohibit a person from testifying in a civil or criminal action about matters within that person's independent knowledge.

(d) Each member of a Local Team and invited participant shall sign a statement indicating an understanding of and adherence to confidentiality requirements, including the possible civil or criminal consequences of any breach of confidentiality.

(e) Cases receiving child protective services at the time of review by a Local Team shall have an entry in the child's protective services record to indicate that the case was received by that Team. Additional entry into the record shall be at the discretion of the director of the county department of social services.

(f) The Social Services Commission shall adopt rules to implement this section in connection with reviews conducted by Community Child Protection Teams. The Health Services Commission shall adopt rules to implement this section in connection

with Local Teams that review additional child fatalities. In particular, these rules shall allow information generated by an executive session of a Local Team to be accessible for administrative or research purposes only."

Section 2. G.S. 122C-54(h) reads as rewritten:

"(h) A facility shall disclose confidential information for purposes of complying with Article 44 of Chapter 7A of the General ~~Statutes and~~ Statutes, Article 6 of Chapter 108A of the General Statutes, and Article 62 of Chapter 143 of the General Statutes, or as required by other State or federal law."

Section 3. G.S. 7A-675(h) reads as rewritten:

"(h) ~~Nothing in this section shall preclude the necessary sharing of information among authorized agencies.~~ The chief district court judge in each district shall designate by standing order certain agencies in the district as 'agencies authorized to share information'. Agencies so designated shall share with one another information that is in their possession that is relevant to any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, delinquent, or undisciplined, and shall continue to do so until the juvenile is no longer subject to the juvenile jurisdiction of the court. Agencies that may be designated as 'agencies authorized to share information' include local mental health facilities, local health departments, local departments of social services, local law enforcement agencies, local school administrative units, the district's district attorney's office, the Division of Juvenile Services of the Administrative Office of the Courts, and the Office of Guardian ad Litem Services of the Administrative Office of the Courts. Any information shared among agencies pursuant to this subsection shall remain confidential and shall be withheld from public inspection. Nothing in this section or any other provision of law shall preclude any other necessary sharing of information among agencies."

Section 4. This act becomes effective October 1, 1997. Sections 1 and 2 of this act apply to confidential records being accessed on or after that date. Section 3 of this act applies to all juvenile cases pending or commenced on or after that date.

North Carolina General Assembly
Legislative Services Office

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March 27, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: House Bill 151 - Child Fatality Task Force Confidential Records

Section 1 amends G.S. 143-578 to allow the Child Fatality Prevention Team, local teams and the Child Fatality Prevention Task Force to make written demands for access to information or reports, whether or not confidential, that may be relevant to the review of a child's death or maltreatment. Unless the information is protected by attorney-client privilege, any public or private agency or individual must provide access to the information to the extent allowed by federal law. Anyone providing information in good faith is immune from civil or criminal liability. The chair of the state team, local team or task force may issue subpoenas (enforceable by the superior court) for the records.

Section 2 makes a conforming amendment to G.S. 122C-54(h) to provide that mental health facilities may release information allowed to be released under the changes made in Section 1 of the bill.

Section 3 amends G.S. 7A-675(h) to direct the chief district court judge in each district to designate, by standing order, agencies that are "agencies authorized to share information". Agencies so designated must share with each other information that is relevant to any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, delinquent or undisciplined. Designated agencies may include local mental health facilities, health departments, departments of social services, law enforcement agencies, school administrative units, the district attorney's office, the Division of Juvenile Services and the Office of Guardian ad Litem Services. Shared information is confidential and must be withheld from the public.

Section 4 makes this act effective October 1, 1997. Sections 1 and 2 apply to confidential records accessed on or after that date. Section 3 applies to juvenile cases pending or commenced 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

HB 151 / SB 309 - CFTF CONFIDENTIAL RECORDS

Rep. Ruth Easterling/Sen. William Martin

The North Carolina Child Fatality Task Force, in its 1997 Report to the Governor and General Assembly, recommends that the General Assembly remove the barriers to sharing confidential records that impede child fatality review and prevention efforts.

EXPLANATION OF THE BILL

1. **Amend G.S. § 143-578(a) to allow the Chairperson of the State Team, a Local Team, or the Task Force to determine which records are relevant to a review of a child's death or maltreatment.** Certain family records are difficult to access because G.S. § 143-578 does not specify which records are relevant for review. This amendment designates the team chairperson to determine which records are relevant for review. In addition, the amendment provides immunity for individuals or agencies who provide access to records while acting in good faith.

2. **Enact a new G.S. § 143-578(a1) to give the Chairperson of the State Team, a Local Team, or the Task Force subpoena power.** Allows the Child Fatality Prevention System to use subpoena power as a tool of last resort when encountering difficulty accessing records necessary to reviewing child deaths. Agencies reluctant to share confidential information may be more comfortable doing so after a subpoena is issued.

3. **Amend G.S. § 122-54(h) to allow mental health agencies to share information in compliance with above statute changes.** Amending G.S. § 122-54(h) eliminates the present contradiction in the law.

4. **Amend G.S. § 7A-675(h) to specify that the Chief District Court Judge shall designate authorized agencies to share information.** G.S. § 7A-675(h) currently provides for sharing information, but does not define which agencies are authorized to do so. This amendment will allow each judicial district to have a standing administrative order naming specific agencies that are directed to share information concerning a juvenile and members of the juvenile's family, unless prohibited by federal law.

(over)

EXPLANATION OF THE PROBLEM

In its enabling legislation, the NC Child Fatality Task Force is charged to ". . . examine the laws, rules, and policies relating to confidentiality of and access to information that affect those agencies with responsibilities for children . . . to determine whether those laws impede the exchange of information necessary to protect children from preventable deaths, and, if so, recommend changes to them." *G.S. § 143-574(2)*

For the past several months, the NC Child Fatality Task Force has studied confidentiality laws and found that the process of child death reviews and child abuse and neglect investigations are impeded by certain aspects of the laws governing confidential records. It is for this reason that we recommend changes to G.S. § 143-578, § 122C-54(h), and § 7A-675(h). These changes will streamline the death review process and foster the prevention of child abuse and neglect injuries and deaths.

SUPPORT CFTF CONFIDENTIAL RECORDS

Adolescent Pregnancy Prevention Coalition of NC
Association of NC Boards of Health
Covenant with North Carolina's Children

Justice for Children Task Force
National Association of Local Nutrition Directors
National Association of Social Workers-NC Chapter
NC Association of County Directors of Social Services
NC Association of Local Health Directors
NC Child Advocacy Institute

NC Congress of Parents and Teachers, Inc. (PTA)
NC Equity
NC Law Enforcement Officers Association
NC Medical Society
NC Nurses Association
NC Pediatric Society
NC Primary Healthcare Association
NC State Association of Black Social Workers
Prevent Child Abuse North Carolina
School Nurses Association of NC
Society for Public Health Education, Inc.-NC Chapter
State Board of Education

****

The North Carolina Child Fatality Task Force is a 36-member study commission established by the General Assembly during the 1991 Session. The Task Force is charged to study the predominant causes and prevention of child deaths in North Carolina and make recommendations for changes to laws, rules or policies that support the safe and healthy development of our children.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 333

Short Title: Clarify Atty-In-Fact Gifts. (Public)

Sponsors: Representatives Culpepper; and Brawley.

Referred to: Judiciary II.

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE CIRCUMSTANCES UNDER WHICH AN ATTORNEY-IN-FACT MAY MAKE GIFTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32A-2 reads as rewritten:

"**§ 32A-2. Powers conferred by the Statutory Short Form Power of Attorney set out in G.S. 32A-1.**

The Statutory Short Form Power of Attorney set out in G.S. 32A-1 confers the following powers on the attorney-in-fact named therein:

(1) Real Property Transactions. -- To lease, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, purchase, exchange, and acquisition of, and to accept, take, receive, and possess any interest in real property whatsoever, on such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper; and to maintain, repair, improve, manage, insure, rent, lease, sell, convey, subject to liens, mortgage, subject to deeds of trust, and in any way or manner deal with all or any part of any interest in real property whatsoever, that the principal owns at the time of execution or may thereafter acquire, for under such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper.

(2) Personal Property Transactions. -- To lease, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, purchase, exchange, and acquisition of, and to accept, take,

receive, and possess any personal property whatsoever, tangible or intangible, or interest thereto, on such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper; and to maintain, repair, improve, manage, insure, rent, lease, sell, convey, subject to liens and mortgages, and hypothecate, and in any way or manner deal with all or any part of any personal property whatsoever, tangible or intangible, or any interest therein, that the principal owns at the time of execution or may thereafter acquire, under such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper.

(3) Bond, Share, Stock, Securities and Commodity Transactions. -- To request, ask, demand, sue for, recover, collect, receive, and hold and possess any bond, share, instrument of similar character, commodity interest or any instrument with respect thereto together with the interest, dividends, proceeds, or other distributions connected therewith, as now are, or shall hereafter become, owned by, or due, owing payable, or belonging to, the principal at the time of execution or in which the principal may thereafter acquire interest, to have, use, and take all lawful means and equitable and legal remedies, procedures, and writs in the name of the principal for the collection and recovery thereof, and to adjust, sell, compromise, and agree for the same, and to make, execute, and deliver for the principal, all endorsements, acquittances, releases, receipts, or other sufficient discharges for the same.

(4) Banking Transaction. -- To make, receive, sign, endorse, execute, acknowledge, deliver, and possess checks, drafts, bills of exchange, letters of credit, notes, stock certificates, withdrawal receipts and deposit instruments relating to accounts or deposits in, or certificates of deposit of, banks, savings and loan or other institutions or associations for the principal.

(5) Safe Deposits. -- To have free access at any time or times to any safe deposit box or vault to which the principal might have access as lessee or owner.

(6) Business Operating Transactions. -- To conduct, engage in, and transact any and all lawful business of whatever nature or kind for the principal.

(7) Insurance Transactions. -- To exercise or perform any act, power, duty, right or obligation whatsoever in regard to any contract of life, accident, health, disability or liability insurance or any combination of such insurance procured by or on behalf of the principal prior to execution; and to procure new, different or additional contracts of insurance for the principal and to designate the beneficiary of any such contract of insurance, provided, however, that the agent himself cannot be such beneficiary unless

the agent is spouse, child, grandchild, parent, brother or sister of the principal.

(8) Estate Transactions. -- To request, ask, demand, sue for, recover, collect, receive, and hold and possess all legacies, bequests, devises, as are, owned by, or due, owing, payable, or belonging to, the principal at the time of execution or in which the principal may thereafter acquire interest, to have, use, and take all lawful means and equitable and legal remedies, procedures, and writs in the name of the principal for the collection and recovery thereof, and to adjust, sell, compromise, and agree for the same, and to make, execute, and deliver for the principal, all endorsements, acquittances, releases, receipts, or other sufficient discharges for the same.

(9) Personal Relationships and Affairs. -- To do all acts necessary for maintaining the customary standard of living of the principal, the spouse and children, and other dependents of the principal; to provide medical, dental and surgical care, hospitalization and custodial care for the principal, the spouse, and children, and other dependents of the principal; to continue whatever provision has been made by the principal, for the principal, the spouse, and children, and other dependents of the principal, with respect to automobiles, or other means of transportation; to continue whatever charge accounts have been operated by the principal, for the convenience of the principal, the spouse, and children, and other dependents of the principal, to open such new accounts as the attorney-in-fact shall think to be desirable for the accomplishment of any of the purposes enumerated in this section, and to pay the items charged on such accounts by any person authorized or permitted by the principal or the attorney-in-fact to make such charges; to continue the discharge of any services or duties assumed by the principal, to any parent, relative or friend of the principal; to continue payments incidental to the membership or affiliation of the principal in any church, club, society, order or other organization, or to continue contributions thereto.

In the event the attorney-in-fact named pursuant to G.S. 32A-1 makes a decision regarding the health care of the principal that is contradictory to a decision made by a health care agent appointed pursuant to Article 3 of this Chapter, the decision of the health care agent shall overrule the decision of the attorney-in-fact.

(10) Social Security and Unemployment. -- To prepare, execute and file all social security, unemployment insurance and information returns required by the laws of the United States, or of any state or subdivision thereof, or of any foreign government.

(11) Benefits from Military Service. -- To execute vouchers in the name of the principal for any and all allowances and reimbursements payable by the United States, or subdivision thereof, to the principal, arising from or based upon military service and to receive, to endorse and to collect the proceeds of any check payable to the order of the principal drawn on the treasurer or other fiscal officer or depository of the United States or subdivision thereof; to take possession and to order the removal and shipment, of any property of the principal from any post, warehouse, depot, dock or other place of storage or safekeeping, either governmental or private, to execute and to deliver any release, voucher, receipt, bill of lading, shipping ticket, certificate or other instrument which the agent shall think to be desirable or necessary for such purpose; to prepare, to file and to prosecute the claim of the principal to any benefit or assistance, financial or otherwise, to which the principal is, or claims to be, entitled, under the provisions of any statute or regulation existing at the creation of the agency or thereafter enacted by the United States or by any state or by any subdivision thereof, or by any foreign government, which benefit or assistance arises from or is based upon military service performed prior to or after execution.

(12) Tax matters. -- To prepare, execute, verify and file in the name of the principal and on behalf of the principal any and all types of tax returns, amended returns, declaration of estimated tax, report, protest, application for correction of assessed valuation of real or other property, appeal, brief, claim for refund, or petition, including petition to the Tax Court of the United States, in connection with any tax imposed or proposed to be imposed by any government, or claimed, levied or assessed by any government, and to pay any such tax and to obtain any extension of time for any of the foregoing; to execute waivers or consents agreeing to a later determination and assessment of taxes than is provided by any statute of limitations; to execute waivers of restriction on the assessment and collection of deficiency in any tax; to execute closing agreements and all other documents, instruments and papers relating to any tax liability of any sort; to institute and carry on through counsel any proceeding in connection with determining or contesting any such tax or to recover any tax paid or to resist any claim for additional tax on any proposed assessment or levy thereof; and to enter into any agreements or stipulations for compromise or other adjustments or disposition of any tax.

(13) Employment of Agents. -- To employ agents such as legal counsel, accountants or other professional representation as may be appropriate and to grant such agents such powers of attorney or

other appropriate authorization as may be required in connection with such representation or by the Internal Revenue Service or other governmental authority.

(14) Gifts to Charities, and to Individuals Other Than the Attorney-In-Fact. --

a. Except as provided in G.S. 32A-2(14)b., to make gifts of any of the principal's property to any individual other than the attorney-in-fact or to any organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subdivision 'Internal Revenue Code' means the 'Code' as defined in G.S. 105-2.1.

b. Except as provided in G.S. 32A-2(14)c., or unless gifts are expressly authorized by the power of attorney, a power described in G.S. 32A-2(14)a. may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or creditors of the estate of the attorney-in-fact.

c. If the power described in G.S. 32A-2(14)a. is conferred upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or attorneys-in-fact who are not disqualified by G.S. 32A-2(14)b. from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact.

d. An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request the clerk of the superior court to issue an order to make a gift of the property of the principal.

(15) Gifts to the Named Attorney-In-Fact. -- To make gifts to the attorney-in-fact named in the power of attorney or the estate, creditors, or creditors of the estate of the ~~attorney-in-fact.~~ attorney-in-fact, in accordance with the principal's personal history of making or joining in the making of lifetime gifts."

Section 2. This act becomes effective July 1, 1997, and applies to all powers of attorney executed on or after October 1, 1995.

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March 26, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 333—Clarify Atty-In-Fact Gifts (Culpepper)

House Bill 333 is a recommendation of the Estate Planning and Fiduciary Section of the North Carolina Bar Association.

G.S.32A-2(14)b. prohibits an attorney-in-fact from making gifts in favor of the himself or herself. However, subdivision (15) of the same section authorizes such gifts. To address the conflict between the two subdivisions, House Bill 333 adds language to G.S. 32A-2(14)b. providing that such gifts may be made if "expressly authorized by the power of attorney." To conform with other provisions of the statute, the bill provides that such gifts may be made only "in accordance with the principal's history of making or joining in the making of lifetime gifts."

House Bill 333 becomes effective July 1, 1997 and applies to powers of attorney executed on or after October 1, 1995.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **March 27, 1997**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elsie Roane	State DSS
Roslyn Sprott	NC Coalition Against Domestic Violence
[illegible]	AOC
Martha Livengood	YAEO/DOA
BILL SCOGGIN	NCBA
Sandra Byrd	NCBA
Susan Valauri	Nationwide
Tony Kaplan	

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 1, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on April 1, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Berry, Cansler, Creech, Culpepper, Gardner, Goodwin, Hensley, McMahan, Nesbitt, Redwine, Russell, Saunders, Shubert, Sutton and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-114 REPEAL UCC BULK TRANSFERS
HB-407 UNIFORM FRADULENT TRANSFER ACT
HB-183 DWI/FELONY PRIOR RECORD LEVEL
HB-174 ACTIVE SENTENCE/TRIAL WAITING TIME

Representative Baddour was recognized to review HB-407 and answer questions of committee members.

Mr. Jerry Hartzell, Attorney, North Carolina Bar - Business Section and Mr. Rob Schofield, Attorney, Justice and Community Development Center, answered questions of committee members.

Representative Nesbitt was recognized to send forth an amendment and moved it be adopted; motion failed. A copy of the amendment is attached.

Representative Baddour moved for a favorable report; motion passed.

Representative Culpepper was recognized to review HB-114 and answer questions of committee members.

Representative Creech moved for a favorable report; motion passed.

Representatives Bowie and McComas were recognized to explain HB-183 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Representative Bowie moved for a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations; motion passed.

Ms. Susan Hayes, Committee Counsel, was recognized to explain House Bill 174 and answer questions of committee members. A copy of the bill and bill explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Representative Kiser moved for a favorable report; motion passed.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted:

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. First

H. B. No. 407 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Nesbitt
)
Sen.)

moves to amend the bill on page 5, lines 25-28

( ) WHICH CHANGES THE TITLE

by deleting the lines;

and on page 5 line 19

by deleting the letter "(a)".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 407 A BILL TO BE ENTITLED AN ACT TO REPEAL THE CURRENT STATUTES REGARDING FRADULENT CONVEYANCES AND TO ADOPT THE UNIFORM FRADULENT TRANSFER ACT IN ORDER TO MODERNIZE NORTH CAROLINA LAW AND HARMONIZE OUR LAW ON THIS SUBJECT WITH THOSES STATES THAT HAVE ADOPTED THIS UNIFORM ACT.

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)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 114 A BILL TO BE ENTITLED AN ACT TO REPEAL ARTICLE 6 OF THE UNIFORM COMMERCIAL CODE RELATING TO BULK TRANSFERS AND TO ENACT CONFORMING AMENDMENTS TO THE UNIFORM COMMERCIAL CODE AND OTHER GENERAL STATUTES, 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

H 1

HOUSE BILL 183

Short Title: DWI/Felony Prior Record Level. (Public)

Sponsors: Representatives Bowie, McComas; Aldridge, Barbee, Capps, Crawford, Creech, Decker, Dickson, Dockham, Grady, Gray, Gulley, Hardy, McMahan, Mercer, Nye, Preston, Redwine, Rogers, Russell, Sherrill, Starnes, Thompson, Tolson, Watson, G. Wilson, and Wood.

Referred to: Transportation, if favorable, Judiciary II.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO INCLUDE PRIOR IMPAIRED DRIVING CONVICTIONS IN FELONY PRIOR RECORD LEVEL CALCULATION, TO PROVIDE FOR AN INDEFINITE CIVIL SUSPENSION OF A DRIVERS LICENSE WHEN A DRIVER IS CHARGED WITH AN IMPAIRED DRIVING OFFENSE WHILE ANOTHER IMPAIRED DRIVING OFFENSE IS PENDING DISPOSITION, AND TO ALLOW FOR MODIFICATION OF SENTENCE FOR IMPAIRED DRIVING ON REMAND TO DISTRICT COURT OR WITHDRAWAL OF APPEAL.

The General Assembly of North Carolina enacts:

Section 1. 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 prior 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."

Section 2. G.S. 20-16.5(a) reads as rewritten:

"(a) Definitions. -- As used in this section the following words and phrases have the following meanings:

(1) Charging Officer. -- As described in G.S. 20-16.2(a1).

(2) Clerk. -- As defined in G.S. 15A-101(2).

(3) Judicial Official. -- As defined in G.S. 15A-101(5).

(4) Revocation Report. -- A sworn statement by a charging officer and a chemical analyst containing facts indicating that the conditions of subsection (b) have been ~~met.~~ met, and whether the person has a pending offense for which their license had been or is revoked under this section. When one chemical analyst analyzes a person's blood and another chemical analyst informs a person of his rights and responsibilities under G.S. 20-16.2, the report must include the statements of both analysts.

(5) Surrender of a Driver's License. -- The act of turning over to a court or a law-enforcement officer the person's most recent, valid driver's license or learner's permit issued by the Division or by a similar agency in another jurisdiction, or a limited driving privilege issued by a North Carolina court. A person who is validly licensed but who is unable to locate his license card may file an affidavit with the clerk setting out facts that indicate that he is unable to locate his license card and that he is validly licensed; the filing of the affidavit constitutes a surrender of the person's license."

Section 3. G.S. 20-16.5(e) reads as rewritten:

"(e) Procedure if Report Filed with Judicial Official When Person Is Present. -- If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official must, after

completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he must enter an order revoking the person's driver's license for the period required in this subsection. The judicial official must order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official must give the person a copy of the revocation order. In addition to setting it out in the order the judicial official must personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. ~~Unless the person is not currently licensed, the~~ The revocation under this subsection begins at the time the revocation order is issued and continues until the person's license has been ~~surrendered for 10 days and the person has paid the applicable costs. If the person is not currently licensed, the revocation continues until 10 days from the date the revocation order is issued and the person has paid the applicable costs.~~ revoked for the period specified in this subsection and the person has paid the applicable costs. The period of revocation is 10 days, if there are no pending offenses for which the person's license had been or is revoked under this section. If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event, may the period of revocation under this subsection be less than 10 days. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk must immediately issue a pick-up order. The pick-up order must be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order must be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division."

Section 4. G.S. 20-16.5(f) reads as rewritten:

"(f) Procedure if Report Filed with Clerk of Court When Person Not Present. -- When a clerk receives a properly executed report under subdivision (d)(3) and the person named in the revocation report is not present before the clerk, the clerk must determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he must mail to the person a revocation order by first-class mail. The order must direct that the person on or before the effective date of the order either surrender his license to the clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order must inform the person of the time and effective date of the revocation and of its duration, of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. Revocation orders mailed under this subsection become effective on the fourth day after the order is deposited in the United States mail. If within five working days of

the effective date of the order, the person does not surrender his license to the clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk must immediately issue a pick-up order. The pick-up order must be issued and served in the same manner as specified in subsection (e) for pick-up orders issued pursuant to that subsection. A revocation under this subsection begins at the date specified in the order and continues until the person's license has been revoked for the period specified in this subsection and the person has paid the applicable costs. ~~The~~ If the person has no pending offenses for which his license had been or is revoked under this section, the period of revocation under this subsection is:

(1) Ten days from the time the person surrenders his license to the court, if the surrender occurs within five working days of the effective date of the order; or

(2) Ten days after the person appears before the clerk and demonstrates that he is not currently licensed to drive, if the appearance occurs within five working days of the effective date of the revocation order; or

(3) Thirty days from the time:

a. The person's driver's license is picked up by a law-enforcement officer following service of a pick-up order; or

b. The person demonstrates to a law-enforcement officer who has a pick-up order for his license that he is not currently licensed; or

c. The person's driver's license is surrendered to the court if the surrender occurs more than five working days after the effective date of the revocation order; or

d. The person appears before the clerk to demonstrate that he is not currently licensed, if he appears more than five working days after the effective date of the revocation order.

If at the time of the current offense, the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event may the period of revocation for the current offense be less than the applicable period of revocation in subdivision (1), (2), or (3) of this subsection. When a pick-up order is issued, it must inform the person of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. An officer serving a pick-up order under this subsection must return the order to the court indicating the date it was served or that he was unable to serve the order. If the license was surrendered, the officer serving the order must deposit it with the clerk within three days of the surrender."

Section 5. G.S. 20-16.5(i) reads as rewritten:

"(i) Effect of Revocations. -- A revocation under this section revokes a person's privilege to drive in North Carolina whatever the source of his authorization to drive. Revocations under this section are independent of and run concurrently with any

other revocations. No court imposing a period of revocation following conviction of an offense involving impaired driving may give credit for any period of revocation imposed under this section. ~~A~~ Except as provided in subsection (i1), a person is not eligible for a limited driving privilege under any statute while his license is revoked under this section."

Section 6. G.S. 20-16.5 is amended by adding a new subsection to read:

"(i1) A person whose license has been indefinitely revoked under this section may, after completion of 10 days under subsection (e) or the applicable period of time under subdivisions (1), (2), or (3) of subsection (f), apply for a limited driving privilege as provided in G.S. 20-179.3. A judge of the division in which the current offense is pending may issue the limited driving privilege only if the privilege is necessary to overcome undue hardship and the person meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply."

Section 7. G.S. 20-16.5(k) reads as rewritten:

"(k) Report to Division. -- Except as provided below, the clerk must mail a report to the ~~Division within~~ Division:

(1) If the license is revoked indefinitely, within 10 working days of the revocation of the license; and

(2) In all cases, within 10 working days of the return of a license under this section or of the termination of a revocation of the driving privilege of a person not currently licensed.

The report must identify the person whose license has been ~~revoked and~~ revoked, specify the date on which his license was ~~revoked.~~ revoked, and indicate whether the license has been returned. The report must also provide, if applicable, whether the license is revoked indefinitely. No report need be made to the Division, however, if there was a surrender of the driver's license issued by the Division, a 10-day minimum revocation was imposed, and the license was properly returned to the person under subsection (h) within five working days after the 10-day period had elapsed."

Section 8. G.S. 20-179 is amended by adding a new subsection to read:

"(a1) Modification of Sentence. -- If a conviction for impaired driving under G.S. 20-138.1 has been appealed to superior court and the notice of appeal is withdrawn or the case remanded to district court for imposition of judgment, the district court shall, upon motion of the district attorney, hold a hearing to determine if any grossly aggravating factors under subdivision (1) of subsection (c) apply which were not included in the judgment. If so, the judge shall modify the sentence in accordance with this section. The motion of the district attorney under this subsection must be filed prior to the order of remand or withdrawal of the notice of appeal."

Section 9. There is appropriated from the General Fund to the Department of Correction the sum of eight hundred thirty-seven thousand two hundred nineteen dollars ($837, 219) for the 1997-98 fiscal year to fund the estimated additional 165 inmates that will be added by the implementation of Section 1 of this act.

Section 10. Section 1 of this act becomes effective December 1, 1997. Sections 2 through 8 of this act become effective July 1, 1998. Sections 9 and 10 of this act become effective July 1, 1997.

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March 30, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 183—DWI/Felony Prior Record Level

Under Structured Sentencing, only Class A1 and Class 1 misdemeanors are counted in the felony prior record calculation. A DWI conviction under G.S. 20-138.1 is not assigned a misdemeanor level and is, therefore, not included in the felony prior record calculation. Section 1 of House Bill 183 would provide that these convictions are included in the calculation.

Also, under Structured Sentencing, Class 1 misdemeanor offenses under Chapter 20 of the General Statutes, Motor Vehicles, are specifically excluded from the prior record calculation. A conviction for impaired driving in a commercial vehicle under G.S. 20-138.2 is a Class 1 misdemeanor. Section 1 of the bill provides that this offense is included.

Sections 2, 3, and 4 of the bill amend various provisions of Chapter 20 of the General Statutes to provide for an indefinite civil suspension of a drivers license if the driver has, at the time of the offense, one or more pending DWI offenses. The civil suspension remains in effect until a final judgment has been entered for all of the offenses.

Sections 5 and 6 of the bill provide for the issuance of a limited driving privilege in the event of an indefinite civil suspension. A judge must find that the limited driving privilege is necessary to overcome undue hardship. The defendant's license must be suspended for a minimum of 10 days before the limited driving privilege may be issued.

Section 7 of the bill provides for the clerk to mail a report of the indefinite suspension to the Division of Motor Vehicles within 10 days of the revocation.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 8 of the bill authorizes a district court judge to modify an appealed sentence after remand of the case to district court or withdrawal of the appeal when, during the appeal, another DWI conviction was entered. The sentence may be modified on motion of the district attorney.

Factors Contributing to Service Greater Than Presumptive Term to Be Set Out. — A trial judge is required to consider all of the aggravating and mitigating factors listed in this section before imposing a sentence greater than the presumptive term, but he is only required to set out in the judgment the factors that he determines by the preponderance of the evidence are present. State v. Greime, 97 N.C. App. 409, 388 S.E.2d 594 (1990).

Sentence in Excess of Presumptive Term Upheld. —

Twenty-five-year sentence for robbery with a dangerous weapon held valid, just and in accordance with the purposes of the Fair Sentencing Act. State v. Summerlin, 98 N.C. App. 167, 390 S.E.2d 358, cert. denied, 327 N.C. 143, 394 S.E.2d 183 (1990).

The trial court acted under a misapprehension of law when it sentenced a defendant to a presumptive term of three years for marijuana offenses under § 90-95(b)(2). State v. Pavone, 104 N.C. App. 442, 410 S.E.2d 1 (1991).

Habitual Felons. — Defendant's sentences were not excessive where defendant was an habitual offender, sentenced to fourteen years of imprisonment, the minimum sentence allowed under the habitual felon statute. State v. Hodge, 112 N.C. App. 462, 436 S.E.2d 251 (1993).

IV. APPELLATE REVIEW.

Consolidation of Presumptive Sentences. — When indictments or convictions with equal presumptive terms were consolidated for sentencing without the finding of aggravating or mitigating circumstances, and the terms were totaled to arrive at the sentence, the sentence, for purposes of appellate review, because of the provisions of former § 15A-1340.4(a), would be deemed to be equally attributable to each indictment or conviction if nothing else appeared in the record. State v. Hemby, 333 N.C. 331, 426 S.E.2d 77 (1993).

Finding Aggravating Factor for Misdemeanor Conviction Nonprejudicial Error. — The trial court did not need to find an aggravating factor for the breaking and entering count since the defendant was convicted of a misdemeanor which was not subject to former § 15A-1340.4(b). The finding of an aggravating factor for the misdemeanor conviction, therefore, was superfluous and nonprejudicial error. The extent of punishment for misdemeanors is referred to the discretion of the trial court and its sentence may not be interfered with by the appellate court, except in cases of manifest and gross abuse. State v. Clark, 107 N.C. App. 184, 419 S.E.2d 188 (1992).

Where trial judge stated his intended sentence even before evidence was presented to the jury on the issue of guilt, the appellate court could not conclude that the sentence imposed was based solely upon the evidence, the argument of counsel and the aggravating and mitigating factors found by the trial judge, and the case would be remanded for a new sentencing hearing. State v. Cannon, 326 N.C. 37, 387 S.E.2d 450 (1990).

Sentence Influenced by Insistence on Jury Trial. — Where it could reasonably be inferred from the language of the trial judge that sentence was imposed at least in part because defendant did not agree to a plea offer by the state and insisted on a trial by jury, defendant's constitutional right to trial by jury was abridged, and a new sentencing hearing would result. State v. Cannon, 326 N.C. 37, 387 S.E.2d 450 (1990).

§ 15A-1340.14. Prior record level for felony sentencing.

(a) Generally. — The prior record level of a felony offender is determined by calculating the sum of the points assigned to each of the offender's prior convictions that the court finds to have been proved in accordance with this section.

(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, 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)), 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.

(c) Prior Record Levels for Felony Sentencing. — The prior record levels for felony sentencing are:

(1) Level I — 0 points.
(2) Level II — At least 1, but not more than 4 points.
(3) Level III — At least 5, but not more than 8 points.
(4) Level IV — At least 9, but not more than 14 points.
(5) Level V — At least 15, but not more than 18 points.
(6) Level VI — At least 19 points.

In determining the prior record level, the classification of a prior offense is the classification assigned to that offense at the time the offense for which the offender is being sentenced is committed.

(d) Multiple Prior Convictions Obtained in One Court Week. — For purposes of determining the prior record level, if an offender is convicted of more than one offense in a single superior court during one calendar week, only the conviction for the offense with the highest point total is used. If an offender is convicted of more than one offense in a single session of district court, only one of the convictions is used.

(e) Classification of Prior Convictions From Other Jurisdictions. — Except as otherwise provided in this subsection, a conviction occurring in a jurisdiction other than North Carolina is classified as a Class I felony if the jurisdiction in which the offense occurred classifies the offense as a felony, or is classified as a Class 3 misdemeanor if the jurisdiction in which the offense occurred classifies the offense as a misdemeanor. If the offender proves by the preponderance of the evidence that an offense classified as a felony in the other jurisdiction is substantially similar to an offense that is a misdemeanor in North Carolina, the conviction is treated as that class of misdemeanor for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as either a misdemeanor or a felony in the other jurisdiction is substantially similar to an offense in North Carolina that is classified as a Class I felony or higher, the conviction is treated as that class of felony for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as a misdemeanor in the other jurisdiction is substantially similar to an offense classified as a Class A1 or Class 1 misdemeanor

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(f) Proof of Prior Conviction
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Editor's Note. — Session La
c. 538, which enacts this Article
October 1, 1994, in s. 56, as am
Session Laws 1994, Extra Sessi
s. 14(b), provides: "This act be
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in North Carolina, the conviction is treated as a Class A1 or Class 1 misdemeanor for assigning prior record level points.

(f) Proof of Prior Convictions. — A prior conviction shall be proved by any of the following methods:

(1) Stipulation of the parties.

(2) An original or copy of the court record of the prior conviction.

(3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.

(4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, "a copy" includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the offender's full record. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, the court may grant a continuance of the sentencing hearing. If asked by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the defendant's prior criminal record to the defendant within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 22, s. 10; c. 24, s. 14(b); 1993 (Reg. Sess., 1994), c. 767, ss. 11-13; 1995, c. 507, s. 19.5(f); 1995 (Reg. Sess., 1996), c. 742, s. 15.)

Editor's Note. — Session Laws 1993, c. 538, which enacts this Article effective October 1, 1994, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act [October 1, 1994] are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 14 provides: "Prosecution for offenses occurring before the effective date of this Part are not abated or affected by this Part, and the statutes that would be applicable but for this Part remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 1 provides: "This act shall be known as the Crime Control Act of 1994."

Session Laws 1993 (Reg. Sess., 1994), c. 767, which amended this section, in s. 34 provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1995, c. 507, s. 1.1, pro-

§ 20-16.4: Repealed by Session Laws 1989, c. 691, s. 4, effective January 1, 1990.

§ 20-16.5. Immediate civil license revocation for certain persons charged with implied-consent offenses.

(a) Definitions. — As used in this section the following words and phrases have the following meanings:

(1) Charging Officer. — As described in G.S. 20-16.2(a1).

(2) Clerk. — As defined in G.S. 15A-101(2).

(3) Judicial Official. — As defined in G.S. 15A-101(5).

(4) Revocation Report. — A sworn statement by a charging officer and a chemical analyst containing facts indicating that the conditions of subsection (b) have been met. When one chemical analyst analyzes a person's blood and another chemical analyst informs a person of his rights and responsibilities under G.S. 20-16.2, the report must include the statements of both analysts.

(5) Surrender of a Driver's License. — The act of turning over to a court or a law enforcement officer the person's most recent, valid driver's license or learner's permit issued by the Division or by a similar agency in another jurisdiction, or a limited driving privilege issued by a North Carolina court. A person who is validly licensed but who is unable to locate his license card may file an affidavit with the clerk setting out facts that indicate that he is unable to locate his license card and that he is validly licensed; the filing of the affidavit constitutes a surrender of the person's license.

(b) Revocations for Persons Who Refuse Chemical Analyses or Have Alcohol Concentrations of 0.08 or More After Driving a Motor Vehicle or of 0.04 or More After Driving a Commercial Vehicle. — A person's driver's license is subject to revocation under this section if:

(1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;

(2) The person is charged with that offense as provided in G.S. 20-16.2(a);

(3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and

(4) The person:

a. Willfully refuses to submit to the chemical analysis;

b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving; or

c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial vehicle.

(b1) Precharge Test Results as Basis for Revocation. — Notwithstanding the provisions of subsection (b), a person's driver's license is subject to revocation under this section if:

(1) He requests a precharge chemical analysis pursuant to G.S. 20-16.2(i); and

(2) He has:

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(3) He is charged with an implie

(c) Duty of Charging Officers and Ch
Judicial Officials. — If a person's driv
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(d) Which Judicial Official Must Re
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(2) A judicial official conducting
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(3) The clerk of superior court in
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(e) Procedure if Report Fil ith J
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(2) He has:

a. An alcohol concentration of 0.08 or more at any relevant time after driving; or

b. An alcohol concentration of 0.04 or more at any relevant time after driving a commercial motor vehicle; and

(3) He is charged with an implied-consent offense.

(c) Duty of Charging Officers and Chemical Analysts to Report to Judicial Officials. — If a person's driver's license is subject to revocation under this section, the charging officer and the chemical analyst must execute a revocation report. If the person has refused to submit to a chemical analysis, a copy of the affidavit to be submitted to the Division under G.S. 20-16.2(c) may be substituted for the revocation report if it contains the information required by this section. It is the specific duty of the charging officer to make sure that the report is expeditiously filed with a judicial official as required by this section.

(d) Which Judicial Official Must Receive Report. — The judicial official with whom the revocation report must be filed is:

(1) The judicial official conducting the initial appearance on the underlying criminal charge if:

a. No revocation report has previously been filed; and

b. At the time of the initial appearance the results of the chemical analysis, if administered, or the reports indicating a refusal, are available.

(2) A judicial official conducting any other proceeding relating to the underlying criminal charge at which the person is present, if no report has previously been filed.

(3) The clerk of superior court in the county in which the underlying criminal charge has been brought if subdivisions (1) and (2) are not applicable at the time the charging officer must file the report.

(e) Procedure if Report Filed with Judicial Official When Person Is Present. — If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official must, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he must enter an order revoking the person's driver's license for the period required in this subsection. The judicial official must order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official must give the person a copy of the revocation order. In addition to setting it out in the order the judicial official must personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. Unless the person is not currently licensed, the revocation under this subsection begins at the time the revocation order is issued and continues until the person's license has been surrendered for 10 days and the person has paid the applicable costs. If the person is not currently licensed, the revocation continues until 10 days from the date the revocation order is issued and the person has paid the applicable costs. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk must immediately issue a pick-up order. The pick-up order must be issued to a member of a

local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order must be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division.

(f) Procedure if Report Filed with Clerk of Court When Person Not Present. — When a clerk receives a properly executed report under subdivision (d)(3) and the person named in the revocation report is not present before the clerk, the clerk must determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he must mail to the person a revocation order by first-class mail. The order must direct that the person on or before the effective date of the order either surrender his license to the clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order must inform the person of the time and effective date of the revocation and of its duration, of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. Revocation orders mailed under this subsection become effective on the fourth day after the order is deposited in the United States mail. If within five working days of the effective date of the order, the person does not surrender his license to the clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk must immediately issue a pick-up order. The pick-up order must be issued and served in the same manner as specified in subsection (e) for pick-up orders issued pursuant to that subsection. A revocation under this subsection begins at the date specified in the order and continues until the person's license has been revoked for the period specified in this subsection and the person has paid the applicable costs. The period of revocation under this subsection is:

(1) Ten days from the time the person surrenders his license to the court, if the surrender occurs within five working days of the effective date of the order; or

(2) Ten days after the person appears before the clerk and demonstrates that he is not currently licensed to drive, if the appearance occurs within five working days of the effective date of the revocation order; or

(3) Thirty days from the time:

a. The person's driver's license is picked up by a law-enforcement officer following service of a pick-up order; or

b. The person demonstrates to a law-enforcement officer who has a pick-up order for his license that he is not currently licensed; or

c. The person's driver's license is surrendered to the court if the surrender occurs more than five working days after the effective date of the revocation order; or

d. The person appears before the clerk to demonstrate that he is not currently licensed, if he appears more than five working days after the effective date of the revocation order.

When a pick-up order is issued, it must inform the person of his right to a hearing as specified in subsection (g), and that the revoca-

tion remains in effe[illegible]ding pick-up order under this subse court indicating the date it w. serve the order. If the license the order must deposit it with. surrender.

(g) Hearing before Magistra- ity of Revocation. — A person section may request in writing the revocation. The request ma initial appearance, or within revocation to the clerk or a ma may specifically request that t court judge. The Administrativ hearing request form for any p district court judge is request within the county by a magis judge to conduct such hearings court judge hold the hearing, t the district court district as c court judge assigned to condu mains in effect pending the h within three working days fo. before a magistrate or within before a district court judge. T ify the grounds upon which th lenged and the hearing must b the request. A witness may su he is subpoenaed to [illegible] the subject to questioni[illegible] the ing, and the judicial official m tional evidence if he is not sat ness of evidence. The person tion may, but is not required contested by the person reque may accept as true any matt any relevant condition under cial official must find by the g condition was met in order to sion of the hearing the judicia ing or rescinding the revocat without prejudice to the per any other potential party as t nal, that may involve facts b tion (b) considered by the juc cial official is final and may r Justice. If the hearing is not ing days of the written reque within five working days of t a district court judge, the ju scinding the revocation, unle contributed to the delay in requesting the hearing fail scheduling thereof after ha his right to a hearing.

tion remains in effect pending the hearing. An officer serving a pick-up order under this subsection must return the order to the court indicating the date it was served or that he was unable to serve the order. If the license was surrendered, the officer serving the order must deposit it with the clerk within three days of the surrender.

(g) Hearing before Magistrate or Judge if Person Contests Validity of Revocation. — A person whose license is revoked under this section may request in writing a hearing to contest the validity of the revocation. The request may be made at the time of the person's initial appearance, or within 10 days of the effective date of the revocation to the clerk or a magistrate designated by the clerk, and may specifically request that the hearing be conducted by a district court judge. The Administrative Office of the Courts must develop a hearing request form for any person requesting a hearing. Unless a district court judge is requested, the hearing must be conducted within the county by a magistrate assigned by the chief district judge to conduct such hearings. If the person requests that a district court judge hold the hearing, the hearing must be conducted within the district court district as defined in G.S. 7A-133 by a district court judge assigned to conduct such hearings. The revocation remains in effect pending the hearing, but the hearing must be held within three working days following the request if the hearing is before a magistrate or within five working days if the hearing is before a district court judge. The request for the hearing must specify the grounds upon which the validity of the revocation is challenged and the hearing must be limited to the grounds specified in the request. A witness may submit his evidence by affidavit unless he is subpoenaed to appear. Any person who appears and testifies is subject to questioning by the judicial official conducting the hearing, and the judicial official may adjourn the hearing to seek additional evidence if he is not satisfied with the accuracy or completeness of evidence. The person contesting the validity of the revocation may, but is not required to, testify in his own behalf. Unless contested by the person requesting the hearing, the judicial official may accept as true any matter stated in the revocation report. If any relevant condition under subsection (b) is contested, the judicial official must find by the greater weight of the evidence that the condition was met in order to sustain the revocation. At the conclusion of the hearing the judicial official must enter an order sustaining or rescinding the revocation. The judicial official's findings are without prejudice to the person contesting the revocation and to any other potential party as to any other proceedings, civil or criminal, that may involve facts bearing upon the conditions in subsection (b) considered by the judicial official. The decision of the judicial official is final and may not be appealed in the General Court of Justice. If the hearing is not held and completed within three working days of the written request for a hearing before a magistrate or within five working days of the written request for a hearing before a district court judge, the judicial official must enter an order rescinding the revocation, unless the person contesting the revocation contributed to the delay in completing the hearing. If the person requesting the hearing fails to appear at the hearing or any rescheduling thereof after having been properly notified, he forfeits his right to a hearing.

(h) Return of License. — After the applicable period of revocation under this section, or if the magistrate or judge orders the revocation rescinded, the person whose license was revoked may apply to the clerk for return of his surrendered license. Unless the clerk finds that the person is not eligible to use the surrendered license, he must return it if:

(1) The applicable period of revocation has passed and the person has tendered payment for the costs under subsection (j); or

(2) The magistrate or judge has ordered the revocation rescinded.

If the license has expired, he may return it to the person with a caution that it is no longer valid. Otherwise, if the person is not eligible to use the license and the license was issued by the Division or in another state, the clerk must mail it to the Division. If the person has surrendered his copy of a limited driving privilege and he is no longer eligible to use it, the clerk must make a record that he has withheld the limited driving privilege and forward that record to the clerk in the county in which the limited driving privilege was issued for filing in the case file. If the person's license is revoked under this section and under another section of this Chapter, the clerk must surrender the license to the Division if the revocation under this section can terminate before the other revocation; in such cases, the costs required by subsection (j) must still be paid before the revocation under this section is terminated.

(i) Effect of Revocations. — A revocation under this section revokes a person's privilege to drive in North Carolina whatever the source of his authorization to drive. Revocations under this section are independent of and run concurrently with any other revocations. No court imposing a period of revocation following conviction of an offense involving impaired driving may give credit for any period of revocation imposed under this section. A person is not eligible for a limited driving privilege under any statute while his license is revoked under this section.

(j) Costs. — Unless the magistrate or judge orders the revocation rescinded, a person whose license is revoked under this section must pay a fee of fifty dollars ($50.00) as costs for the action before the person's license may be returned under subsection (h). The costs collected under this section shall be credited to the General Fund. Fifty percent (50%) of the costs collected shall be used to fund a statewide chemical alcohol testing program administered by the Injury Control Section of the Department of Environment, Health, and Natural Resources.

(k) Report to Division. — Except as provided below, the clerk must mail a report to the Division within 10 working days of the return of a license under this section or of the termination of a revocation of the driving privilege of a person not currently licensed. The report must identify the person whose license has been revoked and specify the dates on which his license was revoked. No report need be made to the Division, however, if there was a surrender of the driver's license issued by the Division, a ten-day minimum revocation was imposed, and the license was properly returned to the person under subsection (h) within five working days after the 10-day period had elapsed.

(*l*) Restoration Fee for Unlicensed Persons. — If a person whose license is revoked under this section has no valid license, he must

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(o) Designation of Proceedings. —
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of the Courts. (1983, c. 435, s. 14;
ss. 11-17; 1985, c. 690, ss. 1, 2; 1987
1989, c. 771, ss. 15, 16; 1991, c. 68
6.)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1112 would have amended subsections (b) and (j) and subdivision (b1)(2) of this section[illegible]ive June 1, 1989, through June 30[illegible]to establish provisions for those [illegible]to this section who were driving in commercial vehicles, with certain exceptions for persons holding a Class C license issued before June 1, 1989. Session Laws 1989, c. 771, s. 18, effective June 1 1989, repealed Session Laws 1987 (Reg. Sess., 1988), c. 1112; therefore, the provisions of c. 1112 never went into effect.

Session Laws 1991, c. 689, which amended this section, in s. 233.1(d) provides: "Amounts collected under G.S 20-16.5(j) for fiscal years 1991-92 and 1992-93 and designated for the alcohol testing program of the Injury Contr Section of the Department of Environment, Health, and Natural Resources shall not revert to the General Fund The amount of funds collected und G.S. 20-16.5(j) that are designated f this alcohol testing program and ha not been spent or obligated as of June 30, 1994, shall revert to the Highway Fund."

Session Laws 1991, c. 689, s. 352 provides: "Except for statutory changes o other provisions that clearly indicate a

he restoration fee required by G.S. 20-7 before he may apply license from the Division.

Modification of Revocation Order. — Any judicial official presiding over a proceeding under this section may issue a modified order if he determines that an inappropriate order has been issued.

(n) Exception for Revoked Licenses. — Notwithstanding any other provision of this section, if the judicial official required to issue a revocation order under this section determines that the person whose license is subject to revocation under subsection (b):

(1) Has a currently revoked driver's license;

(2) Has no limited driving privilege; and

(3) Will not become eligible for restoration of his license or for a limited driving privilege during the period of revocation required by this section,

the judicial official need not issue a revocation order under this section. In this event the judicial official must file in the records of the civil proceeding a copy of any documentary evidence and set out in writing all other evidence on which he relies in making his determination.

(o) Designation of Proceedings. — Proceedings under this section are civil actions, and must be identified by the caption "In the Matter of _____" and filed as directed by the Administrative Office of the Courts. (1983, c. 435, s. 14; 1983 (Reg. Sess., 1984), c. 1101, ss. 11-17; 1985, c. 690, ss. 1, 2; 1987 (Reg. Sess., 1988), c. 1037, s. 80; 1989, c. 771, ss. 15, 16; 1991, c. 689, s. 233.1(a); 1993, c. 285, ss. 5, 6.)

Editor's Note. — Session Laws 1987 (Reg. Sess., 1988), c. 1112 would have amended subsections (b) and (j) and subdivision (b1)(2) of this section effective June 1, 1989, through June 30, 1989, to establish provisions for those subject to this section who were driving in commercial vehicles, with certain exceptions for persons holding a Class C license issued before June 1, 1989. Session Laws 1989, c. 771, s. 18, effective June 1, 1989, repealed Session Laws 1987 (Reg. Sess., 1988), c. 1112; therefore, the provisions of c. 1112 never went into effect.

Session Laws 1991, c. 689, which amended this section, in s. 233.1(d) provides: "Amounts collected under G.S. 20-16.5(j) for fiscal years 1991-92 and 1992-93 and designated for the alcohol testing program of the Injury Control Section of the Department of Environment, Health, and Natural Resources shall not revert to the General Fund. The amount of funds collected under G.S. 20-16.5(j) that are designated for this alcohol testing program and have not been spent or obligated as of June 30, 1994, shall revert to the Highway Fund."

Session Laws 1991, c. 689, s. 352 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1991-93 biennium, the textual provisions of Titles I, II, and III of this act shall apply only to funds appropriated for and activities occurring during the 1991-93 biennium."

Session Laws 1991, c. 689, s. 353 is a severability clause.

Session Laws 1993, c. 321, s. 272 provides:

"(a) Amounts collected under G.S. 20-16.5(j) for fiscal years 1993-94 and 1994-95 and designated for the alcohol testing program of the Injury Control Section of the Department of Environment, Health, and Natural Resources shall not revert to the General Fund unless the amounts exceed the amounts appropriated in subsection (b) of this section.

"Beginning with the 1995-96 fiscal year, any funds collected under G.S. 20-16.5(j) that are designated for the alcohol testing program of the Injury Control Section of the Department of Environment, Health, and Natural Resources and are not needed for that program shall be transferred quarterly to the Governor's Highway Safety Program for grants to local law enforcement agencies for training concerning enforcement of the laws on driving while

§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.

(a) Sentencing Hearing Required. — After a conviction for impaired driving under G.S. 20-138.1, the judge must hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed. Before the hearing the prosecutor must make all feasible efforts to secure the defendant's full record of traffic convictions, and must present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor must furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor must present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor must present evidence of the resulting alcohol concentration.

(b) Repealed by Session Laws 1983, c. 435, s. 29.

(c) Determining Existence of Grossly Aggravating Factors. — At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge must first determine whether there are any grossly aggravating factors in the case. The judge must impose the Level One punishment under subsection (g) of this section if the judge determines that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if the judge determines that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:
   a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or
   b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing.

   Each prior conviction is a separate grossly aggravating factor.

(2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

(4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravat-

ing and mitigating factors and impose punishment as required by subsection (f).

(d) Aggravating Factors to Be Weighed. — The judge must determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The judge must weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.20 or more within a relevant time after the driving.
(2) Especially reckless or dangerous driving.
(3) Negligent driving that led to an accident causing property damage in excess of five hundred dollars ($500.00) or personal injury.
(4) Driving by the defendant while his driver's license was revoked.
(5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.
(6) Conviction under G.S. 20-141(j) of speeding by the defendant while fleeing or attempting to elude apprehension.
(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.
(8) Passing a stopped school bus in violation of G.S. 20-217.
(9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor must occur during the same transaction or occurrence as the impaired driving offense.

(e) Mitigating Factors to Be Weighed. — The judge must also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge must weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.11 at any relevant time after the driving.
(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.
(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.
(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.
(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of

prescribed dosage.
(6) The defendant's voluntary
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(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.

(7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor must occur during the same transaction or occurrence as the impaired driving offense.

(f) Weighing the Aggravating and Mitigating Factors. — If the judge in the sentencing hearing determines that there are no grossly aggravating factors, he must weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the judge determines that:

(1) The aggravating factors substantially outweigh any mitigating factors, he must note in the judgment the factors found and his finding that the defendant is subject to the Level Three punishment and impose a punishment within the limits defined in subsection (i).

(2) There are no aggravating and mitigating factors, or that aggravating factors are substantially counterbalanced by mitigating factors, he must note in the judgment any factors found and his finding that the defendant is subject to the Level Four punishment and impose a punishment within the limits defined in subsection (j).

(3) The mitigating factors substantially outweigh any aggravating factors, he must note in the judgment the factors found and his finding that the defendant is subject to the Level Five punishment and impose a punishment within the limits defined in subsection (k).

It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism, drug addiction, diminished capacity, or mental disease or defect. Evidence of these matters may be received in the sentencing hearing, however, for use by the judge in formulating terms and conditions of sentence after determining which punishment level must be imposed.

(f1) Aider and Abettor Punishment. — Notwithstanding any other provisions of this section, a person convicted of impaired driving under G.S. 20-138.1 under the common law concept of aiding and abetting is subject to Level Five punishment. The judge need not make any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

(f2) Limit on Consolidation of Judgments. — Except as provided in subsection (f1), in each charge of impaired driving for which there is a conviction the judge must determine if the sentencing factors described in subsections (c), (d) and (e) are applicable unless the impaired driving charge is consolidated with a charge carrying a greater punishment. Two or more impaired driving charges may not be consolidated for judgment.

(g) Level One Punishment. — A defendant subject to Level One punishment may be fined up to two thousand dollars ($2,000) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 14 days and a maximum term of not

more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed (i) to require the defendant to serve a term of imprisonment of at least 14 days, or (ii) to require the defendant to serve a term of imprisonment of at least four consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above. If the defendant is placed on probation, the judge must, if required by subsection (m), impose the conditions relating to assessment, treatment, and education described in that subsection. The judge may impose any other lawful condition of probation. If the judge does not place on probation a defendant who is otherwise subject to the mandatory assessment and treatment provisions of subsection (m), he must include in the record of the case his reasons for not doing so.

(h) Level Two Punishment. — A defendant subject to Level Two punishment may be fined up to one thousand dollars ($1,000) and must be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed (i) to require the defendant to serve a term of imprisonment of at least seven days or, (ii) to require the defendant to serve a term of imprisonment of at least two consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above. If the defendant is placed on probation, the judge must, if required by subsection (m), impose the conditions relating to assessment, treatment, and education described in that subsection. The judge may impose any other lawful condition of probation. If the judge does not place on probation a defendant who is otherwise subject to the mandatory assessment and treatment provisions of subsection (m), he must include in the record of the case his reasons for not doing so.

(i) Level Three Punishment. — A defendant subject to Level Three punishment may be fined up to five hundred dollars ($500.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment must be suspended, on the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or
(2) Perform community service for a term of at least 72 hours; or
(3) Not operate a motor vehicle for a term of at least 90 days; or
(4) Any combination of these conditions.

The judge in his discretion may impose any other lawful condition of probation and, if required by subsection (m), must impose the conditions relating to assessment, treatment, and education described in that subsection. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(j) Level Four Punishment. — A defendant subject to Level Four punishment may be fined up to two hundred fifty dollars ($250.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment must be suspended, on the condition that the defendant:

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(1) Be imprisoned for a term of 48 hours as a condition of special probation; or
(2) Perform community service for a term of 48 hours; or
(3) Not operate a motor vehicle for a term of 60 days; or
(4) Any combination of these conditions.

The judge in his discretion may impose any other lawful condition of probation and, if required by subsection (m), must impose the conditions relating to assessment, treatment, and education described in that subsection. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(k) Level Five Punishment. — A defendant subject to Level Five punishment may be fined up to one hundred dollars ($100.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment must be suspended, on the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or
(2) Perform community service for a term of 24 hours; or
(3) Not operate a motor vehicle for a term of 30 days; or
(4) Any combination of these conditions.

The judge may in his discretion impose any other lawful condition of probation and, if required by subsection (m), must impose the conditions relating to assessment, treatment, and education described in that subsection. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(k1) Credit for Inpatient Treatment. — Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any treatment. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. The credit may not be used more than once during the seven-year period immediately preceding the date of the offense. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

(*l*) Repealed by Session Laws 1989, c. 691, s. 3, effective January 1, 1990.

(m) Assessment and Treatment Required in Certain Cases. — If a defendant being sentenced under this section is placed on probation, he shall be required as a condition of that probation to obtain a substance abuse assessment.

The judge shall require the defendant to obtain the assessment from an area mental health agency, its designated agent, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. Unless a different time limit is specified in

the court's judgment, the defendant shall schedule the assessment within 30 days from the date of the judgment. Any agency performing assessments shall give written notification of its intention to do so to the area mental health authority in the catchment area in which it is located and to the Department of Human Resources. The Secretary of the Department of Human Resources may adopt rules to implement the provisions of this subsection, and these rules may include provisions to allow defendant to obtain assessments and treatment from agencies not located in North Carolina. The assessing agency shall give the client a standardized test capable of providing uniform research data, including, but not limited to, demographic information, defendant history, assessment results and recommended interventions, approved by the Department of Human Resources to determine chemical dependency. A clinical interview concerning the general status of the defendant with respect to chemical dependency shall be conducted by the assessing agency before making any recommendation for further treatment. A recommendation made by the assessing agency shall be signed by a "Certified Alcoholism, Drug Abuse or Substance Abuse Counselor", as defined by the Department of Human Resources.

If the assessing agency recommends that the defendant participate in a treatment program, the judge may require the defendant to do so, and he shall require the defendant to execute a Release of Information authorizing the treatment agency to report his progress to the court or the Department of Correction. The judge may order the defendant to participate in an appropriate treatment program at the time he is ordered to obtain an assessment, or he may order him to reappear in court when the assessment is completed to determine if a condition of probation requiring participation in treatment should be imposed. An order of the court shall not require the defendant to participate in any treatment program for more than 90 days unless a longer treatment program is recommended by the assessing agency and his alcohol concentration was .15 or greater as indicated by a chemical analysis taken when he was charged or this was a second or subsequent offense within five years. At the time of sentencing the judge shall require the defendant to pay one hundred twenty-five dollars ($125.00). The payment of the fee of one hundred twenty-five dollars ($125.00) shall be (i) fifty dollars ($50.00) to the assessing agency and (ii) seventy-five dollars ($75.00) to either a treatment facility or to an alcohol and drug education traffic school depending upon the recommendation made by the assessing agency. Fees received by the Area Mental Health, Developmental Disabilities, and Substance Abuse Authorities under this section shall be administered pursuant to G.S. 20-179.2(e), provided, however that the provisions of G.S. 20-179.2(c) shall not apply to monies received under this section. The operators of the local alcohol and drug education traffic school may change the length of time required to complete the school in accordance with administrative costs, provided, however that the length and the curriculum of the school shall be approved by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services and in no event shall the school be less than five hours in length. If the defendant is treated by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar ($75.00) fee. If an area mental health facility or its contractor is providing treatment or education services to a de-

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fendant pursuant to this subsection, the area facility or its contractor may require that the defendant pay the fees prescribed by law for the services before it certifies that the defendant has completed the recommended treatment or educational program. Any determinations with regard to the defendant's ability to pay the assessment fee shall be made by the judge.

In those cases in which no substance abuse handicap is identified, that finding shall be filed with the court and the defendant shall be required to attend an alcohol and drug education traffic school. When treatment is required, the treatment agency's progress reports shall be filed with the court or the Department of Correction at intervals of no greater than six months until the termination of probation or the treatment agency determines and reports that no further treatment is appropriate. If the defendant is required to participate in a treatment program and he completes the recommended treatment, he does not have to attend the alcohol and drug education traffic school. Upon the completion of the court-ordered assessment and court-ordered treatment or school, the assessing or treatment agency or school shall give the Division of Motor Vehicles the original of the certificate of completion, shall provide the defendant with a copy of that certificate, and shall retain a copy of the certificate on file for a period of five years. The Division of Motor Vehicles shall not reissue the drivers license of a defendant ordered to obtain assessment, participate in a treatment program or school unless it has received the original certificate of completion from the assessing or treatment agency or school or a certificate of completion sent by the agency subsequent to a court order as hereinafter provided; provided, however that a defendant may be issued a limited driving privilege pursuant to G.S. 20-179.3. Unless the judge has waived the fee, no certificate shall be issued unless the agency or school has received the fifty dollar ($50.00) fee and the seventy-five dollar ($75.00) fee as appropriate. A defendant may within 90 days after an agency decision to decline to certify, by filing a motion in the criminal case, request that a judge presiding in the court in which he was convicted review the decision of an assessment or treatment agency to decline to certify that the defendant has completed the assessment or treatment. The agency whose decision is being reviewed shall be notified at least 10 days prior to any hearing to review its decision. If the judge determines that the defendant has obtained an assessment, has completed the treatment, or has made an effort to do so that is reasonable under the circumstances, as the case may be, the judge shall order that the agency send a certificate of completion to the Division of Motor Vehicles.

The Department of Human Resources may approve programs offered in another state if they are substantially similar to programs approved in this State, and if that state recognizes North Carolina programs for similar purposes. The defendant shall be responsible for the fees at the approved program.

(n) Time Limits for Performance of Community Service. — If the judgment requires the defendant to perform a specified number of hours of community service as provided in subsections (i), (j), or (k), the community service must be completed:

(1) Within 90 days, if the amount of community service required is 72 hours or more; or

(2) Within 60 days, if the amount of community service required is 48 hours; or

(3) Within 30 days, if the amount of community service required is 24 hours.

The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection.

(o) Evidentiary Standards; Proof of Prior Convictions. — In the sentencing hearing, the State must prove any grossly aggravating or aggravating factor by the greater weight of the evidence, and the defendant must prove any mitigating factor by the greater weight of the evidence. Evidence adduced by either party at trial may be utilized in the sentencing hearing. Except as modified by this section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or absence of previous convictions that he finds reliable but he must give prima facie effect to convictions recorded by the Division or any other agency of the State of North Carolina. A copy of such conviction records transmitted by the police information network in general accordance with the procedure authorized by G.S. 20-26(b) is admissible in evidence without further authentication. If the judge decides to impose an active sentence of imprisonment that would not have been imposed but for a prior conviction of an offense, the judge must afford the defendant an opportunity to introduce evidence that the prior conviction had been obtained in a case in which he was indigent, had no counsel, and had not waived his right to counsel. If the defendant proves by the preponderance of the evidence all three above facts concerning the prior case, the conviction may not be used as a grossly aggravating or aggravating factor.

(p) Limit on Amelioration of Punishment. — For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(2) The defendant must serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.

(3) The defendant may not be released on parole unless he is otherwise eligible and has served the mandatory minimum period of imprisonment.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(q) Repealed by Session Laws 1991, c. 726, s. 20, effective October 1, 1991.

(r) Supervised Probation Terminated. — Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets two conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced and that the defendant is sentenced under subsections (i), (j), and (k) of this section.

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16; c. 1133, s. 1; 1975
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139; c. 352, s. 1; c. 79
1989 (Reg. Sess., 199
19(b), (c); c. 726, ss.

Cross References. —
provisions regarding li
privileges, see § 20-179.3

Editor's Note. — Sessi
c. 797, s. 2 amended the
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When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or

(2) Treatment and education as described in subsection (m); or

(3) Payment of any fines, court costs, and fees; or

(4) Any combination of these conditions.

(s) Method of Serving Sentence. — The judge in his discretion may order a term of imprisonment or community service to be served on weekends, even if the sentence cannot be served in consecutive sequence.

(t) Assessment for Convicted Defendants not Placed on Probation. — Any person convicted of impaired driving who is not placed on probation shall obtain a substance abuse assessment as a condition of having his driver's license restored following a revocation ordered pursuant to G.S. 20-17(2). The assessment shall be obtained from an area mental health agency, its designated agency, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. The fee for the assessment shall be as specified in subsection (m) of this section. The assessing agency shall provide to the Department of Human Resources a certificate attesting that the assessment has been performed and indicating its results. The Department shall promptly notify the Division of Motor Vehicles of the receipt of the certificate. The Division shall not reissue a driver's license to the defendant until this notification is received. The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services may adopt rules to implement the provisions of this subsection. (1937, c. 407, s. 140; 1947, c. 1067, s. 18; 1967, c. 510; 1969, c. 50; c. 1283, ss. 1-5; 1971, c. 619, s. 16; c. 1133, s. 1; 1975, c. 716, s. 5; 1977, c. 125; 1977, 2nd Sess., c. 1222, s. 1; 1979, c. 453, ss. 1, 2; c. 903, ss. 1, 2; 1981, c. 466, ss. 4-6; 1983, c. 435, s. 29; 1983 (Reg. Sess., 1984), c. 1101, ss. 21-29, 36; 1985, c. 706, s. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 201(d); 1987, c. 139; c. 352, s. 1; c. 797, s. 1; 1989, c. 548, ss. 1, 2; c. 691, ss. 1-3, 4.1; 1989 (Reg. Sess., 1990), c. 1031, ss. 1, 2; c. 1039, s. 6; 1991, c. 636, s. 19(b), (c); c. 726, ss. 20, 21; 1993, c. 285, s. 9.)

Cross References. — For current provisions regarding limited driving privileges, see § 20-179.3.

Editor's Note. — Session Laws 1987, c. 797, s. 2 amended the provisions of subsection (m) of this section pertaining to the assessment of convicted impaired drivers to establish a pilot program in 10 counties effective January 1, 1988, until July 1, 1989. The program was to become statewide effective July 1, 1989. In 1989, Chapter 797 was amended twice, by Session Laws 1989, cc. 548 and 691. The general effect of these 1989 amendments was to extend and amend the provisions of the original pilot program, making changes retroactively effective January 1, 1988 until July 28, 1989; to make other changes to the pilot program effective July 28, 1989 until January 1, 1990; to make amendments to the version of subsection (m) effective statewide except for those counties in which the pilot program applied, effective July 28, 1989 until January 1, 1990; and finally to set out the version of subsection (m) which went into effect statewide on January 1, 1990, with conforming amendments to the rest of this section.

Effect of Amendments. — The 1993 amendment, effective October 1, 1993, and applicable to all offenses committed on or after that date, rewrote subsection (c).

Legal Periodicals. — For survey of 1979 law on criminal procedure, see 58 N.C.L. Rev. 1404 (1980).

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 183 A BILL TO BE ENTITLED AN ACT TO INCLUDE PRIOR IMPAIRED DRIVING CONVICTIONS IN FELONY PRIOR RECORD LEVEL CALCULATION, TO PROVIDE FOR AN INDEFINITE CIVIL SUSPENSION OF A DRIVERS LICENSE WHEN A DRIVER IS CHARGED WITH AN IMPAIRED DRIVING OFFENSE WHILE ANOTHER IMPAIRED DRIVING OFFENSE IS PENDING DISPOSITION, AND TO ALLOW FOR MODIFICATION OF SENTENCE FOR IMPAIRED DRIVING ON REMAND TO DISTRICT COURT OF WITHDRAWAL OF APPEAL.

☐ With a favorable report.

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

☐ 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 174

Short Title: Active Sentence/Trial Waiting Time. (Public)

Sponsors: Representative Neely.

Referred to: Judiciary II.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO PERMIT AN ACTIVE SENTENCE TO BE IMPOSED FOR A CRIMINAL CONVICTION IF THE DEFENDANT SERVED TIME AWAITING TRIAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1340.20 is amended by adding a new subsection to read:

"(c1) Active Punishment Exception. -- The court may impose an active punishment for a class of offense and prior conviction level that does not otherwise authorize the imposition of an active punishment if the term of imprisonment is equal to or less than the total amount of time the offender has already spent committed to or in confinement in any State or local correctional, mental, or other institution as a result of the charge that culminated in the sentence."

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

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Administrative Division
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(919) 733-2578

March 25, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: House Bill 174 - Active Sentence/Trial Waiting Time

House Bill 174 would allow a judge to impose an active sentence for a misdemeanor conviction, that would ordinarily only allow a Community Service or Intermediate punishment, when the active sentence is equal to or less than the amount of time the defendant has already spent confined while awaiting resolution of the charge.

This bill is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§ 15A-1340.20. Procedure and incidents of sentence of imprisonment for misdemeanors.

(a) Application to Misdemeanors Only. - This Part applies to sentences imposed for misdemeanor convictions.

(b) Procedure Generally; Term of Imprisonment. - A sentence imposed for a misdemeanor shall contain a sentence disposition specified for the class of offense and prior conviction level, and any sentence of imprisonment shall be within the range specified for the class of offense and prior conviction level, unless applicable statutes require otherwise. The kinds of sentence dispositions are active punishment, intermediate punishment, and community punishment. Except for the work and earned time credits authorized by G.S. 162-60, or earned time credits authorized by G.S. 15A-1355(c), if applicable, an offender whose sentence of imprisonment is activated shall serve each day of the term imposed.

(c) Suspension of Sentence. - Unless otherwise provided, the court shall suspend a sentence of imprisonment if the class of offense and prior conviction level requires community or intermediate punishment as a sentence disposition.

(d) Earned Time Authorization. - An offender sentenced to a term of imprisonment that is activated is eligible to receive earned time credit for misdemeanant offenders awarded by the Department of Correction or the custodian of a local confinement facility, pursuant to rules adopted in accordance with law and pursuant to G.S. 162-60. These rules and statute combined shall not award misdemeanant offenders more than four days of earned time credit per month of incarceration.

(1993, c. 538, s. 1; 1994, Ex. Sess., c. 24, s. 14(b); 1993 (Reg. Sess., 1994), c. 767, s. 1.)

(c) 1996 by Michie, a division of Reed Elsevier Inc.

Effective for Offenses Committed on or after 12/1/95

MISDEMEANOR PUNISHMENT CHART

CLASS	PRIOR CONVICTION LEVELS		
	I	II	III
	No Prior Convictions	One to Four Prior Convictions	Five or More Prior Convictions
A1	1 - 60 days C/I/A	1 - 75 days C/I/A	1 - 150 days C/I/A
1	1 - 45 days C	1 - 45 days C/I/A	1 - 120 days C/I/A
2	1 - 30 days C	1 - 45 days C/I	1 - 60 days C/I/A
3	1 - 10 days C	1 - 15 days C/I	1 - 20 days C/I/A

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

Cells with slash allow either disposition at the discretion of the judge.

Revised: 08-04-95

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 174 A BILL TO BE ENTITLED AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO PERMIT AN ACTIVE SENTENCE TO BE IMPOSED FOR A CRIMINAL CONVICTION IF THE DEFENDANT SERVED TIME AWAITING TRIAL.

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)

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **April 1, 1997 10:00 A.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Scoggin	NCBA
Rob Sheffield	NCJCDC
Barnard Allen	SOS
Lynn Joe Bain	Smith Anderson
Stephanie Williams	Bone/Associates / Firemen
Sonya Schmidt	NCJCDC
Caroline Myers	Crisis Assistance Ministry, Charlotte
Charles C. Lewis	General Statutes Commission
Floyd M. Lewis	General Statutes Commission
P. Day Hall	General Statutes Commission
Kim Smith	NCLM
Eddie Caldwell	HBAC
[illegible]	NC Assoc of REALTORS
R. Dan Williams	NCMBA
J. Michael Carpenter	NCMBA
Lyman Cooper	CSX Corp

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 1, 1997 1:00 P.M.

The North Carolina House of Representatives Judiciary II Committee met on April 1, 1997, at 1:00 P.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Berry, Bowie, Cansler, Culpepper, Gardner, Hensley, McMahan, Redwine, Russell, Saunders, Shubert, Sutton, Weatherly and Wilkins. A list of visitors is attached.

The following bill was discussed;

HB-234 SMOKE DETECTOR PENALTIES

Representative Berry, Chair, House Bill 234 Subcommittee, provided members with a proposed committee substitute. A copy of the proposed committee substitute and explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Representative Bowie moved proposed committee substitute be adopted for purpose of discussion; motion passed.

Representatives Berry and McMahan, HB-234 Subcommittee, answered questions of committee members.

Mr. Tim Minton, North Carolina Association of Realtors, and Mr. Rob Schofield, Attorney, Justice and Community Development Center, answered questions of committee members.

Representative Easterling, Bill Sponsor, stated she did not know of any opposition to the proposed committee substitute bill.

Due to concerns of committee members the bill was re-referred to the subcommittee.

The meeting was adjourned at 1:50 P.M.

Respectfully submitted:

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 234*
Proposed Committee Substitute H234-CSSA-002
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Smoke Detector Installation/Penalties. (Public)

Sponsors:

Referred to: Judiciary II.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY A LANDLORD'S OBLIGATION TO INSTALL SMOKE DETECTORS, TO REQUIRE A TENANT TO NOTIFY A LANDLORD IN WRITING IF A SMOKE DETECTOR NEEDS TO BE REPLACED OR REPAIRED, TO IMPOSE A CIVIL PENALTY IF A LANDLORD FAILS TO PROVIDE, INSTALL, REPLACE, OR REPAIR A SMOKE DETECTOR IN A RESIDENTIAL RENTAL DWELLING, AND TO IMPOSE A CIVIL PENALTY IF A TENANT INTERFERES OR MAKES INOPERATIVE A SMOKE DETECTOR IN A RESIDENTIAL RENTAL DWELLING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 42-42(a) reads as rewritten:

"(a) The landlord shall:

(1) Comply with the current applicable building and housing codes, whether enacted before or after October 1, 1977, to the extent required by the operation of such codes; no new requirement is imposed by this subdivision (a)(1) if a structure is exempt from a current building ~~code;~~ code.

(2) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable ~~condition;~~ condition.

(3) Keep all common areas of the premises in safe ~~condition;~~ condition.

(4) Maintain in good and safe working order and promptly repair all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances supplied or required to be supplied by ~~him~~ the landlord provided that notification of needed repairs is made to the landlord in writing by the ~~tenant~~ tenant, except in emergency ~~situations; and~~ situations.

(5) Provide operable smoke detectors, either battery-operated or electrical, having an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval, ~~that are installed~~ and install the smoke detectors in accordance with either the standards of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the landlord shall retain or provide as proof of compliance. The landlord ~~must~~ shall replace or repair the smoke detectors within 15 days of receipt of notification ~~provided~~ if the landlord is notified of needed replacement or repairs in writing by the tenant. The landlord shall ensure that a previously installed smoke detector is operable and in good repair at the beginning of each tenancy. Unless the landlord and the tenant have a written agreement to the contrary, the landlord ~~must~~ shall place new batteries in a battery-operated smoke detector at the beginning of a tenancy and the tenant ~~must~~ shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered as negligence on the part of the tenant or the landlord."

Section 2. G.S. 42-43(a) reads as rewritten:

"(a) The tenant shall:

(1) Keep that part of the premises ~~which he~~ that the tenant occupies and uses as clean and safe as the conditions of the premises permit and cause no unsafe or unsanitary conditions in the common areas and remainder of the premises ~~which he uses;~~ that the tenant uses.

(2) Dispose of all ashes, rubbish, garbage, and other waste in a clean and safe ~~manner;~~ manner.

(3) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition ~~permits;~~ permits.

(4) Not deliberately or negligently destroy, deface, damage, or remove any part of the premises, nor render inoperable the smoke detector provided by the landlord, or knowingly permit any person to do ~~so;~~ so.

(5) Comply with any and all obligations imposed upon the tenant by current applicable building and housing ~~codes;~~ codes.

(6) Be responsible for all damage, defacement, or removal of any property inside a dwelling unit in ~~his~~ the tenant's exclusive control unless ~~said~~ the damage, defacement or removal was due to ordinary wear and tear, acts of the landlord or ~~his~~ the landlord's agent, defective products supplied or repairs authorized by the landlord, acts of third parties not invitees of the tenant, or natural ~~forces; and~~ forces.

(7) Notify the ~~landlord~~ landlord, in writing, of the need for replacement of or repairs to a smoke detector. ~~Nothing in this bill shall prohibit an individual landlord in a written agreement with the tenant from requiring the tenant to provide notice in writing of the need for replacement of or repairs to a smoke detector.~~ The landlord shall ensure that a previously installed smoke detector is operable and in good repair at the beginning of each tenancy. Unless the landlord and the tenant have a written agreement to the contrary, the landlord ~~must~~ shall place new batteries in a battery-operated smoke detector at the beginning of a tenancy and the tenant ~~must~~ shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered as negligence on the part of the tenant or the landlord."

Section 3. G.S. 42-44 reads as rewritten:

"§ 42-44. General ~~remedies~~ remedies; penalties, and limitations.

(a) Any right or obligation declared by this Chapter is enforceable by civil action, in addition to other remedies of law and in equity.

(a1) If the landlord fails to provide, install, replace or repair a smoke detector under the provisions of G.S. 42-42(a)(5), a complaint may be filed against the landlord with the local inspection department that is responsible for inspecting buildings in the area where the rental property is located. The inspection department shall notify the landlord of the landlord's obligations under G.S. 42-42(a)(5) and that the landlord has 30 days from receipt of notification to comply with G.S. 42-42(a)(5). If a landlord fails to comply with the complaint within 30 days of receipt, the landlord shall be guilty of an infraction and shall be subject to a fine of not more than five hundred dollars ($500.00) for each violation. The landlord may temporarily disconnect a detector in a dwelling unit or common area for construction or rehabilitation activities when such activities are likely to activate the detector or make it inactive.

(a2) A tenant is totally responsible for the smoke detector once the tenant takes occupancy unless a written notice under G.S. 42-43(a)(7) is given. A tenant who interferes with or makes inoperative any smoke detector required by this section shall be guilty of an infraction and subject to a fine of not more than two hundred fifty dollars ($250.00) for each violation and shall reimburse the landlord for costs associated with the replacement of the smoke detector.

(b) Repealed by Session Laws 1979, c. 820, s. 8.

(c) The tenant may not unilaterally withhold rent prior to a judicial determination of a right to do so.

(d) A violation of this Article shall not constitute negligence per se."

Section 4. G.S. 42-44(a2), as enacted by this act, becomes effective December 1, 1997, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

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April 1, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: Proposed Committee Substitute for HB234 - Smoke Detector Installation/Penalties

This bill clarifies the landlord and tenant obligations in installing and maintaining smoke detectors in rental property. It also provides civil and criminal penalties for failure to fulfill the statutory obligations.

Section 1 of the bill amends G.S. 42-42(a)(5) to make it clear that the landlord is required to install smoke detectors. The previous language made it clear that they were to provide them, but was ambiguous as to whether they had to actually install them or whether they could require the tenant to install the detectors provided by the landlord. This section also provides that the landlord has 15 days from receipt of written notice from the tenant to replace or repair a smoke detector. The remaining changes to G.S. 42-42(a) contained in this section are grammatical ones.

Section 2 of the bill amends G.S. 42-43(a)(7) to clear up an inconsistency between this statute and G.S. 42-42(a)(5). G.S. 42-42(a)(5) requires the tenant to notify the landlord <u>in writing</u> if the smoke detector needs replacement or repairs. G.S. 42-43(a)(7) currently allows the landlord and tenant to agree that notification must be in writing, but does not require it. This bill amends this section to require that the notification be in writing. The remaining changes to G.S. 42-43(a) contained in this section are grammatical ones.

Section 3 of the bill amends G.S. 42-44 by adding two new subsections. Subsection (a1) would provide for a complaint to be filed with the local inspection department and allow a court to impose a civil penalty of not more than $500 if a landlord fails to provide, install, replace or repair a smoke detector. Subsection (a2) would subject the tenant to a fine of not more than $250 if they interfere with or make inoperative any smoke detector required by the statute.

Section 4 makes the new criminal offense contained in G.S. 42-44(a2) effective December 1, 1997. All other provisions of this act would become effective when the act becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **April 1, 1997 1:00 P.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	VAIC
[illegible]	VA Low Income Housing Coalition
R.S Schofield	NCJCDC
Thomas V. Bennett	NCCFTF -- Raleigh
[illegible]	N.C. Dept. of Insurance
[illegible]	NCHBA
[illegible]	NC Association of Realtors, Inc.
Eddie Caldwell	Apt. Assn of NC
James Houston	ASU Dept PS/CJ
Nicole Simoneaux	ASU Dept of Criminal Justice/PS
Janet Walker	ASU Poli Sci/Crim Just. Dept.
Debra L. Wilson	ASU MPA Graduate School

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 3, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on April 3, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Kiser, Vice Chairman, called the meeting to order.

Those in attendance were Representatives Kiser, Baddour, Bowie, Cansler, Culpepper, Decker, Goodwin, Hensley, Nesbitt, Russell, Saunders, Shubert, and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-175 STRUCTURED SENTENCING/TECHNICAL AMENDMENTS
HB-195 CLARIFY POST-RELEASE SUPERVISION
HB-333 CLARIFY ATTORNEY-IN-FACT GIFTS

Mr. Tim Hovis, Committee Counsel, was recognized to explain HB-175 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Hovis are attached.

Representative Nesbitt was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Bowie moved the amendment be incorporated in a committee substitute bill and favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

Representative Bowie was recognized to explain HB-195 and answer questions of committee members. A copy of the bill and bill explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Representative Russell moved for a favorable report; motion passed.

Representative Culpepper was recognized to present a proposed committee substitute for HB-333 and answer questions of committee members. A copy of the proposed committee substitute is attached.

Ms. Sandra Byrd, Chair, Estate Planning and Fiduciary Law Section, Legislative Committee, North Carolina Bar, provided members with a handout and answered questions of committee members. A copy of the handout is attached.

No action was taken on HB-333.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 175

Short Title: Struct. Sent./Tech. & Clarifying Amends. (Public)

Sponsors: Representative Neely.

Referred to: Judiciary II.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO MAKE CERTAIN TECHNICAL, CLARIFYING, AND CONFORMING AMENDMENTS TO STRUCTURED SENTENCING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-72.1(e) reads as rewritten:

"(e) Punishment. -- For a first conviction under subsection (a) or (d), or for a subsequent conviction for which the punishment is not specified by this subsection, the defendant ~~may~~ shall be guilty of a Class 3 misdemeanor. The term of imprisonment may be suspended only on condition that the defendant perform community service for a term of at least 24 hours. For a second offense committed within three years after the date the defendant was convicted of an offense under this section, the defendant ~~may~~ shall be guilty of a Class 2 misdemeanor. The term of imprisonment may be suspended only on condition that the defendant be imprisoned for a term of at least 72 hours as a condition of special probation, perform community service for a term of at least 72 hours, or both. For a third or subsequent offense committed within five years after the date the defendant was convicted of two other offenses under this section, the defendant ~~may~~ shall be guilty of a Class 1 misdemeanor. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least ~~14~~ 11 days. However, if the sentencing judge finds that the defendant is unable, by reason of mental or physical infirmity, to perform the service required under this section, and the reasons for such findings are set forth in the

judgment, ~~he~~ the judge may pronounce such other sentence as ~~he~~ the judge finds appropriate."

Section 2. G.S. 15A-1021(a) reads as rewritten:

"(a) In superior court, the prosecution and the defense may discuss the possibility that, upon the defendant's entry of a plea of guilty or no contest to one or more offenses, the prosecutor will not charge, will dismiss, or will move for the dismissal of other charges, or will recommend or not oppose a particular ~~sentence, including a prison term different from the presumptive prison term applicable to the defendant, if convicted, under G.S. 15A-1340.4(f).~~ sentence. If the defendant is represented by counsel in the discussions the defendant need not be present. The trial judge may participate in the discussions."

Section 3. G.S. 15A-1340.17(c) reads as rewritten:

"(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart Described. -- The authorized punishment for each class of offense and prior record level is as specified in the chart below. Prior record levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offense are indicated by the letters placed vertically on the left side of the chart. Each cell on the chart contains the following components:

(1) A sentence disposition or dispositions: 'C' indicates that a community punishment is authorized; 'I' indicates that an intermediate punishment is authorized; 'A' indicates that an active punishment is authorized; and 'Life Imprisonment Without Parole' indicates that the defendant shall be imprisoned for the remainder of the prisoner's natural life.

(2) A presumptive range of minimum durations, if the sentence of imprisonment is neither aggravated or mitigated; any minimum term of imprisonment in that range is permitted unless the court finds pursuant to G.S. 15A-1340.16 that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.

(3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the mitigated range is permitted. The mitigated range is the lower of the three ranges in the cell.

(4) An aggravated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the aggravated range is permitted. The aggravated range is the higher of the three ranges in the cell.

PRIOR RECORD LEVEL

	I	II	III	IV	V	VI	
	0 Pts	1-4 Pts	5-8 Pts	9-14 Pts	15-18 Pts	19+ Pts	
A		Life Imprisonment Without Parole or Death as Established by Statute					
	A	A	A	A	A	A	DISPOSITION
	240-300	288-360	336-420	384-480	Life Imprisonment Without Parole		Aggravated
B1	192-240	230-288	269-336	307-384	346-433	384-480	PRESUMPTIVE
	144-192	173-230	202-269	230-307	260-346	288-384	Mitigated
	A	A	A	A	A	A	DISPOSITION
	157-196	189-237	220-276	251-313	282-353	313-392	Aggravated
B2	125-157	151-189	176-220	201-251	225-282	251-313	PRESUMPTIVE
	94-125	114-151	132-176	151-201	169-225	188-251	Mitigated
	A	A	A	A	A	A	DISPOSITION
	73-92	100-125	116-145	133-167	151-188	168-210	Aggravated
C	58-73	80-100	93-116	107-133	121-151	135-168	PRESUMPTIVE
	44-58	60-80	70-93	80-107	90-121	101-135	Mitigated
	A	A	A	A	A	A	DISPOSITION
	64-80	77-95	103-129	117-146	133-167	146-183	Aggravated
D	51-64	61-77	82-103	94-117	107-133	117-146	PRESUMPTIVE
	38-51	46-61	61-82	71-94	80-107	88-117	Mitigated
	I/A	I/A	A	A	A	A	DISPOSITION
	25-31	29-36	34-42	46-58	53-66	59-74	Aggravated
E	20-25	23-29	27-34	37-46	42-53	47-59	PRESUMPTIVE
	15-20	17-23	20-27	28-37	32-42	35-47	Mitigated
	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-24	21-26	25-31	34-42	39-49	Aggravated
F	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated

		I/A	I/A	I/A	I/A	A	A	DISPOSITION
		13-16	15-19	16-20	20-25	21-26	29-36	Aggravated
	G	10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
		8-10	9-12	10-13	12-16	13-17	17-23	Mitigated

		C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
		6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
	H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
		4-5	4-6	6-8	7-9	9-12	12-16	Mitigated

		C	C/I	I	I/A	I/A	I/A	DISPOSITION
		6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
	I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
		3-4	3-4	4-5	4-6	5-7	6-8	Mitigated

".

Section 4. G.S. 15A-1444(e) reads as rewritten:

"(e) Except as provided in ~~subsection (a1)~~ subsections (a1) and (a2) of this section and G.S. 15A-979, and except when a motion to withdraw a plea of guilty or no contest has been denied, the defendant is not entitled to appellate review as a matter of right when he has entered a plea of guilty or no contest to a criminal charge in the superior court, but he may petition the appellate division for review by writ of certiorari. If an indigent defendant petitions the appellate division for a writ of certiorari, the presiding superior court judge may in his discretion order the preparation of the record and transcript of the proceedings at the expense of the State."

Section 5. G.S. 113-136(j) reads as rewritten:

"(j) The refusal of any person to stop in obedience to the directions of an inspector or protector acting under the authority of this section is unlawful. A violation of this subsection is ~~punishable by a fine of not less than fifty dollars ($50.00) nor more than two hundred dollars ($200.00), imprisonment not to exceed 30 days, or both.~~ a Class 3 misdemeanor and may include a fine of not less than fifty dollars ($50.00)."

Section 6. G.S. 15A-1340.11(2) reads as rewritten:

"(2) Community punishment. -- A sentence in a criminal case that does not include an active ~~punishment or~~ punishment, an intermediate ~~punishment.~~ punishment, or any of the conditions of probation listed in subdivision (6) of this section."

Section 7. 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, 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)), 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~~ any prior ~~offense,~~ offense for which the offender was convicted, whether or not that prior offense is used in determining prior record level, 1 point.
(7) If the offense was committed while the offender was on ~~probation or~~ supervised or unsupervised probation, parole, or post-release supervision, 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."

Section 8. G.S. 15A-1340.21(b) reads as rewritten:

"(b) Prior Conviction Levels for Misdemeanor Sentencing. -- The prior conviction levels for misdemeanor sentencing are:

(1) Level I -- 0 prior convictions.
(2) Level II -- At least 1, but not more than 4 prior convictions.
(3) Level III -- At least 5 prior convictions.

In determining the prior conviction level, a prior offense may be included if it is either a felony or a misdemeanor at the time the offense for which the offender is being sentenced is committed."

Section 9. G.S. 90-98 reads as rewritten:

"**§ 90-98. Attempt and conspiracy; penalties.**

~~Any~~ Except as otherwise provided in this Article, any person who attempts or conspires to commit any offense defined in this Article is ~~punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of~~ guilty of an offense that is the same class as the offense which was the object of the attempt or ~~conspiracy.~~ conspiracy and is punishable as specified for that class of offense and prior record or conviction level in Article 81B of Chapter 15A of the General Statutes. ~~If the offense the person attempts or conspires to commit is a felony, the attempt or conspiracy is punishable as a felony of the same class as that offense.~~"

Section 10. G.S. 15-48 is repealed.

Section 11. G.S. 7A-598 reads as rewritten:

"**§ 7A-598. Grounds for order.**

An order may issue only on affidavit or affidavits sworn to before the judge and establishing the following grounds for the order:

(1) That there is probable cause to believe that an offense has been committed which if committed by an adult would be ~~punishable by imprisonment for more than two years;~~ a felony offense; and

(2) That there are reasonable grounds to suspect that the juvenile named or described in the affidavit committed the offense; and

(3) That the results of specific nontestimonial identification procedures will be of material aid in determining whether the juvenile named in the affidavit committed the offense."

Section 12. G.S. 7A-600 reads as rewritten:

"**§ 7A-600. Nontestimonial identification order at request of juvenile.**

A juvenile in custody for or charged with an offense which if committed by an adult would be ~~punishable by imprisonment for more than two years~~ a felony offense may request that nontestimonial identification procedures be conducted upon himself. If it appears that the results of specific nontestimonial identification procedures will be of material aid to the juvenile's defense, the judge to whom the request was directed must order the State to conduct the identification procedures."

Section 13. G.S. 15A-263(a) reads as rewritten:

"(a) In General. Following application made under G.S. 15A-262, a superior court judge may enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the State if the judge finds:

(1) That there is reasonable suspicion to believe that ~~an offense punishable by imprisonment for more than one year~~ a felony offense, or a Class A1 or Class 1 misdemeanor offense has been committed;

(2) That there are reasonable grounds to suspect that the person named or described in the affidavit committed the offense, if that person is known and can be named or described; and

(3) That the results of procedures involving pen registers or trap and trace devices will be of material aid in determining whether the person named in the affidavit committed the offense."

Section 14. G.S. 15A-273 reads as rewritten:

"**§ 15A-273. Basis for order.**

An order may issue only on an affidavit or affidavits sworn to before the judge and establishing the following grounds for the order:

(1) That there is probable cause to believe that ~~an offense punishable by imprisonment for more than one year~~ a felony offense, or a Class A1 or Class 1 misdemeanor offense has been committed;

(2) That there are reasonable grounds to suspect that the person named or described in the affidavit committed the offense; and

(3) That the results of specific nontestimonial identification procedures will be of material aid in determining whether the person named in the affidavit committed the offense."

Section 15. G.S. 15A-281 reads as rewritten:

"**§ 15A-281. Nontestimonial identification order at request of defendant.**

A person arrested for or charged with ~~an offense punishable by imprisonment for more than one year~~ a felony offense, or a Class A1 or Class 1 misdemeanor offense may request that nontestimonial identification procedures be conducted upon himself. If it appears that the results of specific nontestimonial identification procedures will be of material aid in determining whether the defendant committed the offense, the judge to whom the request was directed must order the State to conduct the identification procedures."

Section 16. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

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April 2, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 175—Structured Sentencing/Technical and Clarifying Amendments (Neely)

House Bill 175 is a recommendation of the North Carolina Sentencing and Policy Advisory Commission.

Under Structured Sentencing, a sentence may be suspended only if the period of incarceration imposed as a condition of special probation does not exceed one-fourth of the suspended sentence. A defendant who commits a third or subsequent shoplifting offense, under G.S. 14-72.1, is guilty of a Class 1 misdemeanor for which the longest suspended sentence is 45 days. Based upon the one-fourth rule, the longest sentence as a condition of special probation would be 11 days. However, G.S. 14-72.1(e) provides for a period of 14 days. Section 1 of the bill changes the number of days from 14 to 11.

Section 2 of the bill deletes from **G.S. 15A-1021, Plea conference,** language referring to a prison term outside of the presumptive sentence. Under Structured Sentencing, there can be no prison term outside of the presumptive sentence. In addition, the statute referenced in this provision, G.S. 15A-1340.4(f), was repealed with the enactment of Structured Sentencing.

Section 3 clarifies that, for Class A offenses, a life sentence means life imprisonment without parole.

As a part of Structured Sentencing, **G.S. 15A-1444, When defendant may appeal; certiorari**, was amended to add subsection (a2) to give an appeal as of right for the imposition of an incorrect sentence under Structured Sentencing . However, subsection (e) of this statute, which denies an appeal as of right, was not amended to reflect the addition of subsection (a2). Section 4 adds "(a2)" as an exception in subsection (e).

G.S. 113-136(j) addresses the enforcement authority of wildlife inspectors. However, the language used in the statute is not consistent with Structure Sentencing. Section 5 of the bill makes the offense a Class 3 misdemeanor.

Section 6 clarifies that community punishment may not include any of the conditions of probation listed as intermediate punishments. Some judges have been imposing these conditions under community punishment even though the conditions are listed under intermediate punishment and are intended solely for intermediate punishment.

In determining prior record level under Structured Sentencing, only the most serious conviction in each court session is assigned points. However, Structured Sentencing does authorize an additional point if the elements of the current offense are included in any prior offenses. Section 7 provides that, when imposing this additional point, the court may compare the offense to **all** prior convictions, not just the most serious conviction in each court session. This section also provides that if the offense was committed while the defendant was on post-release supervision, the defendant may receive an additional point.

Section 8 provides that only felonies and misdemeanors may count toward prior record level. An offense which is an infraction at the time of the current offense may not be included.

Section 9 clarifies that conspiracy to commit drug trafficking offenses fall under mandatory drug trafficking laws. Conspiracy to commit other drug offenses are punished according to the Structured Sentencing grid.

Section 10 repeals **G.S. 15-48, Outlawry for Felony.** This statute authorizes a judge, upon a written affidavit that a felony has been committed, to empower a sheriff or any citizen to apprehend and slay an individual. The statute has been declared unconstitutional.

Sections 11 and 12 make technical changes to the statutes authorizing the issuance of nontestimonial identification orders for a juvenile. A nontestimonial identification order is an order for fingerprints, palm prints, blood and urine specimens, saliva samples, etc.. The statute fails to contain language consistent with Structured Sentencing. The sections delete language allowing such orders for offenses "punishable by imprisonment for more than two years" and substitutes the words "a felony offense".

Section 13 makes technical changes to G.S. 15A-263 dealing with the issuance of ex parte orders authorizing a pen register or a trap and trace device. These are devices used to identify numbers dialed on a telephone line. Again, the statute fails to reflect language consistent with Structured Sentencing. This section deletes language authorizing such orders for "an offense punishable by imprisonment for more than one year" and substitutes "a felony offense, or a Class A1 or Class 1 misdemeanor".

Sections 14 and 15 make technical changes to the statutes authorizing the issuance of nontestimonial identification orders for adult defendants. To reflect language consistent with Structured Sentencing, the sections delete language allowing such orders for "an offense punishable by imprisonment for more than one year" and substitutes "a felony offense, or a Class A1 or Class 1 misdemeanor offense".

the only evidence of value indicated that the truck stolen was worth more than the threshold amount and there was no evidence which would have supported a jury verdict of misdemeanor larceny. State v. Huggins, 338 N.C. 494, 450 S.E.2d 479 (1994).

§ 14-72.1. Concealment of merchandise in mercantile establishments.

(a) Whoever, without authority, willfully conceals the goods or merchandise of any store, not theretofore purchased by such person, while still upon the premises of such store, shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in subsection (e). Such goods or merchandise found concealed upon or about the person and which have not theretofore been purchased by such person shall be prima facie evidence of a willful concealment.

(b) Repealed by Session Laws 1985 (Regular Session, 1986), c. 841, s. 2, effective October 1, 1986.

(c) A merchant, or the merchant's agent or employee, or a peace officer who detains or causes the arrest of any person shall not be held civilly liable for detention, malicious prosecution, false imprisonment, or false arrest of the person detained or arrested, where such detention is upon the premises of the store or in a reasonable proximity thereto, is in a reasonable manner for a reasonable length of time, and, if in detaining or in causing the arrest of such person, the merchant, or the merchant's agent or employee, or the peace officer had at the time of the detention or arrest probable cause to believe that the person committed the offense created by this section. If the person being detained by the merchant, or the merchant's agent or employee, is a minor under the age of 18 years, the merchant or the merchant's agent or employee, shall call or notify, or make a reasonable effort to call or notify the parent or guardian of the minor, during the period of detention. A merchant, or the merchant's agent or employee, who makes a reasonable effort to call or notify the parent or guardian of the minor shall not be held civilly liable for failing to notify the parent or guardian of the minor.

(d) Whoever, without authority, willfully transfers any price tag from goods or merchandise to other goods or merchandise having a higher selling price or marks said goods at a lower price or substitutes or superimposes thereon a false price tag and then presents said goods or merchandise for purchase shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in subsection (e).

Nothing herein shall be construed to provide that the mere possession of goods or the production by shoppers of improperly priced merchandise for checkout shall constitute prima facie evidence of guilt.

(e) Punishment. — For a first conviction under subsection (a) or (d), or for a subsequent conviction for which the punishment is not specified by this subsection, the defendant may be guilty of a Class 3 misdemeanor. The term of imprisonment may be suspended only on condition that the defendant perform community service for a term of at least 24 hours. For a second offense committed within three years after the date the defendant was convicted of an offense under this section, the defendant may be guilty of a Class 2 misdemeanor. The term of imprisonment may be suspended only on condition that the defendant be imprisoned for a term of at least 72

hours as a condition of special probation, perform community service for a term of at least 72 hours, or both. For a third or subsequent offense committed within five years after the date the defendant was convicted of two other offenses under this section, the defendant may be guilty of a Class 1 misdemeanor. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 14 days. However, if the sentencing judge finds that the defendant is unable, by reason of mental or physical infirmity, to perform the service required under this section, and the reasons for such findings are set forth in the judgment, he may pronounce such other sentence as he finds appropriate.

(f) Community Service Period. — If the judgment requires a defendant sentenced under this section to perform a specified number of hours of community service, the community service must be completed within:

(1) 90 days, if the amount of community service required is 72 hours or more;

(2) 60 days, if the amount of community service required is at least 48 hours but less than 72 hours; and

(3) 30 days, if the amount of community service required is at least 24 hours but less than 48 hours.

The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection. Failure to complete the community service requirement within the applicable time limits is a violation of the defendant's probation.

(g) Limitations. — For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial;

(2) The defendant must serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period; and

(3) The defendant may not be released or paroled unless he is otherwise eligible and has served the mandatory minimum period of imprisonment. (1957, c. 301; 1971, c. 238; 1973, c. 457, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 841, ss. 1-3; 1987, c. 660; 1993, c. 539, s. 35; 1994, Ex. Sess., c. 24, s. 14(c); c. 28, s. 1; 1995, c. 185, s. 3; c. 509, s. 9.)

Editor's Note. — Session Laws 1993, c. 539, 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 1994 Extra Session amendment by c. 28, s. 1, effective January 1, 1995, and applicable to offenses occurring on or after that date, in subsection (c) substituted "the merchant's" for "his" throughout the subsection, substituted "minor under the age of 18 years" for "minor 16 years of age or younger," and added the last sentence of the subsection.

Session Laws 1995, c. 185, s. 3, effective December 1, 1995, and applicable to acts committed on or after that date, in subsection (c), in the first sentence inserted "upon the premises of the store or in a reasonable proximity thereto, is" following "detention is", and inserted "and" following "length of time".

Session Laws 1995, c. 509, s. 9, effective July 29, 1995, substituted "subsection" for "subsections" in the first sentence of subsection (e).

IMENTARY

riod. After one member raised a question as to language, subsection (b) was changed to say that a defendant may not be "required" to plead sooner than in seven days; a parallel change was not suggested for subsection (a). This change was for the apparent purpose of allowing an uncounseled defendant who affirmatively wanted to plead to do so immediately. For example, the mandated seven-day delay for a defendant without counsel might in a rural county mean waiting several months in county jail (if conditions of pretrial release could not be met or unless there was a waiver of venue) until the next session of court. The General Assembly, however, amended to the present language stating a one-week flat ban on pleas. The answer apparently is that if the defendant wants to enter an earlier plea, he must retain or accept appointment of counsel.

OTES

portunity to retain counsel between the time of his arrest and trial. State v. Grimes, 47 N.C. App. 476, 267 S.E.2d 387 (1980).

Quoted in State v. Lee, 40 N.C. App. 165, 252 S.E.2d 225 (1979).

Cited in State v. Sanders, 294 N.C. 337, 240 S.E.2d 788 (1978).

Reserved for future codification

ARTICLE 58.

Procedures Relating to Guilty Pleas in Superior Court.

OFFICIAL COMMENTARY

Since the mid-1960's a number of commentators have urged that the criminal justice system be examined realistically. They indicate that the rules postulate an adversary "due-process" mode of proceeding but in fact about 90 percent of the criminal convictions obtained come through the entry or negotiation of a guilty plea. They have called this the "administrative" mode of proceeding within the criminal justice system. Most of the recent proposals have been to legitimate the administrative handling of cases — to bring plea negotiations out of the back room and put them on the record. It is thought that making the procedure public should have a number of benefits.

These benefits include:

(1) Making the basis for negotiations more rational. If the process is legitimate but carries its approved guidelines, it becomes more difficult to make plea bargains on factors such as the particular mood of the prosecutor when approached, the political power exercised by the defendant or his lawyer, peculiar conditions of the local docket, etc.

(2) Allowing defendants to tell the truth in plea proceedings. They should not be expected to go before judges after plea negotiations and lie by saying no promises or agreements were made.

(3) The possibility of clear rules setting out exactly to what extent the judge should or should not get involved at various stages of the plea negotiations.

(4) The likelihood of fewer successful attacks on guilty pleas in post-conviction hearings. If the procedures of plea negotiation are on the record and accurately reflect the things (legitimately) done, the basis for later challenge is effectively minimized.

One of the first major proposals on plea negotiation was in the Report of the President's Commission on Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society, pp. 134-137 (1967). This was soon followed by A.B.A. Project on Standards for Criminal Justice, Standards Relating to Guilty Pleas (1968). The model utilized in drafting this article is American Law Institute, A Model Code of Pre-Arraignment Procedure — Tentative Draft No. 5, Article 350 (1972).

Although the Commission proposed no statute as to plea negotiations in district court, it assumes that these negotiations will be utilized in that court. The provisions of a normative nature in this Article should apply in district court also, though it is clearly expected the process should be less formal and not subject to the procedural restrictions placed upon pleas of guilty or no contest in superior court.

Editor's Note. — The "Official Commentary" under this Article appears as originally drafted by the Criminal Code Commission and does not reflect amendments or changes in the law since the enactment of Session Laws 1973, c. 1286.

§ 15A-1021. Plea conference; improper pressure prohibited; submission of arrangement to judge; restitution and reparation as part of plea arrangement agreement, etc.

(a) In superior court, the prosecution and the defense may discuss the possibility that, upon the defendant's entry of a plea of

guilty or no contest to one or more offenses, the prosecutor will not charge, will dismiss, or will move for the dismissal of other charges, or will recommend or not oppose a particular sentence, including a prison term different from the presumptive prison term applicable to the defendant, if convicted, under G.S. 15A-1340.4(f). If the defendant is represented by counsel in the discussions the defendant need not be present. The trial judge may participate in the discussions.

(b) No person representing the State or any of its political subdivisions may bring improper pressure upon a defendant to induce a plea of guilty or no contest.

(c) If the parties have reached a proposed plea arrangement in which the prosecutor has agreed to recommend a particular sentence, they may, with the permission of the trial judge, advise the judge of the terms of the arrangement and the reasons therefor in advance of the time for tender of the plea. The proposed plea arrangement may include a provision for the defendant to make restitution or reparation to an aggrieved party or parties for the damage or loss caused by the offense or offenses committed by the defendant. The judge may indicate to the parties whether he will concur in the proposed disposition. The judge may withdraw his concurrence if he learns of information not consistent with the representations made to him.

(d) When restitution or reparation by the defendant is a part of the plea arrangement agreement, if the judge concurs in the proposed disposition he may order that restitution or reparation be made as a condition of special probation pursuant to the provisions of G.S. 15A-1351, or probation pursuant to the provisions of G.S. 15A-1343(d). If an active sentence is imposed the court may recommend that the defendant make restitution or reparation out of any earnings gained by the defendant if he is granted work release privileges under the provisions of G.S. 148-33.1, or that restitution or reparation be imposed as a condition of parole in accordance with the provisions of G.S. 148-57.1. The order or recommendation providing for restitution or reparation shall be in accordance with the applicable provisions of G.S. 15A-1343(d).

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 the plea agreement may include a provision that the defendant will be ordered to pay for such treatment.

When restitution or reparation is recommended as part of a plea arrangement that results in an active sentence, the sentencing court shall enter as a part of the commitment that restitution or reparation is recommended as part of the plea arrangement. The Administrative Office of the Courts shall prepare and distribute forms which provide for ample space to make restitution or reparation recommendations incident to commitments. (1973, c. 1286, s. 1; 1975, c. 117; c. 166, s. 27; 1977, c. 614, ss. 3, 4; 1977, 2nd Sess., c. 1147, s. 1; 1979, c. 760, s. 3; 1985, c. 474, s. 2; 1987, c. 598, s. 3.)

ed that prior to the jury verdict, the trial court did not believe defendant was acting in self-defense. Therefore, the trial court did not err in its rejection of self-defense as a factor in mitigation. State v. Williams, 100 N.C. App. 567, 397 S.E.2d 364 (1990), cert. dismissed, 328 N.C. 576, 403 S.E.2d 520 (1991).

Trial court did not abuse its discretion in refusing to find defendant's requested nonstatutory factor in mitigation that defendant had sought treatment for his alcoholism where defendant stated that on the weekend before sentencing, he had a few beers. State v. Santon, 101 N.C. App. 710, 401 S.E.2d 117 (1991).

IV. FINDINGS OF COURT.

Specific Evidence Relied on Need Not Be Specified. — When finding an aggravating factor, the sentencing judge does not have to specify the specific evidence on which he relied to find that factor. The record, however, must contain sufficient evidence to support the aggravating factor. State v. Rose, 327 N.C. 599, 398 S.E.2d 314 (1990).

Judge Did Not Need to Make Findings in Aggravation and Mitigation. ial court did not err in sentencing ant to two consecutive 40-year for trafficking in cocaine without finding any aggravating factors; the statutory mandatory minimum sentence for each conviction of trafficking in more than 400 grams of cocaine is 35 years in prison and since each of the 40-year sentences pronounced was less than the total of the presumptive terms of the consolidated convictions, the trial court's sentences for the substantive offenses were lawful. State v. Kamtsiklis, 94 N.C. App. 250, 380 S.E.2d 400 (1989).

Evidence Held Sufficient to Support Finding. — There was sufficient evidence from which the trial judge could find by a preponderance of the evidence that defendant was armed with a deadly weapon at the time he broke into elderly woman's home. Where the evidence tended to show defendant first acquired the revolver when he shot trooper and had it with him when he was captured, also co-defendant's testimony provided direct evidence defendant had trooper's revolver at the time he entered the house. State v. Rios, 322 N.C. 596, 369 S.E.2d 576 (1988).

§ 15A-1340.16A. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony and the defendant used, displayed, or threatened to use or display a firearm during the commission of the felony.

(a) If a person is convicted of a Class A, B1, B2, C, D, or E felony and the court finds that the person used, displayed, or threatened to use or display a firearm at the time of the felony, the court shall increase the minimum term of imprisonment to which the person is sentenced by 60 months. The court shall not suspend the 60-month minimum term of imprisonment imposed as an enhanced sentence under this section and shall not place any person sentenced under this section on probation for the enhanced sentence.

(b) Subsection (a) of this section does not apply in any of the following circumstances:

(1) The person is not sentenced to an active term of imprisonment.

(2) The evidence of the use, display, or threatened use or display of a firearm is needed to prove an element of the underlying Class A, B1, B2, C, D, or E felony.

(3) The person did not actually possess a firearm about his or her person. (1994, Ex. Sess., c. 22, s. 20.)

Editor's Note. — Session Laws 1994, Extra Session, c. 22, which enacted this section, in s. 1 provides: "This act shall be known as the Crime Control Act of 1994."

Session Laws 1994, Extra Session, c. 22, s. 24, makes this section effective on the date that Chapter 538 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses committed on or after that date.

Session Laws 1994, Extra Session, c. 22, which added this section, in s. 24 provides: "Prosecutions for, or sentences based on, offenses committed before the effective dates of this Part are not abated or affected by this Part, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this Part remain applicable to those prosecutions or sentences."

§ 15A-1340.17. Punishment limits for each class of offense and prior record level.

(a) Offense Classification; Default Classifications. — The offense classification is as specified in the offense for which the sentence is being imposed. If the offense is a felony for which there is no classification, it is a Class I felony.

(b) Fines. — Any judgment that includes a sentence of imprisonment may also include a fine. If a community punishment is authorized, the judgment may consist of a fine only. Additionally, when the defendant is other than an individual, the judgment may consist of a fine only. Unless otherwise provided, the amount of the fine is in the discretion of the court.

(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart Described. — The authorized punishment for each class of offense and prior record level is as specified in the chart below. Prior record levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offense are

indicated by the letters placed vertically on the left side of the chart. Each cell on the chart contains the following components:

(1) A sentence disposition or dispositions: "C" indicates that a community punishment is authorized; "I" indicates that an intermediate punishment is authorized; "A" indicates that an active punishment is authorized; and "Life Imprisonment Without Parole" indicates that the defendant shall be imprisoned for the remainder of the prisoner's natural life.

(2) A presumptive range of minimum durations, if the sentence of imprisonment is neither aggravated or mitigated; any minimum term of imprisonment in that range is permitted unless the court finds pursuant to G.S. 15A-1340.16 that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.

(3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the mitigated range is permitted. The mitigated range is the lower of the three ranges in the cell.

(4) An aggravated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the aggravated range is permitted. The aggravated range is the higher of the three ranges in the cell.

PRIOR RECORD LEVEL

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	Life Imprisonment or Death as Established by Statute						
	A 240-300	A 288-360	A 336-420	A 384-480	A Life Imprisonment Without Parole	A	DISPOSITION Aggravated
B1	192-240 144-192	230-288 173-230	269-336 202-269	307-384 230-307	346-433 260-346	384-480 288-384	PRESUMPTIVE Mitigated
	A 157-196	A 189-237	A 220-276	A 251-313	A 282-353	A 313-392	DISPOSITION Aggravated
B2	125-157 94-125	151-189 114-151	176-220 132-176	201-251 151-201	225-282 169-225	251-313 188-251	PRESUMPTIVE Mitigated
	A 73-92	A 100-125	A 116-145	A 133-167	A 151-188	A 168-210	DISPOSITION Aggravated
C	58-73 44-58	80-100 60-80	93-116 70-93	107-133 80-107	121-151 90-121	135-168 101-135	PRESUMPTIVE Mitigated
	A 64-80	A 77-95	A 103-129	A 117-146	A 133-167	A 146-183	DISPOSITION Aggravated
D	51-64 38-51	61-77 46-61	82-103 61-82	94-117 71-94	107-133 80-107	117-146 88-117	PRESUMPTIVE Mitigated
	I/A 25-31	I/A 29-36	A 34-42	A 46-58	A 53-66	A 59-74	DISPOSITION Aggravated

	I/A	I/A	A	A	A	A	DISPOSITION
E	20-25	23-29	27-34	37-46	42-53	47-59	PRESUMPTIVE
	15-20	17-23	20-27	28-37	32-42	35-47	Mitigated
	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-24	21-26	25-31	34-42	39-49	Aggravated
F	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated
	I/A	I/A	I/A	I/A	A	A	DISPOSITION
	13-16	15-19	16-20	20-25	21-26	29-36	Aggravated
G	10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
	8-10	9-12	10-13	12-16	13-17	17-23	Mitigated
	C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated

(d) Maximum Sentences Specified for Class F through Class I Felonies. — Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class F through Class I felonies. The first figure in each cell in the table is the minimum term and the second is the maximum term.

3-4	4-5	5-6	6-8	7-9	8-10	9-11	10-12
11-14	12-15	13-16	14-17	15-18	16-20	17-21	18-22
19-23	20-24	21-26	22-27	23-28	24-29	25-30	26-32
27-33	28-34	29-35	30-36	31-38	32-39	33-40	34-41
35-42	36-44	37-45	38-46	39-47	40-48	41-50	42-51
43-52	44-53	45-54	46-56	47-57	48-58	49-59	

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

15-27	16-29	17-30	18-31	19-32	20-33	21-35	22-36
23-37	24-38	25-39	26-41	27-42	28-43	29-44	30-45
31-47	32-48	33-49	34-50	35-51	36-53	37-54	38-55
39-56	40-57	41-59	42-60	43-61	44-62	45-63	46-65
47-66	48-67	49-68	50-69	51-71	52-72	53-73	54-74
55-75	56-77	57-78	58-79	59-80	60-81	61-83	62-84
63-85	64-86	65-87	66-89	67-90	68-91	69-92	70-93
71-95	72-96	73-97	74-98	75-99	76-101	77-102	78-103
79-104	80-105	81-107	82-108	83-109	84-110	85-111	86-113
87-114	88-115	89-116	90-117	91-119	92-120	93-121	94-122

95-123	96-125	97-126	98-127	99-128	100-129	101-131	102-132
103-133	104-134	105-135	106-137	107-138	108-139	109-140	110-141
111-143	112-144	113-145	114-146	115-147	116-149	117-150	118-151
119-152	120-153	121-155	122-156	123-157	124-158	125-159	126-161
127-162	128-163	129-164	130-165	131-167	132-168	133-169	134-170
135-171	136-173	137-174	138-175	139-176	140-177	141-179	142-180
143-181	144-182	145-183	146-185	147-186	148-187	149-188	150-189
151-191	152-192	153-193	154-194	155-195	156-197	157-198	158-199
159-200	160-201	161-203	162-204	163-205	164-206	165-207	166-209
167-210	168-211	169-212	170-213	171-215	172-216	173-217	174-218
175-219	176-221	177-222	178-223	179-224	180-225	181-227	182-228
183-229	184-230	185-231	186-233	187-234	188-235	189-236	190-237
191-239	192-240	193-241	194-242	195-243	196-245	197-246	198-247
199-248	200-249	201-251	202-252	203-253	204-254	205-255	206-257
207-258	208-259	209-260	210-261	211-263	212-264	213-265	214-266
215-267	216-269	217-270	218-271	219-272	220-273	221-275	222-276
223-277	224-278	225-279	226-281	227-282	228-283	229-284	230-285
231-287	232-288	233-289	234-290	235-291	236-293	237-294	238-295
239-296	240-297	241-299	242-300	243-301	244-302	245-303	246-305
247-306	248-307	249-308	250-309	251-311	252-312	253-313	254-314
255-315	256-317	257-318	258-319	259-320	260-321	261-323	262-324
263-325	264-326	265-327	266-329	267-330	268-331	269-332	270-333
271-335	272-336	273-337	274-338	275-339	276-341	277-342	278-343
279-344	280-345	281-347	282-348	283-349	284-350	285-351	286-353
287-354	288-355	289-356	290-357	291-359	292-360	293-361	294-362
295-363	296-365	297-366	298-367	299-368	300-369	301-371	302-372
303-373	304-374	305-375	306-377	307-378	308-379	309-380	310-381
311-383	312-384	313-385	314-386	315-387	316-389	317-390	318-391
319-392	320-393	321-395	322-396	323-397	324-398	325-399	326-401
327-402	328-403	329-404	330-405	331-407	332-408	333-409	334-410
335-411	336-413	337-414	338-415	339-416			

(e1) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms of 340 Months or More. — Unless provided otherwise in a statute establishing a punishment for a specific crime, when the minimum sentence is 340 months or more, the corresponding maximum term of imprisonment shall be equal to the sum of the minimum term of imprisonment and twenty percent (20%) of the minimum term of imprisonment, rounded to the next highest month, plus nine additional months. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 14, ss. 20, 21; c. 22, s. 7; c. 24, s. 14(b); 1995, c. 507, s. 19.5(*l*).)

Editor's Note. — Session Laws 1993, c. 538, which enacts this Article effective October 1, 1994, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "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."

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 14 provides: "This Part becomes effective on the same date that Chapter 538 of the 1993 Session Laws becomes effective [October 1, 1994], and applies to offenses occurring on or after the effective date of this Part. Prosecution for offenses occurring before the effective date of this Part are not abated or affected by this Part, and the statutes that would be applicable but for this Part remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 1 provides: "This act shall be known as the Crime Control Act of 1994."

under the federal Constitution. State v. Huff, 325 N.C. 1, 381 S.E.2d 635 (1989), vacated and remanded for further consideration at 497 U.S. 1021, 110 S. Ct. 3266, 111 L. Ed. 777 (1990) in light of McKoy v. North Carolina, 494 U.S. 433, 110 S. Ct. 1227, 108 L. Ed. 2d 369 (1990), death sentence vacated, remanded for new capital sentencing proceeding, State v. Huff, 328 N.C. 532, 402 S.E.2d 577 (1991).

Overwhelming Evidence Held to Render U.S. Const., Amend. IV Violation Harmless. — Where trial court erred in denying defendant's motion to suppress evidence obtained from warrantless seizure of his automobile, error was harmless beyond a reasonable doubt since evidence presented at voir dire showing defendant guilty of crimes charged was overwhelming, where defendant admitted in his initial meeting with police that he had been wearing a Dracula costume the night before, where victim positively and unwaveringly identified defendant both in pre-trial photographic showing and at the voir dire hearing, and where defendant confessed to crimes. State v. Russell, 92 N.C. App. 639, 376 S.E.2d 458 (1989).

Because failure to submit the statutory mitigating circumstance of no significant history of prior criminal activity is a violation of both our statute and the Eighth Amendment, the standard for determining prejudice is subsection (b), which provides that violation of defendant's federal constitutional rights is prejudicial unless the State can demonstrate on appeal that it was harmless beyond a reasonable doubt. State v. Quick, 337 N.C. 359, 446 S.E.2d 535 (1994).

§ 15A-1444. When defendant may appeal; certiorari.

(a) A defendant who has entered a plea of not guilty to a criminal charge, and who has been found guilty of a crime, is entitled to appeal as a matter of right when final judgment has been entered.

(a1) A defendant who has been found guilty, or entered a plea of guilty or no contest to a felony, is entitled to appeal as a matter of right the issue of whether his or her sentence is supported by evidence introduced at the trial and sentencing hearing only if the minimum sentence of imprisonment does not fall within the presumptive range for the defendant's prior record or conviction level and class of offense. Otherwise, the defendant is not entitled to appeal this issue as a matter of right but may petition the appellate division for review of this issue by writ of certiorari.

(a2) A defendant who has entered a plea of guilty or no contest to a felony or misdemeanor in superior court is entitled to appeal as a matter of right the issue of whether the sentence imposed:

(1) Results from an incorrect finding of the defendant's prior record level under G.S. 15A-1340.14 or the defendant's prior conviction level under G.S. 15A-1340.21;

(2) Contains a type of sentence disposition that is not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level; or

(3) Contains a term of imprisonment that is for a duration not authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 for the defendant's class of offense and prior record or conviction level.

(b) Procedures for appeal from the magistrate to the district court are as provided in Article 90, Appeals from Magistrates and from District Court Judges.

(c) Procedures for appeal from the district court to the superior court are as provided in Article 90, Appeals from Magistrates and from District Court Judges.

(d) Procedures for appeal to the appellate division are as provided in this Article, the rules of the appellate division, and Chapter 7A of the General Statutes. The appeal must be perfected and conducted in accordance with the requirements of those provisions.

(e) Except as provided in subsection (a1) of this section and G.S. 15A-979, and except when a motion to withdraw a plea of guilty or no contest has been denied, the defendant is not entitled to appellate review as a matter of right when he has entered a plea of guilty or no contest to a criminal charge in the superior court, but he may petition the appellate division for review by writ of certiorari. If an indigent defendant petitions the appellate division for a writ of certiorari, the presiding superior court judge may in his discretion order the preparation of the record and transcript of the proceedings at the expense of the State.

(f) The ruling of the court upon a motion for appropriate relief is subject to review upon appeal or by writ of certiorari as provided in G.S. 15A-1422.

(g) Review by writ of certiorari is available when provided for by this Chapter, by other rules of law, or by rule of the appellate division. (1977, c. 711, s. 1; 1979, c. 760, s. 3; 1981, c. 179, ss. 8, 9; 1993, c. 538, s. 27; 1994, Ex. Sess., c. 24, s. 14(b).)

Editor's Note. —

Session Laws 1993, c. 538, which amended this section, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, inserted "or her" near the middle of the first sentence of subsection (a1), substituted "minimum sentence of imprisonment does not fall within the presumptive range of the defendant's prior record or conviction level and class of offense" for "prison term of the sentence exceeds the presumptive term set by G.S. 15A-1304.4, and if the judge was required to make findings as to aggravating or mitigating factors pursuant to this Article" in that sentence, substituted "the defendant" for "he" in the second sentence of subsection (a1), and added subsection (a2). As to the applicability of the amendment, see the Editor's Note.

Legal Periodicals. —

For article, "The Substantial Right Doctrine and Interlocutory Appeals," see 17 Campbell L. Rev. 71 (1995).

CASE NOTES

This section provides the exclusive statutory authority for appeals in criminal proceedings. State v. Shoff, 118 N.C. App. 724, 456 S.E.2d 875 (1995).

Reliance upon a substantial rights analysis as the basis for appellate review appears contrary to the plain and unambiguous language of the statutes governing criminal appeals. State v. Shoff, 118 N.C. App. 724, 456 S.E.2d 875 (1995).

The Fair Sentencing Act does not allow appeal, etc. —

In accord with the main volume. See State v. Hardy, 104 N.C. App. 226, 409 S.E.2d 96 (1991).

A defendant who has been found guilty is entitled under subsection (a1) to appellate review of the issue of whether his sentence is supported by the evidence presented at trial or during the sentencing hearing. The reviewing court must also determine whether the trial court abused its discretion in weighing the aggravating and mitigating factors. State v. Summerlin, 98 N.C. App. 167, 390 S.E.2d 358, cert. denied, 327 N.C. 143, 394 S.E.2d 183 (1990).

Writ of Certiorari Available to De-

be considered to set a different level of
ed in the light of G.S. 14-3 or any equiv-
Noncriminal sanctions, however, such as
sion, and exercise of powers auxiliary to
as seizure of property involved in the
o not constitute different levels of pun-
al liability. Any previous conviction of
apter, or under rules authorized by it,
ment under subsection (a) even though
the second or subsequent one.
his Subchapter, violations of laws or
Wildlife Resources Commission under
aw replaced by the present provisions
ied to be violations of laws or rules
. c. 957, s. 2; 1973, c. 1262, s. 28; 1979,
1991, c. 176, s. 1; c. 761, s. 50.5; 1993,
ss., c. 24, s. 14(c).)

Effect of Amendments. — The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, in subdivision (a)(1), substituted "as a Class 3 misdemeanor" for "a fine of not less than twenty-five dollars ($25.00) nor more than one hundred dollars ($100.00) or imprisonment not to exceed 30 days"; and in subdivision (c)(2) substituted "as a Class 2 misdemeanor" for "a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00), imprisonment not to exceed 90 days, or both".

upon penalty for offense ules of Wildlife Resources in certain instances.

nembers of the public from being
es for offenses created by rules of
sion, the penalty for an offense
es of the Wildlife Resources Com-
n dollars ($10.00) except that of-
on] (b) are punished as set forth in

does not apply to any rule viola-

3-294 or otherwise involving ag-
result in a greater punishment
13-135;
t subject to the collection-license
4 or who is a dealer as defined in

limits, creel limits, taking fish
line; buying or selling wildlife,
live wildlife, taking wildlife at

night or with the aid of a conveyance, or falconry. (1979, c. 830, s. 1; 1987, c. 827, s. 98.)

§ 113-136. Enforcement authority of inspectors and protectors; refusal to obey or allow inspection by inspectors and protectors.

(a) Inspectors and protectors are granted the powers of peace officers anywhere in this State, and beyond its boundaries to the extent provided by law, in enforcing all matters within their respective subject-matter jurisdiction as set out in this section.

(b) The jurisdiction of inspectors extends to all matters within the jurisdiction of the Department set out in this Subchapter, Part 5A of Article 7 of Chapter 143B of the General Statutes, Article 5 of Chapter 76 of the General Statutes, and Article 2 of Chapter 77 of the General Statutes, and to all other matters within the jurisdiction of the Department which it directs inspectors to enforce. In addition, inspectors have jurisdiction over all offenses involving property of or leased to or managed by the Department in connection with the conservation of marine and estuarine resources.

(c) The jurisdiction of protectors extends to all matters within the jurisdiction of the Wildlife Resources Commission, whether set out in this Chapter, Chapter 75A, Chapter 143, Chapter 143B, or elsewhere. The Wildlife Resources Commission is specifically granted jurisdiction over all aspects of:

(1) Boating and water safety;
(2) Hunting and trapping;
(3) Fishing, exclusive of fishing under the jurisdiction of the Marine Fisheries Commission; and
(4) Activities in woodlands and on inland waters governed by G.S. 113-60.1 to G.S. 113-60.3.

In addition, protectors have jurisdiction over all offenses involving property of or leased by the Wildlife Resources Commission or occurring on wildlife refuges, game lands, or boating and fishing access areas managed by the Wildlife Resources Commission. The authority of protectors over offenses on public hunting grounds is governed by the jurisdiction granted the Commission in G.S. 113-264(c).

(d) Inspectors and protectors are additionally authorized to arrest without warrant under the terms of G.S. 15A-401(b) for felonies, for breaches of the peace, for assaults upon them or in their presence, and for other offenses evincing a flouting of their authority as enforcement officers or constituting a threat to public peace and order which would tend to subvert the authority of the State if ignored. In particular, they are authorized, subject to the direction of the administrative superiors, to arrest for violations of G.S. 14-223, 14-225, 14-269, and 14-277.

(d1) In addition to law enforcement authority granted elsewhere, a protector has the authority to enforce criminal laws under the following circumstances:

(1) When the protector has probable cause to believe that a person committed a criminal offense in his presence and at the time of the violation the protector is engaged in the enforcement of laws otherwise within his jurisdiction; or

(2) When the 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, 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 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 protectors to initiate or conduct an independent investigation into violations of criminal laws outside the scope of their subject matter or territorial jurisdiction.

(e) Inspectors and protectors may serve arrest warrants, search warrants, orders for arrest, criminal summonses, subpoenas, and all other process connected with any cases within their subject-matter jurisdiction. In the exercise of their law enforcement powers, inspectors are subject to provisions relating to police officers in general set out in Chapter 15, Chapter 15A, and elsewhere.

(f) Inspectors and protectors are authorized to stop temporarily any persons they reasonably believe to be engaging in activity regulated by their respective agencies to determine whether such activity is being conducted within the requirements of the law, including license requirements. If the person stopped is in a motor vehicle being driven at the time and the inspector or protector in question is also in a motor vehicle, the inspector or protector is required to sound a siren or activate a special light, bell, horn, or exhaust whistle approved for law-enforcement vehicles under the provisions of G.S. 20-125(b) or 20-125(c).

(g) Protectors may not temporarily stop or inspect vehicles proceeding along primary highways of the State without clear evidence that someone within the vehicle is or has recently been engaged in an activity regulated by the Wildlife Resources Commission. Inspectors may temporarily stop vehicles, boats, airplanes, and other conveyances upon reasonable grounds to believe that they are transporting taxable seafood products; they are authorized to inspect any seafood products being transported to determine whether they were taken in accordance with law and to require exhibition of any applicable license, tax receipts, permits, bills of lading, or other identification required to accompany such seafood products.

(h), (i) Repealed by Session Laws 1979, c. 830, s. 1.

(j) The refusal of any person to stop in obedience to the directions of an inspector or protector acting under the authority of this section is unlawful. A violation of this subsection is punishable by a fine of not less than fifty dollars ($50.00) nor more than two hundred dollars ($200.00), imprisonment not to exceed 30 days, or both.

(k) It is unlawful to refuse to exhibit upon request by any inspector, protector, or other law enforcement officer any item required to be carried by any law or rule as to which inspectors or protectors have enforcement jurisdiction. The items that must be exhibited include boating safety or other equipment or any license, permit, tax receipt, certificate, or identification. It is unlawful to refuse to allow inspectors, protectors, or other law enforcement officers to inspect weapons, equipment, fish, or wildlife that the officer reasonably believes to be possessed incident to an activity regulated by

any law or rule as to which inspectors and protectors have enforcement jurisdiction.

(f) Nothing in this section authorizes searches within the curtilage of a dwelling or of the living quarters of a vessel in contravention of constitutional prohibitions against unreasonable searches and seizures. (1915, c. 84, s. 6; 1917, c. 290, s. 2; C.S., s. 1885; 1935, c. 118; 1957, c. 1423, s. 2; 1965, c. 957, s. 2; 1973, c. 1262, ss. 18, 28, 86; c. 1286, s. 17; c. 1297; 1977, c. 771, s. 4; 1979, c. 830, s. 1; 1987, c. 641, ss. 20, 22; c. 827, s. 98; 1991, c. 730, s. 1.)

Cross References. — As to issuance of warning tickets, see § 113-140.

Editor's Note. — Section 20-125(c), referred to in subsection (f) of this section, was repealed by Session Laws 1979, c. 653. See now § 20-130.1.

CASE NOTES

Test For Reasonable Warrantless Inspection. — Warrantless inspections will be deemed to be reasonable only so long as three criteria are met. First, there must be a "substantial" government interest that informs the regulatory scheme pursuant to which the inspection is made; second, the warrantless inspections must be necessary to further the regulatory scheme; and finally, the statute's inspection program, in terms of the certainty and regularity of its application, must provide a constitutionally adequate substitute for a warrant. Where this test is satisfied and the public interest outweighs a minimal intrusion, the statute does not violate U.S. Const., Amend. IV. State v. Nobles, 107 N.C. App. 627, 422 S.E.2d 78 (1992), aff'd per curiam, 333 N.C. 787, 429 S.E.2d 716 (1993).

§ 113-137. Search on arrest; seizure and confiscation of property; disposition of confiscated property.

(a) Every inspector or protector who arrests a person for an offense as to which he has enforcement jurisdiction is authorized to search the person arrested and the surrounding area for weapons and for fruits, instrumentalities, and evidence of any crime for which the person arrested is or might have been arrested.

(b) Every inspector or protector who issues a citation instead of arresting a person, in cases in which the inspector or protector is authorized to arrest, may seize all lawfully discovered evidence, fruits, and instrumentalities of any crime as to which he has arrest jurisdiction and probable cause. When live fish are returned to public fishing bottoms or public waters, the inspector or protector shall state on the citation the quantity returned.

(c) Every inspector or protector who in the lawful pursuit of his duties has probable cause for believing he has discovered a violation of the law over which he has jurisdiction may seize in connection therewith any fish, wildlife, weapons, equipment, vessels, or other evidence, fruits, or instrumentalities of the crime, notwithstanding the absence of any person in the immediate area subject to arrest or the failure or inability of the inspector or protector to capture or otherwise take custody of the person guilty of the violation in question. Where the owner of such property satisfies the Secretary or the Executive Director, as the case may be, of his ownership and that he had no knowledge or culpability in regard to the offense involving the use of his property, such property must be returned to the owner. If after due diligence on the part of em-

23 **transactionally related, etc.** — The trial court must consider all circumstances that are both transactionally related to the offense and reasonably related to the purposes of sentencing, provided that they are not essential to the establishment of elements of the offense. This is so regardless of whether such factors were specifically listed under former § 15A-1340.4(a)(1), and regardless of whether the State specifically requests a finding in this regard. State v. Flowe, 107 N.C. App. 468, 420 S.E.2d 475, cert. denied, 332 N.C. 669, 424 S.E.2d 412 (1992).

Aggravating Factor Not Shown. — Where the record did not support the court's conclusion that defendant committed the crimes for pecuniary gain, the court erred in finding pecuniary gain as an aggravating factor. State v. Barnes, 116 N.C. App. 311, 447 S.E.2d 478 (1994).

Presumption Evidence Sufficient to Aggravate Sentence. — Absent any indication to the contrary in the record, the Supreme Court will presume the trial court in making its findings of fact relied only on evidence which was proper to consider. Thus, without any indication in the record to the contrary, the Supreme Court will presume that the trial court did not improperly aggravate the sentence with evidence necessary to prove the crime. State v. Brinson, 337 N.C. 764, 448 S.E.2d 822 (1994).

Separate Factors in Aggravation Cannot Be Found on the Same Evidence. — The trial court improperly found two factors in aggravation based upon the same evidence. Therefore, defendant was entitled to a new sentencing hearing on his convictions for burglary and kidnapping. State v. Kyle, 333 N.C. 687, 430 S.E.2d 412 (1993).

Where the trial court found in aggravation of the defendant's conspiracy conviction that the offense was committed to disrupt the lawful exercise of a governmental function or the enforcement of laws and that the offense was committed to hinder the lawful exercise of a governmental function or the enforcement of laws and the trial court used the same item of evidence — that the defendant had conspired to murder a law enforcement officer who was interfering with their drug trade — as the basis for finding both aggravating factors, constituted error. State v. Morston, 336 N.C. 381, 445 S.E.2d 1 (1994).

Judge Held Not Required to Find Aggravating and Mitigating Factors. — Where defendant was charged, convicted and sentenced for four separate violations of § 14-100, the trial judge was not required to find aggravating and mitigating factors in sentencing defendant, even though charges against defendant were consolidated for trial and for hearing on judgments, as they were not consolidated for judgment and thus did not exceed maximum ten-year term for the offense. State v. Bresse, 101 N.C. App. 519, 400 S.E.2d 73, cert. denied, 329 N.C. 272, 407 S.E.2d 842 (1991).

No Right of Appeal Where Findings Not Required. — Since the court was not required under former § 15A-1340.4(b) to make findings of aggravating and mitigating factors to support the sentence imposed, defendant had no appeal as of right pursuant to § 15A-1444(a1). State v. Washington, 116 N.C. App. 318, 447 S.E.2d 799 (1994).

§ 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.

(5) Intensive probation. — Probation that requires the offender to submit to supervision by officers assigned to the Intensive Probation Program established pursuant to G.S. 143B-262(c), and to comply with the rules adopted for that Program.

(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.
   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. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 14, s. 17; c. 24, s. 14(b).)

Editor's Note. — Session Laws 1993, c. 538, which enacts this Article effective October 1, 1994, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "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 1994 Extra Session amendment, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994), and applicable to offenses occurring on or after that date, substituted "country" for "county" in subdivision (7)c.

DECIDED UNDER PRIOR LAW

Editor's Note. — The cases cited below were decided under former §§ 15A-1340.1, 15A-1340.4, and 15A-1380.1.

A conviction of driving while impaired under § 20-138.1, irrespective of the level of punishment imposed, constitutes a prior conviction of an offense punishable by more than sixty days' imprisonment for purposes of sentencing under the Fair Sentencing Act. State v. Santon, 101 N.C. App. 710, 401 S.E.2d 117 (1991).

Time of Prior Conviction. — Based on former § 15A-1340.2(4), at a resentencing hearing, a judge could aggravate a sentence under former § 15A-1340.4(a)(1) with a conviction that was entered after defendant's conviction and first sentencing on April 5, 1991, but before his resentencing on December 9, 1993. State v. Mixion, 118 N.C. App. 559, 455 S.E.2d 904 (1995).

§ 15A-1340.12. Purposes of sentencing.

The primary purposes of sentencing a person convicted of a crime are to impose a punishment commensurate with the injury the offense has caused, taking into account factors that may diminish or increase the offender's culpability; to protect the public by restraining offenders; to assist the offender toward rehabilitation and restoration to the community as a lawful citizen; and to provide a general deterrent to criminal behavior. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 24, s. 14(b).)

Supplement

§ 15A-1340.14. Prior record level for felony sentencing.

(a) Generally. — The prior record level of a felony offender is determined by calculating the sum of the points assigned to each of the offender's prior convictions that the court finds to have been proved in accordance with this section.

(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, 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)), 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.

(c) Prior Record Levels for Felony Sentencing. — The prior record levels for felony sentencing are:

(1) Level I — 0 points.

(2) Level II — At least 1, but not more than 4 points.

(3) Level III — At least 5, but not more than 8 points.

(4) Level IV — At least 9, but not more than 14 points.

(5) Level V — At least 15, but not more than 18 points.

(6) Level VI — At least 19 points.

In determining the prior record level, the classification of a prior offense is the classification assigned to that offense at the time the offense for which the offender is being sentenced is committed.

(d) Multiple Prior Convictions Obtained in One Court Week. — For purposes of determining the prior record level, if an offender is convicted of more than one offense in a single superior court during one calendar week, only the conviction for the offense with the highest point total is used. If an offender is convicted of more than one offense in a single session of district court, only one of the convictions is used.

(e) Classification of Prior Convictions From Other Jurisdictions. — Except as otherwise provided in this subsection, a conviction occurring in a jurisdiction other than North Carolina is classified as a Class I felony if the jurisdiction in which the offense occurred classifies the offense as a felony, or is classified as a Class 3 misdemeanor if the jurisdiction in which the offense occurred classifies the offense as a misdemeanor. If the offender proves by the preponderance of the evidence that an offense classified as a felony in the other jurisdiction is substantially similar to an offense that is

a misdemeanor in North Carolina, the conviction is treated as that class of misdemeanor for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as either a misdemeanor or a felony in the other jurisdiction is substantially similar to an offense in North Carolina that is classified as a Class I felony or higher, the conviction is treated as that class of felony for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as a misdemeanor in the other jurisdiction is substantially similar to an offense classified as a Class 1 misdemeanor in North Carolina, the conviction is treated as a Class 1 misdemeanor for assigning prior record level points.

(f) Proof of Prior Convictions. — A prior conviction shall be proved by any of the following methods:

(1) Stipulation of the parties.

(2) An original or copy of the court record of the prior conviction.

(3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.

(4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is **prima facie** evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, "a copy" includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the offender's full record. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, the court may grant a continuance of the sentencing hearing. If asked by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the defendant's prior criminal record to the defendant within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 22, s. 10; c. 24, s. 14(b); 1993 (Reg. Sess., 1994), c. 767, ss. 11-13; 1995, c. 507, s. 19.5(f).)

Editor's Note. — Session Laws 1993, c. 538, which enacts this Article effective October 1, 1994, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act [October 1, 1994] are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 14 provides: "Prosecution for offenses occurring before the effective date of this Part are not abated or affected by this Part,

Editor's Note. — Session Laws 1993, c. 538, which enacts this Article effective October 1, 1994, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1993 (Reg. Sess., 1994), c. 767, which amended this section, in s. 34 provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, in subsection (d) added "and pursuant to G.S. 162-60" in the first sentence, and inserted "and statute combined" in the second sentence.

§ 15A-1340.21. Prior conviction level for misdemeanor sentencing.

(a) Generally. — The prior conviction level of a misdemeanor offender is determined by calculating the number of the offender's prior convictions that the court finds to have been proven in accordance with this section.

(b) Prior Conviction Levels for Misdemeanor Sentencing. — The prior conviction levels for misdemeanor sentencing are:

(1) Level I — 0 prior convictions.

(2) Level II — At least 1, but not more than 4 prior convictions.

(3) Level III — At least 5 prior convictions.

(c) Proof of Prior Convictions. — A prior conviction shall be proved by any of the following methods:

(1) Stipulation of the parties.

(2) An original or copy of the court record of the prior conviction.

(3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.

(4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, "copy" includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, the court may grant a continuance of the sentencing hearing.

(d) Multiple Prior Convictions Obtained in One Court Week. — For purposes of this section, if an offender is convicted of more than

one offense in a single session of district court, or in a single week of superior court or of a court in another jurisdiction, only one of the convictions may be used to determine the prior conviction level. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 24, s. 14(b); 1993 (Reg. Sess., 1994), c. 767, s. 13.1.)

Editor's Note. — Session Laws 1993, c. 538, which enacts this Article effective October 1, 1994, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1993 (Reg. Sess., 1994), c. 767, which amended this section, in s. 34 provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective October 1, 1994, substituted "the court may grant" for "either the State or the offender is entitled to" in the last sentence of subsection (c).

§ 15A-1340.22. Multiple convictions.

(a) Limits on Consecutive Sentences. — If the court elects to impose consecutive sentences for two or more misdemeanors and the most serious misdemeanor is classified in Class 1 or Class 2, the cumulative length of the sentences of imprisonment shall not exceed twice the maximum sentence authorized for the class and prior conviction level of the most serious offense. Consecutive sentences shall not be imposed if all convictions are for Class 3 misdemeanors.

(b) Consolidation of Sentences. — If an offender is convicted of more than one offense at the same session of court, the court may consolidate the offenses for judgment and impose a single judgment for the consolidated offenses. Any sentence imposed shall be consistent with the appropriate prior conviction level of the most serious offense. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 24, s. 14(b).)

Editor's Note. — Session Laws 1993, c. 538, which enacts this Article effective October 1, 1994, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§ 15A-1340.23. Punishment limits for each class of offense and prior conviction level.

(a) Offense Classification; Default Classifications. — The offense classification is as specified in the offense for which the sentence is being imposed. If the offense is a misdemeanor for which there is no classification, it is as classified in G.S. 14-3.

(b) Fines. — Any judgment that includes a sentence of imprisonment may also include a fine. Additionally, when the defendant is

§§ 15-44 to 15-47: Repealed by Session Laws 1973, c. 1286, s. 26.

Cross References. — See Editor's note following the analysis to this Chapter. For present provisions as to arrest, see §§ 15A-401 through 15A-405.

ARTICLE 7.

Fugitives from Justice.

§ 15-48. Outlawry for felony.

In all cases where any justice or judge of the General Court of Justice shall, on written affidavit, filed and retained by such justice or judge, receive information that a felony has been committed by any person, and that such person flees from justice, conceals himself and evades arrest and service of the usual process of law, the justice or judge is hereby empowered and required to issue proclamation against him reciting his name, if known, and thereby requiring him forthwith to surrender himself; and also empowering and requiring the sheriff of any county in the State in which such fugitive shall be to take such power with him as he shall think fit and necessary for the going in search and pursuit of, and effectually apprehending, such fugitive from justice, which proclamation shall be published at the door of the courthouse of any county in which such fugitive is supposed to lurk or conceal himself, and at such other places as the justice or judge shall direct; and if any person against whom proclamation has been thus issued continues to stay out, lurks and conceals himself, and does not immediately surrender himself, any citizen of the State may capture, arrest, and bring him to justice, and in case of flight or resistance by him, after being called on and warned to surrender, may slay him without accusation of any crime. (1866, c. 62; 1868-9, c. 178, subch. 1, s. 8; Code, s. 1131; Rev., s. 3183; C.S., s. 4549; 1969, c. 44, s. 30; 1973, c. 1141, s. 9.)

Cross References. — As to extradition, see § 15A-721 et seq. For extradition manual and forms, see Appendix V.

Legal Periodicals. — For note on outlawry, see 41 N.C.L. Rev. 634 (1963).

For survey of 1976 case law on constitutional law, see 55 N.C.L. Rev. 965 (1977).

CASE NOTES

Constitutionality of Section. — This section is procedurally deficient under the due process clause of U.S. Const., Amend. 14, in these respects: (1) It is not required that an impartial judicial officer determine probable cause, i.e., that a felony has been committed and that the person proposed to be outlawed probably committed it. (2) Alternatively, it is not required that an arrest warrant be issued or an indictment returned by a grand jury. (3) It is not required that an arrest warrant or other process be served, or an attempt made to serve it, and a return made that the accused is not to be found within the county. (4) There is no provision for notice and opportunity to be heard. Autry v. Mitchell, 420 F. Supp. 967 (E.D.N.C. 1976).

The State has failed to demonstrate a compelling governmental interest in the apprehension of all fleeing accused felons, and this section as drawn and as administered violates the equal pro-

(1) The identity of the law enforcement officer making the application and the identity of the law enforcement agency conducting the investigation; and

(2) A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency. (1987 (Reg. Sess., 1988), c. 1104, s. 1.)

§ 15A-263. Issuance of order for pen register or trap and trace device.

(a) In General. — Following application made under G.S. 15A-262, a superior court judge may enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the State if the judge finds:

(1) That there is reasonable suspicion to believe that an offense punishable by imprisonment for more than one year has been committed;

(2) That there are reasonable grounds to suspect that the person named or described in the affidavit committed the offense, if that person is known and can be named or described; and

(3) That the results of procedures involving pen registers or trap and trace devices will be of material aid in determining whether the person named in the affidavit committed the offense.

(b) Contents of Order. — An order issued under this section

(1) Shall specify:

a. The identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;

b. The identity, if known, of the person who is the subject of the criminal investigation;

c. The number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and

d. The offense to which the information likely to be obtained by the pen register or trap and trace device relates; and

(2) Shall direct, upon request of the applicant, the furnishing of information, facilities, or technical assistance necessary to accomplish the installation of the pen register or trap and trace device under G.S. 15A-264.

(c) Time Period and Extension.

(1) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed 60 days.

(2) An extension of an order issued under this section may be granted, but only upon an application for an order under G.S. 15A-262 and upon the judicial finding required by subsection (a) of this section. The period of extension shall not exceed 60 days.

(d) Nondisclosure of Existence of Pen Register or Trap and Device. — An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that (1) The order be sealed until otherwise ordered by the court; and (2) The person owning or leasing the line to which a pen register or a trap and trace device is attached, or who has been ordered by the judge to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the judge.

(e) Liability for Violation of Provisions of G.S. 15A-903 and Article. — A violation of this section is punishable as provided in G.S. 15A-903 and Article. (1987 (Reg. Sess., 1988),

15A-264. Assistance in installation of pen register or

(a) Pen Registers. — Upon the request of an officer authorized to install and use a pen register, a provider of wire or electronic communication service, a landlord, custodian, or other person shall furnish such information, facilities, or technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person ordered by the court to provide assistance is directed by a court order as provided in G.S. 15A-263(b)(2).

(b) Trap and Trace Devices. — Upon the request of an officer authorized to receive the results of a trap and trace device under this Article, a provider of wire or electronic communication service, a landlord, a custodian, or other person shall install the device immediately on the appropriate line and shall furnish the officer all additional information, facilities, and technical assistance, including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person ordered by the court to provide assistance is directed by a court order as provided in G.S. 15A-263. Unless otherwise ordered by the judge, the results of the trap and trace device shall be furnished to the law enforcement officer designated in the court order at reasonable intervals during regular business hours for the duration of the order.

(c) Compensation. — A provider of wire or electronic communication service, a landlord, a custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be compensated for the reasonable expenses incurred in providing the facilities and assistance.

(d) No Cause of Action Against Provider Rendering Assistance Under This Article. — No cause of action shall lie or be allowed in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this Article.

(e) Defense. — A good faith reliance on a court order or on a request pursuant to this Article, a request of an investigative or law enforcement officer under this Article, or a good faith determination that G.S. 15A-287 permitted the conduct complained of is a complete defense against any civil or criminal action brought under this Article or any other law. (1987 (Reg. Sess., 1988), c. 1104, s. 1.)

(d) Nondisclosure of Existence of Pen Register or a Trap and Trace Device. — An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that:

(1) The order be sealed until otherwise ordered by the judge; and

(2) The person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the judge to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any person, unless otherwise ordered by the judge.

The provisions of G.S. 15A-903 and 15A-904 shall apply to this Article. (1987 (Reg. Sess., 1988), c. 1104, s. 1.)

§ 15A-264. Assistance in installation and use of a pen register or a trap and trace device.

(a) Pen Registers. — Upon the request of a law enforcement officer authorized to install and use a pen register under this Article, a provider of wire or electronic communication service, a landlord, a custodian, or other person shall furnish the officer promptly with all information, facilities, or technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the communication services, if the assistance is directed by a court order as provided in G.S. 15A-263(b)(2).

(b) Trap and Trace Devices. — Upon the request of a law enforcement officer authorized to receive the results of a trap and trace device under this Article, a provider of a wire or electronic communication service, a landlord, a custodian, or other person shall install the device immediately on the appropriate line and shall furnish the officer all additional information, facilities, or technical assistance, including installation and operation of the device unobtrusively and with a minimum of interference with the communication services, if the installation and assistance are directed by court order as provided in G.S. 15A-263(b)(2). Unless otherwise ordered by the judge, the results of the trap and trace device shall be furnished to the law enforcement officer designated in the court order at reasonable intervals during regular business hours for the duration of the order.

(c) Compensation. — A provider of a wire or electronic communication service, a landlord, a custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be compensated for the reasonable expenses incurred in providing the facilities and assistance.

(d) No Cause of Action Against a Provider Giving Information or Assistance Under this Article. — No cause of action shall be allowed in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this Article.

(e) Defense. — A good faith reliance on a court order or a statutory authorization is a complete defense against any civil or criminal action brought under this Article or any other law. (1987 (Reg. Sess., 1988), c. 1104, s. 1.)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 175

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

H175-ARG-001 Page 1 of __

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

moves to amend the bill on page 5, lines 10-12,
by rewriting the lines to read:
"prior ~~offense,~~ offense or offenses for which the offender was convicted, whether or not the offense or offenses were used in determining prior record level, 1 point."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 175 A BILL TO BE ENTITLED AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO MAKE CERTAIN TECHNICAL, CLARIFYING, AND CONFORMING AMENDMENTS TO STRUCTURED SENTENCING.

☐ 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 175
Proposed Committee Substitute H175-PCS2229

Short Title: Struct. Sent./Tech. & Clarifying Amends. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION'S RECOMMENDATION TO MAKE CERTAIN TECHNICAL, CLARIFYING, AND CONFORMING AMENDMENTS TO STRUCTURED SENTENCING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-72.1(e) reads as rewritten:

"(e) Punishment. -- For a first conviction under subsection (a) or (d), or for a subsequent conviction for which the punishment is not specified by this subsection, the defendant ~~may~~ shall be guilty of a Class 3 misdemeanor. The term of imprisonment may be suspended only on condition that the defendant perform community service for a term of at least 24 hours. For a second offense committed within three years after the date the defendant was convicted of an offense under this section, the defendant ~~may~~ shall be guilty of a Class 2 misdemeanor. The term of imprisonment may be suspended only on condition that the defendant be imprisoned for a term of at least 72 hours as a condition of special probation, perform community service for a term of at least 72 hours, or both. For a third or subsequent offense committed within five years after the date the defendant was convicted of two other offenses under this section, the defendant ~~may~~ shall be guilty of a Class 1 misdemeanor. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least ~~14~~ 11 days. However, if the sentencing judge finds that the defendant is unable, by reason of mental or physical infirmity, to perform the service

required under this section, and the reasons for such findings are set forth in the judgment, ~~he~~ the judge may pronounce such other sentence as ~~he~~ the judge finds appropriate."

Section 2. G.S. 15A-1021(a) reads as rewritten:

"(a) In superior court, the prosecution and the defense may discuss the possibility that, upon the defendant's entry of a plea of guilty or no contest to one or more offenses, the prosecutor will not charge, will dismiss, or will move for the dismissal of other charges, or will recommend or not oppose a particular ~~sentence, including a prison term different from the presumptive prison term applicable to the defendant, if convicted, under G.S. 15A-1340.4(f).~~ sentence. If the defendant is represented by counsel in the discussions the defendant need not be present. The trial judge may participate in the discussions."

Section 3. G.S. 15A-1340.17(c) reads as rewritten:

"(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart Described. -- The authorized punishment for each class of offense and prior record level is as specified in the chart below. Prior record levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offense are indicated by the letters placed vertically on the left side of the chart. Each cell on the chart contains the following components:

(1) A sentence disposition or dispositions: 'C' indicates that a community punishment is authorized; 'I' indicates that an intermediate punishment is authorized; 'A' indicates that an active punishment is authorized; and 'Life Imprisonment Without Parole' indicates that the defendant shall be imprisoned for the remainder of the prisoner's natural life.

(2) A presumptive range of minimum durations, if the sentence of imprisonment is neither aggravated or mitigated; any minimum term of imprisonment in that range is permitted unless the court finds pursuant to G.S. 15A-1340.16 that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.

(3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the mitigated range is permitted. The mitigated range is the lower of the three ranges in the cell.

(4) An aggravated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the aggravated range is permitted. The aggravated range is the higher of the three ranges in the cell.

PRIOR RECORD LEVEL

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A		Life Imprisonment Without Parole or Death as Established by Statute					
	A 240-300	A 288-360	A 336-420	A 384-480	A Life Imprisonment Without Parole	A	DISPOSITION Aggravated
B1	192-240	230-288	269-336	307-384	346-433	384-480	PRESUMPTIVE
	144-192	173-230	202-269	230-307	260-346	288-384	Mitigated
	A	A	A	A	A	A	DISPOSITION
	157-196	189-237	220-276	251-313	282-353	313-392	Aggravated
B2	125-157	151-189	176-220	201-251	225-282	251-313	PRESUMPTIVE
	94-125	114-151	132-176	151-201	169-225	188-251	Mitigated
	A	A	A	A	A	A	DISPOSITION
	73-92	100-125	116-145	133-167	151-188	168-210	Aggravated
C	58-73	80-100	93-116	107-133	121-151	135-168	PRESUMPTIVE
	44-58	60-80	70-93	80-107	90-121	101-135	Mitigated
	A	A	A	A	A	A	DISPOSITION
	64-80	77-95	103-129	117-146	133-167	146-183	Aggravated
D	51-64	61-77	82-103	94-117	107-133	117-146	PRESUMPTIVE
	38-51	46-61	61-82	71-94	80-107	88-117	Mitigated
	I/A	I/A	A	A	A	A	DISPOSITION
	25-31	29-36	34-42	46-58	53-66	59-74	Aggravated
E	20-25	23-29	27-34	37-46	42-53	47-59	PRESUMPTIVE
	15-20	17-23	20-27	28-37	32-42	35-47	Mitigated
	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-24	21-26	25-31	34-42	39-49	Aggravated
F	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated

		I/A	I/A	I/A	I/A	A	A	DISPOSITION
		13-16	15-19	16-20	20-25	21-26	29-36	Aggravated
	G	10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
		8-10	9-12	10-13	12-16	13-17	17-23	Mitigated

		C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
		6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
	H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
		4-5	4-6	6-8	7-9	9-12	12-16	Mitigated

		C	C/I	I	I/A	I/A	I/A	DISPOSITION
		6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
	I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
		3-4	3-4	4-5	4-6	5-7	6-8	Mitigated

".

Section 4. G.S. 15A-1444(e) reads as rewritten:

"(e) Except as provided in ~~subsection (a1)~~ subsections (a1) and (a2) of this section and G.S. 15A-979, and except when a motion to withdraw a plea of guilty or no contest has been denied, the defendant is not entitled to appellate review as a matter of right when he has entered a plea of guilty or no contest to a criminal charge in the superior court, but he may petition the appellate division for review by writ of certiorari. If an indigent defendant petitions the appellate division for a writ of certiorari, the presiding superior court judge may in his discretion order the preparation of the record and transcript of the proceedings at the expense of the State."

Section 5. G.S. 113-136(j) reads as rewritten:

"(j) The refusal of any person to stop in obedience to the directions of an inspector or protector acting under the authority of this section is unlawful. A violation of this subsection is ~~punishable by a fine of not less than fifty dollars ($50.00) nor more than two hundred dollars ($200.00), imprisonment not to exceed 30 days, or both.~~ a Class 3 misdemeanor and may include a fine of not less than fifty dollars ($50.00)."

Section 6. G.S. 15A-1340.11(2) reads as rewritten:

"(2) Community punishment. -- A sentence in a criminal case that does not include an active ~~punishment or~~ punishment, an intermediate ~~punishment.~~ punishment, or any of the conditions of probation listed in subdivision (6) of this section."

Section 7. 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, 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)), 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~~ any prior ~~offense,~~ offense for which the offender was convicted, whether or not the prior offense or offenses were used in determining prior record level, 1 point.
(7) If the offense was committed while the offender was on ~~probation or~~ supervised or unsupervised probation, parole, or post-release supervision, 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."

Section 8. G.S. 15A-1340.21(b) reads as rewritten:

"(b) Prior Conviction Levels for Misdemeanor Sentencing. -- The prior conviction levels for misdemeanor sentencing are:

(1) Level I -- 0 prior convictions.
(2) Level II -- At least 1, but not more than 4 prior convictions.
(3) Level III -- At least 5 prior convictions.

In determining the prior conviction level, a prior offense may be included if it is either a felony or a misdemeanor at the time the offense for which the offender is being sentenced is committed."

Section 9. G.S. 90-98 reads as rewritten:

"**§ 90-98. Attempt and conspiracy; penalties.**

~~Any~~ Except as otherwise provided in this Article, any person who attempts or conspires to commit any offense defined in this Article is ~~punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of~~ guilty of an offense that is the same class as the offense which was the object of the attempt or ~~conspiracy.~~ conspiracy and is punishable as specified for that class of offense and prior record or conviction level in Article 81B of Chapter 15A of the General Statutes. ~~If the offense the person attempts or conspires to commit is a felony, the attempt or conspiracy is punishable as a felony of the same class as that offense.~~"

Section 10. G.S. 15-48 is repealed.

Section 11. G.S. 7A-598 reads as rewritten:

"**§ 7A-598. Grounds for order.**

An order may issue only on affidavit or affidavits sworn to before the judge and establishing the following grounds for the order:

(1) That there is probable cause to believe that an offense has been committed which if committed by an adult would be ~~punishable by imprisonment for more than two years;~~ a felony offense; and

(2) That there are reasonable grounds to suspect that the juvenile named or described in the affidavit committed the offense; and

(3) That the results of specific nontestimonial identification procedures will be of material aid in determining whether the juvenile named in the affidavit committed the offense."

Section 12. G.S. 7A-600 reads as rewritten:

"**§ 7A-600. Nontestimonial identification order at request of juvenile.**

A juvenile in custody for or charged with an offense which if committed by an adult would be ~~punishable by imprisonment for more than two years~~ a felony offense may request that nontestimonial identification procedures be conducted upon himself. If it appears that the results of specific nontestimonial identification procedures will be of material aid to the juvenile's defense, the judge to whom the request was directed must order the State to conduct the identification procedures."

Section 13. G.S. 15A-263(a) reads as rewritten:

"(a) In General. -- Following application made under G.S. 15A-262, a superior court judge may enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the State if the judge finds:

(1) That there is reasonable suspicion to believe that ~~an offense punishable by imprisonment for more than one year~~ a felony offense, or a Class A1 or Class 1 misdemeanor offense has been committed;

(2) That there are reasonable grounds to suspect that the person named or described in the affidavit committed the offense, if that person is known and can be named or described; and

(3) That the results of procedures involving pen registers or trap and trace devices will be of material aid in determining whether the person named in the affidavit committed the offense."

Section 14. G.S. 15A-273 reads as rewritten:

"**§ 15A-273. Basis for order.**

An order may issue only on an affidavit or affidavits sworn to before the judge and establishing the following grounds for the order:

(1) That there is probable cause to believe that ~~an offense punishable by imprisonment for more than one year~~ a felony offense, or a Class A1 or Class 1 misdemeanor offense has been committed;

(2) That there are reasonable grounds to suspect that the person named or described in the affidavit committed the offense; and

(3) That the results of specific nontestimonial identification procedures will be of material aid in determining whether the person named in the affidavit committed the offense."

Section 15. G.S. 15A-281 reads as rewritten:

"**§ 15A-281. Nontestimonial identification order at request of defendant.**

A person arrested for or charged with ~~an offense punishable by imprisonment for more than one year~~ a felony offense, or a Class A1 or Class 1 misdemeanor offense may request that nontestimonial identification procedures be conducted upon himself. If it appears that the results of specific nontestimonial identification procedures will be of material aid in determining whether the defendant committed the offense, the judge to whom the request was directed must order the State to conduct the identification procedures."

Section 16. 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 195

Short Title: Clarify Post-Release Supervision. (Public)

Sponsors: Representative Bowie.

Referred to: Judiciary II.

February 17, 1997

A BILL TO BE ENTITLED.

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION TO MAKE CLARIFYING CHANGES TO POST-RELEASE SUPERVISION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1368.6(e) reads as rewritten:

"(e) Revocation Hearing. -- Before finally revoking post-release supervision, the Commission shall, unless the supervisee waived the hearing or the time limit, provide a hearing within 45 days of the supervisee's reconfinement to determine whether to revoke supervision finally. For purposes of this subsection, the 45-day period begins when the preliminary hearing required by subsection (b) of this section is held or waived, or upon the passage of seven working days after arrest, whichever is sooner. The Commission shall adopt rules governing the hearing and shall file and publish them as provided in Article 5 of Chapter 150B of the General Statutes."

Section 2. G.S. 15A-1368(a)(5) reads as rewritten:

"(5) Maximum imposed term. -- The maximum term of imprisonment imposed on an individual prisoner by a court judgment, as described in G.S. 15A-1340.13(c). When a prisoner is serving consecutive prison terms, the maximum imposed term, for purposes of this Article, is the sum of all maximum terms imposed in the court judgment or judgments, less nine months for each of the second and subsequent sentences imposed for Class B through Class E felonies."

Section 3. G.S. 15-196.1 reads as rewritten:

"**§ 15-196.1. Credits allowed.**

The minimum and maximum term of a sentence shall be credited with and diminished by the total amount of time a defendant has spent, committed to or in confinement in any State or local correctional, mental or other institution as a result of the charge that culminated in the sentence. The credit provided shall be calculated from the date custody under the charge commenced and shall include credit for all time spent in custody pending trial, trial de novo, appeal, retrial, or pending ~~parole and probation~~ parole, probation, or post-release supervision revocation hearing: Provided, however, the credit available herein shall not include any time that is credited on the term of a previously imposed sentence to which a defendant is subject."

Section 4. G.S. 15-196.3 reads as rewritten:

"**§ 15-196.3. Effect of credit.**

Time creditable under this section shall reduce the minimum and maximum term of a sentence; and, irrespective of sentence, shall reduce the time required to attain privileges made available to inmates in the custody of the State Department of Correction which are dependent, in whole or in part, upon the passage of a specific length of time in custody, including parole or post-release supervision consideration by the ~~State Board of Paroles.~~ Post-Release Supervision and Parole Commission. However, nothing in this section shall be construed as requiring an automatic award of privileges by virtue of the passage of time."

Section 5. G.S. 15-196.4 reads as rewritten:

"**§ 15-196.4. Procedures for judicial award.**

Upon sentencing or activating a sentence, the judge presiding shall determine the credits to which the defendant is entitled and shall cause the clerk to transmit to the custodian of the defendant a statement of allowable credits. Upon committing a defendant upon the conclusion of an appeal, or a ~~parole or probation~~ parole, probation, or post-release supervision revocation, the committing authority shall determine any credits allowable on account of these proceedings and shall cause to be transmitted, as in all other cases, a statement of the allowable credit to the custodian of the defendant. Upon reviewing a petition seeking credit not previously allowed, the court shall determine the credits due and forward an order setting forth the allowable credit to the custodian of the petitioner."

Section 6. G.S. 15A-1368.4 reads as rewritten:

"**§ 15A-1368.4. Conditions of post-release supervision.**

(a) In General. -- Conditions of post-release supervision may be reintegrative in nature or designed to control the supervisee's behavior and to enforce compliance with law or judicial order. A supervisee may have his supervision period revoked for any violation of a controlling condition or for repeated violation of a reintegrative condition. Compliance with reintegrative conditions may entitle a supervisee to earned time credits as described in G.S. 15A-1368.2(d).

(b) Required Condition. -- The Commission shall provide as an express condition of every release that the supervisee not commit another crime during the period for which the supervisee remains subject to revocation. A supervisee's failure to comply

with this controlling condition is a supervision violation for which the supervisee may face revocation as provided in G.S. 15A-1368.3.

(b1) Additional Required Conditions for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. -- In addition to the required condition set forth in subsection (b) of this section, for a supervisee who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, controlling conditions, violations of which may result in revocation of post-release supervision, are:

(1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).

(2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the Commission.

(3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

(4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.

(5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless a court of competent jurisdiction expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the child's best interest to allow the supervisee to reside in the same household with a minor child.

(c) Discretionary Conditions. -- The Commission, in consultation with the Division of Adult Probation and Parole, may ~~in its discretion~~ impose conditions on a supervisee it believes reasonably necessary to ensure that the supervisee will lead a law-abiding life or to assist the supervisee to do so.

(d) Reintegrative Conditions. -- Appropriate reintegrative conditions, for which a supervisee may receive earned time credits against the length of the supervision period, and repeated violation that may result in revocation of post-release supervision, are:

(1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip the supervisee for suitable employment.

(2) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

(3) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on post-release supervision.

(4) Support the supervisee's dependents and meet other family responsibilities.

(5) In the case of a supervisee who attended a basic skills program during incarceration, continue attending a basic skills program in

pursuit of a General Education Development Degree or adult high school diploma.

(6) Satisfy other conditions reasonably related to reintegration into society.

(e) Controlling Conditions. -- Appropriate controlling conditions, violation of which may result in revocation of post-release supervision, are:

(1) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for the supervisee 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.

(2) Comply with a court order to pay the costs of reintegrative treatment for a minor and a minor's parents or custodians where the offense involved evidence of physical, mental, or sexual abuse of a minor.

(3) Comply with a court order to pay court costs and costs for appointed counsel or public defender in the case for which the supervisee was convicted.

(4) Not possess a firearm, destructive device, or other dangerous weapon unless granted written permission by the Commission or a post-release supervision officer.

(5) Report to a post-release supervision officer at reasonable times and in a reasonable manner, as directed by the Commission or a post-release supervision officer.

(6) Permit a post-release supervision officer to visit at reasonable times at the supervisee's home or elsewhere.

(7) Remain within the geographic limits fixed by the Commission unless granted written permission to leave by the Commission or the post-release supervision officer.

(8) Answer all reasonable inquiries by the post-release supervision officer and obtain prior approval from the post-release supervision officer for any change in address or employment.

(9) Promptly notify the post-release supervision officer of any change in address or employment.

(10) Submit at reasonable times to searches of the supervisee's person by a post-release supervision officer for purposes reasonably related to the post-release supervision. The Commission shall not require as a condition of post-release supervision that the supervisee submit to any other searches that would otherwise be unlawful. Whenever the search consists of testing for the presence of illegal drugs, the supervisee may also be required to reimburse

the Department of Correction for the actual cost of drug testing and drug screening, if the results are positive.

(11) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.

(12) Comply with an order from a court of competent jurisdiction regarding the payment of an obligation of the supervisee in connection with any judgment rendered by the court.

(13) 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.

(14) Submit to supervision by officers assigned to the Intensive Post-Release Supervision Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program.

(f) Required Supervision Fee. -- The Commission shall require as a condition of post-release supervision that the supervisee pay a supervision fee of twenty dollars ($20.00) per month. The Commission may exempt a supervisee from this condition only if it finds that requiring payment of the fee is an undue economic burden. The fee shall be paid to the clerk of superior court of the county in which the supervisee was convicted. The clerk shall transmit any money collected pursuant to this subsection to the State to be deposited in the State's General Fund. In no event shall a supervisee be required to pay more than one supervision fee per month."

Section 7. G.S. 15A-1368.2(e) is repealed.

Section 8. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

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February 25, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: House Bill 195 - Clarify Post-Release Supervision

House Bill 195 is a recommendation of the NC Sentencing and Policy Advisory Commission. This bill makes several clarifying changes to post-release supervision.

Section 1 amends G.S. 15A-1368.6(e) by clarifying that the 45 day period, within which a hearing to revoke post-release supervision must be held, begins to run when the preliminary hearing is held or seven working days have passed since arrest, whichever is sooner.

Section 2 amends G.S. 15A-1368(a)(5) by adding the words "or judgments". This is a clarifying amendment.

Sections 3, 4 and 5 amend G.S. 15-196.1, -196.3 and -196.4 respectively by adding post-release supervision to each of these statutes. These statutes deal with credit for time served awaiting hearing of the case.

Section 6 amends G.S. 15A-1368.4. In Subsection (c), language is added that indicates that the Post-release Supervision and Parole Commission will consult with the Division of Adult Probation and Parole in determining what conditions are appropriate for a supervisee under post-release supervision.

Subsection (e) is amended by adding two new conditions which may be imposed on a supervisee under post-release supervision. Subsection (e)(13) allows the supervisee to be required to remain in one or more specified places for a specific period each day and to be monitored by an electronic device. Subsection (e)(14) allows the supervisee to be required to submit to supervision by the Intensive Post-Release Supervision Program.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 7 repeals G.S. 15A-1368.2(e) which states: "The Commission shall choose the level of supervision for supervisees. It may place a supervisee on any available level of supervision, including electronic monitoring, intensive supervision, or regular supervision."

Section 8 makes this act effective December 1, 1997 and applies to offenses committed on or after that date.

HOUSE BILL 195

CLARIFY POST-RELEASE SUPERVISION

ISSUE: A post-release supervisee must have a final revocation hearing within 45 days of his or her re-confinement. It is not clear in the statute when that 45 day period begins.
Post-release supervision was added to the statutes during the 1993 Session. Some statutes which refer to probation and parole were not amended to include post-release supervision.

APPROACH: This bill amends the revocation hearing statute to say that the 45 day period begins when the preliminary hearing is held or waived, or after seven working days have passed since arrest, whichever is sooner.
This bill amends certain sections of the general statutes to include references to post-release supervision.
This bill adds a curfew and intensive supervision to the list of controlling conditions the Post-Release Supervision and Parole Commission may impose on a supervisee.

IMPACT: This change is not expected to have any additional impact on prison or jail populations.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 195 A BILL TO BE ENTITLED AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION TO MAKE CLARIFYING CHANGES TO POST-RELEASE SUPERVISION.

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 D

H333-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 333
THIS IS A DRAFT 2-APR-97 17:12:14
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Clarify Atty-In-Fact Gifts. (Public)

Sponsors:

Referred to:

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE CIRCUMSTANCES UNDER WHICH AN ATTORNEY-IN-FACT MAY MAKE GIFTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32A-2(14) reads as rewritten:

"(14) Gifts to Charities, and to Individuals Other Than the Attorney-In-Fact. --

a. Except as provided in G.S. 32A-2(14)b., to make gifts of any of the principal's property to any individual other than the attorney-in-fact or to any organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subdivision

'Internal Revenue Code' means the 'Code' as defined in G.S. 105-2.1.

b. Except as provided in G.S. 32A-2(14)c., or unless gifts are expressly authorized by the power of attorney under G.S. 32A-2(15), a power described in G.S. 32A-2(14)a. may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or creditors of the estate of the attorney-in-fact.

c. If the power described in G.S. 32A-2(14)a. is conferred upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or attorneys-in-fact who are not disqualified by G.S. 32A-2(14)b. from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact.

d. An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request the clerk of the superior court to issue an order to make a gift of the property of the principal."

Section 2. G.S. 32A-2(15) reads as rewritten:

"(15) Gifts to the Named Attorney-In-Fact. -- To make gifts to the attorney-in-fact named in the power of attorney or the estate, creditors, or creditors of the estate of the ~~attorney-in-fact.~~ attorney-in-fact, in accordance with the principal's personal history of making or joining in the making of lifetime gifts."

Section 3. Section 1 of this act becomes effective July 1, 1997, and applies to all powers of attorney executed on or after October 1, 1995. Section 2 of this act becomes effective October 1, 1997 and applies to all powers of attorney executed on or after that date.

SAMPLE

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32A OF THE NORTH CAROLINA GENERAL STATUTES WHICH EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES CONCERNED.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, _____, appoint _____to be my attorney-in-fact, to act in my name in any way which I could not act for myself, with respect to the following matters as each of them is defined in Chapter 32A of the North Carolina General Statutes. (DIRECTIONS: initial the line opposite one or more of the subdivisions as to which the principal desires to give the attorney-in-fact authority).

(1)	Real property transactions	_____
(2)	Personal property transactions	_____
(3)	Bond, share, stock, securities and commodity transactions	_____
(4)	Banking transactions	_____
(5)	Estate transactions	_____
(6)	Business operating transactions	_____
(7)	Insurance transactions	_____
(8)	Estate transactions	_____
(9)	Personal relationships and affairs	_____
(10)	Social security and unemployment	_____
(11)	Benefits from military service	_____
(12)	Tax matters	_____
(13)	Employment of agents	_____
(14)	Gifts to charities, and to individuals other than the attorney-in-fact	_____
(15)	Gifts to the named attorney-in-fact	_____

This power of attorney shall not be affected by my subsequent incapacity or mental incompetence.

Dated_____,_____

_____(Seal)
Signature

STATE OF _____COUNTY OF _____on this day of _____, _____, personally appeared before me, the said named _____to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My Commission expires _____

_____
(Signature of Notary Public)
Notary Public (Official Seal)

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

April 3, 1997 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amanda Digby	NCATL
PAUL STOLL	NC BANKERS ASSN.
John Madler	Sentencing Commission
BILL SCOGGIN	NC BAR ASSOC.
Sandra Byrd	NC Bar Assoc
Roslyn Sawtell	NC Coalition Against Domestic Violence
Tracy Herring	PRS + Parole Commission
Susan Schmidt	NCJC DC
J. Matthew Smith	Apt. Assoc. of NC
Thomas V. Bennett	NCCFTF — Raleigh

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 8, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on April 8, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Berry, Bowie, Cansler, Culpepper, Decker, Gardner, Goodwin, Hackney, McMahan, Nesbitt, Redwine, Russell, Saunders, Shubert, Sutton and Weatherly. A list of visitors is attached.

The following bill was discussed:

HB-533 EQUITABLE DISTRIBUTION/DIVISIBLE PROPERTY

Representative Hackney was recognized to present the bill and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

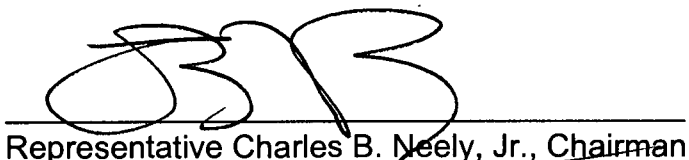
Wade Harrison and Charles Coltrane, Board Certified Specialist in Family Law, and Gerard Chapman, Attorney, representing the North Carolina Bar Association, Family Law Section, answered questions of committee members.

Representative Hackney was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

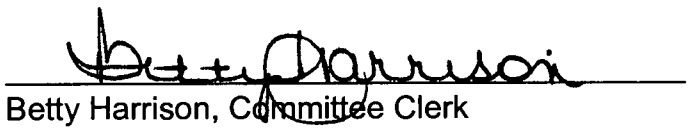
No action was taken on HB-533.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted:



Representative Charles B. Neely, Jr., Chairman



Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 533

Short Title: Equit. Distr./Divisible Prop. (Public)

Sponsors: Representatives Hackney; Russell, Baddour, and Alexander.

Referred to: Judiciary II.

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO ADD "DIVISIBLE PROPERTY" AS A CATEGORY OF PROPERTY SUBJECT TO EQUITABLE DISTRIBUTION, TO CREATE A REBUTTABLE PRESUMPTION THAT AN IN KIND DISTRIBUTION OF PROPERTY IS EQUITABLE, TO ENCOURAGE INTERIM DISTRIBUTION OF PROPERTY OR DEBT, AND TO ALLOW CERTAIN EVIDENCE OF THE VALUE OF MARITAL PROPERTY, AS RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-20 reads as rewritten:

"**§ 50-20. Distribution by court of marital property upon divorce.**

(a) Upon application of a party, the court shall determine what is the marital property and divisible property and shall provide for an equitable distribution of the marital property and divisible property between the parties in accordance with the provisions of this section.

(b) For purposes of this section:

(1) 'Marital property' means all real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the parties, and presently owned, except property determined to be separate property or divisible property in accordance with subdivision (2) or (4) of this subsection. Marital property includes all vested pension, retirement, and other deferred compensation rights, including military pensions eligible under the federal Uniformed Services

Former Spouses' Protection Act. It is presumed that all property acquired after the date of marriage and before the date of separation is marital property except property which is separate property under subdivision (2) of this subsection. This presumption may be rebutted by the greater weight of the evidence.

(2) 'Separate property' means all real and personal property acquired by a spouse before marriage or acquired by a spouse by bequest, devise, descent, or gift during the course of the marriage. However, property acquired by gift from the other spouse during the course of the marriage shall be considered separate property only if such an intention is stated in the conveyance. Property acquired in exchange for separate property shall remain separate property regardless of whether the title is in the name of the husband or wife or both and shall not be considered to be marital property unless a contrary intention is expressly stated in the conveyance. The increase in value of separate property and the income derived from separate property shall be considered separate property. All professional licenses and business licenses which would terminate on transfer shall be considered separate property. The expectation of nonvested pension, retirement, or other deferred compensation rights shall be considered separate property.

(3) 'Distributive award' means payments that are payable either in a lump sum or over a period of time in fixed amounts, but shall not include alimony payments or other similar payments for support and maintenance which are treated as ordinary income to the recipient under the Internal Revenue Code.

The distributive award of vested pension, retirement, and other deferred compensation benefits may be made payable:

a. As a lump sum by agreement;
b. Over a period of time in fixed amounts by agreement;
c. As a prorated portion of the benefits made to the designated recipient at the time the party against whom the award is made actually begins to receive the benefits; or
d. By awarding a larger portion of other assets to the party not receiving the benefits, and a smaller share of other assets to the party entitled to receive the benefits.

Notwithstanding the foregoing, the court shall not require the administrator of the fund or plan involved to make any payments until the party against whom the award is made actually begins to receive the benefits unless a plan under the Employee Retirement Income Security Act (ERISA) permits earlier distribution. The award shall be determined using the proportion of time the marriage existed, (up to the date of separation of the parties), simultaneously with the employment which earned the vested

pension, retirement, or deferred compensation benefit, to the total amount of time of employment. The award shall be based on the vested accrued benefit, as provided by the plan or fund, calculated as of the date of separation, and shall not include contributions, years of service or compensation which may accrue after the date of separation. The award shall include gains and losses on the prorated portion of the benefit vested at the date of separation. No award shall exceed fifty percent (50%) of the benefits the person against whom the award is made is entitled to receive as vested pension, retirement, or other deferred compensation benefits, except that an award may exceed fifty percent (50%) if (i) other assets subject to equitable distribution are insufficient; or (ii) there is difficulty in distributing any asset or any interest in a business, corporation, or profession; or (iii) it is economically desirable for one party to retain an asset or interest that is intact and free from any claim or interference by the other party; or (iv) more than one pension or retirement system or deferred compensation plan or fund is involved, but the benefits awarded may not exceed fifty percent (50%) of the total benefits of all the plans added together; or (v) both parties consent. In no event shall an award exceed fifty percent (50%) if a plan prohibits an award in excess of fifty percent (50%).

In the event the person receiving the award dies, the unpaid balance, if any, of the award shall pass to the beneficiaries of the recipient by will, if any, or by intestate succession, or by beneficiary designation with the plan consistent with the terms of the plan unless the plan prohibits such a designation. In the event the person against whom the award is made dies, the award to the recipient shall remain payable to the extent permitted by the pension or retirement system or deferred compensation plan or fund involved.

The Court may require distribution of the award by means of a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code of 1986. To facilitate the calculation and payment of distributive awards, the administrator of the system, plan or fund may be ordered to certify the total contributions, years of service, and pension, retirement, or other deferred compensation benefits payable.

The provisions of this section and G.S. 50-21 shall apply to all pension, retirement, and other deferred compensation plans and funds, including military pensions eligible under the Federal Uniform Services Former Spouses Protection Act, and including funds administered by the State pursuant to Articles 84 through 88 of Chapter 58 and Chapters 120, 127A, 128, 135, 143, 143B, and

147 of the General Statutes, to the extent of a member's accrued benefit at the date of separation, as determined by the court.

(4) 'Divisible property' means all real and personal property as set forth below:

a. All appreciation and diminution in value of marital property and divisible property of the parties occurring after the date of separation and prior to the date of distribution, except that appreciation or diminution in value which is the result of postseparation actions or activities of a spouse shall not be treated as divisible property.

b. All property, property rights, or any portion thereof received after the date of separation but before the date of distribution that were acquired as a result of the efforts of either spouse during the marriage and before the date of separation, including, but not limited to, commissions, bonuses, and contractual rights.

c. Passive income from marital property received after the date of separation, including but not limited to, interest and dividends.

d. Increases in marital debt and financing charges and interest related to marital debt.

(c) There shall be an equal division by using net value of marital property and divisible property unless the court determines that an equal division is not equitable. If the court determines that an equal division is not equitable, the court shall divide the marital property and divisible property equitably. Factors the court shall consider under this subsection are as follows:

(1) The income, property, and liabilities of each party at the time the division of property is to become effective;

(2) Any obligation for support arising out of a prior marriage;

(3) The duration of the marriage and the age and physical and mental health of both parties;

(4) The need of a parent with custody of a child or children of the marriage to occupy or own the marital residence and to use or own its household effects;

(5) The expectation of pension, retirement, or other deferred compensation rights, which is separate property;

(6) Any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services, or lack thereof, as a spouse, parent, wage earner or homemaker;

(7) Any direct or indirect contribution made by one spouse to help educate or develop the career potential of the other spouse;

(8) Any direct contribution to an increase in value of separate property which occurs during the course of the marriage;
(9) The liquid or nonliquid character of all marital property;
(10) The difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest, intact and free from any claim or interference by the other party;
(11) The tax consequences to each party;
(11a) Acts of either party to maintain, preserve, develop, or expand; or to waste, neglect, devalue or convert such marital property, during the period after separation of the parties and before the time of distribution; and
(12) Any other factor which the court finds to be just and proper.

(c1) Notwithstanding any other provision of law, a second or subsequent spouse acquires no interest in the marital property of his or her spouse from a former marriage until a final determination of equitable distribution is made in the marital property of the spouse's former marriage.

(d) Before, during or after marriage the parties may by written agreement, duly executed and acknowledged in accordance with the provisions of G.S. 52-10 and 52-10.1, or by a written agreement valid in the jurisdiction where executed, provide for distribution of the marital property in a manner deemed by the parties to be equitable and the agreement shall be binding on the parties.

(e) Subject to the presumption of subsection (c) of this section that an equal division is equitable, it shall be presumed in every action that an in kind distribution of marital or divisible property is equitable. This presumption may be rebutted by the greater weight of the evidence. In any action in which the ~~court determines that an equitable distribution of all or portions of the marital property in kind would be impractical,~~ presumption is rebutted, the court in lieu of ~~such~~ in kind distribution shall provide for a distributive award in order to achieve equity between the parties. The court may provide for a distributive award to facilitate, effectuate or supplement a distribution of marital or divisible property. The court may provide that any distributive award payable over a period of time be secured by a lien on specific property.

(f) The court shall provide for an equitable distribution without regard to alimony for either party or support of the children of both parties. After the determination of an equitable distribution, the court, upon request of either party, shall consider whether an order for alimony or child support should be modified or vacated pursuant to G.S. 50-16.9 or 50-13.7.

(g) If the court orders the transfer of real or personal property or an interest therein, the court may also enter an order which shall transfer title, as provided in G.S. 1A-1, Rule 70 and G.S. 1-228.

(h) If either party claims that any real property is marital property, that party may cause a notice of lis pendens to be recorded pursuant to Article 11 of Chapter 1 of the General Statutes. Any person whose conveyance or encumbrance is recorded or

whose interest is obtained by descent, prior to the filing of the lis pendens, shall take the real property free of any claim resulting from the equitable distribution proceeding. The court may cancel the notice of lis pendens upon substitution of a bond with surety in an amount determined by the court to be sufficient provided the court finds that the claim of the spouse against property subject to the notice of lis pendens can be satisfied by money damages.

(i) Upon filing an action or motion in the cause requesting an equitable distribution or alleging that an equitable distribution will be requested when it is timely to do so, a party may seek injunctive relief pursuant to G.S. 1A-1, Rule 65 and Chapter 1, Article 37, to prevent the disappearance, waste or conversion of property alleged to be marital property or separate property of the party seeking relief. The court, in lieu of granting an injunction, may require a bond or other assurance of sufficient amount to protect the interest of the other spouse in the marital or separate property. Upon application by the owner of separate property which was removed from the marital home or possession of its owner by the other spouse, the court may enter an order for reasonable counsel fees and costs of court incurred to regain its possession, but such fees shall not exceed the fair market value of the separate property at the time it was removed.

(i1) ~~For good cause shown, including, but not limited to, providing for the subsistence of a spouse while an action is pending,~~ Unless good cause is shown that there should not be an interim distribution, the ~~Court~~ court may, at any time after an action for equitable distribution has been filed and prior to the final judgment of equitable distribution, enter orders declaring what is separate property and may also enter orders dividing part of the marital ~~property~~ property, divisible property or debt, or marital debt, between the parties. The partial distribution may provide for a distributive ~~award.~~ award and may also provide for a distribution of marital property, marital debt, divisible property, or divisible debt. Any such orders entered shall be taken into consideration at trial and proper credit given.

Hearings held pursuant to this subsection may be held at sessions arranged by the chief district court judge pursuant to G.S. 7A-146 and, if held at such sessions, shall not be subject to the reporting requirements of G.S. 7A-198.

(j) In any order for the distribution of property made pursuant to this section, the court shall make written findings of fact that support the determination that the marital property has been equitably divided.

(k) The rights of the parties to an equitable distribution of marital property are a species of common ownership, the rights of the respective parties vesting at the time of the parties' separation."

Section 2. G.S. 50-21(b) reads as rewritten:

"(b) For purposes of equitable distribution, marital property shall be valued as of the date of the separation of the ~~parties.~~ parties, and evidence of preseparation and postseparation occurrences or values is competent as corroborative evidence of the value of marital property as of the date of the separation of the parties. Divisible property and divisible debt shall be valued as of the date of distribution."

Section 3. This act becomes effective October 1, 1997, and applies to actions for equitable distribution filed on and after that date.

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April 7, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 533—Equit. Distr./Divisible Property (Hackney)

House Bill 533 is a recommendation of the Family Law Section of the North Carolina Bar Association.

Section 1 of the bill adds a new category of property called "divisible property" which is subject to equitable distribution upon divorce. Divisible property is defined as real and personal property, including the appreciation and diminution in value of property, acquired after the date of separation and prior to the date of distribution.

Section 1 of the bill creates a presumption that an in kind distribution of property is equitable.

This section also makes it easier for the court to make interim distributions of property prior to the final judgment. Under current law, before an interim distribution may be made, the spouse must show good cause for such a distribution. The bill authorizes the court to make interim distributions unless good cause is shown that such a distribution should **not** be made.

Section 2 of the bill makes changes concerning evidence of the value of property during equitable distribution. The bill provides that evidence of preseparation and postseparation value is competent as corroborative evidence of the value as of the date of separation. Divisible property is valued as of the date of separation.

The act becomes effective October 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Authority of Court. — Where neither party made application or stated a claim for equitable distribution prior to the judgment of absolute divorce, the trial court lacked the authority to enter such a judgment. Stirewalt v. Stirewalt, 114 N.C. App. 107, 440 S.E.2d 854 (1994).

Trial court did not err in order purging defendant of contempt for failure to comply with equitable distribution judgment, by awarding the plaintiff the present value of the stock which had been assigned to her when the initial judgment had been entered. It was proper for the trial court to require the defendant to compensate the plaintiff for the stock splits and the dividends which she would have received had defendant not been recalcitrant in carrying out the trial court's orders. Conrad v. Conrad, 82 N.C. App. 758, 348 S.E.2d 349 (1986).

XI. ATTORNEYS' FEES.

When Contingent Fee Agreement Is Enforceable. — A contingent fee arrangement covering services rendered in an equitable distribution action is fully enforceable as long as it does not provide compensation to the attorney for securing the divorce. In re Cooper, 81 N.C. App. 27, 344 S.E.2d 27 (1986).

Contingent Fee Agreement for Equitable Distribution Must Be Separate from Fee Agreement for Divorce. — If an attorney represents a client in both a divorce proceeding and an equitable distribution proceeding, and the client wishes to have a contingent fee contract in the equitable distribution proceeding, the parties must execute a separate agreement to provide for a fee in the divorce action that is not contingent upon the securing of the divorce. In re Cooper, 81 N.C. App. 27, 344 S.E.2d 27 (1986).

Contingent fee contract in which the fee was contingent with respect to both divorce and equitable distribution actions was void as against public policy, even though the uncontested divorce involved relatively minimal time compared with the time the attorney spent on the equitable distribution claim; and the attorney could not recover either under the contract itself or in quantum meruit for services rendered pursuant to the contract. In re Cooper, 81 N.C. App. 27, 344 S.E.2d 27 (1986).

§ 50-21. Procedures in actions for equitable distribution of property; sanctions for purposeful and prejudicial delay.

(a) At any time after a husband and wife begin to live separate and apart from each other, a claim for equitable distribution may be filed, either as a separate civil action, or together with any other action brought pursuant to Chapter 50 of the General Statutes, or as a motion in the cause as provided by G.S. 50-11(e) or (f). Within 90 days after service of a claim for equitable distribution, the party who first asserts the claim shall prepare and serve upon the opposing party an equitable distribution inventory affidavit listing all property claimed by the party to be marital property and all property claimed by the party to be separate property, and the estimated date-of-separation fair market value of each item of marital and separate property. Within 30 days after service of the inventory affidavit, the party upon whom service is made shall prepare and serve an inventory affidavit upon the other party. The inventory affidavits prepared and served pursuant to this subsection shall be subject to amendment and shall not be binding at trial as to completeness or value. The court may extend the time limits in this subsection for good cause shown. The affidavits are subject to the requirements of G.S. 1A-1, Rule 11, and are deemed to be in the nature of answers to interrogatories propounded to the parties. Any party failing to supply the information required by this subsection in the affidavit is subject to G.S. 1A-1, Rules 26, 33, and 37. During the pendency of the action for equitable distribution, discovery may proceed, and the court shall enter temporary orders as appropriate

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(c) Nothing in G.S. 50
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and necessary for the purpose of preventing the disappearance, waste, or destruction of marital or separate property or to secure the possession thereof.

Real or personal property located outside of North Carolina is subject to equitable distribution in accordance with the provisions of G.S. 50-20, and the court may include in its order appropriate provisions to ensure compliance with the order of equitable distribution.

(b) For purposes of equitable distribution, marital property shall be valued as of the date of the separation of the parties.

(c) Nothing in G.S. 50-20 or this section shall restrict or extend the right to trial by jury as provided by the Constitution of North Carolina.

(d) Within 120 days after the filing of the initial pleading or motion in the cause for equitable distribution, the party first serving the pleading or application shall apply to the court to conduct a scheduling and discovery conference. If that party fails to make application, then the other party may do so. At the conference the court shall determine a schedule of discovery as well as consider and rule upon any motions for appointment of expert witnesses, or other applications, including applications to determine the date of separation, and shall set a date for the disclosure of expert witnesses and a date on or before which an initial pretrial conference shall be held.

At the initial pretrial conference the court shall make inquiry as to the status of the case and shall enter a date for the completion of discovery, the completion of a mediated settlement conference, if applicable, and the filing and service of motions, and shall determine a date on or after which a final pretrial conference shall be held and a date on or after which the case shall proceed to trial.

The final pretrial conference shall be conducted pursuant to the Rules of Civil Procedure and the General Rules of Practice in the applicable district or superior court, adopted pursuant to G.S. 7A-34. The court shall rule upon any matters reasonably necessary to effect a fair and prompt disposition of the case in the interests of justice.

(e) Upon motion of either party or upon the court's own initiative, the court shall impose an appropriate sanction on a party when the court finds that:

(1) The party has willfully obstructed or unreasonably delayed, or has attempted to obstruct or unreasonably delay, discovery proceedings, including failure to make discovery pursuant to G.S. 1A-1, Rule 37, or has willfully obstructed or unreasonably delayed or attempted to obstruct or unreasonably delay any pending equitable distribution proceeding, and

(2) The willful obstruction or unreasonable delay of the proceedings is or would be prejudicial to the interests of the opposing party.

Delay consented to by the parties is not grounds for sanctions. The sanction may include an order to pay the other party the amount of the reasonable expenses and damages incurred because of the willful obstruction or unreasonable delay, including a reasonable attorneys' fee, and including appointment by the court, at the offending party's expense, of an accountant, appraiser, or other expert whose services the court finds are necessary to secure in order for the discovery or other equitable distribution proceeding to

be timely conducted. (1981, c. 815, s. 6; 1983, c. 671, s. 1; 1985, c. 689, s. 21; 1987, c. 844, s. 1; 1991, c. 610, s. 2; 1991 (Reg. Sess., 1992), c. 910, s. 1; 1993, c. 209, s. 1; 1995, c. 244, s. 1; c. 245, s. 1.)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 910, s. 1, amended this section effective October 1, 1992, and applicable only to actions for equitable distribution filed or pending on or after that date, by adding the language beginning "or except if the parties have been separated" in the second paragraph of subsection (a).

Session Laws 1993, c. 209, s. 1, amended this section, effective October 1, 1993, and applicable to actions filed on or after that date, in subsection (a), by inserting the language beginning "Within 90 days after service" and ending "this subsection for good cause shown", and substituting "the" for "any such" following "During the pendency".

Effect of Amendments. — Session Laws 1995, c. 244, s. 1, effective October 1, 1995, and applicable to claims for equitable distribution filed on or after that date and to pending litigation as to subsection (e) only, added "sanctions for purposeful and prejudicial delay" to the end of the catchline; in the first paragraph of subsection (a) added the sixth and seventh sentences, and substituted "shall enter" for "may enter" in the eight sentence; and added subsections (d) and (e).

Session Laws 1995, c. 245, s. 1, effective October 1, 1995, and applicable to actions filed on or after that date, deleted the former second paragraph of subsection (a) regarding entry of judgment for equitable distribution.

Legal Periodicals. — For comment on resulting trusts in entireties property when the wife furnishes purchase money, see 17 Wake Forest L. Rev. 415 (1981).

For survey of 1982 law on property, see 61 N.C.L. Rev. 1171 (1983).

For note, "North Carolina's Equitable Distribution Statute: Recent Developments," see 64 N.C.L. Rev. 1395 (1986).

For note, "Branch Banking & Trust Co. v. Wright — Creditors' Rights to Entireties Property Awarded to Nondebtor Spouse Upon Divorce," see 64 N.C.L. Rev. 1471 (1986).

For article, "The Partnership Ideal: The Development of Equitable Distribution in North Carolina," see 65 N.C.L. Rev. 195 (1987).

Semantics as Jurisprudence: The Elevation of Form Over Substance in the Treatment of Separation Agreements in North Carolina, 69 N.C.L. Rev. 319 (1991).

CASE NOTES

***Editor's Note.** — Some of the cases below were decided prior to the rewriting of this section by Session Laws 1987, c. 844, which provides for entry of a consent judgment of equitable distribution prior or subsequent to entry of a divorce judgment, and for institution of an action of equitable distribution prior to entry of a divorce judgment.*

Public policy of this State is that equitable distribution of property shall follow decree of absolute divorce. Hendrix v. Hendrix, 67 N.C. App. 354, 313 S.E.2d 25 (1984).

Equitable distribution, when properly demanded, must be granted upon the divorce decree being entered; and if alimony and child support has not been previously awarded, equitable distribution must be made first; but if alimony or child support has already been awarded, the awards must be reconsidered upon request after the marital property has been equitably distributed. This order of events is required, no doubt, because of the obvious relationship that exists between the property that one has and his or her need for support and the ability to furnish it. Capps v. Capps, 69 N.C. App. 755, 318 S.E.2d 346 (1984). But see now subsection (a) of this section.

It is North Carolina's public policy that an equitable distribution of property shall follow a decree of absolute divorce. However, a resort to the equitable distribution law is not the only recognized way for married people to dispose of their marital property. An alternative is in § 50-20(d). Case v. Case, 73 N.C. App. 76, 325 S.E.2d 661, cert. denied, 313 N.C. 597, 330 S.E.2d 606 (1985). And see now subsection (a) of this section.

The plain language of subsection (a) of this section clearly provides that the equitable distribution of marital property must follow a decree of absolute

divorce; however, the distribution proceedings may be instituted as a cross action or in a suit altogether separate from the divorce action. This section does not require that the distribution hearing must be held immediately following entry of the absolute divorce. Sharp v. Sharp, 84 N.C. App. 128, 351 S.E.2d 799 (1987). And see now subsection (a) of this section.

No Right to Jury Trial in Equitable Distribution Action. — No right to bring an action for equitable distribution of marital property existed prior to the adoption of the equitable distribution statutes, § 50-20 and this section, and the language of the statutes themselves create no new right to trial by jury; therefore, there is no right to trial by jury for such an action under the Constitution of North Carolina. Kiser v. Kiser, 325 N.C. 502, 385 S.E.2d 487 (1989).

Discretion of Trial Court. — The trial court retains the discretion to choose the appropriate method of compensating the spouse for his post-separation payment of marital debt. Loving v. Loving, 118 N.C. App. 501, 455 S.E.2d 885 (1995).

Judgment effectuating a property distribution pursuant to an agreement that was not signed by both spouses was a court-ordered equitable distribution granted before absolute divorce, and as such was expressly prohibited by subsection (a) of this section. Collar v. Collar, 86 N.C. App. 105, 356 S.E.2d 407 (1987).

Jurisdiction over Out-of-State Property. — Subsection (a) of this section simply authorizes jurisdiction over the property of the defendant located outside North Carolina once due process concerns are satisfied. Carroll v. Carroll, 88 N.C. App. 453, 363 S.E.2d 872 (1988).

Alternative Procedures for Making Application for Distribution. — Although subsection (a) of this section sets out the procedure for making application for the distribution of property, it is not the only recognized way for married people to dispose of their marital property. An alternative is found in § 50-20(d). Hendrix v. Hendrix, 67 N.C. App. 354, 313 S.E.2d 25 (1984).

Pleadings. — A plaintiff in a divorce action may admit to a claim for equitable distribution in a reply, and join in the claims for an equitable distribution of the marital property through a reply pleading. The defendant is precluded, by principles of equitable estoppel, from defeating plaintiff's right to equitable distribution by submitting to a voluntary dismissal of his counterclaim. Hunt v. Hunt, 117 N.C. App. 280, 450 S.E.2d 558 (1994).

Equitable distribution reflects the idea that marriage is a partnership enterprise to which both spouses make vital contributions and which entitles the homemaker spouse to a share of the property acquired during the relationship. White v. White, 312 N.C. 770, 324 S.E.2d 829 (1985).

Equitable distribution is not automatic. A party seeking equitable distribution must specifically apply for it, either by way of cross-action in an action brought for absolute divorce or as a separate action. Hagler v. Hagler, 319 N.C. 287, 354 S.E.2d 228 (1987).

Trial Court Must Make Written Findings. — When determining equitable distribution, the trial court must make written findings characterizing postseparation appreciation of marital assets as either passive or active. Smith v. Smith, 336 N.C. 575, 444 S.E.2d 420 (1994).

Formerly No Authority to Enter Order of Equitable Distribution Preceding Divorce. — Prior to the 1987 amendment to this section, although the trial court had jurisdiction over the parties and their property, it was without authority to enter an order of equitable distribution of the marital property preceding an absolute divorce, notwithstanding the parties' consent. McKenzie v. McKenzie, 75 N.C. App. 188, 330 S.E.2d 270 (1985).

Evidence of Divorce Required. — An order of equitable distribution must be supported by a finding of fact, based on competent evidence, that a judgment of absolute divorce has been entered by a court of competent jurisdiction. McIver v. McIver, 77 N.C. App. 232, 334 S.E.2d 454 (1985). But see now subsection (a) of this section.

Separate Trials for Divorce and Distribution. — The trial court's order granting the plaintiff's motion for separate trials of his claim for absolute divorce and the defendant's claim for equitable distribution of the marital property did not constitute an abuse of discretion, nor did it prejudice the defendant's substantial rights. Sharp v. Sharp, 84 N.C. App. 128, 351 S.E.2d 799 (1987).

When Equitable Distribution Becomes Operative. — By the terms of subsection (a), equitable distribution becomes operative only after a husband and wife have separated and a claim for

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 533 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Hackney
)
Sen.)

moves to amend the bill on page 4, line 23

( ) WHICH CHANGES THE TITLE

by inserting before the words "divisible property" the words "net value of"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **April 8, 1997 10:00 A.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Barry Burger	DHR - Child Support Enforcement
Charles W. Coltrane	NCBA - Family Law Council
Gerard M Chapman	" " " "
Wade Harmon	N.C.B.A Family Law Section
[illegible]	NCBA
Lilc Scogin	NCBA
Polly Williams	NC Equity
[illegible]	NCHA
Evelyn Hasselmann	NCHA
Cat Yancey	SCSL

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 533
Proposed Committee Substitute H533-PCS2239

Short Title: Equit. Distr./Divisible Prop. (Public)

Sponsors:

Referred to:

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO ADD "DIVISIBLE PROPERTY" AS A CATEGORY OF PROPERTY SUBJECT TO EQUITABLE DISTRIBUTION, TO CREATE A REBUTTABLE PRESUMPTION THAT AN IN KIND DISTRIBUTION OF PROPERTY IS EQUITABLE, TO ENCOURAGE INTERIM DISTRIBUTION OF PROPERTY OR DEBT, AND TO ALLOW CERTAIN EVIDENCE OF THE VALUE OF MARITAL PROPERTY, AS RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-20 reads as rewritten:

"**§ 50-20. Distribution by court of marital property upon divorce.**

(a) Upon application of a party, the court shall determine what is the marital property and divisible property and shall provide for an equitable distribution of the marital property and divisible property between the parties in accordance with the provisions of this section.

(b) For purposes of this section:

(1) 'Marital property' means all real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the parties, and presently owned, except property determined to be separate property or divisible property in accordance with subdivision (2) or (4) of this subsection. Marital property includes all vested pension, retirement, and other deferred compensation rights, including

military pensions eligible under the federal Uniformed Services Former Spouses' Protection Act. It is presumed that all property acquired after the date of marriage and before the date of separation is marital property except property which is separate property under subdivision (2) of this subsection. This presumption may be rebutted by the greater weight of the evidence.

(2) 'Separate property' means all real and personal property acquired by a spouse before marriage or acquired by a spouse by bequest, devise, descent, or gift during the course of the marriage. However, property acquired by gift from the other spouse during the course of the marriage shall be considered separate property only if such an intention is stated in the conveyance. Property acquired in exchange for separate property shall remain separate property regardless of whether the title is in the name of the husband or wife or both and shall not be considered to be marital property unless a contrary intention is expressly stated in the conveyance. The increase in value of separate property and the income derived from separate property shall be considered separate property. All professional licenses and business licenses which would terminate on transfer shall be considered separate property. The expectation of nonvested pension, retirement, or other deferred compensation rights shall be considered separate property.

(3) 'Distributive award' means payments that are payable either in a lump sum or over a period of time in fixed amounts, but shall not include alimony payments or other similar payments for support and maintenance which are treated as ordinary income to the recipient under the Internal Revenue Code.

The distributive award of vested pension, retirement, and other deferred compensation benefits may be made payable:

a. As a lump sum by agreement;
b. Over a period of time in fixed amounts by agreement;
c. As a prorated portion of the benefits made to the designated recipient at the time the party against whom the award is made actually begins to receive the benefits; or
d. By awarding a larger portion of other assets to the party not receiving the benefits, and a smaller share of other assets to the party entitled to receive the benefits.

Notwithstanding the foregoing, the court shall not require the administrator of the fund or plan involved to make any payments until the party against whom the award is made actually begins to receive the benefits unless a plan under the Employee Retirement Income Security Act (ERISA) permits earlier distribution. The

award shall be determined using the proportion of time the marriage existed, (up to the date of separation of the parties), simultaneously with the employment which earned the vested pension, retirement, or deferred compensation benefit, to the total amount of time of employment. The award shall be based on the vested accrued benefit, as provided by the plan or fund, calculated as of the date of separation, and shall not include contributions, years of service or compensation which may accrue after the date of separation. The award shall include gains and losses on the prorated portion of the benefit vested at the date of separation. No award shall exceed fifty percent (50%) of the benefits the person against whom the award is made is entitled to receive as vested pension, retirement, or other deferred compensation benefits, except that an award may exceed fifty percent (50%) if (i) other assets subject to equitable distribution are insufficient; or (ii) there is difficulty in distributing any asset or any interest in a business, corporation, or profession; or (iii) it is economically desirable for one party to retain an asset or interest that is intact and free from any claim or interference by the other party; or (iv) more than one pension or retirement system or deferred compensation plan or fund is involved, but the benefits awarded may not exceed fifty percent (50%) of the total benefits of all the plans added together; or (v) both parties consent. In no event shall an award exceed fifty percent (50%) if a plan prohibits an award in excess of fifty percent (50%).

In the event the person receiving the award dies, the unpaid balance, if any, of the award shall pass to the beneficiaries of the recipient by will, if any, or by intestate succession, or by beneficiary designation with the plan consistent with the terms of the plan unless the plan prohibits such a designation. In the event the person against whom the award is made dies, the award to the recipient shall remain payable to the extent permitted by the pension or retirement system or deferred compensation plan or fund involved.

The Court may require distribution of the award by means of a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code of 1986. To facilitate the calculation and payment of distributive awards, the administrator of the system, plan or fund may be ordered to certify the total contributions, years of service, and pension, retirement, or other deferred compensation benefits payable.

The provisions of this section and G.S. 50-21 shall apply to all pension, retirement, and other deferred compensation plans and funds, including military pensions eligible under the Federal

Uniform Services Former Spouses Protection Act, and including funds administered by the State pursuant to Articles 84 through 88 of Chapter 58 and Chapters 120, 127A, 128, 135, 143, 143B, and 147 of the General Statutes, to the extent of a member's accrued benefit at the date of separation, as determined by the court.

(4) 'Divisible property' means all real and personal property as set forth below:

a. All appreciation and diminution in value of marital property and divisible property of the parties occurring after the date of separation and prior to the date of distribution, except that appreciation or diminution in value which is the result of postseparation actions or activities of a spouse shall not be treated as divisible property.

b. All property, property rights, or any portion thereof received after the date of separation but before the date of distribution that were acquired as a result of the efforts of either spouse during the marriage and before the date of separation, including, but not limited to, commissions, bonuses, and contractual rights.

c. Passive income from marital property received after the date of separation, including, but not limited to, interest and dividends.

d. Increases in marital debt and financing charges and interest related to marital debt.

(c) There shall be an equal division by using net value of marital property and net value of divisible property unless the court determines that an equal division is not equitable. If the court determines that an equal division is not equitable, the court shall divide the marital property and divisible property equitably. Factors the court shall consider under this subsection are as follows:

(1) The income, property, and liabilities of each party at the time the division of property is to become effective;

(2) Any obligation for support arising out of a prior marriage;

(3) The duration of the marriage and the age and physical and mental health of both parties;

(4) The need of a parent with custody of a child or children of the marriage to occupy or own the marital residence and to use or own its household effects;

(5) The expectation of pension, retirement, or other deferred compensation rights, which is separate property;

(6) Any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services, or lack thereof, as a spouse, parent, wage earner or homemaker;

(7) Any direct or indirect contribution made by one spouse to help educate or develop the career potential of the other spouse;
(8) Any direct contribution to an increase in value of separate property which occurs during the course of the marriage;
(9) The liquid or nonliquid character of all marital property;
(10) The difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest, intact and free from any claim or interference by the other party;
(11) The tax consequences to each party;
(11a) Acts of either party to maintain, preserve, develop, or expand; or to waste, neglect, devalue or convert such marital property, during the period after separation of the parties and before the time of distribution; and
(12) Any other factor which the court finds to be just and proper.

(c1) Notwithstanding any other provision of law, a second or subsequent spouse acquires no interest in the marital property of his or her spouse from a former marriage until a final determination of equitable distribution is made in the marital property of the spouse's former marriage.

(d) Before, during or after marriage the parties may by written agreement, duly executed and acknowledged in accordance with the provisions of G.S. 52-10 and 52-10.1, or by a written agreement valid in the jurisdiction where executed, provide for distribution of the marital property in a manner deemed by the parties to be equitable and the agreement shall be binding on the parties.

(e) Subject to the presumption of subsection (c) of this section that an equal division is equitable, it shall be presumed in every action that an in kind distribution of marital or divisible property is equitable. This presumption may be rebutted by the greater weight of the evidence. In any action in which the ~~court determines that an equitable distribution of all or portions of the marital property in kind would be impractical,~~ presumption is rebutted, the court in lieu of ~~such~~ in kind distribution shall provide for a distributive award in order to achieve equity between the parties. The court may provide for a distributive award to facilitate, effectuate or supplement a distribution of marital or divisible property. The court may provide that any distributive award payable over a period of time be secured by a lien on specific property.

(f) The court shall provide for an equitable distribution without regard to alimony for either party or support of the children of both parties. After the determination of an equitable distribution, the court, upon request of either party, shall consider whether an order for alimony or child support should be modified or vacated pursuant to G.S. 50-16.9 or 50-13.7.

(g) If the court orders the transfer of real or personal property or an interest therein, the court may also enter an order which shall transfer title, as provided in G.S. 1A-1, Rule 70 and G.S. 1-228.

(h) If either party claims that any real property is marital property, that party may cause a notice of lis pendens to be recorded pursuant to Article 11 of Chapter 1 of the General Statutes. Any person whose conveyance or encumbrance is recorded or whose interest is obtained by descent, prior to the filing of the lis pendens, shall take the real property free of any claim resulting from the equitable distribution proceeding. The court may cancel the notice of lis pendens upon substitution of a bond with surety in an amount determined by the court to be sufficient provided the court finds that the claim of the spouse against property subject to the notice of lis pendens can be satisfied by money damages.

(i) Upon filing an action or motion in the cause requesting an equitable distribution or alleging that an equitable distribution will be requested when it is timely to do so, a party may seek injunctive relief pursuant to G.S. 1A-1, Rule 65 and Chapter 1, Article 37, to prevent the disappearance, waste or conversion of property alleged to be marital property or separate property of the party seeking relief. The court, in lieu of granting an injunction, may require a bond or other assurance of sufficient amount to protect the interest of the other spouse in the marital or separate property. Upon application by the owner of separate property which was removed from the marital home or possession of its owner by the other spouse, the court may enter an order for reasonable counsel fees and costs of court incurred to regain its possession, but such fees shall not exceed the fair market value of the separate property at the time it was removed.

(i1) ~~For good cause shown, including, but not limited to, providing for the subsistence of a spouse while an action is pending,~~ Unless good cause is shown that there should not be an interim distribution, the ~~Court~~ court may, at any time after an action for equitable distribution has been filed and prior to the final judgment of equitable distribution, enter orders declaring what is separate property and may also enter orders dividing part of the marital ~~property~~ property, divisible property or debt, or marital debt, between the parties. The partial distribution may provide for a distributive ~~award.~~ award and may also provide for a distribution of marital property, marital debt, divisible property, or divisible debt. Any such orders entered shall be taken into consideration at trial and proper credit given.

Hearings held pursuant to this subsection may be held at sessions arranged by the chief district court judge pursuant to G.S. 7A-146 and, if held at such sessions, shall not be subject to the reporting requirements of G.S. 7A-198.

(j) In any order for the distribution of property made pursuant to this section, the court shall make written findings of fact that support the determination that the marital property has been equitably divided.

(k) The rights of the parties to an equitable distribution of marital property are a species of common ownership, the rights of the respective parties vesting at the time of the parties' separation."

Section 2. G.S. 50-21(b) reads as rewritten:

"(b) For purposes of equitable distribution, marital property shall be valued as of the date of the separation of the ~~parties.~~ parties, and evidence of preseparation and postseparation occurrences or values is competent as corroborative evidence of the

value of marital property as of the date of the separation of the parties. Divisible property and divisible debt shall be valued as of the date of distribution."

Section 3. The amendments to G.S. 50-20(i1) made by this act become effective October 1, 1997, and apply to motions for interim distribution filed on or after that date. The remainder of this act becomes effective October 1, 1997, and applies to actions for equitable distribution filed on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 533 A BILL TO BE ENTITLED AN ACT TO ADD "DIVISIBLE PROPERTY" AS A CATEGORY OF PROPERTY SUBJECT TO EQUITABLE DISTRIBUTION, TO CREATE A REBUTTABLE PRESUMPTION THAT AN IN KIND DISTRIBUTION OF PROPERTY IS EQUITABLE, TO ENCOURAGE INTERIM DISTRIBUTION OF PROPERTY OR DEBT, AND TO ALLOW CERTAIN EVIDENCE OF THE VALUE OF MARITAL PROPERTY, AS RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH CAROLINA BAR ASSOCIATION.

☐ 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 534

Short Title: Support Orders Enforcement. (Public)

Sponsors: Representatives Hackney; Russell, Baddour, and Alexander.

Referred to: Judiciary II.

March 18, 1997

A BILL TO BE ENTITLED

AN ACT REGARDING THE CONTRACTUAL OBLIGATIONS OF SPOUSES, THE TRANSFER OF PROPERTY AND INCOME WITHHOLDING TO ENFORCE SUPPORT ORDERS, AND THE AWARDING OF ALIMONY, AS RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 52-2 reads as rewritten:

"**§ 52-2. Capacity to contract.**

(a) Subject to the provisions of G.S. 52-10 or 52-10.1, G.S. 39-7 and other regulations and limitations now or hereafter prescribed by the General Assembly, every married person is authorized to contract and deal so as to affect his or her real and personal property in the same manner and with the same effect as if he or she were unmarried.

(b) Except as otherwise provided by this section or by other State law, a spouse shall not be responsible for the other spouse's contract liability to a third party, whether the liability arose before or after the marriage. The doctrine of necessaries as it existed at common law, however, shall apply and shall apply equally to both spouses, except as provided in subsection (c) of this section, but shall in no event create any liability between the spouses as to each other.

(c) The doctrine of necessaries shall not apply to either spouse when the spouses are living separate and apart with the intent on behalf of one of them to cease marital cohabitation, unless one of the following applies:

(1) The nondebtor spouse has willfully created the appearance of not being separated and has requested that the creditor extend credit to the estranged debtor spouse; or

(2) The debt is for medical expenses and the nondebtor spouse carries medical insurance on the debtor spouse, provided that the nondebtor spouse shall be liable only for the debt that is or will be discharged under the terms of the medical insurance."

Section 2. G.S. 50-13.4(e) reads as rewritten:

"(e) Payment for the support of a minor child shall be paid by lump sum payment, periodic payments, or by transfer of title or possession of personal property of any interest therein, or a security interest in or possession of real property, as the court may order. The court may order the transfer of title to real property in payment of arrearages of child support. In every case in which payment for the support of a minor child is ordered and alimony or postseparation support is also ordered, the order shall separately state and identify each allowance."

Section 3. G.S. 50-16.7(a) reads as rewritten:

"(a) Alimony or postseparation support shall be paid by lump sum payment, periodic payments, income withholding, or by transfer of title or possession of personal property or any interest therein, or a security interest in or possession of real property, as the court may order. The court may order the transfer of title to real property in payment of lump-sum payments of alimony or postseparation support or in payment of arrearages of alimony or postseparation support. In every case in which either alimony or postseparation support is allowed and provision is also made for support of minor children, the order shall separately state and identify each allowance."

Section 4. G.S. 50-16.7 is amended by adding the following new subsection to read:

"(l1) The dependent spouse may apply to the court for an order of income withholding for current or delinquent payments of alimony or postseparation support or for any portion of the payments. If the court orders income withholding, a notice of obligation to withhold shall be served on the payor as required by G.S. 1A-1, Rule 4, Rules of Civil Procedure. Copies of the notice shall be filed with the clerk of court and served upon the supporting spouse by first-class mail."

Section 5. G.S. 110-136.6 is amended by adding the following new subsection to read:

"(b1) When there is an order of income withholding for current or delinquent payments of alimony or postseparation support or for any portion of the payments, the total amount withheld under this Article and under G.S. 50-16.7 shall not exceed the amounts allowed under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. § 1637(b)."

Section 6. G.S. 110-136.8(b) reads as rewritten:

"(b) Payor's responsibilities. A payor who has been properly served with a notice to withhold is required to:

(1) Withhold from the obligor's disposable income and, within 10 days of the date the obligor is paid, send to the clerk of superior court specified in the notice, the amount specified in the notice and the date the amount was withheld, but in no event more than the amount allowed by G.S. 110-136.6; however, if a lesser amount of disposable income is available for any pay period, the payor shall either: (a) compute and send the appropriate amount to the clerk of court, using the percentages as provided in G.S. 110-136.6, or (b) request the initiating party to inform the payor of the proper amount to be withheld for that period;

(2) Continue withholding until further notice from the IV-D agency or the clerk of superior court;

(3) Withhold for child support before withholding pursuant to any other legal process under State law against the same disposable income;

(4) Begin withholding from the first payment due the obligor in the first pay period that occurs 14 days following the date the notice of the obligation to withhold was served on the payor;

(5) Promptly notify the obligee in a IV-D case, or the clerk of superior court in a non-IV-D case, in writing:

a. If there ~~is more than one child support withholding for the obligor;~~ are one or more orders of child support withholding for the obligor;

a1. If there are one or more orders of alimony or postseparation support withholding for the obligor;

b. When the obligor terminates employment or otherwise ceases to be entitled to disposable income from the payor, and provide the obligor's last known address, and the name and address of his new employer, if known;

c. Of the payor's inability to comply with the withholding for any reason; and

(6) Cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income."

Section 7. G.S. 50-16.1A is amended by adding the following new subdivision to read:

"(4a) 'Payor' means any payor, including any federal, State, or local governmental unit, of disposable income to an obligor. When the payor is an employer, payor means employer as defined under 20 U.S.C. § 203(d) of the Fair Labor Standards Act."

Section 8. G.S. 110-129(11) reads as rewritten:

"(11) 'Obligee', in a IV-D case, means the child support enforcement agency, and in a non-IV-D case means the individual to whom a duty of ~~support~~ support, whether child support, alimony, or

postseparation support, is owed or the individual's legal representative."

Section 9. G.S. 110-129(12) reads as rewritten:

"(12) 'Obligor' means the individual who owes a duty to make child support payments or payments of alimony or postseparation support under a court order."

Section 10. G.S. 50-16.3A(b) is amended by adding the following new subdivision to read:

"(16) Income being received by either party that was previously considered by the court in determining the value of a marital asset in an equitable distribution of the parties' marital property."

Section 11. This act becomes effective October 1, 1997. Section 1 of this act applies to contracts entered into and transactions occurring on and after that date.

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April 7, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 534-Support Orders Enforcement (Hackney)

House Bill 534 is a recommendation of the Family Law Section of the North Carolina Bar Association.

Section 1 of the bill amends **G.S. 52-2, Capacity to contract**, to provide that a spouse shall not be responsible for the other spouse's contracts. The bill creates an exception for contracts following within the common law doctrine of necessaries. This doctrine provides that a spouse may be liable to third parties who furnished "necessaries" to the other spouse, i.e. food, shelter, medical care. The bill provides that the doctrine shall not, however, create liability between the spouses as to each other. The bill states that the doctrine does not apply when the spouses are living separate and apart with the intent to cease marital cohabitation unless: (1) the nondebtor spouse has requested that credit be extended to the debtor spouse; or (2) the debt is for medical expenses and the nondebtor spouse carries medical insurance on the debtor spouse. The nondebtor spouse is only liable for the debt covered by insurance.

Section 2 of the bill authorizes the court to order the transfer of title to real property to cover child support arrearages.

Sections 3 through 10 of the bill authorize the use of income withholding for payment of alimony and postseparation support. Section 3 also authorizes the court to transfer title to real property to pay alimony or postseparation support.

Section 10 of the bill provides that, in determining the amount and duration of alimony, the court may consider income being received by either party that was used in determining the value of a marital asset in equitable distribution.

The bill becomes effective October 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§ 50-13.4. (For applicability see note) Action for support of minor child.

(a) Any parent, or any person, agency, organization or institution having custody of a minor child, or bringing an action or proceeding for the custody of such child, or a minor child by his guardian may institute an action for the support of such child as hereinafter provided.

(b) In the absence of pleading and proof that the circumstances otherwise warrant, the father and mother shall be primarily liable for the support of a minor child. In the absence of pleading and proof that the circumstances otherwise warrant, parents of a minor, unemancipated child who is the custodial or noncustodial parent of a child shall share this primary liability for their grandchild's support with the minor parent, the court determining the proper share, until the minor parent reaches the age of 18 or becomes emancipated. If both the parents of the child requiring support were unemancipated minors at the time of the child's conception, the parents of both minor parents share primary liability for their grandchild's support until both minor parents reach the age of 18 or become emancipated. If only one parent of the child requiring support was an unemancipated minor at the time of the child's conception, the parents of both parents are liable for any arrearages in child support owed by the adult or emancipated parent until the other parent reaches the age of 18 or becomes emancipated. In the absence of pleading and proof that the circumstances otherwise warrant, any other person, agency, organization or institution standing in loco parentis shall be secondarily liable for such support. Such other circumstances may include, but shall not be limited to, the relative ability of all the above-mentioned parties to provide support or the inability of one or more of them to provide support, and the needs and estate of the child. The judge may enter an order requiring any one or more of the above-mentioned parties to provide for the support of the child as may be appropriate in the particular case, and if appropriate the court may authorize the application of any separate estate of the child to his support. However, the judge may not order support to be paid by a person who is not the child's parent or an agency, organization or institution standing in loco parentis absent evidence and a finding that such person, agency, organization or institution has voluntarily assumed the obligation of support in writing. The preceding sentence shall not be construed to prevent any court from ordering the support of a child by an agency of the State or county which agency may be responsible under law for such support.

(c) Payments ordered for the support of a minor child shall be in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case.

The court shall determine the amount of child support payments by applying the presumptive guidelines established pursuant to subsection (c1). However, upon request of any party, the Court shall hear evidence, and from the evidence, find the facts relating to the reasonable needs of the child for support and the relative ability of each parent to provide support. If, after considering the evidence,

the Court finds by the greater weight of the evidence that the application of the guidelines would not meet or would exceed the reasonable needs of the child considering the relative ability of each parent to provide support or would be otherwise unjust or inappropriate the Court may vary from the guidelines. If the court orders an amount other than the amount determined by application of the presumptive guidelines, the court shall make findings of fact as to the criteria that justify varying from the guidelines and the basis for the amount ordered.

Payments ordered for the support of a child shall terminate when the child reaches the age of 18 except:

(1) If the child is otherwise emancipated, payments shall terminate at that time;

(2) If the child is still in primary or secondary school when the child reaches age 18, support payments shall continue until the child graduates, otherwise ceases to attend school on a regular basis, fails to make satisfactory academic progress towards graduation, or reaches age 20, whichever comes first, unless the court in its discretion orders that payments cease at age 18 or prior to high school graduation.

In the case of graduation, or attaining age 20, payments shall terminate without order by the court, subject to the right of the party receiving support to show, upon motion and with notice to the opposing party, that the child has not graduated or attained the age of 20.

(c1) Effective July 1, 1990, the Conference of Chief District Judges shall prescribe uniform statewide presumptive guidelines for the computation of child support obligations of each parent as provided in Chapter 50 or elsewhere in the General Statutes and shall develop criteria for determining when, in a particular case, application of the guidelines would be unjust or inappropriate. Prior to May 1, 1990 these guidelines and criteria shall be reported to the General Assembly by the Administrative Office of the Courts by delivering copies to the President Pro Tempore of the Senate and the Speaker of the House of Representatives. The purpose of the guidelines and criteria shall be to ensure that payments ordered for the support of a minor child are in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case. The guidelines shall include a procedure for setting child support, if any, in a joint or shared custody arrangement which shall reflect the other statutory requirements herein.

Periodically, but at least once every four years, the Conference of Chief District Judges shall review the guidelines to determine whether their application results in appropriate child support award amounts. The Conference may modify the guidelines accordingly. The Conference shall give the Department of Human Resources, the Administrative Office of the Courts, and the general public an opportunity to provide the Conference with information relevant to the development and review of the guidelines. Any modifications of the guidelines or criteria shall be reported to the General Assembly by the Administrative Office of the Courts before they become effective by delivering copies to the President Pro Tempore of the Senate and the Speaker of the House of Represen-

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(d) Payments for the support of a
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tatives. The guidelines, when adopted or modified, shall be provided to the Department of Human Resources and the Administrative Office of the Courts, which shall disseminate them to the public through local IV-D offices, clerks of court, and the media.

Until July 1, 1990, the advisory guidelines adopted by the Conference of Chief District Judges pursuant to this subsection as formerly written shall operate as presumptive guidelines and the factors adopted by the Conference of Chief District Judges pursuant to this subsection as formerly written shall constitute criteria for varying from the amount of support determined by the guidelines.

(d) Payments for the support of a minor child shall be ordered to be paid to the person having custody of the child or any other proper person, agency, organization or institution, or to the court, for the benefit of such child.

(d1) For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) shall apply.

(e) Payment for the support of a minor child shall be paid by lump sum payment, periodic payments, or by transfer of title or possession of personal property of any interest therein, or a security interest in or possession of real property, as the court may order. In every case in which payment for the support of a minor child is ordered and alimony or postseparation support is also ordered, the order shall separately state and identify each allowance.

(f) Remedies for enforcement of support of minor children shall be available as herein provided.

(1) The court may require the person ordered to make payments for the support of a minor child to secure the same by means of a bond, mortgage or deed of trust, or any other means ordinarily used to secure an obligation to pay money or transfer property, or by requiring the execution of an assignment of wages, salary or other income due or to become due.

(2) If the court requires the transfer of real or personal property or an interest therein as provided in subsection (e) as a part of an order for payment of support for a minor child, or for the securing thereof, the court may also enter an order which shall transfer title as provided in G.S. 1A-1, Rule 70 and G.S. 1-228.

(3) The remedy of arrest and bail, as provided in Article 34 of Chapter 1 of the General Statutes, shall be available in actions for child-support payments as in other cases.

(4) The remedies of attachment and garnishment, as provided in Article 35 of Chapter 1 of the General Statutes, shall be available in an action for child-support payments as in other cases, and for such purposes the child or person bringing an action for child support shall be deemed a creditor of the defendant. Additionally, in accordance with the provisions of G.S. 110-136, a continuing wage garnishment proceeding for wages due or to become due may be instituted by motion in the original child support proceeding or by independent action through the filing of a petition.

(5) The remedy of injunction, as provided in Article 37 of Chapter 1 of the General Statutes and G.S. 1A-1, Rule 65, shall be available in actions for child support as in other cases.

(6) Receivers, as provided in Article 38 of Chapter 1 of the General Statutes, may be appointed in action for child support as in other cases.

(7) A minor child or other person for whose benefit an order for the payment of child support has been entered shall be a creditor within the meaning of Article 3 of Chapter 39 of the General Statutes pertaining to fraudulent conveyances.

(8) A judgment for child support shall not be a lien against real property unless the judgment expressly so provides, sets out the amount of the lien in a sum certain, and adequately describes the real property affected; but past due periodic payments may by motion in the cause or by a separate action be reduced to judgment which shall be a lien as other judgments.

(9) An order for the periodic payments of child support is enforceable by proceedings for civil contempt, and its disobedience may be punished by proceedings for criminal contempt, as provided in Chapter 5A of the General Statutes.

Notwithstanding the provisions of G.S. 1-294, an order for the payment of child support which has been appealed to the appellate division is enforceable in the trial court by proceedings for civil contempt during the pendency of the appeal. Upon motion of an aggrieved party, the court of the appellate division in which the appeal is pending may stay any order for civil contempt entered for child support until the appeal is decided, if justice requires.

(10) The remedies provided by Chapter 1 of the General Statutes, Article 28, Execution; Article 29B, Execution Sales; and Article 31, Supplemental Proceedings, shall be available for the enforcement of judgments for child support as in other cases, but amounts so payable shall not constitute a debt as to which property is exempt from execution as provided in Article 16 of Chapter 1C of the General Statutes.

(11) The specific enumeration of remedies in this section shall not constitute a bar to remedies otherwise available. (1967, c. 1153, s. 2; 1969, c. 895, s. 17; 1975, c. 814; 1977, c. 711, s. 26; 1979, c. 386, s. 10; 1981, c. 472; c. 613, ss. 1, 3; 1983, c. 54; c. 530, s. 1; 1985, c. 689, s. 17; 1985 (Reg. Sess., 1986), c. 1016; 1989, c. 529, ss. 1, 2; 1989 (Reg. Sess., 1990), c. 1067, s. 2; 1993, c. 335, s. 1; c. 517, s. 5; 1995, c. 319, s. 9; c. 518, s. 1.)

Local Modification. — Person: 1967, c. 848, s. 2.

Cross References. — As to actions for custody and support, see also § 50-13.5 and notes thereunder. As to the maintenance of certain actions as independent actions, see § 50-19. For the North Carolina Child Support Guidelines, effective August 1, 1991, see the Annotated Rules of North Carolina.

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990), c. 1067, s. 3 provided that prior to August 1, 1991, the Conference of Chief District Judges should review and make applicable revisions to the presumptive child support guidelines which became effective July 1, 1990. It further provided that the purpose for this review was to ensure that payments ordered were sufficient to meet the reasonable needs of the child, having due regard for relevant factors, and that the conference should give the Department of Human Resources, the Administrative Office of the Courts, and the general public an opportunity to comment on the new guidelines and any proposed changes, and that the Conference should

alimony pendente lite and for reasonable counsel fees, as provided by former § 50-15. Brown v. Brown, 205 N.C. 64, 169 S.E. 818 (1933).

However, resumption of marital relations rescinds deed of separation. Williams v. Williams, 261 N.C. 48, 134 S.E.2d 227 (1964).

Discontinuance of Payments Under Separation Agreement. — Where, by an agreement for a separation between husband and wife, the former agreed to pay a certain monthly allowance, and the husband, after paying several installments, discontinued the payments, he could not set up the agreement in bar of her action for support under this section, even though he discontinued the payments because she demanded that the allowance be increased. Cram v. Cram, 116 N.C. 288, 21 S.E. 197 (1895).

Election to Seek Alimony Rather Than Damages for Breach of Contract to Support. — When a wife, in an action for alimony without divorce, elects to seek alimony rather than damages for the breach of the contract to support her, she is only entitled to such an award as would be proper if no contract had been signed. If there has been a partial performance, she must account for the net benefits, if any, which she may have received. Wilson v. Wilson, 261 N.C. 40, 134 S.E.2d 240 (1964).

Attempt to Set Aside Settlement. — The eminence, experience, and character of counsel who represented the plaintiff in procuring a property settlement would bear directly on plaintiff's subsequent attempt to set it aside as fraudulent. Van Every v. Van Every, 265 N.C. 506, 144 S.E.2d 603 (1965), decided under former § 50-16.

Suit Held Not Barred by Separation Agreement. — Jurisdiction of the court invoked under former § 50-16 was not barred by separation agreement pleaded, where wife sued for alimony and support without divorce on grounds of specific acts of cruelty by husband and declared intention to sue for divorce in two years. Butler v. Butler, 226 N.C. 594, 39 S.E.2d 745 (1946).

Setting Out Separation Agreement in Record on Appeal. — Where defendant resisted his wife's application for alimony without divorce under former § 50-16, upon the ground that there was still in effect a valid contract of separation which they had both executed, and appealed from an adverse decision of the trial judge hearing the matter, the record on appeal should have set out the written contract of separation so that the Supreme Court could determine whether it was reasonable, just and fair to the wife, and whether in taking her acknowledgment the officer had properly certified that it was not unreasonable or injurious to her, as the statutes then required. Moore v. Moore, 185 N.C. 332, 117 S.E. 12 (1923).

Post-Separation Failure to Provide Necessary Subsistence. — Absent a valid separation agreement waiving all alimony rights under subsection (b) of this section, post-separation failure to provide a dependent-spouse with necessary subsistence gives rise to an action for alimony. Brown v. Brown, 104 N.C. App. 547, 410 S.E.2d 223 (1991), cert. denied, 331 N.C. 383, 417 S.E.2d 789 (1992).

§ 50-16.7. (For applicability see note) How alimony and postseparation support paid; enforcement of decree.

(a) Alimony or postseparation support shall be paid by lump sum payment, periodic payments, or by transfer of title or possession of personal property or any interest therein, or a security interest in or possession of real property, as the court may order. In every case in which either alimony or postseparation support is allowed and provision is also made for support of minor children, the order shall separately state and identify each allowance.

(b) The court may require the supporting spouse to secure the payment of alimony or postseparation support so ordered by means of a bond, mortgage, or deed of trust, or any other means ordinarily used to secure an obligation to pay money or transfer property, or by requiring the supporting spouse to execute an assignment of wages, salary, or other income due or to become due.

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(c) If the court requires the transfer of real or personal property or an interest therein as a part of an order for alimony or postseparation support as provided in subsection (a) or for the securing thereof, the court may also enter an order which shall transfer title, as provided in G.S. 1A-1, Rule 70 and G.S. 1-228.

(d) The remedy of arrest and bail, as provided in Article 34 of Chapter 1 of the General Statutes, shall be available in actions for alimony or postseparation support as in other cases.

(e) The remedies of attachment and garnishment, as provided in Article 35 of Chapter 1 and Article 9 of Chapter 110 of the General Statutes, shall be available in actions for alimony or postseparation support as in other cases, and for such purposes the dependent spouse shall be deemed a creditor of the supporting spouse.

(f) The remedy of injunction, as provided in Article 37 of Chapter 1 of the General Statutes and G.S. 1A-1, Rule 65, shall be available in actions for alimony or postseparation support as in other cases.

(g) Receivers, as provided in Article 38 of Chapter 1 of the General Statutes, may be appointed in actions for alimony or postseparation support as in other cases.

(h) A dependent spouse for whose benefit an order for the payment of alimony or postseparation support has been entered shall be a creditor within the meaning of Article 3 of Chapter 39 of the General Statutes pertaining to fraudulent conveyances.

(i) A judgment for alimony or postseparation support obtained in an action therefor shall not be a lien against real property unless the judgment expressly so provides, sets out the amount of the lien in a sum certain, and adequately describes the real property affected; but past-due periodic payments may by motion in the cause or by a separate action be reduced to judgment which shall be a lien as other judgments.

(j) Any order for the payment of alimony or postseparation support is enforceable by proceedings for civil contempt, and its disobedience may be punished by proceedings for criminal contempt, as provided in Chapter 5A of the General Statutes.

Notwithstanding the provisions of G.S. 1-294 or G.S. 1-289, an order for the periodic payment of alimony that has been appealed to the appellate division is enforceable in the trial court by proceedings for civil contempt during the pendency of the appeal. Upon motion of an aggrieved party, the court of the appellate division in which the appeal is pending may stay any order for civil contempt entered for alimony until the appeal is decided if justice requires.

(k) The remedies provided by Chapter 1 of the General Statutes Article 28, Execution; Article 29B, Execution Sales; and Article 31, Supplemental Proceedings, shall be available for the enforcement of judgments for alimony and postseparation support as in other cases, but amounts so payable shall not constitute a debt as to which property is exempt from execution as provided in Article 16 of Chapter 1C of the General Statutes.

(*l*) The specific enumeration of remedies in this section shall not constitute a bar to remedies otherwise available. (1967, c. 1152, s. 2; 1969, c. 541, s. 5; c. 895, s. 18; 1977, c. 711, s. 26; 1985, c. 482, s. 1; c. 689, s. 18; 1995 c. 319, s. 5.)

Local Modification. — Person: 1967, c. 848, s. 2.

Editor's Note. — As for garnishment of government employee benefits, see 42 U.S.C. 659 and 10 U.S.C. 1408.

Session Laws 1995, c. 319, which amended this section, in s. 12 provides that this act applies to civil actions filed

If the obligor fails to respond or appear, the court shall hear evidence and enter an order as provided herein.

(c1) Immediate income withholding. In non-IV-D cases in which a child support order is initially entered on or after January 1, 1994, an obligor is subject to income withholding immediately upon entry of the order, unless either of the following applies:

a. One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding.

b. A written agreement is reached between the parties that provides for an alternative arrangement.

The term "good cause" as used in this subsection includes a reasonable and workable plan for consistent and timely payments by some means other than income withholding. In considering whether a plan is reasonable, the court may consider the obligor's employment history and record of meeting financial obligations in a timely manner.

In entering an order for immediate income withholding under this subsection, the court shall follow the requirements and procedures as specified in other sections of this Article, including amount to be withheld, multiple withholdings, notice to payor, and termination of withholding.

(d) Notice to payor and obligor. If an order for income withholding is entered, a notice of obligation to withhold shall be served on the payor as required by G.S. 1A-1, Rule 4, Rules of Civil Procedure. Copies of such notice shall be filed with the clerk of court and served upon the obligor by first class mail.

(e) Modification of withholding. When an order for withholding has been entered under this section, any party may file a motion seeking modification of the withholding based on changed circumstances. The clerk or the court on its own motion may initiate a hearing for modification when it appears that modification of the withholding is required or appropriate. (1985 (Reg. Sess., 1986), c. 949, s. 2; 1987, c. 60; 1989, c. 601, s. 4; 1993, c. 517, s. 2.)

Effect of Amendments. — The 1993 amendment, effective January 1, 1994, and applicable to all orders entered on or after that date, added subsection (c1).

CASE NOTES

It was not error for a trial court to enter an order to withhold plaintiff's wages to collect child support arrearages that had been reduced to judgment. Griffin v. Griffin, 103 N.C. App. 65, 404 S.E.2d 478 (1991).

Where Illinois judgment incorporating parties' separation agreement was never registered in North Carolina and remained a valid and fully enforceable judgment of another state entitled to enforcement according to its terms in this State, the trial judge erred in not extending full faith and credit to the judgment by refusing to enforce the automatic adjustment provisions thereof, allowing defendant a credit against his child support obligation, and refusing to award pre-judgment interest to plaintiff. Glatz v. Glatz, 98 N.C. App. 324, 390 S.E.2d 763 (1990).

§ 110-136.6. Amount to be withheld.

(a) Computation of amount. When income withholding is implemented pursuant to this Article, the amount to be withheld shall include:

(1) An amount sufficient to pay current child support; and
(2) An additional amount toward liquidation of arrearages; and
(3) A processing fee of two dollars ($2.00) to cover the cost of withholding, to be retained by the payor for each withholding unless waived by the payor.

The amount withheld may also include court costs and attorneys fees as may be awarded by the court in non-IV-D cases and as may be awarded by the court in IV-D cases pursuant to G.S. 110-130.1.

(b) Limits on amount withheld. Withholding for current support, arrearages, processing fees, court costs, and attorneys fees shall not exceed forty percent (40%) of the obligor's disposable income for one pay period from the payor when there is one order of withholding. The sum of multiple withholdings, for current support, arrearages, processing fees, court costs, and attorneys fees shall not exceed:

(1) Forty-five percent (45%) of disposable income for one pay period from the payor in the case of an obligor who is supporting his spouse or other dependent children; or
(2) Fifty percent (50%) of disposable income for one pay period from the payor in the case of an obligor who is not supporting a spouse or other dependent children.

(c) Contents of order and notice. An order or advance notice for withholding and any notice to a payor of his obligation to withhold shall state a specific monetary amount to be withheld and the amount of disposable income from the applicable payor on which the amount to be withheld was determined. The notice shall clearly indicate that in no event shall the amount withheld exceed the appropriate percentage of disposable income paid by a payor as provided in subsection (b). (1985 (Reg. Sess., 1986), c. 949, s. 2.)

CASE NOTES

Assertion of Claim for Costs and Attorney's Fees. — The language in subsection (a) of this section allowing court costs and attorney's fees to be included in the amount withheld by the court clearly contemplates that such claims should be asserted prior to the entry of the withholding order. Therefore, the trial judge had no authority to allow plaintiff's motion for an award of attorney's fees where such motion was filed three months after the entry of the income withholding order. Glatz v. Glatz, 98 N.C. App. 324, 390 S.E.2d 763 (1990).

§ 110-136.7. Multiple withholding.

When an obligor is subject to more than one withholding for child support, withholding for current child support shall have priority over past-due support. Where two or more orders for current support exist, each family shall receive a pro rata share of the total amount withheld based on the respective child support orders being enforced. (1985 (Reg. Sess., 1986), c. 949, s. 2.)

§ 110-136.8. Notice to payor; payor's responsibilities.

(a) Contents of notice. Notice to a payor of his obligation to withhold shall include information regarding the payor's rights and responsibilities, the amount of disposable income attributable to that payor on which that withholding is based, the penalties under this section, and the maximum percentages of disposable income that may be withheld as provided in G.S. 110-136.6.

(1) An amount sufficient to pay current child support; and
(2) An additional amount toward liquidation of arrearages; and
(3) A processing fee of two dollars ($2.00) to cover the cost of withholding, to be retained by the payor for each withholding unless waived by the payor.

The amount withheld may also include court costs and attorneys fees as may be awarded by the court in non-IV-D cases and as may be awarded by the court in IV-D cases pursuant to G.S. 110-130.1.

(b) Limits on amount withheld. Withholding for current support, arrearages, processing fees, court costs, and attorneys fees shall not exceed forty percent (40%) of the obligor's disposable income for one pay period from the payor when there is one order of withholding. The sum of multiple withholdings, for current support, arrearages, processing fees, court costs, and attorneys fees shall not exceed:

(1) Forty-five percent (45%) of disposable income for one pay period from the payor in the case of an obligor who is supporting his spouse or other dependent children; or
(2) Fifty percent (50%) of disposable income for one pay period from the payor in the case of an obligor who is not supporting a spouse or other dependent children.

(c) Contents of order and notice. An order or advance notice for withholding and any notice to a payor of his obligation to withhold shall state a specific monetary amount to be withheld and the amount of disposable income from the applicable payor on which the amount to be withheld was determined. The notice shall clearly indicate that in no event shall the amount withheld exceed the appropriate percentage of disposable income paid by a payor as provided in subsection (b). (1985 (Reg. Sess., 1986), c. 949, s. 2.)

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When an obligor is subject to more than one withholding for child support, withholding for current child support shall have priority over past-due support. Where two or more orders for current support exist, each family shall receive a pro rata share of the total amount withheld based on the respective child support orders being enforced. (1985 (Reg. Sess., 1986), c. 949, s. 2.)

§ 110-136.8. Notice to payor; payor's responsibilities.

(a) Contents of notice. Notice to a payor of his obligation to withhold shall include information regarding the payor's rights and responsibilities, the amount of disposable income attributable to that payor on which that withholding is based, the penalties under this section, and the maximum percentages of disposable income that may be withheld as provided in G.S. 110-136.6.

(b) Payor's responsibilities. A payor who has been properly served with a notice to withhold is required to:

(1) Withhold from the obligor's disposable income and, within 10 days of the date the obligor is paid, send to the clerk of superior court specified in the notice, the amount specified in the notice and the date the amount was withheld, but in no event more than the amount allowed by G.S. 110-136.6; however, if a lesser amount of disposable income is available for any pay period, the payor shall either: (a) compute and send the appropriate amount to the clerk of court, using the percentages as provided in G.S. 110-136.6, or (b) request the initiating party to inform the payor of the proper amount to be withheld for that period;

(2) Continue withholding until further notice from the IV-D agency or the clerk of superior court;

(3) Withhold for child support before withholding pursuant to any other legal process under State law against the same disposable income;

(4) Begin withholding from the first payment due the obligor in the first pay period that occurs 14 days following the date the notice of the obligation to withhold was served on the payor;

(5) Promptly notify the obligee in a IV-D case, or the clerk of superior court in a non-IV-D case, in writing:

a. If there is more than one child support withholding for the obligor;

b. When the obligor terminates employment or otherwise ceases to be entitled to disposable income from the payor, and provide the obligor's last known address, and the name and address of his new employer, if known;

c. Of the payor's inability to comply with the withholding for any reason; and

(6) Cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income.

(c) Change in obligor's employment. If the obligor changes employment within the State when withholding is in effect, the requirement for withholding shall continue, and

(1) In a IV-D case, the IV-D obligee shall make any necessary adjustments to the withholding, notify the obligor and his new employer in accordance with this section, and file a copy of the adjusted withholding with the clerk of superior court;

(2) In a non-IV-D case, the clerk shall serve a notice of obligation to withhold according to the terms of the withholding order on the new employer and on the obligor; if the obligor or payor gives notice that an adjustment to the withholding order, other than the change in payor, is needed, the matter shall be scheduled for hearing before a child support hearing officer or district court judge who shall make any necessary adjustments to the withholding.

(d) The payor may combine amounts withheld from obligors' disposable incomes in a single payment to each clerk of superior court if the payor separately identifies by name and case number the portion of the single payment attributable to each individual obligor and the date that each payment was withheld from the obligor's disposable income.

(e) Prohibited conduct by payor; civil penalty. Notwithstanding any other provision of law, when a court finds, pursuant to a motion in the cause filed by the initiating party joining the payor as a third party defendant, with 30 days notice to answer the motion, that a payor has willfully refused to comply with the provisions of this section, such payor shall be ordered to commence withholding and shall be held liable to the initiating party for any amount which such payor should have withheld, except that such payor shall not be required to vary the normal pay or disbursement cycles in order to comply with these provisions.

A payor shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any obligor solely because of the withholding. When a court finds that a payor has taken any of these actions, the payor shall be liable for a civil penalty to be paid to the county school fund. For a first offense, the civil penalty shall be one hundred dollars ($100.00). For second and third offenses, the civil penalty shall be five hundred dollars ($500.00) and one thousand dollars ($1,000), respectively. Any payor who violates any provision of this paragraph shall be liable in a civil action for reasonable damages suffered by an obligor as a result of the violation, and an obligor discharged or demoted in violation of this paragraph shall be entitled to be reinstated to his former position. The statute of limitations for actions under this subsection shall be one year pursuant to G.S. 1-54.

(f) Any payor who withholds the sum provided in any notice or order to the payor shall not be liable for any penalties under this section. (1985 (Reg. Sess., 1986), c. 949, s. 2; 1987, c. 589, s. 2; 1991, c. 541, ss. 1, 2.)

§ 110-136.9. Payment of withheld funds.

In IV-D cases, when required by federal or State law or regulations or by court order, the clerk of superior court shall transmit payments received from payors to the Department of Human Resources for appropriate distribution. In all other cases, unless a court order requires otherwise, the clerk of superior court shall transmit the payments to the custodial parent. (1985 (Reg. Sess., 1986), c. 949, s. 2.)

§ 110-136.10. Termination of withholding.

A requirement that income be withheld for child support shall promptly terminate as to prospective payments when the payor receives notice from the court or IV-D agency that:

(1) The child support order has expired or become invalid; or
(2) The initiating party, the obligor, and the district court judge agree to termination because there is another adequate means to collect child support or arrearages; or
(3) The whereabouts of the child and obligee are unknown, except that withholding shall not be terminated until all valid arrearages to the State are paid in full. (1985 (Reg. Sess., 1986), c. 949, s. 2.)

Trial court did not err by finding wife's pleadings were insufficient on their face and dismissing her action for alimony pendente lite; plaintiff asserted in her complaint that she was a "dependent spouse," but the only support she offered for this conclusion was evidence of her husband's salary and she did not present any evidence that she needed assistance to subsist during the prosecution or defense of the suit. Shook v. Shook, 95 N.C. App. 578, 383 S.E.2d 405 (1989), cert. denied, 326 N.C. 50, 389 S.E.2d 94 (1990).

Spouse Held Dependent. — Where defendant had not been regularly employed for 18 or 19 years prior to the separation and was completely supported by her husband, and her time was devoted to housework and rearing her children, it was clear from this evidence that plaintiff was a dependent spouse within the purview of subdivision (3) of this section. Hudson v. Hudson, 21 N.C. App. 412, 204 S.E.2d 697 (1974).

Where the evidence was not such as to require the court to find that defendant was capable of earning far greater income than she currently earned and showed that for the last five years of the parties' marriage defendant had earned insufficient income to meet her reasonable needs, there was sufficient evidence to support the court's conclusion that defendant was a dependent spouse, and the court's findings that plaintiff's net monthly income was $1,753 and that his reasonable expenses were $1,242 were sufficient to support the conclusion that plaintiff was a supporting spouse. Beaman v. Beaman, 77 N.C. App. 717, 336 S.E.2d 129 (1985).

Where plaintiff's budget of $2800 per month was both reasonable and commensurate with the standard of living which the couple maintained prior to the date of the separation, plaintiff had no income producing assets, but earned a net income of $1353 per month, and defendant's gross income was nearly four times that of plaintiff, these findings supported trial court's determination that plaintiff was a dependent spouse and that defendant was a supporting spouse. Ellinwood v. Ellinwood, 94 N.C. App. 682, 381 S.E.2d 162 (1989).

V. SUPPORTING SPOUSE.

"Supporting Spouse" Defined. — A "supporting spouse" is a spouse, whether husband or wife, upon whom the other spouse is actually substantially dependent or from whom such other spouse is substantially in need of maintenance and support. A spouse meets the definition if he or she qualifies under either test, which essentially is the same as that applied for "dependent spouse." The primary issue is not the supporting spouse's ability to pay, but whether the spouse seeking alimony is a dependent spouse. Long v. Long, 71 N.C. App. 405, 322 S.E.2d 427 (1984).

Determination that one is a "supporting spouse" within the meaning of subdivision (4) of this section is a consequence of two or more related propositions taken as premises, one being that the relationship of spouse exists, and the other consisting of the finding that one of the three (now two) alternatives in subdivision (4) is a fact. Peoples v. Peoples, 10 N.C. App. 402, 179 S.E.2d 138 (1971).

As to the former presumption in subdivision (4) of this section, prior to its amendment in 1981, that the husband was the "supporting spouse," see Rayle v. Rayle, 20 N.C. App. 594, 202 S.E.2d 286 (1974).

§ 50-16.1A. (For applicability see editor's note) Definitions.

As used in this Chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Alimony" means an order for payment for the support and maintenance of a spouse or former spouse, periodically or in a lump sum, for a specified or for an indefinite term, ordered in an action for divorce, whether absolute or from bed and board, or in an action for alimony without divorce.

(2) "Dependent spouse" means a spouse, whether husband or wife, who is actually substantially dependent upon the other spouse for his or her maintenance and support or is substantially in need of maintenance and support from the other spouse.

(3) "Marital misconduct" means any of the following acts that occur during the marriage and prior to or on the date of separation:
   a. Illicit sexual behavior. For the purpose of this section, illicit sexual behavior means acts of sexual or deviate sexual intercourse, deviate sexual acts, or sexual acts defined in G.S. 14-27.1(4), voluntarily engaged in by a spouse with someone other than the other spouse;
   b. Involuntary separation of the spouses in consequence of a criminal act committed prior to the proceeding in which alimony is sought;
   c. Abandonment of the other spouse;
   d. Malicious turning out-of-doors of the other spouse;
   e. Cruel or barbarous treatment endangering the life of the other spouse;
   f. Indignities rendering the condition of the other spouse intolerable and life burdensome;
   g. Reckless spending of the income of either party, or the destruction, waste, diversion, or concealment of assets;
   h. Excessive use of alcohol or drugs so as to render the condition of the other spouse intolerable and life burdensome;
   i. Willful failure to provide necessary subsistence according to one's means and condition so as to render the condition of the other spouse intolerable and life burdensome.

(4) "Postseparation support" means spousal support to be paid until the earlier of either the date specified in the order of postseparation support, or an order awarding or denying alimony. Postseparation support may be ordered in an action for divorce, whether absolute or from bed and board, for annulment, or for alimony without divorce.

(5) "Supporting spouse" means a spouse, whether husband or wife, upon whom the other spouse is actually substantially dependent for maintenance and support or from whom such spouse is substantially in need of maintenance and support. (1995, c. 319, s. 2.)

Editor's Note. — Session Laws 1995, c. 319, s. 12, provides that this section becomes effective October 1, 1995, is applicable to civil actions filed on or after that date, and is not applicable to pending litigation or future motions in the cause seeking to modify orders or judgments in effect on that date.

§ 50-16.2: (For continued applicability see editor's note) Repealed by Session Laws 1995, c. 319, s. 1, effective October 1, 1995.

Cross References. — As to alimony generally, see § 50-16.3A.

Editor's Note. — Session Laws 1995, c. 319, which repealed this section, in section 12 provides that the act applies to civil motions filed on or after that date, and shall not apply to pending litigation, or to future motions in the cause seeking to modify orders or judgments in effect on October 1, 1995. This section, prior to the repeal by S.L. 1995, c. 319, read as follows: "**Grounds for alimony.** A dependent spouse is entitled to an order for alimony when:

(1) The supporting spouse has committed adultery.

(2) There has been an involuntary separation of the spouses in consequence of a criminal act committed by the supporting spouse

§ 110-129. Definitions.

As used in this Article:

(1) "Court order" means any judgment or order of the courts of this State or of another state.

(2) "Dependent child" means any person under the age of 18 who is not otherwise emancipated, married or a member of the armed forces of the United States, or any person over the age of 18 for whom a court orders that support payments continue as provided in G.S. 50-13.4(c).

(3) "Responsible parent" means the natural or adoptive parent of a dependent child who has the legal duty to support said child and includes the father of a child born out-of-wedlock and the parents of a dependent child who is the custodial or noncustodial parent of the dependent child requiring support. If both the parents of the child requiring support were unemancipated minors at the time of the child's conception, the parents of both minor parents share primary liability for their grandchild's support until both minor parents reach the age of 18 or become emancipated. If only one parent of the child requiring support was an unemancipated minor at the time of the child's conception, the parents of both parents are liable for any arrearages in child support owed by the adult or emancipated parent until the other parent reaches the age of 18 or becomes emancipated.

(4) "Program" means the Child Support Enforcement Program established and administered pursuant to the provisions of this Article and Title IV-D of the Social Security Act.

(5) "Designated representative" means any person or agency designated by a board of county commissioners or the Department of Human Resources to administer a program of child support enforcement for a county or region of the State.

(6) "Disposable income" means any form of periodic payment to an individual, regardless of sources, including but not limited to wages, salary, commission, self-employment income, bonus pay, severance pay, sick pay, incentive pay, vacation pay, compensation as an independent contractor, worker's compensation, unemployment compensation benefits, disability, annuity, survivor's benefits, pension and retirement benefits, interest, dividends, rents, royalties, trust income and other similar payments, which remain after the deduction of amounts for federal, State, and local taxes, Social Security, and involuntary retirement contributions. However, Supplemental Security Income, Aid for Dependent Children, and other public assistance payments shall be excluded from disposable income. For employers, disposable income means "wage" as it is defined by G.S. 95-25.2(16). Unemployment compensation benefits shall be treated as disposable income only for the purposes of income withholding under the provisions of G.S. 110-136.4, and the amount withheld shall not exceed twenty-five percent (25%) of the unemployment compensation benefits.

(7) "IV-D case" means a case in which services have been applied for or are being provided by a child support enforce-

(3) "Marital misconduct" means any of the following acts that occur during the marriage and prior to or on the date of separation:
   a. Illicit sexual behavior. For the purpose of this section, illicit sexual behavior means acts of sexual or deviate sexual intercourse, deviate sexual acts, or sexual acts defined in G.S. 14-27.1(4), voluntarily engaged in by a spouse with someone other than the other spouse;
   b. Involuntary separation of the spouses in consequence of a criminal act committed prior to the proceeding in which alimony is sought;
   c. Abandonment of the other spouse;
   d. Malicious turning out-of-doors of the other spouse;
   e. Cruel or barbarous treatment endangering the life of the other spouse;
   f. Indignities rendering the condition of the other spouse intolerable and life burdensome;
   g. Reckless spending of the income of either party, or the destruction, waste, diversion, or concealment of assets;
   h. Excessive use of alcohol or drugs so as to render the condition of the other spouse intolerable and life burdensome;
   i. Willful failure to provide necessary subsistence according to one's means and condition so as to render the condition of the other spouse intolerable and life burdensome.

(4) "Postseparation support" means spousal support to be paid until the earlier of either the date specified in the order of postseparation support, or an order awarding or denying alimony. Postseparation support may be ordered in an action for divorce, whether absolute or from bed and board, for annulment, or for alimony without divorce.

(5) "Supporting spouse" means a spouse, whether husband or wife, upon whom the other spouse is actually substantially dependent for maintenance and support or from whom such spouse is substantially in need of maintenance and support. (1995, c. 319, s. 2.)

Editor's Note. — Session Laws 1995, c. 319, s. 12, provides that this section becomes effective October 1, 1995, is applicable to civil actions filed on or after that date, and is not applicable to pending litigation or future motions in the cause seeking to modify orders or judgments in effect on that date.

§ 50-16.2: (For continued applicability see editor's note) Repealed by Session Laws 1995, c. 319, s. 1, effective October 1, 1995.

Cross References. — As to alimony generally, see § 50-16.3A.

Editor's Note. — Session Laws 1995, c. 319, which repealed this section, in section 12 provides that the act applies to civil motions filed on or after that date, and shall not apply to pending litigation, or to future motions in the cause seeking to modify orders or judgments in effect on October 1, 1995. This section, prior to the repeal by S.L. 1995, c. 319, read as follows: "**Grounds for alimony.** A dependent spouse is entitled to an order for alimony when:

(1) The supporting spouse has committed adultery.

(2) There has been an involuntary separation of the spouses in consequence of a criminal act committed by the supporting spouse

lies as a matter of right. Little v. Little, 12 N.C. App. 353, 183 S.E.2d 278 (1971).

Scope of Review. — Proper exercise of the trial judge's authority in granting alimony, alimony pendente lite, or counsel fees is a question of law, reviewable on appeal. Rickert v. Rickert, 282 N.C. 373, 193 S.E.2d 79 (1972).

Reviewable Question of Law in Award of Attorneys' Fees. — The facts required by this section and § 50-16.4 must be alleged and proved to support an order for attorneys' fees. Whether these requirements have been met is a question of law that is reviewable on appeal. Hudson v. Hudson, 299 N.C. 465, 263 S.E.2d 719 (1980).

Order denying alimony pendente lite and attorneys' fees is an interlocutory decree from which an immediate appeal does not lie. Wilson v. Wilson, 90 N.C. App. 144, 367 S.E.2d 363 (1988).

Denial of Attorneys' Fees Held Interlocutory. — Denial of attorneys' fees under § 50-16.4 was not a final order of the trial court, where at the time appellant's motion was filed there had been no determination that his client, defendant, was entitled to alimony pendente lite under this section, so that appellant was not yet entitled to attorneys' fees under § 50-16.4, and as appellant could appeal the denial of his motion after final judgment, or could bring a separate lawsuit to collect his fees, no substantial right of appellant was affected by the Court of Appeals' failure to entertain an interlocutory appeal on this issue. Howell v. Howell, 89 N.C. App. 115, 365 S.E.2d 181 (1988).

Weight of Evidence is for Trier of Facts. — While the sufficiency of the findings of fact to support the award is reviewable on appeal, the weight to be accorded the evidence is solely for the trier of the facts. Cornelison v. Cornelison, 47 N.C. App. 91, 266 S.E.2d 707 (1980).

Conclusive Effect of Findings. — If the findings of fact are supported by competent evidence, they are conclusive on appeal, even though the evidence would support contrary findings. Cornelison v. Cornelison, 47 N.C. App. 91, 266 S.E.2d 707 (1980).

Effect of Appeal. — When an order arising from a domestic case is appealed, the cause is taken out of the jurisdiction of the trial court and put into the jurisdiction of the appellate court. Pending the appeal, the trial judge is functus officio and is without authority to act in the matter. Traywick v. Traywick, 31 N.C. App. 363, 229 S.E.2d 220 (1976).

Remand on Appeal. — The district court had jurisdiction to entertain a motion in the cause and to adjudge defendant guilty of contempt for failure to comply with order for alimony pendente lite after the judgment on the merits had been reversed on other grounds, new trial had been ordered and the case had been certified back to the trial court by the Court of Appeals. Traywick v. Traywick, 31 N.C. App. 363, 229 S.E.2d 220 (1976).

§ 50-16.3A. (For applicability see editor's note) Alimony.

(a) Entitlement. — In an action brought pursuant to Chapter 50 of the General Statutes, either party may move for alimony. The court shall award alimony to the dependent spouse upon a finding that one spouse is a dependent spouse, that the other spouse is a supporting spouse, and that an award of alimony is equitable after considering all relevant factors, including those set out in subsection (b) of this section. If the court finds that the dependent spouse participated in an act of illicit sexual behavior, as defined in G.S. 50-16.1A(3)a., during the marriage and prior to or on the date of separation, the court shall not award alimony. If the court finds that the supporting spouse participated in an act of illicit sexual behavior, as defined in G.S. 50-16.1A(3)a., during the marriage and prior to or on the date of separation, then the court shall order that alimony be paid to a dependent spouse. If the court finds that the dependent and the supporting spouse each participated in an act of illicit sexual behavior during the marriage and prior to or on the date of separation, then alimony shall be denied or awarded in the

discretion of the court after consid
Any act of illicit sexual behavio
condoned by the other party sha
The claim for alimony may be
entry of a judgment for equitabl
issues of amount and of whet
supporting spouse may be review
of the equitable distribution clai
(b) Amount and Duration. —
tion in determining the amount,
of alimony. The duration of the a
indefinite term. In determining
of payment of alimony, the court
including:
(1) The marital misconduc
herein shall prevent a
post date-of-separation
ing evidence supportin
conduct occurred durin
separation;
(2) The relative earnings a
(3) The ages and the phys
tions of the spouses;
(4) The amount and source
both spouses, includin
dends, and benefits suc
social security, or othe
(5) The duration of the ma
(6) The contribution by on
increased earning pow
(7) The extent to which t
cial obligations of a s
serving as the custod
(8) The standard of livin
marriage;
(9) The relative educati
sary to acquire suffic
spouse seeking alimo
her reasonable econo
(10) The relative assets
relative debt service
legal obligations of s
(11) The property brough
(12) The contribution of
(13) The relative needs
(14) The federal, State
alimony award;
(15) Any other factor rel
the parties that the
(c) Findings of Fact. — The
award or denial of alimony a
its amount, duration, and m
is a motion before the court f
pleadings, or other motion f
not require special findings
finding of fact on each of the
if evidence is offered on tha

ment agency established pursuant to Title IV-D of the Social Security Act as amended and this Article.

(8) "Non-IV-D case" means any case, other than a IV-D case, in which child support is legally obligated to be paid.

(9) "Initiating party" means the party, the attorney for a party, a child support enforcement agency, or the clerk of superior court who initiates an action, proceeding, or procedure as allowed or required by law for the establishment or enforcement of a child support obligation.

(10) "Mistake of fact" means that the obligor:

(a) Is not in arrears in an amount equal to the support payable for one month; or

(b) Did not request that withholding begin, if withholding is pursuant to a purported request by the obligor for withholding; or

(c) Is not the person subject to the court order of support for the child named in the advance notice of withholding; or

(d) Does not owe the amount of current support or arrearages specified in the advance notice or motion of withholding; or

(e) Has a rate of withholding which exceeds the amount of support specified in the court order.

(11) "Obligee", in a IV-D case, means the child support enforcement agency, and in a non-IV-D case means the individual to whom a duty of support is owed or the individual's legal representative.

(12) "Obligor" means the individual who owes a duty to make child support payments under a court order.

(13) "Payor" means any payor, including any federal, State, or local governmental unit, of disposable income to an obligor. When the payor is an employer, payor means employer as is defined at 29 USC § 203(d) in the Fair Labor Standards Act. (1975, c. 827, s. 1; 1977, 2nd Sess., c. 1186, ss. 2, 3; 1985, c. 592; 1985 (Reg. Sess., 1986), c. 949, s. 1; 1987, c. 764, s. 3; 1989, c. 601, s. 1; 1991, c. 541, s. 3; 1995, c. 518, s. 2.)

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, and applicable to child support assessed for children born on or after that date, in subdivision (3) substituted "a child born out-of-wedlock and the parents of a dependant child who is the custodial or noncustodial parent of the dependant child requiring support" for "an illegitimate child" in the first sentence, and added the second and last sentences.

CASE NOTES

Responsible Parent Remains Liable for Future Support. — Section 49-7, read together with § 50-13.7, clearly contemplates a continuing obligation on the part of the parents of an illegitimate child to provide support, including when necessary the modification or increase of payments ordered to satisfy this obligation. Having been conclusively determined a "responsible parent," as that term is defined in this section, the father of an illegitimate child must necessarily remain liable for the future support of his minor child. Wilkes County ex rel. Child Support Enforcement Agency ex rel. Nations v. Gentry, 311 N.C. 580, 319 S.E.2d 224 (1984).

Plea of guilty may be considered as evidentiary admission by defendant on issue of paternity, where defendant makes no attempt to refute or explain this evidence and it is therefore

uncontroverted … unne… termine whether defend… guilty to an earlier crim… nonsupport must be give… toppel effect. Wilkes Coun… Support Enforcement Age… tions v. Gentry, 311 N.C. … 224 (1984).

The credible, uncontro… of defendant's plea of guil… charge of nonsupport of … is sufficient to establish … to bring defendant within … of "responsible parent" … tion. That definition inclu… of an illegitimate child." … ex rel. Child Support … Agency ex rel. Nations …

§ 110-130. Acti… tive…

Any county inte… dependent child ma… the responsible par… paternity and/or s… dian or guardian of … designated represe… child resides or is fo… found, or i… e cou… proceedi… ituti… mation o… ef. T… testimony at the … and/or to obtain sup… the designated rep… husband-wife privil… or father from te… grounds for the ex… husband and wife … answer upon the … nate him, the cour… shall not thereafte… the conception of … whom support is … testimony. (1975, … 410.)

Legal Periodicals. … 1980 constitutional … Rev. 1097 (1981). …

For note on spouse … inal proceedings, se… Rev. 990 (1981). …

County has the … duty to pursue an …

(d) In the claim for alimony, either spouse may request a jury trial on the issue of marital misconduct as defined in G.S. 50-16.1A. If a jury trial is requested, the jury will decide whether either spouse or both have established marital misconduct. (1995, c. 319, s. 2; c. 509, s. 135.2(b).)

Editor's Note. — Session Laws 1995, c. 319, s. 12, provides that this section is effective October 1, 1995, is applicable to civil actions filed on or after that date, and is not applicable to pending litigation or future motions in the cause seeking to modify orders or judgments in effect on that date.

Effect of Amendments. — Session Laws 1995, c. 509, s. 135.2(b), effective October 1, 1995, in subsection (a) in the first paragraph, added "to a dependent spouse" at the end of the fourth sentence, and substituted "condoned" for "condone" in the last sentence.

§ 50-16.4. (For applicability see note) Counsel fees in actions for alimony, postseparation support.

At any time that a dependent spouse would be entitled to alimony pursuant to G.S. 50-16.3A, or postseparation support pursuant to G.S. 50-16.2A, the court may, upon application of such spouse, enter an order for reasonable counsel fees for the benefit of such spouse, to be paid and secured by the supporting spouse in the same manner as alimony. (1967, c. 1152, s. 2; 1995, c. 319, s. 3.)

Editor's Note. — Session Laws 1995, c. 319, which amended this section, in s. 12 provides that this act applies to civil actions filed on or after October 1, 1995, and shall not apply to pending litigation, or to future motions in the cause seeking to modify orders or judgments in effect on October 1, 1995.

This section, prior to the amendment by Session Laws 1995, c. 319, read as follows: "**Counsel fees in actions for alimony.** At any time that a dependent spouse would be entitled to alimony pendente lite pursuant to G.S. 50-16.3, the court may, upon application of such spouse, enter an order for reasonable counsel fees for the benefit of such spouse, to be paid and secured by the supporting spouse in the same manner as alimony."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, and applicable to civil actions filed on or after that date, added "postseparation support" in the catchline of this section; and substituted "alimony pursuant to G.S. 50-16.3A, or postseparation support pursuant to G.S. 50-16.2A" for "alimony pendente lite pursuant to G.S. 50-16.3".

Legal Periodicals. — For comment on contingent fees in domestic relations actions, see 62 N.C.L. Rev. 381 (1984).

For note, "The Contingent Fee Contract in Domestic Relations Cases," see 7 Campbell L. Rev. 427 (1985).

For note, "A Public Goods Approach to Calculating Reasonable Fees under Attorney Fee Shifting Statutes," see 1989 Duke L.J. 438.

CASE NOTES

I. In General.
II. Amount of Fees.
III. Findings.
IV. Review on Appeal.

I. IN GENERAL.

***Editor's Note.** — Some of the cases cited below were decided under former §§ 50-15 and 50-16 which dealt with alimony pendente lite in divorce actions and subsistence and counsel fees pending actions for alimony without divorce, respectively.*

Former Sections 50-16.1 Th 50-16.10 in Pari Materia. — Th utes codified as §§ 50-16.1 throu 16.10 all deal with the same s matter, alimony, and are to be con in pari materia. Rowe v. Rowe, 30 177, 287 S.E.2d 840 (1982).

Section 50-16.9 does not list fac help in the modification decision, l alimony statutes, §§ 50-16.1 throu 16.10, have been read in pari m because they deal with the same s matter. Broughton v. Broughton, 5 App. 778, 294 S.E.2d 772, cert. 307 N.C. 269, 299 S.E.2d 214 (19

Right Derived from Commo — The right of a wife (dependent s to subsistence pending trial and t neys' fees was derived from the c law. Little v. Little, 12 N.C. App. 3 S.E.2d 278 (1971).

Apart from statute, there duty upon husband (supp spouse), before or after sepa to furnish wife (dependent s with legal counsel, whether h other be the adverse party to h versy. Rickert v. Rickert, 282 193 S.E.2d 79 (1972).

Purpose. — The purpose o ance for attorneys' fees is to p (dependent spouse) on sub even terms with the husband ing spouse) in the litigation. H Harrell, 253 N.C. 758, 117 S.E (1961); Harrell v. Harrell, 256 123 S.E.2d 220 (1961); Deal v. D N.C. 489, 131 S.E.2d 24 (1963); S v. Stanback, 270 N.C. 497, 15 221 (1967); Sprinkle v. Sprinkle, App. 175, 193 S.E.2d 468 (1972)

The remedy of subsistence and fees pendente lite is intended t the wife to maintain herself acc her station in life and to emplo to meet her husband at trial u stantially equal terms. Little v. N.C. App. 353, 183 S.E.2d 278

The purpose of the allowanc sel fees pendente lite is to enabl (dependent spouse), as litigan the husband (supporting spo igant, on substantially eve making it possible for her adequate counsel. Schloss v. Sc N.C. 266, 160 S.E.2d 5 (1968); Rickert, 282 N.C. 373, 193 (1972); Hudson v. Hudson, 299 263 S.E.2d 719 (1980).

Contingent Fee Agreem Not Enforceable. — A contr payment of a fee to an attorn gent upon his procuring a div

discretion of the court after consideration of all of the circumstances. Any act of illicit sexual behavior by either party that has been condoned by the other party shall not be considered by the court.

The claim for alimony may be heard on the merits prior to the entry of a judgment for equitable distribution, and if awarded, the issues of amount and of whether a spouse is a dependent or supporting spouse may be reviewed by the court after the conclusion of the equitable distribution claim.

(b) Amount and Duration. — The court shall exercise its discretion in determining the amount, duration, and manner of payment of alimony. The duration of the award may be for a specified or for an indefinite term. In determining the amount, duration, and manner of payment of alimony, the court shall consider all relevant factors, including:

(1) The marital misconduct of either of the spouses. Nothing herein shall prevent a court from considering incidents of post date-of-separation marital misconduct as corroborating evidence supporting other evidence that marital misconduct occurred during the marriage and prior to date of separation;
(2) The relative earnings and earning capacities of the spouses;
(3) The ages and the physical, mental, and emotional conditions of the spouses;
(4) The amount and sources of earned and unearned income of both spouses, including, but not limited to, earnings, dividends, and benefits such as medical, retirement, insurance, social security, or others;
(5) The duration of the marriage;
(6) The contribution by one spouse to the education, training, or increased earning power of the other spouse;
(7) The extent to which the earning power, expenses, or financial obligations of a spouse will be affected by reason of serving as the custodian of a minor child;
(8) The standard of living of the spouses established during the marriage;
(9) The relative education of the spouses and the time necessary to acquire sufficient education or training to enable the spouse seeking alimony to find employment to meet his or her reasonable economic needs;
(10) The relative assets and liabilities of the spouses and the relative debt service requirements of the spouses, including legal obligations of support;
(11) The property brought to the marriage by either spouse;
(12) The contribution of a spouse as homemaker;
(13) The relative needs of the spouses;
(14) The federal, State, and local tax ramifications of the alimony award;
(15) Any other factor relating to the economic circumstances of the parties that the court finds to be just and proper.

(c) Findings of Fact. — The court shall set forth the reasons for its award or denial of alimony and, if making an award, the reasons for its amount, duration, and manner of payment. Except where there is a motion before the court for summary judgment, judgment on the pleadings, or other motion for which the Rules of Civil Procedure do not require special findings of fact, the court shall make a specific finding of fact on each of the factors in subsection (b) of this section if evidence is offered on that factor.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 534

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

H534-ARG-001 Page 1 of __

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

Rep. Hackney

moves to amend the bill on page 2, line 13,
by rewriting the line to read:
"of arrearages of child support so long as the net value of the interest in the property being transferred does not exceed the amount of the arrearage being satisfied. In every case in which payment for the support of a";

and on page 2, line 22,
by rewriting the line to read:
"in payment of arrearages of alimony or postseparation support so long as the net value of the interest in the property being transferred does not exceed the amount of the arrearage being satisfied. In every case in".

SIGNED Hackney
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 534

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

H534-ARG-001 Page 1 of __

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

Rep. Hackney

moves to amend the bill on page 4, lines 12-13,
by rewriting the lines to read:
"Section 11. Section 1 of this act becomes effective October 1, 1997 and applies to contracts entered into and transactions occurring on or after that date. Section 6 of this act becomes effective October 1, 1997 and applies to notices served on or after that date. The remaining sections of this act are effective upon becoming law."

~~and on page 4, line 11,~~
~~by inserting between the word "marital" and the~~ word ~~"property." the words "or divisible".~~

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. 534 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Hackney
)
Sen.)

moves to amend the bill on page 2, line 40

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"U.S.C. §1673(b)."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

DRAFT OF 4/3/97

PROPOSED REVISION TO SECTION 1 OF HOUSE BILL 534

The General Assembly of North Carolina enacts:

Section 1. G.S. 52-2 reads as rewritten:

"**§52-2. Capacity to Contract.**

(a) Subject to the provisions of G.S. 52-10 or 52-10.1, G.S. 39-7 and other regulations and limitations now or hereafter prescribed by the General Assembly, every married person is authorized to contract and deal so as to affect his or her real and personal property in the same manner and with the same effect as if he or she were unmarried.

(b) Except as otherwise provided by this section or by other State law, a spouse shall not be responsible for the other spouse's liability to a third party, whether the liability arose before or after the marriage. The doctrine of necessaries as it existed at common law, however, shall apply and shall apply equally to both spouses, except as provided in subsection (c) of this section, but shall in no event create any liability between the spouses as to each other.

(c) As to a spouse who establishes by the greater weight of the evidence that he or she was living separate and apart from the other spouse at the time necessaries were provided to the other spouse, with the intent by either spouse to cease marital cohabitation, and that there was no resumption of marital relations while necessaries were being provided to the other spouse, liability under the doctrine of necessaries shall be limited to an amount equal to fifty percent (50%) of the net value of real or personal property subject as of the date or dates on which necessaries were provided to distribution under G.S. § 50-20 unless one of the following applies:

(1) The non-debtor spouse has either willfully created the appearance of not being separated or has requested that the creditor extend credit to the estranged debtor spouse; or

(2) The debt is for medical expenses and the debtor spouse is insured under the non-debtor spouse's medical insurance plan or policy, provided that the non-debtor spouse shall be liable only for the debt that is or will be discharged under the terms of the medical insurance.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 535

Short Title: Equit. Distrib./Retirement Rts. (Public)

Sponsors: Representatives Hackney; Russell, Baddour, and Alexander.

Referred to: Judiciary II.

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO INCLUDE NONVESTED PENSION, RETIREMENT, AND OTHER DEFERRED COMPENSATION RIGHTS AS MARITAL PROPERTY, AS RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 50 of the General Statutes is amended by adding the following new section to read:

"**§ 50-20.1. Pension and retirement benefits.**

(a) The award of vested and nonvested pension, retirement, or other deferred compensation benefits may be made payable:

(1) As a lump sum by agreement;

(2) Over a period of time in fixed amounts by agreement;

(3) As a prorated portion of the benefits made to the designated recipient at the time the party against whom the award is made actually begins to receive the benefits; or

(4) By awarding a larger portion of other assets to the party not receiving the benefits, and a smaller share of other assets to the party entitled to receive the benefits.

Notwithstanding the foregoing, the court shall not require the administrator of the fund or plan involved to make any payments until the party against whom the award is made actually begins to receive the benefits unless the plan permits an earlier distribution.

(b) The award shall be determined using the proportion of time the marriage existed, (up to the date of separation of the parties), simultaneously with the employment which earned the vested and nonvested pension, retirement, or deferred compensation benefit, to the total amount of time of employment. The award shall be based on the vested and nonvested accrued benefit, as provided by the plan or fund, calculated as of the date of separation, and shall not include contributions, years of service, or compensation which may accrue after the date of separation. The award shall include gains and losses on the prorated portion of the benefit vested at the date of separation.

(c) No award shall exceed fifty percent (50%) of the benefits the person against whom the award is made is entitled to receive as vested and nonvested pension, retirement, or other deferred compensation benefits, except that an award may exceed fifty percent (50%) if (i) other assets subject to equitable distribution are insufficient; or (ii) there is difficulty in distributing any asset or any interest in a business, corporation, or profession; or (iii) it is economically desirable for one party to retain an asset or interest that is intact and free from any claim or interference by the other party; or (iv) more than one pension or retirement system or deferred compensation plan or fund is involved, but the benefits award may not exceed fifty percent (50%) of the total benefits of all the plans added together; or (v) both parties consent. In no event shall an award exceed fifty percent (50%) if a plan prohibits an award in excess of fifty percent (50%).

(d) In the event the person receiving the award dies, the unpaid balance, if any, of the award shall pass to the beneficiaries of the recipient by will, if any, or by intestate succession, or by beneficiary designation with the plan consistent with the terms of the plan unless the plan prohibits such designation. In the event the person against whom the award is made dies, the award to the recipient shall remain payable to the extent permitted by the pension or retirement system or deferred compensation plan or fund involved.

(e) The court may require distribution of the award by means of a qualified domestic relations order, or as defined in section 414(p) of the Internal Revenue Code of 1986. To facilitate the calculating and payment of distributive awards, the administrator of the system, plan, or fund may be ordered to certify the total contributions, years of service, and pension, retirement, or other deferred compensation benefits payable.

(f) This section and G.S. 50-21 shall apply to all pension, retirement, and other deferred compensation plans and funds, including vested and nonvested military pensions eligible under the federal Uniform Services Former Spouses Protection Act, and including funds administered by the State pursuant to Articles 84 through 88 of Chapter 58 and Chapters 120, 127A, 128, 135, 143, 143G, and 147 of the General Statutes, to the extent of a member's accrued benefit at the date of separation, as determined by the court."

Section 2. G.S. 50-20(b)(1) reads as rewritten:

"(1) 'Marital property' means all real and personal property acquired by either spouse or both spouses during the course of the marriage

and before the date of the separation of the parties, and presently owned, except property determined to be separate property in accordance with subdivision (2) of this subsection. Marital property includes all vested and nonvested pension, retirement, and other deferred compensation rights, ~~including~~ and vested and nonvested military pensions eligible under the federal Uniformed Services Former Spouses' Protection Act. It is presumed that all property acquired after the date of marriage and before the date of separation is marital property except property which is separate property under subdivision (2) of this subsection. This presumption may be rebutted by the greater weight of the evidence."

Section 3. G.S. 50-20(b)(2) reads as rewritten:

(2) 'Separate property' means all real and personal property acquired by a spouse before marriage or acquired by a spouse by bequest, devise, descent, or gift during the course of the marriage. However, property acquired by gift from the other spouse during the course of the marriage shall be considered separate property only if such an intention is stated in the conveyance. Property acquired in exchange for separate property shall remain separate property regardless of whether the title is in the name of the husband or wife or both and shall not be considered to be marital property unless a contrary intention is expressly stated in the conveyance. The increase in value of separate property and the income derived from separate property shall be considered separate property. All professional licenses and business licenses which would terminate on transfer shall be considered separate property. ~~The expectation of nonvested pension, retirement, or other deferred compensation rights shall be considered separate property.~~"

Section 4. G.S. 50-20(b)(3) reads as rewritten:

"(3) 'Distributive award' means payments that are payable either in a lump sum or over a period of time in fixed amounts, but shall not include alimony payments or other similar payments for support and maintenance which are treated as ordinary income to the recipient under the Internal Revenue Code.

~~The distributive award of vested pension, retirement, and other deferred compensation benefits may be made payable:~~

~~a. As a lump sum by agreement;~~

~~b. Over a period of time in fixed amounts by agreement;~~

~~c. As a prorated portion of the benefits made to the designated recipient at the time the party against whom the award is made actually begins to receive the benefits; or~~

~~d. By awarding a larger portion of other assets to the party not receiving the benefits, and a smaller share of other assets to the party entitled to receive the benefits.~~

~~Notwithstanding the foregoing, the court shall not require the administrator of the fund or plan involved to make any payments until the party against whom the award is made actually begins to receive the benefits unless a plan under the Employee Retirement Income Security Act (ERISA) permits earlier distribution. The award shall be determined using the proportion of time the marriage existed, (up to the date of separation of the parties), simultaneously with the employment which earned the vested pension, retirement, or deferred compensation benefit, to the total amount of time of employment. The award shall be based on the vested accrued benefit, as provided by the plan or fund, calculated as of the date of separation, and shall not include contributions, years of service or compensation which may accrue after the date of separation. The award shall include gains and losses on the prorated portion of the benefit vested at the date of separation. No award shall exceed fifty percent (50%) of the benefits the person against whom the award is made is entitled to receive as vested pension, retirement, or other deferred compensation benefits, except that an award may exceed fifty percent (50%) if (i) other assets subject to equitable distribution are insufficient; or (ii) there is difficulty in distributing any asset or any interest in a business, corporation, or profession; or (iii) it is economically desirable for one party to retain an asset or interest that is intact and free from any claim or interference by the other party; or (iv) more than one pension or retirement system or deferred compensation plan or fund is involved, but the benefits awarded may not exceed fifty percent (50%) of the total benefits of all the plans added together; or (v) both parties consent. In no event shall an award exceed fifty percent (50%) if a plan prohibits an award in excess of fifty percent (50%).~~

~~In the event the person receiving the award dies, the unpaid balance, if any, of the award shall pass to the beneficiaries of the recipient by will, if any, or by intestate succession, or by beneficiary designation with the plan consistent with the terms of the plan unless the plan prohibits such a designation. In the event the person against whom the award is made dies, the award to the recipient shall remain payable to the extent permitted by the pension or retirement system or deferred compensation plan or fund involved.~~

~~The Court may require distribution of the award by means of a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code of 1986. To facilitate the calculation and payment of distributive awards, the administrator of the system, plan or fund may be ordered to certify the total~~

~~contributions, years of service, and pension, retirement, or other deferred compensation benefits payable.~~

~~The provisions of this section and G.S. 50-21 shall apply to all pension, retirement, and other deferred compensation plans and funds, including military pensions eligible under the Federal Uniform Services Former Spouses Protection Act, and including funds administered by the State pursuant to Articles 84 through 88 of Chapter 58 and Chapters 120, 127A, 128, 135, 143, 143B, and 147 of the General Statutes, to the extent of a member's accrued benefit at the date of separation, as determined by the court.~~"

Section 5. G.S. 50-20(c) reads as rewritten:

"(c) There shall be an equal division by using net value of marital property unless the court determines that an equal division is not equitable. If the court determines that an equal division is not equitable, the court shall divide the marital property equitably. Factors the court shall consider under this subsection are as follows:

(1) The income, property, and liabilities of each party at the time the division of property is to become effective;

(2) Any obligation for support arising out of a prior marriage;

(3) The duration of the marriage and the age and physical and mental health of both parties;

(4) The need of a parent with custody of a child or children of the marriage to occupy or own the marital residence and to use or own its household effects;

(5) The expectation of ~~nonvested~~ pension, retirement, or other deferred compensation ~~rights, which is separate property;~~ rights that are not marital property;

(6) Any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services, or lack thereof, as a spouse, parent, wage earner or homemaker;

(7) Any direct or indirect contribution made by one spouse to help educate or develop the career potential of the other spouse;

(8) Any direct contribution to an increase in value of separate property which occurs during the course of the marriage;

(9) The liquid or nonliquid character of all marital property;

(10) The difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest, intact and free from any claim or interference by the other party;

(11) The tax consequences to each party;

(11a) Acts of either party to maintain, preserve, develop, or expand; or to waste, neglect, devalue or convert such marital property,

during the period after separation of the parties and before the time of distribution; and

(12) Any other factor which the court finds to be just and proper."

Section 6. This act becomes effective October 1, 1997, and applies to actions for equitable distribution filed on and after that date.

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April 7, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 535—Equit. Distrib./Retirement Rts. (Hackney)

House Bill 535 is a recommendation of the Family Law Section of the North Carolina Bar Association.

House Bill 535 adds a new section, G.S. 50-20.1, to Chapter 50 of the General Statutes which includes nonvested pension, retirement, and other deferred compensation rights as marital property for the purposes of equitable distribution. The statute authorizes the award of nonvested pension and retirement benefits in any of the following ways: (1) in lump sum payments; (2) payments over a period of time; (3) as a prorated portion of the benefits at the time the benefits are received, or (4) by awarding more assets to the party not receiving the benefits.

The award is determined using the proportion of time the marriage existed simultaneously with the employment which earned the benefits to the total time of employment. Benefits accrued after the date of separation are not included. The award may not exceed 50% of the benefits unless other assets subject to equitable distribution are insufficient or difficult to distribute. If the award recipient dies, the award passes to the recipient's beneficiaries. If the person against whom the award is made dies, the award remains payable to the recipient to the extent allowed by the retirement or pension plan.

House Bill 535 becomes effective October 1, 1997 and applies to actions for equitable distribution filed on or after that date.

(4) Custody and support of a person incapable of self-support upon reaching majority; or

(5) Divorce pursuant to G.S. 50-5.1 or G.S. 50-6.

(b) Notwithstanding the provisions of G.S. 1A-1, Rule 13(a), any action described in subdivision (a)(1) through (a)(5) of this section that is filed as an independent, separate action may be prosecuted during the pendency of an action for divorce under G.S. 50-5.1 or G.S. 50-6.

(c) Repealed by Session Laws 1991, c. 569, s. 1. (1979, c. 709, s. 2; 1985, c. 689, s. 20; 1991, c. 569, s. 1; 1995, c. 319, s. 10.)

Editor's Note. — Session Laws 1995, c. 319, which amended this section, in s. 12 provides that this act applies to civil actions filed on or after October 1, 1995, and shall not apply to pending litigation, or to future motions in the cause seeking to modify orders or judgments in effect on October 1, 1995.

This section, prior to the amendment by Session Laws 1995, c. 319, read as follows: "**Maintenance of certain actions as independent actions permissible.** (a) Notwithstanding the provisions of G.S. 1A-1, Rule 13(a), any action for divorce under the provisions of G.S. 50-5.1 or G.S. 50-6 that is filed as an independent, separate action may be prosecuted during the pendency of an action for:

(1) Alimony;

(2) Alimony pendente lite;

(3) Custody and support of minor children;

(4) Custody and support of a person incapable of self-support upon reaching majority; or

(5) Divorce pursuant to G.S. 50-5.1 or G.S. 50-6.

(b) Notwithstanding the provisions of G.S. 1A-1, Rule 13(a), any action described in subdivision (a)(1) through (a)(5) of this section that is filed as an independent, separate action may be prosecuted during the pendency of an action for divorce under G.S. 50-5.1 or G.S. 50-6.

(c) Repealed by Session Laws 1991, c. 569, s. 1, effective October 1, 1991."

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, and applicable to civil actions filed on or after that date, substituted "Post-separation support" for "Alimony pendente lite" in subdivision (a)(2).

Legal Periodicals. — For survey of 1979 family law, see 58 N.C.L. Rev. 1471 (1980).

For survey of 1982 law on civil procedure, see 61 N.C.L. Rev. 991 (1983).

CASE NOTES

Effect on Legal Consequences of Prior Supreme Court Decision. — The enactment of this section, providing that an action for divorce could be maintained during the pendency of an action for alimony notwithstanding the provisions of § 1A-1, Rule 13(a), did not apply to affect the legal consequences of a prior Supreme Court decision determining the law of the case. Gardner v. Gardner, 48 N.C. App. 38, 269 S.E.2d 630 (1980).

Applied in Arney v. Arney, 71 N.C. App. 218, 321 S.E.2d 472 (1984).

Quoted in Banner v. Banner, 86 N.C. App. 397, 358 S.E.2d 110 (1987).

§ 50-20. Distribution by court of marital property upon divorce.

(a) Upon application of a party, the court shall determine what is the marital property and shall provide for an equitable distribution of the marital property between the parties in accordance with the provisions of this section.

(b) For purposes of this section:

(1) "Marital property" means all real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the

parties, and presently owned, except property determined to be separate property in accordance with subdivision (2) of this subsection. Marital property includes all vested pension, retirement, and other deferred compensation rights, including military pensions eligible under the federal Uniformed Services Former Spouses' Protection Act. It is presumed that all property acquired after the date of marriage and before the date of separation is marital property except property which is separate property under subdivision (2) of this subsection. This presumption may be rebutted by the greater weight of the evidence.

(2) "Separate property" means all real and personal property acquired by a spouse before marriage or acquired by a spouse by bequest, devise, descent, or gift during the course of the marriage. However, property acquired by gift from the other spouse during the course of the marriage shall be considered separate property only if such an intention is stated in the conveyance. Property acquired in exchange for separate property shall remain separate property regardless of whether the title is in the name of the husband or wife or both and shall not be considered to be marital property unless a contrary intention is expressly stated in the conveyance. The increase in value of separate property and the income derived from separate property shall be considered separate property. All professional licenses and business licenses which would terminate on transfer shall be considered separate property. The expectation of nonvested pension, retirement, or other deferred compensation rights shall be considered separate property.

(3) "Distributive award" means payments that are payable either in a lump sum or over a period of time in fixed amounts, but shall not include alimony payments or other similar payments for support and maintenance which are treated as ordinary income to the recipient under the Internal Revenue Code.

The distributive award of vested pension, retirement, and other deferred compensation benefits may be made payable:

a. As a lump sum by agreement;
b. Over a period of time in fixed amounts by agreement;
c. As a prorated portion of the benefits made to the designated recipient at the time the party against whom the award is made actually begins to receive the benefits; or
d. By awarding a larger portion of other assets to the party not receiving the benefits, and a smaller share of other assets to the party entitled to receive the benefits.

Notwithstanding the foregoing, the court shall not require the administrator of the fund or plan involved to make any payments until the party against whom the award is made actually begins to receive the benefits unless a plan under the Employee Retirement Income Security Act (ERISA) permits earlier distribution. The award shall be determined using the proportion of time the marriage existed, (up to the date of separation of the parties), simultaneously with the employment which earned the vested pension,

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In the event the person receiving the award dies, the unpaid balance, if any, of the award shall pass to the beneficiaries of the recipient by will, if any, or by intestate succession, or by beneficiary designation with the plan consistent with the terms of the plan unless the plan prohibits such a designation. In the event the person against whom the award is made dies, the award to the recipient shall remain payable to the extent permitted by the pension or retirement system or deferred compensation plan or fund involved.

The Court may require distribution of the award by means of a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code of 1986. To facilitate the calculation and payment of distributive awards, the administrator of the system, plan or fund may be ordered to certify the total contributions, years of service, and pension, retirement, or other deferred compensation benefits payable.

The provisions of this section and G.S. 50-21 shall apply to all pension, retirement, and other deferred compensation plans and funds, including military pensions eligible under the Federal Uniform Services Former Spouses Protection Act, and including funds administered by the State pursuant to Articles 84 through 88 of Chapter 58 and Chapters 120, 127A, 128, 135, 143, 143B, and 147 of the General Statutes, to the extent of a member's accrued benefit at the date of separation, as determined by the court.

(c) There shall be an equal division by using net value of marital property unless the court determines that an equal division is not equitable. If the court determines that an equal division is not equitable, the court shall divide the marital property equitably. Factors the court shall consider under this subsection are as follows:

(1) The income, property, and liabilities of each party at the time the division of property is to become effective;
(2) Any obligation for support arising out of a prior marriage;
(3) The duration of the marriage and the age and physical and mental health of both parties;
(4) The need of a parent with custody of a child or children of the marriage to occupy or own the marital residence and to use or own its household effects;
(5) The expectation of nonvested pension, retirement, or other deferred compensation rights, which is separate property;
(6) Any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services, or lack thereof, as a spouse, parent, wage earner or homemaker;
(7) Any direct or indirect contribution made by one spouse to help educate or develop the career potential of the other spouse;
(8) Any direct contribution to an increase in value of separate property which occurs during the course of the marriage;
(9) The liquid or nonliquid character of all marital property;
(10) The difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest, intact and free from any claim or interference by the other party;
(11) The tax consequences to each party;
(11a) Acts of either party to maintain, preserve, develop, or expand; or to waste, neglect, devalue or convert such marital property, during the period after separation of the parties and before the time of distribution; and
(12) Any other factor which the court finds to be just and proper.

(c1) Notwithstanding any other provision of law, a second or subsequent spouse acquires no interest in the marital property of his or her spouse from a former marriage until a final determination of equitable distribution is made in the marital property of the spouse's former marriage.

(d) Before, during or after marriage the parties may by written agreement, duly executed and acknowledged in accordance with the provisions of G.S. 52-10 and 52-10.1, or by a written agreement valid in the jurisdiction where executed, provide for distribution of the marital property in a manner deemed by the parties to be equitable and the agreement shall be binding on the parties.

(e) In any action in which the court determines that an equitable distribution of all or portions of the marital property in kind would be impractical, the court in lieu of such distribution shall provide for a distributive award in order to achieve equity between the parties. The court may provide for a distributive award to facilitate, effectuate or supplement a distribution of marital property. The court may provide that any distributive award payable over a period of time be secured by a lien on specific property.

(f) The court shall provide for an equitable distribution without regard to alimony for either party or support of the children of both parties. After the determination of an equitable distribution, the court, upon request of either party, shall consider whether an order

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(1981, c. 815, s. 1; 198
c. 31, ss. 1-3; c. 143; c.
635, ss. 1, 1.1; 1991 (R
c. 245, s. 2.)

for alimony or child support should be modified or vacated pursuant to G.S. 50-16.9 or 50-13.7.

(g) If the court orders the transfer of real or personal property or an interest therein, the court may also enter an order which shall transfer title, as provided in G.S. 1A-1, Rule 70 and G.S. 1-228.

(h) If either party claims that any real property is marital property, that party may cause a notice of lis pendens to be recorded pursuant to Article 11 of Chapter 1 of the General Statutes. Any person whose conveyance or encumbrance is recorded or whose interest is obtained by descent, prior to the filing of the lis pendens, shall take the real property free of any claim resulting from the equitable distribution proceeding. The court may cancel the notice of lis pendens upon substitution of a bond with surety in an amount determined by the court to be sufficient provided the court finds that the claim of the spouse against property subject to the notice of lis pendens can be satisfied by money damages.

(i) Upon filing an action or motion in the cause requesting an equitable distribution or alleging that an equitable distribution will be requested when it is timely to do so, a party may seek injunctive relief pursuant to G.S. 1A-1, Rule 65 and Chapter 1, Article 37, to prevent the disappearance, waste or conversion of property alleged to be marital property or separate property of the party seeking relief. The court, in lieu of granting an injunction, may require a bond or other assurance of sufficient amount to protect the interest of the other spouse in the marital or separate property. Upon application by the owner of separate property which was removed from the marital home or possession of its owner by the other spouse, the court may enter an order for reasonable counsel fees and costs of court incurred to regain its possession, but such fees shall not exceed the fair market value of the separate property at the time it was removed.

(i1) For good cause shown, including, but not limited to, providing for the subsistence of a spouse while an action is pending, the Court may, at any time after an action for equitable distribution has been filed and prior to the final judgment of equitable distribution, enter orders declaring what is separate property and dividing part of the marital property between the parties. The partial distribution may provide for a distributive award. Any such orders entered shall be taken into consideration at trial and proper credit given.

Hearings held pursuant to this subsection may be held at sessions arranged by the chief district court judge pursuant to G.S. 7A-146 and, if held at such sessions, shall not be subject to the reporting requirements of G.S. 7A-198.

(j) In any order for the distribution of property made pursuant to this section, the court shall make written findings of fact that support the determination that the marital property has been equitably divided.

(k) The rights of the parties to an equitable distribution of marital property are a species of common ownership, the rights of the respective parties vesting at the time of the parties' separation. (1981, c. 815, s. 1; 1983, c. 309; c. 640, ss. 1, 2; c. 758, ss. 1-4; 1985, c. 31, ss. 1-3; c. 143; c. 660, ss. 1-3; 1987, c. 663; c. 844, s. 2; 1991, c. 635, ss. 1, 1.1; 1991 (Reg. Sess., 1992), c. 960, s. 1; 1995, c. 240, s. 1; c. 245, s. 2.)

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **April 8, 1997 1:00 P.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charles W. Gaither	NCBA - Family Law Council
Gerald McCoy	" " " "
Rhonda Lyttle	DSS - CSE
Wade Harrison	Family Law Section NCBA
Connie Brown	NCBA
B [illegible]	NCBA
[illegible]	NCAHC
[illegible]	NCHA
Evelyn Hawthorne	NCHA
[illegible]	NASW-NC
[illegible]	Family Law Sec. Bar Assn.
Marcia Armstrong	Family Law Sec. - NCBA

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 8, 1997 4:50 P.M.

The North Carolina House of Representatives Judiciary II Committee met on April 8, 1997, at 4:50 P.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Cansler, Goodwin, Hackney, McMahan, Saunders, Shubert, Sutton, Weatherly, and Wilkins. A list of visitors is attached.

The following bill was discussed:

HB-535 EQUITABLE DISTRIBUTION/RETIREMENT RIGHTS

Representative Hackney was recognized to send forth a proposed committee substitute bill and moved it be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute bill is attached.

Representative Hackney moved for a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

The meeting was adjourned at 5:00 P.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H535-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 535
THIS IS A DRAFT 8-APR-97 16:17:50
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Equit. Distrib./Retirement Rts. (Public)

Sponsors:

Referred to:

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO INCLUDE NONVESTED PENSION, RETIREMENT, AND OTHER DEFERRED COMPENSATION RIGHTS AS MARITAL PROPERTY, AS RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 50 of the General Statutes is amended by adding the following new section to read:

"**§ 50-20.1. Pension and retirement benefits.**

(a) The award of vested pension, retirement, or other deferred compensation benefits may be made payable:

(1) As a lump sum by agreement;

(2) Over a period of time in fixed amounts by agreement;

(3) By appropriate doemstic relations order as a prorated portion of the benefits made to the designated recipient at the time the party against

whom the award is made actually begins to receive the benefits; or

(4) By awarding a larger portion of other assets to the party not receiving the benefits, and a smaller share of other assets to the party entitled to receive the benefits.

(b) The award of nonvested pension, retirement, or other deferred compensation benefits may be made payable:

(1) As a lump sum by agreement;

(2) Over a period of time in fixed amounts by agreement; or

(3) By appropriate domestic relations order as a prorated portion of the benefits made to the designated recipient at the time the party against whom the award is made actually begins to receive the benefits.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the court shall not require the administrator of the fund or plan involved to make any payments until the party against whom the award is made actually begins to receive the benefits unless the plan permits an earlier distribution.

(d) The award shall be determined using the proportion of time the marriage existed, (up to the date of separation of the parties), simultaneously with the employment which earned the vested and nonvested pension, retirement, or deferred compensation benefit, to the total amount of time of employment. The award shall be based on the vested and nonvested accrued benefit, as provided by the plan or fund, calculated as of the date of separation, and shall not include contributions, years of service, or compensation which may accrue after the date of separation. The award shall include gains and losses on the prorated portion of the benefit vested at the date of separation.

(e) No award shall exceed fifty percent (50%) of the benefits the person against whom the award is made is entitled to receive as vested and nonvested pension, retirement, or other deferred compensation benefits, except that an award may exceed fifty percent (50%) if (i) other assets subject to equitable distribution are insufficient; or (ii) there is difficulty in distributing any asset or any interest in a business, corporation, or profession; or (iii) it is economically desirable

for one party to retain an asset or interest that is intact and free from any claim or interference by the other party; or (iv) more than one pension or retirement system or deferred compensation plan or fund is involved, but the benefits award may not exceed fifty percent (50%) of the total benefits of all the plans added together; or (v) both parties consent. In no event shall an award exceed fifty percent (50%) if a plan prohibits an award in excess of fifty percent (50%).

(f) In the event the person receiving the award dies, the unpaid balance, if any, of the award shall pass to the beneficiaries of the recipient by will, if any, or by intestate succession, or by beneficiary designation with the plan consistent with the terms of the plan unless the plan prohibits such designation. In the event the person against whom the award is made dies, the award to the recipient shall remain payable to the extent permitted by the pension or retirement system or deferred compensation plan or fund involved.

(g) The court may require distribution of the award by means of a qualified domestic relations order, or as defined in section 414(p) of the Internal Revenue Code of 1986 or by other appropriate order. To facilitate the calculating and payment of distributive awards, the administrator of the system, plan, or fund may be ordered to certify the total contributions, years of service, and pension, retirement, or other deferred compensation benefits payable.

(h) This section and G.S. 50-21 shall apply to all pension, retirement, and other deferred compensation plans and funds, including vested and nonvested military pensions eligible under the federal Uniform Services Former Spouses Protection Act, and including funds administered by the State pursuant to Articles 84 through 88 of Chapter 58 and Chapters 120, 127A, 128, 135, 143, 143B, and 147 of the General Statutes, to the extent of a member's accrued benefit at the date of separation, as determined by the court."

Section 2. G.S. 50-20(b)(1) reads as rewritten:

"(1) 'Marital property' means all real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the parties, and presently owned, except property determined to be

separate property in accordance with subdivision (2) of this subsection. Marital property includes all vested and nonvested pension, retirement, and other deferred compensation rights, ~~including~~ and vested and nonvested military pensions eligible under the federal Uniformed Services Former Spouses' Protection Act. It is presumed that all property acquired after the date of marriage and before the date of separation is marital property except property which is separate property under subdivision (2) of this subsection. This presumption may be rebutted by the greater weight of the evidence."

Section 3. G.S. 50-20(b)(2) reads as rewritten:

(2) 'Separate property' means all real and personal property acquired by a spouse before marriage or acquired by a spouse by bequest, devise, descent, or gift during the course of the marriage. However, property acquired by gift from the other spouse during the course of the marriage shall be considered separate property only if such an intention is stated in the conveyance. Property acquired in exchange for separate property shall remain separate property regardless of whether the title is in the name of the husband or wife or both and shall not be considered to be marital property unless a contrary intention is expressly stated in the conveyance. The increase in value of separate property and the income derived from separate property shall be considered separate property. All professional licenses and business licenses which would terminate on transfer shall be considered separate property. ~~The expectation of nonvested pension, retirement, or other deferred compensation rights shall be considered separate property.~~"

Section 4. G.S. 50-20(b)(3) reads as rewritten:

"(3) 'Distributive award' means payments that are payable either in a lump sum or over a period of time in fixed amounts, but shall not include alimony payments or other similar payments for

support and maintenance which are treated as ordinary income to the recipient under the Internal Revenue Code.

~~The distributive award of vested pension, retirement, and other deferred compensation benefits may be made payable:~~

~~a. As a lump sum by agreement;~~

~~b. Over a period of time in fixed amounts by agreement;~~

~~c. As a prorated portion of the benefits made to the designated recipient at the time the party against whom the award is made actually begins to receive the benefits; or~~

~~d. By awarding a larger portion of other assets to the party not receiving the benefits, and a smaller share of other assets to the party entitled to receive the benefits.~~

~~Notwithstanding the foregoing, the court shall not require the administrator of the fund or plan involved to make any payments until the party against whom the award is made actually begins to receive the benefits unless a plan under the Employee Retirement Income Security Act (ERISA) permits earlier distribution. The award shall be determined using the proportion of time the marriage existed, (up to the date of separation of the parties), simultaneously with the employment which earned the vested pension, retirement, or deferred compensation benefit, to the total amount of time of employment. The award shall be based on the vested accrued benefit, as provided by the plan or fund, calculated as of the date of separation, and shall not include contributions, years of service or compensation which may accrue after the date of separation. The award shall include gains and losses on the prorated portion of the benefit vested at the date of separation. No award shall exceed fifty percent (50%) of the benefits the person against whom the award is made is entitled to receive as vested pension, retirement, or other~~

~~deferred compensation benefits, except that an award may exceed fifty percent (50%) if (i) other assets subject to equitable distribution are insufficient; or (ii) there is difficulty in distributing any asset or any interest in a business, corporation, or profession; or (iii) it is economically desirable for one party to retain an asset or interest that is intact and free from any claim or interference by the other party; or (iv) more than one pension or retirement system or deferred compensation plan or fund is involved, but the benefits awarded may not exceed fifty percent (50%) of the total benefits of all the plans added together; or (v) both parties consent. In no event shall an award exceed fifty percent (50%) if a plan prohibits an award in excess of fifty percent (50%).~~

~~In the event the person receiving the award dies, the unpaid balance, if any, of the award shall pass to the beneficiaries of the recipient by will, if any, or by intestate succession, or by beneficiary designation with the plan consistent with the terms of the plan unless the plan prohibits such a designation. In the event the person against whom the award is made dies, the award to the recipient shall remain payable to the extent permitted by the pension or retirement system or deferred compensation plan or fund involved.~~

~~The Court may require distribution of the award by means of a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code of 1986. To facilitate the calculation and payment of distributive awards, the administrator of the system, plan or fund may be ordered to certify the total contributions, years of service, and pension, retirement, or other deferred compensation benefits payable.~~

~~The provisions of this section and G.S. 50-21 shall apply to all pension, retirement, and other~~

~~deferred compensation plans and funds, including military pensions eligible under the Federal Uniform Services Former Spouses Protection Act, and including funds administered by the State pursuant to Articles 84 through 88 of Chapter 58 and Chapters 120, 127A, 128, 135, 143, 143B, and 147 of the General Statutes, to the extent of a member's accrued benefit at the date of separation, as determined by the court.~~"

Section 5. G.S. 50-20(c) reads as rewritten:

"(c) There shall be an equal division by using net value of marital property unless the court determines that an equal division is not equitable. If the court determines that an equal division is not equitable, the court shall divide the marital property equitably. Factors the court shall consider under this subsection are as follows:

(1) The income, property, and liabilities of each party at the time the division of property is to become effective;

(2) Any obligation for support arising out of a prior marriage;

(3) The duration of the marriage and the age and physical and mental health of both parties;

(4) The need of a parent with custody of a child or children of the marriage to occupy or own the marital residence and to use or own its household effects;

(5) The expectation of ~~nonvested~~ pension, retirement, or other deferred compensation ~~rights, which is separate property;~~ rights that are not marital property;

(6) Any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services, or lack thereof, as a spouse, parent, wage earner or homemaker;

(7) Any direct or indirect contribution made by one spouse to help educate or develop the career potential of the other spouse;

(8) Any direct contribution to an increase in value of separate property which occurs during the course of the marriage;

(9) The liquid or nonliquid character of all marital property;

(10) The difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest, intact and free from any claim or interference by the other party;

(11) The tax consequences to each party;

(11a) Acts of either party to maintain, preserve, develop, or expand; or to waste, neglect, devalue or convert such marital property, during the period after separation of the parties and before the time of distribution; and

(12) Any other factor which the court finds to be just and proper."

Section 6. This act becomes effective October 1, 1997, and applies to actions for equitable distribution filed on and after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 535 A BILL TO BE ENTITLED AN ACT TO INCLUDE NOVESTED PENSION, RETIREMENT, AND OTHER DEFERRED COMPENSATION RIGHTS AS MARITAL PROPERTY, AS RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH CAROLINA BAR ASSOCIATION.

☐ 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 535
Proposed Committee Substitute H535-PCS7198

Short Title: Equit. Distrib./Retirement Rts. (Public)

Sponsors:

Referred to:

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO INCLUDE NONVESTED PENSION, RETIREMENT, AND OTHER DEFERRED COMPENSATION RIGHTS AS MARITAL PROPERTY, AS RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 50 of the General Statutes is amended by adding the following new section to read:

"**§ 50-20.1. Pension and retirement benefits.**

(a) The award of vested pension, retirement, or other deferred compensation benefits may be made payable:

(1) As a lump sum by agreement;

(2) Over a period of time in fixed amounts by agreement;

(3) By appropriate domestic relations order as a prorated portion of the benefits made to the designated recipient at the time the party against whom the award is made actually begins to receive the benefits; or

(4) By awarding a larger portion of other assets to the party not receiving the benefits and a smaller share of other assets to the party entitled to receive the benefits.

(b) The award of nonvested pension, retirement, or other deferred compensation benefits may be made payable:

(1) As a lump sum by agreement;

(2) Over a period of time in fixed amounts by agreement; or

(3) By appropriate domestic relations order as a prorated portion of the benefits made to the designated recipient at the time the party against whom the award is made actually begins to receive the benefits.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the court shall not require the administrator of the fund or plan involved to make any payments until the party against whom the award is made actually begins to receive the benefits unless the plan permits an earlier distribution.

(d) The award shall be determined using the proportion of time the marriage existed (up to the date of separation of the parties), simultaneously with the employment which earned the vested and nonvested pension, retirement, or deferred compensation benefit, to the total amount of time of employment. The award shall be based on the vested and nonvested accrued benefit, as provided by the plan or fund, calculated as of the date of separation, and shall not include contributions, years of service, or compensation which may accrue after the date of separation. The award shall include gains and losses on the prorated portion of the benefit vested at the date of separation.

(e) No award shall exceed fifty percent (50%) of the benefits the person against whom the award is made is entitled to receive as vested and nonvested pension, retirement, or other deferred compensation benefits, except that an award may exceed fifty percent (50%) if (i) other assets subject to equitable distribution are insufficient; or (ii) there is difficulty in distributing any asset or any interest in a business, corporation, or profession; or (iii) it is economically desirable for one party to retain an asset or interest that is intact and free from any claim or interference by the other party; or (iv) more than one pension or retirement system or deferred compensation plan or fund is involved, but the benefits award may not exceed fifty percent (50%) of the total benefits of all the plans added together; or (v) both parties consent. In no event shall an award exceed fifty percent (50%) if a plan prohibits an award in excess of fifty percent (50%).

(f) In the event the person receiving the award dies, the unpaid balance, if any, of the award shall pass to the beneficiaries of the recipient by will, if any, or by intestate succession, or by beneficiary designation with the plan consistent with the terms of the plan unless the plan prohibits such designation. In the event the person against whom the award is made dies, the award to the recipient shall remain payable to the extent permitted by the pension or retirement system or deferred compensation plan or fund involved.

(g) The court may require distribution of the award by means of a qualified domestic relations order, or as defined in section 414(p) of the Internal Revenue Code of 1986, or by other appropriate order. To facilitate the calculating and payment of distributive awards, the administrator of the system, plan, or fund may be ordered to certify the total contributions, years of service, and pension, retirement, or other deferred compensation benefits payable.

(h) This section and G.S. 50-21 shall apply to all pension, retirement, and other deferred compensation plans and funds, including vested and nonvested military pensions eligible under the federal Uniform Services Former Spouses Protection Act, and including funds administered by the State pursuant to Articles 84 through 88 of Chapter 58 and Chapters 120, 127A, 128, 135, 143, 143B, and 147 of the General Statutes, to the extent of a member's accrued benefit at the date of separation, as determined by the court."

Section 2. G.S. 50-20(b)(1) reads as rewritten:

"(1) 'Marital property' means all real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the parties, and presently owned, except property determined to be separate property in accordance with subdivision (2) of this subsection. Marital property includes all vested and nonvested pension, retirement, and other deferred compensation rights, ~~including~~ and vested and nonvested military pensions eligible under the federal Uniformed Services Former Spouses' Protection Act. It is presumed that all property acquired after the date of marriage and before the date of separation is marital property except property which is separate property under subdivision (2) of this subsection. This presumption may be rebutted by the greater weight of the evidence."

Section 3. G.S. 50-20(b)(2) reads as rewritten:

"(2) 'Separate property' means all real and personal property acquired by a spouse before marriage or acquired by a spouse by bequest, devise, descent, or gift during the course of the marriage. However, property acquired by gift from the other spouse during the course of the marriage shall be considered separate property only if such an intention is stated in the conveyance. Property acquired in exchange for separate property shall remain separate property regardless of whether the title is in the name of the husband or wife or both and shall not be considered to be marital property unless a contrary intention is expressly stated in the conveyance. The increase in value of separate property and the income derived from separate property shall be considered separate property. All professional licenses and business licenses which would terminate on transfer shall be considered separate property. ~~The expectation of nonvested pension, retirement, or other deferred compensation rights shall be considered separate property.~~"

Section 4. G.S. 50-20(b)(3) reads as rewritten:

"(3) 'Distributive award' means payments that are payable either in a lump sum or over a period of time in fixed amounts, but shall not include alimony payments or other similar payments for support and maintenance which are treated as ordinary income to the recipient under the Internal Revenue Code.

~~The distributive award of vested pension, retirement, and other deferred compensation benefits may be made payable:~~

~~a. As a lump sum by agreement;~~

~~b. Over a period of time in fixed amounts by agreement;~~

~~c. As a prorated portion of the benefits made to the designated recipient at the time the party against whom the award is made actually begins to receive the benefits; or~~

~~d. By awarding a larger portion of other assets to the party not receiving the benefits, and a smaller share of other assets to the party entitled to receive the benefits.~~

~~Notwithstanding the foregoing, the court shall not require the administrator of the fund or plan involved to make any payments until the party against whom the award is made actually begins to receive the benefits unless a plan under the Employee Retirement Income Security Act (ERISA) permits earlier distribution. The award shall be determined using the proportion of time the marriage existed, (up to the date of separation of the parties), simultaneously with the employment which earned the vested pension, retirement, or deferred compensation benefit, to the total amount of time of employment. The award shall be based on the vested accrued benefit, as provided by the plan or fund, calculated as of the date of separation, and shall not include contributions, years of service or compensation which may accrue after the date of separation. The award shall include gains and losses on the prorated portion of the benefit vested at the date of separation. No award shall exceed fifty percent (50%) of the benefits the person against whom the award is made is entitled to receive as vested pension, retirement, or other deferred compensation benefits, except that an award may exceed fifty percent (50%) if (i) other assets subject to equitable distribution are insufficient; or (ii) there is difficulty in distributing any asset or any interest in a business, corporation, or profession; or (iii) it is economically desirable for one party to retain an asset or interest that is intact and free from any claim or interference by the other party; or (iv) more than one pension or retirement system or deferred compensation plan or fund is involved, but the benefits awarded may not exceed fifty percent (50%) of the total benefits of all the plans added together; or (v) both parties consent. In no event shall an award exceed fifty percent (50%) if a plan prohibits an award in excess of fifty percent (50%).~~

~~In the event the person receiving the award dies, the unpaid balance, if any, of the award shall pass to the beneficiaries of the recipient by will, if any, or by intestate succession, or by beneficiary designation with the plan consistent with the terms of~~

~~the plan unless the plan prohibits such a designation. In the event the person against whom the award is made dies, the award to the recipient shall remain payable to the extent permitted by the pension or retirement system or deferred compensation plan or fund involved.~~

~~The Court may require distribution of the award by means of a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code of 1986. To facilitate the calculation and payment of distributive awards, the administrator of the system, plan or fund may be ordered to certify the total contributions, years of service, and pension, retirement, or other deferred compensation benefits payable.~~

~~The provisions of this section and G.S. 50-21 shall apply to all pension, retirement, and other deferred compensation plans and funds, including military pensions eligible under the Federal Uniform Services Former Spouses Protection Act, and including funds administered by the State pursuant to Articles 84 through 88 of Chapter 58 and Chapters 120, 127A, 128, 135, 143, 143B, and 147 of the General Statutes, to the extent of a member's accrued benefit at the date of separation, as determined by the court.~~"

Section 5. G.S. 50-20(c) reads as rewritten:

"(c) There shall be an equal division by using net value of marital property unless the court determines that an equal division is not equitable. If the court determines that an equal division is not equitable, the court shall divide the marital property equitably. Factors the court shall consider under this subsection are as follows:

(1) The income, property, and liabilities of each party at the time the division of property is to become effective;

(2) Any obligation for support arising out of a prior marriage;

(3) The duration of the marriage and the age and physical and mental health of both parties;

(4) The need of a parent with custody of a child or children of the marriage to occupy or own the marital residence and to use or own its household effects;

(5) The expectation of ~~nonvested~~ pension, retirement, or other deferred compensation ~~rights, which is separate property;~~ rights that are not marital property;

(6) Any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services, or lack thereof, as a spouse, parent, wage earner or homemaker;

(7) Any direct or indirect contribution made by one spouse to help educate or develop the career potential of the other spouse;

(8) Any direct contribution to an increase in value of separate property which occurs during the course of the marriage;
(9) The liquid or nonliquid character of all marital property;
(10) The difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest, intact and free from any claim or interference by the other party;
(11) The tax consequences to each party;
(11a) Acts of either party to maintain, preserve, develop, or expand; or to waste, neglect, devalue or convert such marital property, during the period after separation of the parties and before the time of distribution; and
(12) Any other factor which the court finds to be just and proper."

Section 6. This act becomes effective October 1, 1997, and applies to actions for equitable distribution filed on and after that date.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

April 8, 1997/After Session — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike S. Watson	~~Family Law Section~~ Bar Assn.
Charles W. Coltrane	NCBA - Family Law Council
Wade Hanson	N.C. BA Family Law Section
Brent McChapman	" " "
BILL SCOBBIN	NCBA
	NCBA
	NCAJC

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 8, 1997 1:00 P.M.

The North Carolina House of Representatives Judiciary II Committee met on April 8, 1997, at 1:00 P.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Cansler, Culpepper, Gardner, Hackney, Redwine, Russell, Shubert, Sutton and Weatherly. A list of visitors is attached.

The following bills were discussed:

HB-533 EQUITABLE DISTRIBUTION/DIVISIBLE PROPERTY
HB-534 SUPPORT ORDERS ENFORCEMENT
HB-535 EQUITABLE DISTRIBUTION/RETIREMENT RIGHTS

Representative Hackney was recognized to send forth an amendment for HB-533 and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Hackney moved the amendments be incorporated in a committee substitute bill, with a favorable report as to the committee substitute, unfavorable as to original bill; motion passed

Representative Hackney was recognized to explain HB-534 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Mr. Wade Harrison Board Certified Specialist in Family Law, representing the North Carolina Bar Association, Family Law Section, and Mr. Bill Pulley, North Carolina Hospital Association, answered questions of committee members.

Representative Hackney was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Hackney was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Hackney was recognized to send forth an amendment and moved it be adopted, motion passed. A copy of the amendment is attached.

Mr. Hovis provided members with a handout DRAFT 4/3/97 PROPOSED REVISION TO SECTION 1 OF HOUSE BILL 534. A copy of the handout is attached.

No action was taken on HB-534.

Representative Hackney was recognized to explain HB-535 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Ms. Marcia Armstrong, Attorney, Board Certified Specialist in Family Law, representative the North Carolina Bar Association, answered questions of committee members.

No action was taken on HB-535.

The meeting was adjourned at 1:50 P.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 533 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Hackney
)
Sen.)

moves to amend the bill on page 7, lines 1-2

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"Section 3. The amendments to G.S. 50-20(il) made by this act become effective October 1, 1997 and apply to motions for interim distribution filed on or after that date. The remainder of this act becomes effective October 1, 1997 and applies to actions for equitable distribution filed on or after that date."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 10, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on April 10, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Bowie, Cansler, Creech, Culpepper, Gardner, Goodwin, Hackney, Hensley, McMahan, Nesbitt, Redwine, Saunders, Shubert, Sutton, Weatherly and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-115 1997 TECHNICAL CORRECTIONS
HB-147 OUTLAW DOG FIGHTS
HB-182 EXCLUDE 10 YEAR CONVICTION
HB-770 AMEND MARIJUANA TRAFFICKING AMENDMENTS

Representative Culpepper was recognized to send forth a proposed committee substitute for HB-115 and moved it be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute bill and bill explanation prepared by the General Statutes Commission are attached.

Ms. P. Bly Hall, North Carolina General Statutes Commission, explained the bill and answered questions of committee members.

Representative Creech moved for a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

Representative Bowie was recognized to explain HB-182 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Representative Kiser was recognized to send forth an amendment and moved it be adopted; motion passed.

Representative Wilkins moved the amendment be incorporated in a committee substitute bill, with a favorable report as to the committee substitute bill, unfavorable as to original bill; motion passed.

Representative Sutton, Chair, HB-147 Subcommittee, was recognized to send forth a proposed committee substitute for HB-147 and moved it be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute bill and explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Representative Weatherly, spoke in favor of the proposed committee substitute and commended the subcommittee on their work.

Representative Shubert moved for a favorable report as to the committee substitute bill, unfavorable as to original bill; motion passed.

Representative Kiser was recognized to explain HB-770 and answer questions of committee members. A copy of the bill and bill explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Representative Hensley moved for a favorable report; motion passed.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H115-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 115
THIS IS A DRAFT 9-APR-97 18:12:37
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: 1997 Technical Corrections. (Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AND SESSION LAWS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-650(b1) reads as rewritten:

"(b1) At the dispositional hearing or a subsequent hearing in the case of a juvenile who has been adjudicated delinquent, undisciplined, abused, neglected, or dependent, if the court finds that it is in the best interest of the juvenile for the parent to be directly involved in the juvenile's treatment, the court may order the parent to participate in medical, psychiatric, psychological, or other treatment of the ~~juvenile~~ juvenile. The cost of the treatment shall be paid pursuant to G.S. 7A-647(3)a."

Section 2. G.S. 14-277(a) reads as rewritten:

"(a) No person shall falsely represent to another that he is a sworn law-enforcement officer. As used in this section, a person represents that he is a sworn law-enforcement officer if he:

(1) Verbally informs another that he is a sworn law-enforcement officer, whether or not the representation refers to a particular agency;
(2) Displays any badge or identification signifying to a reasonable individual that the person is a sworn law-enforcement officer, whether or not the badge or other identification refers to a particular law-enforcement agency; ~~or~~
(3) Unlawfully operates a vehicle on a public street, highway or public vehicular area with an operating red light as defined in G.S. ~~20-130.1(a).~~ 20-130.1(a); or
(4) Unlawfully operates a vehicle on a public street, highway, or public vehicular area with an operating blue light as defined in G.S. 20-130.1(c)."

Section 3. G.S. 15A-401(b) reads as rewritten:

"(b) Arrest by Officer Without a Warrant. --

(1) Offense in Presence of Officer. -- An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal offense in the officer's presence.
(2) Offense Out of Presence of Officer. -- An officer may arrest without a warrant any person who the officer has probable cause to believe:
a. Has committed a felony; or
b. Has committed a misdemeanor, and:
1. Will not be apprehended unless immediately arrested, or
2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or
c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2; or
d. Has committed a misdemeanor under G.S. 14-33(a), ~~G.S. 14-33(b)(1), or G.S. 14-33(b)(2)~~ G.S. 14-33(c)(1), or G.S. 14-33(c)(2) when the offense was committed by a person who is the spouse or former spouse of the alleged victim or by a person with whom the alleged victim is living or has lived as if married.
(3) Repealed by Session Laws 1991, c. 150."

Section 4. G.S. 41-19(a) reads as rewritten:

"(a) Except as extended by subsection (b) of this section, this Article applies to a nonvested property interest or a power

of appointment that is created on or after October 1, 1995. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable."

Section 5. G.S. 68-42 reads as rewritten:

"**§ 68-42. Stock running at large prohibited; certain ponies excepted.**

From and after July 1, 1958, it shall be unlawful for any person, firm or corporation to allow his or its horses, cattle, goats, sheep, or hogs to run free or at large along the outer banks of this State. This Article shall not apply to horses known as marsh ponies or banks ponies on Ocracoke Island, Hyde County. This Article shall not apply to horses known as marsh ponies or banks ponies on ~~Shackelford~~ Shackleford Banks between Beaufort Inlet and Barden's Inlet in Carteret County. Saving and excepting those animals known as 'banker ponies' on the island of Ocracoke owned by the Boy Scouts and not exceeding 35 in number."

Section 6. G.S. 68-43 reads as rewritten:

"**§ 68-43. Authority of Secretary of Environment, Health, and Natural Resources to remove or confine ponies on Ocracoke Island and ~~Shackelford~~ Shackleford Banks.**

Notwithstanding any other provisions of this Article, the Secretary of Environment, Health, and Natural Resources shall have authority to remove or cause to be removed from Ocracoke Island and ~~Shackelford~~ Shackleford Banks all ponies known as banks ponies or marsh ponies if and when he determines that such action is essential to prevent damage to the island. In the event such a determination is made, the Secretary, in lieu of removing all ponies, may require that they be restricted to a certain area or corralled so as to prevent damage to the island. In the event such action is taken, the Secretary is authorized to take such steps and act through his duly designated employees or such other persons as, in his opinion, he deems necessary and he may accept any assistance provided by or through the National Park Service."

Section 7. G.S. 90-89(c)15. reads as rewritten:

"15. ~~Psilocyn.~~ Psilocin."

Section 8. G.S. 97-93(d) reads as rewritten:

"(d) Groups of two or more employers who agree to pool their liabilities under subdivision (a)(2) of this section are subject, in addition to the provisions cited in G.S. 58-2-145(a), to G.S. 58-2-165, ~~G.S.~~ 58-3-81, 58-6-25, 58-7-50, 58-7-55, 58-7-140, 58-7-160, 58-7-162, 58-7-163, 58-7-165, 58-7-167, 58-7-168, 58-7-170, 58-7-172, 58-7-173, 58-7-177, 58-7-179, 58-7-180, 58-7-183,

58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, 58-7-195, 58-7-197, 58-7-200, and Articles 13, 19, 30, and 34 of Chapter 58 of the General Statutes."

Section 9. G.S. 106-727(b) reads as rewritten:

"(b) The Commission shall consist of nine members, as follows:

(1) The Commissioner of Agriculture;

(2) Four members appointed by the General Assembly upon the recommendation of the President Pro Tempore ~~of~~ of the Senate in accordance with G.S. 120-121, one of whom shall be designated to serve as chairman as provided in subsection (d) of this section; and

(3) Four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121."

Section 10. G.S. 106-802(4) reads as rewritten:

"(4) 'Site evaluation' means an investigation to determine if a site meets all federal and State standards as evidenced by the Waste Management Facility Site Evaluation Report on file with the Soil and Water Conservation District office or a comparable report certified by a professional engineer or a comparable report certified by a technical specialist approved by the North Carolina Soil and Water Conservation Commission.

~~Department of Environment, Health and Natural Resources~~".

Section 11. G.S. 115C-81.2(e) reads as rewritten:

"(e) The State Board of Education shall report to the Joint Legislative Education Oversight Committee by December 31, 1996, and annually thereafter on the comprehensive plan developed under ~~Section 1 of Session Laws 1995 (Reg. Sess., 1996), c. 716, s. 1.~~ subsection (a) of this section. The first report shall include revisions made to the standard course of study, teacher certification standards, and teacher education programs. Subsequent reports shall address the effectiveness, based on factors including improved student performance in reading, of the implementation of the plan. The State Board may make recommendations to the General Assembly in any of its reports."

Section 12. G.S. 115C-302(f) reads as rewritten:

"(f) A teacher may use annual leave, personal leave, or leave without pay to care for a newborn child or for a child placed with the teacher for adoption or foster care. The leave may be for consecutive workdays during the first 12 months after the date of birth or placement of the child, unless ~~the~~ the teacher and local board of education agree otherwise."

Section 13. G.S. 115D-2.1(d) reads as rewritten:

"(d) No member of the General Assembly, no officer or employee of the State, and no officer or employee of an institution under the jurisdiction of the State Board and no spouse of any of those persons, shall be eligible to serve on the State Board. Furthermore, no person who within the prior ~~5~~ five years has been an employee of the Department of Community Colleges shall be eligible to serve on the State Board."

Section 14. G.S. 131D-2(a1)(4) reads as rewritten:

"(4) Individuals whose health needs cannot be met in the specific adult care home as determined by the ~~residence,~~ residence; and".

Section 15. G.S. 131D-20(6) reads as rewritten:

"(6) 'Group home for developmentally disabled adults' means ~~and~~ an adult care home which has two to nine developmentally disabled adult residents."

Section 16. G.S. 143B-153(3)b. reads as rewritten:

"b. For the inspection and licensing of adult care homes for aged or disabled persons as provided by G.S. 131D-2(b) and for personnel requirements of staff employed in ~~adult care homes~~ adult care homes;".

Section 17. G.S. 148-32.1(b) reads as rewritten:

"(b) In the event that the custodian of the local confinement facility certifies in writing to the clerk of the superior court in the county in which said local confinement facility is located that the local confinement facility is filled to capacity, or that the facility cannot reasonably accommodate any more prisoners due to segregation requirements for particular prisoners, or that the custodian anticipates, in light of local experiences, an influx of temporary prisoners at that time, or if the local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221, any judge of the district court in the district court district as defined in G.S. 7A-133 where the facility is located, or any superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or G.S. 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the facility is located may order that the prisoner be transferred to any other qualified local confinement facility within that district or within another such district where space is available, including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the prisoner is a non-violent misdemeanant, which local facility shall accept the transferred prisoner, if the prison population has exceeded a manageable level as provided

for in G.S. 148-4.1(a). If no such local confinement facility is available, then any such judge may order the prisoner transferred to such camp or facility as the proper authorities of the Department of Correction shall designate, notwithstanding that the term of imprisonment of the prisoner is 90 days or less. In no event, however, shall a prisoner whose term of imprisonment is less than 30 days be assigned or ordered transferred to any such camp or facility."

Section 18. G.S. 153A-301(a)(10)c. reads as rewritten:

"c. The county will pay to the city the following percentages of the city-county police department budget if there are no significant changes to the city's statutory annexation authority:

1. 9.60% for fiscal years 1995-96 and 1996-97.
2. 7.60% for fiscal years 1997-98 and 1998-99.
3. 5.60% for fiscal years 1999-2000 and 2000-2001.
4. 3.60% for fiscal years 2001-02 and 2002-03.
5. 1.60% for fiscal years 2003-04 and 2004-05.

Provided, if the difference between the ratio of the population in the unincorporated area to the total population served by the city-county police department and the rate for the current year as stated above is greater than fifteen percent (15%), ~~the~~ then the county's agreement to pay such percentages can be amended to reflect that difference."

Section 19. Chapter 261 of the 1995 Session Laws is repealed.

Section 20. Section 2 of Chapter 627 of the 1995 Session Laws reads as rewritten:

"Sec. 2. G.S. ~~113-133(e)~~ 113-133.1(e) is amended by deleting the words 'Currituck: Session Laws 1959, Chapter 545.'"

Section 21. Unless otherwise provided, this act is effective upon becoming law.

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
P.O. BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 733-6026

MEMORANDUM

TO: House Judiciary II Committee

FROM: General Statutes Commission

DATE: April 10, 1997

RE: House Bill 115 (1997 Technical Corrections)

General Comments

This bill makes corrections of a technical nature to various sections of the General Statutes. The amendments correct spelling, typographical, grammatical, redlining, and other obvious drafting errors, make technical conforming changes, and update or correct statutory references.

Specific Comments

Section 1. This section amends G.S. 7A-650(b1) to correct a redlining error. When the subsection was last amended, the extra "juvenile" was inadvertently not redlined out.

Section 2. This section makes a correction to G.S. 14-277(a). When subdivision (4) was added, the conjunction "or" between subdivisions (2) and (3) was not moved. This section moves "or" to the proper location between subdivisions (3) and (4) and conforms the punctuation.

Section 3. This section amends G.S. 15A-401 to update a citation. The General Assembly amended G.S. 14-33 in 1995 so that former subdivisions (b)(1) and (b)(2) of that section are now subdivisions (c)(1) and (c)(2).

Section 4. This section corrects an inadvertent error in G.S. 41-19, which is part of the Uniform Statutory Rule Against Perpetuities, enacted in 1995. The words "created by the exercise of a power of appointment", which appear in the equivalent section in the Uniform Act, were dropped when the original bill was typed. A careful reading of the resulting language will disclose that some language is missing. This section reinserts the missing language.

Sections 5 and 6. These sections amend G.S. 68-42 and 68-43, respectively, to correct

the spelling of "Shackelford", which evidently is spelled "Shackleford".

Section 7. This section amends G.S. 90-89(c)15. to change the spelling of "psilocyn" to the preferred spelling, "psilocin".

Section 8. This section amends G.S. 97-93(d) to conform the style of the citations to the current style used in drafting. In a list of only two citations, each citation is preceded by "G.S."; when the list is longer than two citations, "G.S." appears only in front of the first citation in the list.

Section 9. This section amends G.S. 106-727(b) to delete an extra "of" that occurred as the result of a redlining error.

Section 10. This section amends G.S. 106-802(4) to delete some extraneous language that resulted from amendments to this section by two different acts.

Section 11. This section corrects a citation in G.S. 115C-81.2(e).

Section 12. This section deletes an extra "the" in G.S. 115C-302(f).

Section 13. This section amends G.S. 115D-2.1(d) to conform the style of the number to the current drafting style. The number "5" should have been written out, i.e. "five".

Section 14. This section corrects a typographical error in the punctuation of one of the subdivisions of G.S. 131D-2(a1). The comma should be a semicolon to conform to the punctuation of the other subdivisions in the subsection.

Section 15. This section amends G.S. 131D-20(6) to correct a typographical error. The word "and" should have been "an".

Section 16. This section deletes an extra reference to adult care homes in G.S. 143B-153(3)b. that resulted from amendments by two different acts in the same session.

Section 17. This section amends G.S. 148-32.1(b) to conform the style of the citations to the current style used in drafting. See the comment under Section 8.

Section 18. This section amends G.S. 153A-301(a)(10)c. to delete an extra "the".

Section 19. This section repeals Chapter 261 of the 1995 Session Laws, which was made redundant by Chapter 546 of the 1995 Session Laws. Both amended G.S. 153A-343(b), which was added to G.S. 153A-343 by a previous General Assembly to provide for giving notice of certain types of proposed zoning changes by publication in the newspaper instead of requiring notice to affected property owners by first class mail. The two 1995 acts inserted essentially the

same provision into G.S. 153A-343(b) to allow counties to continue, at the county's option, to send these notices by first class mail. This amendment was the only substantive provision in Chapter 261. Chapter 546, however, accomplished the same result in slightly different language, so that some of the wording from Chapter 261 remains in G.S. 153A-343(b) as "garbage language" that needs to be deleted.

Section 20. This section amends the operative language of Section 2 of Chapter 627 of the 1995 Session Laws. "G.S. 113-133(e)" should have been written "G.S. 113-133.1(e)".

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 115 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AND SESSION LAWS AS RECOMMENDED BY THE GENERAL STATUTES 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

☐ 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 115*
Proposed Committee Substitute H115-PCS7215

Short Title: 1997 Technical Corrections. (Public)

Sponsors:

Referred to:

February 12, 1997

A BILL TO BE ENTITLED

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Section 1. G.S. 7A-650(b1) reads as rewritten:

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(2) Displays any badge or identification signifying to a reasonable individual that the person is a sworn law-enforcement officer,

whether or not the badge or other identification refers to a particular law-enforcement agency; ~~or~~

(3) Unlawfully operates a vehicle on a public street, highway or public vehicular area with an operating red light as defined in G.S. ~~20-130.1(a).~~ 20-130.1(a); or

(4) Unlawfully operates a vehicle on a public street, highway, or public vehicular area with an operating blue light as defined in G.S. 20-130.1(c)."

Section 3. G.S. 15A-401(b) reads as rewritten:

"(b) Arrest by Officer Without a Warrant. --

(1) Offense in Presence of Officer. -- An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal offense in the officer's presence.

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a. Has committed a felony; or

b. Has committed a misdemeanor, and:

1. Will not be apprehended unless immediately arrested, or

2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or

c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2; or

d. Has committed a misdemeanor under G.S. 14-33(a), ~~G.S. 14-33(b)(1), or G.S. 14-33(b)(2)~~ G.S. 14-33(c)(1), or G.S. 14-33(c)(2) when the offense was committed by a person who is the spouse or former spouse of the alleged victim or by a person with whom the alleged victim is living or has lived as if married.

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light of local experiences, an influx of temporary prisoners at that time, or if the local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221, any judge of the district court in the district court district as defined in G.S. 7A-133 where the facility is located, or any superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or G.S. 7A-48 in a district or set of districts as defined in G.S. 7A-41.1 where the facility is located may order that the prisoner be transferred to any other qualified local confinement facility within that district or within another such district where space is available, including a satellite jail unit operated pursuant to G.S. 153A-230.3 if the prisoner is a non-violent misdemeanant, which local facility shall accept the transferred prisoner, if the prison population has exceeded a manageable level as provided for in G.S. 148-4.1(a). If no such local confinement facility is available, then any such judge may order the prisoner transferred to such camp or facility as the proper authorities of the Department of Correction shall designate, notwithstanding that the term of imprisonment of the prisoner is 90 days or less. In no event, however, shall a prisoner whose term of imprisonment is less than 30 days be assigned or ordered transferred to any such camp or facility."

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Provided, if the difference between the ratio of the population in the unincorporated area to the total population served by the city-county police department and the rate for the current year as stated above is greater than fifteen percent (15%), ~~the~~ then the county's agreement to pay such percentages can be amended to reflect that difference."

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"Sec. 2. G.S. ~~113-133(e)~~ 113-133.1(e) is amended by deleting the words 'Currituck: Session Laws 1959, Chapter 545.'"

Section 21. Unless otherwise provided, this act is effective upon becoming law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 182

Short Title: Exclude 10 Yr. Conviction. (Public)

Sponsors: Representatives Bowie; and McMahan.

Referred to: Judiciary II.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO EXCLUDE FROM PRIOR RECORD LEVEL CALCULATIONS CERTAIN PRIOR CONVICTIONS THAT ARE OVER TEN YEARS OLD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1340.14 is amended by adding a new subsection to read:

"(a1) Conviction-Free Period. -- If, within the 10 years immediately preceding the date of the commission of the current offense, an offender:

(1) Has not been convicted of any felony, and

(2) Has not been convicted of any misdemeanor as that term is defined in this subsection, and

(3) Has not been incarcerated as a result of a conviction of any felony or misdemeanor,

then prior Class H and I felony convictions and Class A1 and 1 misdemeanor convictions are not assigned points. For purposes of this subsection, misdemeanor is defined as any nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), misdemeanor death by vehicle (G.S. 20-141.4(a2)), and driving while license revoked (G.S. 20-28(a)), but not any other misdemeanor traffic offense under Chapter 20 of the General Statutes."

Section 2. G.S. 15A-1340.21 is amended by adding a new subsection to read:

"(a1) Conviction-Free Period. -- If, within the 10 years immediately preceding the date of the commission of the current offense, an offender:

(1) Has not been convicted of any felony, and

(2) Has not been convicted of any misdemeanor as that term is defined in this subsection, and

(3) Has not been incarcerated as a result of a conviction of any felony or misdemeanor,

then prior Class H and I felony convictions and misdemeanor convictions are not counted. For purposes of this subsection, misdemeanor is defined as any nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), misdemeanor death by vehicle (G.S. 20-141.4(a2)), and driving while license revoked (G.S. 20-28(a)), but not any other misdemeanor traffic offense under Chapter 20 of the General Statutes."

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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April 2, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 182-Exclude 10 Yr. Conviction (Bowie)

[redacted]e Bill 182 excludes from prior record level calculations prior Class H and I felony convictions and most [redacted]meanor convictions if , within the ten years preceding the current offense, the defendant has not been convicted of a felony or misdemeanor and has not been incarcerated as a result of any conviction.

The bill becomes effective December 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Factors Contributing to Service Greater Than Presumptive Term to Be Set Out. — A trial judge is required to consider all of the aggravating and mitigating factors listed in this section before imposing a sentence greater than the presumptive term, but he is only required to set out in the judgment the factors that he determines by the preponderance of the evidence are present. State v. Greime, 97 N.C. App. 409, 388 S.E.2d 594 (1990).

Sentence in Excess of Presumptive Term Upheld. —

Twenty-five-year sentence for robbery with a dangerous weapon held valid, just and in accordance with the purposes of the Fair Sentencing Act. State v. Summerlin, 98 N.C. App. 167, 390 S.E.2d 358, cert. denied, 327 N.C. 143, 394 S.E.2d 183 (1990).

The trial court acted under a misapprehension of law when it sentenced a defendant to a presumptive term of three years for marijuana offenses under § 90-95(b)(2). State v. Pavone, 104 N.C. App. 442, 410 S.E.2d 1 (1991).

Habitual Felons. — Defendant's sentences were not excessive where defendant was an habitual offender, sentenced to fourteen years of imprisonment, the minimum sentence allowed under the habitual felon statute. State v. Hodge, 112 N.C. App. 462, 436 S.E.2d 251 (1993).

IV. APPELLATE REVIEW.

Consolidation of Presumptive Sentences. — When indictments or convictions with equal presumptive terms were consolidated for sentencing without the finding of aggravating or mitigating circumstances, and the terms were totaled to arrive at the sentence, the sentence, for purposes of appellate review, because of the provisions of former § 15A-1340.4(a), would be deemed to be equally attributable to each indictment or conviction if nothing else appeared in the record. State v. Hemby, 333 N.C. 331, 426 S.E.2d 77 (1993).

Finding Aggravating Factor for Misdemeanor Conviction Nonprejudicial Error. — The trial court did not need to find an aggravating factor for the breaking and entering count since the defendant was convicted of a misdemeanor which was not subject to former § 15A-1340.4(b). The finding of an aggravating factor for the misdemeanor conviction, therefore, was superfluous and nonprejudicial error. The extent of punishment for misdemeanors is referred to the discretion of the trial court and its sentence may not be interfered with by the appellate court, except in cases of manifest and gross abuse. State v. Clark, 107 N.C. App. 184, 419 S.E.2d 188 (1992).

Where trial judge stated his intended sentence even before evidence was presented to the jury on the issue of guilt, the appellate court could not conclude that the sentence imposed was based solely upon the evidence, the argument of counsel and the aggravating and mitigating factors found by the trial judge, and the case would be remanded for a new sentencing hearing. State v. Cannon, 326 N.C. 37, 387 S.E.2d 450 (1990).

Sentence Influenced by Insistence on Jury Trial. — Where it could reasonably be inferred from the language of the trial judge that sentence was imposed at least in part because defendant did not agree to a plea offer by the state and insisted on a trial by jury, defendant's constitutional right to trial by jury was abridged, and a new sentencing hearing would result. State v. Cannon, 326 N.C. 37, 387 S.E.2d 450 (1990).

§ 15A-1340.14. Prior record level for felony sentencing.

(a) Generally. — The prior record level of a felony offender is determined by calculating the sum of the points assigned to each of the offender's prior convictions that the court finds to have been proved in accordance with this section.

(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, 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)), 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.

(c) Prior Record Levels for Felony Sentencing. — The prior record levels for felony sentencing are:

(1) Level I — 0 points.
(2) Level II — At least 1, but not more than 4 points.
(3) Level III — At least 5, but not more than 8 points.
(4) Level IV — At least 9, but not more than 14 points.
(5) Level V — At least 15, but not more than 18 points.
(6) Level VI — At least 19 points.

In determining the prior record level, the classification of a prior offense is the classification assigned to that offense at the time the offense for which the offender is being sentenced is committed.

(d) Multiple Prior Convictions Obtained in One Court Week. — For purposes of determining the prior record level, if an offender is convicted of more than one offense in a single superior court during one calendar week, only the conviction for the offense with the highest point total is used. If an offender is convicted of more than one offense in a single session of district court, only one of the convictions is used.

(e) Classification of Prior Convictions From Other Jurisdictions. — Except as otherwise provided in this subsection, a conviction occurring in a jurisdiction other than North Carolina is classified as a Class I felony if the jurisdiction in which the offense occurred classifies the offense as a felony, or is classified as a Class 3 misdemeanor if the jurisdiction in which the offense occurred classifies the offense as a misdemeanor. If the offender proves by the preponderance of the evidence that an offense classified as a felony in the other jurisdiction is substantially similar to an offense that is a misdemeanor in North Carolina, the conviction is treated as that class of misdemeanor for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as either a misdemeanor or a felony in the other jurisdiction is substantially similar to an offense in North Carolina that is classified as a Class I felony or higher, the conviction is treated as that class of felony for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as a misdemeanor in the other jurisdiction is substantially similar to an offense classified as a Class A1 or Class 1 misdemeanor

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Sess., 1996), c. 742, s. 1

Editor's Note. — Session L
c. 538, which enacts this Artic
October 1, 1994, in s. 56, as a
Session Laws 1994, Extra Ses
s. 14(b), provides: "This act b
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in North Carolina, the conviction is treated as a Class A1 or Class 1 misdemeanor for assigning prior record level points.

(f) Proof of Prior Convictions. — A prior conviction shall be proved by any of the following methods:

(1) Stipulation of the parties.

(2) An original or copy of the court record of the prior conviction.

(3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.

(4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, "a copy" includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the offender's full record. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, the court may grant a continuance of the sentencing hearing. If asked by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the defendant's prior criminal record to the defendant within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 22, s. 10; c. 24, s. 14(b); 1993 (Reg. Sess., 1994), c. 767, ss. 11-13; 1995, c. 507, s. 19.5(f); 1995 (Reg. Sess., 1996), c. 742, s. 15.)

Editor's Note. — Session Laws 1993, c. 538, which enacts this Article effective October 1, 1994, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act [October 1, 1994] are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 14 provides: "Prosecution for offenses occurring before the effective date of this Part are not abated or affected by this Part, and the statutes that would be applicable but for this Part remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 1 provides: "This act shall be known as the Crime Control Act of 1994."

Session Laws 1993 (Reg. Sess., 1994), c. 767, which amended this section, in s. 34 provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1995, c. 507, s. 1.1, pro-

punishment, intermediate punishment, and community punishment. Except for the work and earned time credits authorized by G.S. 162-60, or earned time credits authorized by G.S. 15A-1355(c), if applicable, an offender whose sentence of imprisonment is activated shall serve each day of the term imposed.

(c) Suspension of Sentence. — Unless otherwise provided, the court shall suspend a sentence of imprisonment if the class of offense and prior conviction level requires community or intermediate punishment as a sentence disposition.

(d) Earned Time Authorization. — An offender sentenced to a term of imprisonment that is activated is eligible to receive earned time credit for misdemeanant offenders awarded by the Department of Correction or the custodian of a local confinement facility, pursuant to rules adopted in accordance with law and pursuant to G.S. 162-60. These rules and statute combined shall not award misdemeanant offenders more than four days of earned time credit per month of incarceration. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 24, s. 14(b); 1993 (Reg. Sess., 1994), c. 767, s. 1.)

Editor's Note. — Session Laws 1993, c. 538, which enacts this Article effective October 1, 1994, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1993 (Reg. Sess., 1994), c. 767, which amended this section, in s. 34 provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§ 15A-1340.21. Prior conviction level for misdemeanor sentencing.

(a) Generally. — The prior conviction level of a misdemeanor offender is determined by calculating the number of the offender's prior convictions that the court finds to have been proven in accordance with this section.

(b) Prior Conviction Levels for Misdemeanor Sentencing. — The prior conviction levels for misdemeanor sentencing are:

(1) Level I — 0 prior convictions.
(2) Level II — At least 1, but not more than 4 prior convictions.
(3) Level III — At least 5 prior convictions.

(c) Proof of Prior Convictions. — A prior conviction shall be proved by any of the following methods:

(1) Stipulation of the parties.
(2) An original or copy of the court record of the prior conviction.
(3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.
(4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior

conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, "copy" includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, the court may grant a continuance of the sentencing hearing.

(d) Multiple Prior Convictions Obtained in One Court Week. — For purposes of this section, if an offender is convicted of more than one offense in a single session of district court, or in a single week of superior court or of a court in another jurisdiction, only one of the convictions may be used to determine the prior conviction level. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 24, s. 14(b); 1993 (Reg. Sess., 1994), c. 767, s. 13.1.)

Editor's Note. — Session Laws 1993, c. 538, which enacts this Article effective October 1, 1994, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

Session Laws 1993 (Reg. Sess., 1994), c. 767, which amended this section, in s. 34 provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

§ 15A-1340.22. Multiple convictions.

(a) Limits on Consecutive Sentences. — If the court elects to impose consecutive sentences for two or more misdemeanors and the most serious misdemeanor is classified in Class A1, Class 1, or Class 2, the cumulative length of the sentences of imprisonment shall not exceed twice the maximum sentence authorized for the class and prior conviction level of the most serious offense. Consecutive sentences shall not be imposed if all convictions are for Class 3 misdemeanors.

(b) Consolidation of Sentences. — If an offender is convicted of more than one offense at the same session of court, the court may consolidate the offenses for judgment and impose a single judgment for the consolidated offenses. Any sentence imposed shall be consistent with the appropriate prior conviction level of the most serious offense. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 24, s. 14(b); 1995 (Reg. Sess., 1996), c. 742, s. 16.)

Editor's Note. — Session Laws 1993, c. 538, which enacts this Article effective October 1, 1994, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in

§ 15A-1340.23. Punishm offense and

(a) Offense Classification; De classification is as specified in t being imposed. If the offense is classification, it is as classified

(b) Fines. — Any judgment t ment may also include a fine. other than an individual, the ju a community punishment is a of a fine only. Unless otherwis maximum fine that may be ($200.00) for a Class 3 misd ($1,000) for a Class 2 misden Class 1 misdemeanor and discretion of the court.

(c) Punishment for Each C Level; Punishment Chart De for a specific offense, the au offense and prior conviction l Prior conviction levels are in horizontally on the top of the by the Arabic numbers place Each grid on the chart conta

(1) A sentence dispositi community punishm intermediate punis that an active puni

(2) A range of duration sentence within th

MISDEMEANOR OFFENSE CLASS	LEVE No Pr Convict
A1	1-60 days
1	1-45 days
2	1-30 days
3	1-10 days

(1993, c. 538, s. 1; 1994, 19.5(g).)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 182 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Kiser
Sen.)

moves to amend the bill on page 1, line 14

( ) WHICH CHANGES THE TITLE

by deleting the following: "Hand";

and on page 2, line 5

by deleting the following: "Hand".

SIGNED Joe Kiser

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 182 A BILL TO BE ENTITLED AN ACT TO EXCLUDE FROM PRIOR RECORD LEVEL CALCULATIONS CERTAIN PRIOR CONVICTIONS THAT ARE OVER TEN YEARS OLD.

☐ 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 182
Proposed Committee Substitute H182-PCS7214

Short Title: Exclude 10 Yr. Conviction. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO EXCLUDE FROM PRIOR RECORD LEVEL CALCULATIONS CERTAIN PRIOR CONVICTIONS THAT ARE OVER TEN YEARS OLD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1340.14 is amended by adding a new subsection to read:

"(a1) Conviction-Free Period. -- If, within the 10 years immediately preceding the date of the commission of the current offense, an offender:

(1) Has not been convicted of any felony, and

(2) Has not been convicted of any misdemeanor as that term is defined in this subsection, and

(3) Has not been incarcerated as a result of a conviction of any felony or misdemeanor,

then prior Class I felony convictions and Class A1 and 1 misdemeanor convictions are not assigned points. For purposes of this subsection, misdemeanor is defined as any nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), misdemeanor death by vehicle (G.S. 20-141.4(a2)), and driving while license revoked (G.S. 20-28(a)), but not any other misdemeanor traffic offense under Chapter 20 of the General Statutes."

Section 2. G.S. 15A-1340.21 is amended by adding a new subsection to read:

"(a1) Conviction-Free Period. -- If, within the 10 years immediately preceding the date of the commission of the current offense, an offender:

(1) Has not been convicted of any felony, and
(2) Has not been convicted of any misdemeanor as that term is defined in this subsection, and
(3) Has not been incarcerated as a result of a conviction of any felony or misdemeanor,

then prior Class I felony convictions and misdemeanor convictions are not counted. For purposes of this subsection, misdemeanor is defined as any nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), misdemeanor death by vehicle (G.S. 20-141.4(a2)), and driving while license revoked (G.S. 20-28(a)), but not any other misdemeanor traffic offense under Chapter 20 of the General Statutes."

Section 3. 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 D

HOUSE BILL 147
Proposed Committee Substitute H147-CSSA-002
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Outlaw Dog Fights. (Public)

Sponsors:

Referred to: Judiciary II.

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE FELONY OFFENSE OF DOG FIGHTING AND BAITING.

The General Assembly of North Carolina enacts:

Section 1. Article 47 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-362.2. Dog fighting and baiting.

(a) A person who instigates, promotes, conducts, is employed at, provides a dog for, allows property under his ownership or control to be used for, gambles on, or profits from an exhibition featuring the fighting or baiting of a dog is guilty of a Class H felony. A lease of property that is used or is intended to be used for an exhibition featuring the fighting or baiting of a dog is void, and a lessor who knows this use is made or is intended to be made of his property is under a duty to evict the lessee immediately.

(b) A person who owns, possesses, or trains a dog with the intent that the dog be used in an exhibition featuring the fighting or baiting of that dog is guilty of a Class H felony.

(c) A person who participates as a spectator at an exhibition featuring the fighting or baiting of a dog is guilty of a Class I felony.

(d) A person who commits a second or subsequent offense under subsection (c) of this section within three years after being convicted of any offense under this section is guilty of a Class H felony."

Section 2. G.S. 14-362.1 reads as rewritten:

"§ 14-362.1. Animal ~~fights, other than cock fights, and animal baiting.~~ fights and baiting, other than cock fights, dog fights and dog baiting.

(a) A person who instigates, promotes, conducts, is employed at, provides an animal for, allows property under his ownership or control to be used for, or profits from an exhibition featuring the fighting or baiting of an animal, other than a ~~cock,~~ cock or a dog, is guilty of a Class 2 misdemeanor. A lease of property that is used or is intended to be used for an exhibition featuring the fighting or baiting of an animal, other than a ~~cock,~~ cock or a dog, is void, and a lessor who knows this use is made or is intended to be made of his property is under a duty to evict the lessee immediately.

(b) A person who owns, possesses, or trains an animal, other than a ~~cock,~~ cock or a dog, with the intent that the animal be used in an exhibition featuring the fighting or baiting of that animal or any other animal is guilty of a Class 2 misdemeanor.

(c) A person who participates as a spectator at an exhibition featuring the fighting or baiting of an animal, other than a ~~cock,~~ cock or a dog, is guilty of a Class 2 misdemeanor.

(d) A person who commits an offense under subsection (a) within three years after being convicted of an offense under this section is guilty of a Class I felony.

(e) This section does not prohibit the lawful taking or training of animals under the jurisdiction and regulation of the Wildlife Resources Commission."

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 10, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: HB147 - Outlaw Dog Fights - Committee Substitute

Section 1 of HB147 creates a new G.S. 14-362.2 that would increase the penalty for any person who instigates, promotes, conducts, is employed at, provides a dog for, allows property to be used for, gambles on or profits from a dog fight from a Class 2 misdemeanor to a Class H felony. Under current law, G.S. 14-362.1 contains a Class 2 misdemeanor for the same conduct for all animals except cocks, with the penalty for a second or subsequent offense within 3 years being a Class I felony.

This bill also increases the penalty for any person who owns, possesses, or trains a dog with the intent that the dog be used in fighting from a Class 2 misdemeanor to a Class H felony.

A person who participates as a spectator is guilty of a Class I felony for a first offense and a Class H felony for a second or subsequent offense.

As with G.S. 14-362.1, the bill places a duty upon a lessor to evict a tenant who is using or intends to use the rental property for dog fights.

Section 2 amends the existing G.S. 14-362.1 to remove dog fights from that statute.

Section 3 makes this act effective December 1, 1997 and applies to offenses on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 147 A BILL TO BE ENTITLED AN ACT TO CREATE THE FELONY OFFENSE OF DOG FIGHTING AND BAITING.

☐ 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 147
Proposed Committee Substitute H147-PCS7208

Short Title: Outlaw Dog Fights. (Public)

Sponsors:

Referred to:

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO CREATE THE FELONY OFFENSE OF DOG FIGHTING AND BAITING.

The General Assembly of North Carolina enacts:

Section 1. Article 47 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-362.2. Dog fighting and baiting.**

(a) A person who instigates, promotes, conducts, is employed at, provides a dog for, allows property under his ownership or control to be used for, gambles on, or profits from an exhibition featuring the fighting or baiting of a dog is guilty of a Class H felony. A lease of property that is used or is intended to be used for an exhibition featuring the fighting or baiting of a dog is void, and a lessor who knows this use is made or is intended to be made of his property is under a duty to evict the lessee immediately.

(b) A person who owns, possesses, or trains a dog with the intent that the dog be used in an exhibition featuring the fighting or baiting of that dog is guilty of a Class H felony.

(c) A person who participates as a spectator at an exhibition featuring the fighting or baiting of a dog is guilty of a Class I felony.

(d) A person who commits a second or subsequent offense under subsection (c) of this section within three years after being convicted of any offense under this section is guilty of a Class H felony."

Section 2. G.S. 14-362.1 reads as rewritten:

"§ 14-362.1. Animal ~~fights, other than cock fights, and animal baiting.~~ fights and baiting, other than cock fights, dog fights and dog baiting.

(a) A person who instigates, promotes, conducts, is employed at, provides an animal for, allows property under his ownership or control to be used for, or profits from an exhibition featuring the fighting or baiting of an animal, other than a ~~cock,~~ cock or a dog, is guilty of a Class 2 misdemeanor. A lease of property that is used or is intended to be used for an exhibition featuring the fighting or baiting of an animal, other than a ~~cock,~~ cock or a dog, is void, and a lessor who knows this use is made or is intended to be made of his property is under a duty to evict the lessee immediately.

(b) A person who owns, possesses, or trains an animal, other than a ~~cock,~~ cock or a dog, with the intent that the animal be used in an exhibition featuring the fighting or baiting of that animal or any other animal is guilty of a Class 2 misdemeanor.

(c) A person who participates as a spectator at an exhibition featuring the fighting or baiting of an animal, other than a ~~cock,~~ cock or a dog, is guilty of a Class 2 misdemeanor.

(d) A person who commits an offense under subsection (a) within three years after being convicted of an offense under this section is guilty of a Class I felony.

(e) This section does not prohibit the lawful taking or training of animals under the jurisdiction and regulation of the Wildlife Resources Commission."

Section 3. 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 770

Short Title: Amend Marijuana Trafficking Amts. (Public)

Sponsors: Representatives Kiser; Aldridge, Allred, Baker, Barbee, Beall, Berry, Black, Bonner, Bowie, Brawley, Brown, Buchanan, Cansler, Capps, Carpenter, Clary, Cole, Crawford, Creech, Culpepper, Daughtry, Davis, Decker, Dedmon, Dickson, Eddins, Ellis, Esposito, Gamble, Gardner, Goodwin, Grady, Gray, Gulley, Hall, Hardy, Hensley, Hiatt, Hill, Holmes, Howard, R. Hunter, Hurley, Ives, Jarrell, Jeffus, Justus, Kinney, McComas, McCombs, McCrary, McMahan, Mercer, Miller, Miner, Mitchell, Moore, Morgan, Morris, Nye, Owens, Ramsey, Rayfield, Redwine, Reynolds, Rogers, Russell, Saunders, Sexton, Sherrill, Shubert, Smith, Starnes, Sutton, Tallent, Thompson, Tolson, Wainwright, Warwick, Watson, Weatherly, Wilkins, C. Wilson, G. Wilson, and Yongue.

Referred to: Judiciary II.

April 3, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE OFFENSE OF TRAFFICKING IN MARIJUANA BY CHANGING THE AMOUNT OF MARIJUANA THAT WOULD BE CONSIDERED TRAFFICKING.

The General Assembly of North Carolina enacts:

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

"(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~~ 10 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~~ 10 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."

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

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April 10, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: House Bill 770 - Amend Marijuana Trafficking Amounts

Current law requires that a defendant sell, manufacture, deliver, transport or possess in excess of 50 pounds of marijuana to be charged with "trafficking" marijuana. House Bill 770 decreases this amount to 10 pounds.

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

§ 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

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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.

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(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;

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(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.

(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

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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

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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

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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.

(1971, c. 919, s. 1; 1973, c. 654, s. 1; c. 1078; c. 1358, s. 10; 1975, c. 360, s. 2; 1977, c. 862, ss. 1, 2; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1251, ss. 4-7; 1983, c. 18; c. 294, s. 6; c. 414; 1985, c. 569, s. 1; c. 675, ss. 1, 2; 1987, c. 90; c. 105, ss. 4, 5; c. 640, ss. 1, 2; c. 783, s. 4; 1989, c. 641; c. 672; c. 690; c. 770, s. 68; 1989 (Reg. Sess., 1990), c. 1024, s. 17; c. 1039, s. 5; c. 1081, s. 2; 1991, c. 484, s. 1; 1993, c. 538, s. 30; c. 539, s. 1358.1; 1994, Ex. Sess., c. 11, s. 1; c. 14, ss. 46, 47; c. 24, s. 14(b); 1996, 2nd Ex. Sess., c. 18, s. 20.13(c).)

Cross References. - As to furnishing controlled substances to inmates of charitable, mental or penal institutions, see § 14-258.1.

Editor's Note. - Subsection (f) was repealed by Session Laws 1975, c. 360, s. 2, effective July 1, 1975. The repealing act expired by its own terms on July 1, 1977.

Session Laws 1993, c. 538, which amended this section, in s. 56, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), provides: "This act becomes effective October 1, 1994, and applies only to offenses occurring on or after that date. Prosecutions for, or sentences based on, offenses occurring before the effective date of this act are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

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Session Laws 1994, Extra Session, c. 14, s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1994, Extra Session, c. 14, ss. 46 and 47, which amended this section, was effective on the same date that Chapter 539 of the 1993 Session Laws became effective (October 1, 1994), and applicable to offenses occurring on or after that date.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. - The 1996 Second Extra Session amendment, effective January 1, 1997, and applicable to offenses committed on or after that date, substituted "Class D felon" for "Class E felon" in subdivision (e)(5).

Legal Periodicals. - For note on punishment of physicians under the Controlled Substances Act, see 56 N.C.L. Rev. 154 (1978).

For survey of 1979 criminal law, see 58 N.C.L. Rev. 1350 (1980).

For survey of 1982 criminal law, see 61 N.C.L. Rev. 1060 (1983).

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1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 770 A BILL TO BE ENTITLED AN ACT TO AMEND THE OFFENSE OF TRAFFICKING IN MARIJUANA BY CHANGING THE AMOUNT OF MARIJUANA THAT WOULD BE CONSIDERED TRAFFICKING.

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)

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

April 10, 1997 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
ERIC ZOGRY	SENTENCING COMMISSION
John Madler	Sentencing Commission
Patricia Rawlins	NCAJCC
Andy Romcnt	NCLM
Johnny Bluejeans	
Floyd M. Lewis	General Statutes Commission
Jane Winn	NCBA
Sandra Byrd	NCBA
P. Bly Heath	General Statutes Commission
Laura Hartsell	MCIC
Dennis Patterson	AP
Art Hall	NC Academy of Trial Lawyers - V.P.
Gene Ramquist	NCADA
BILL SLOCUMB	NCBA
Tommy Hamilton	Hamilton + Fry
Jay Blackburn	NC Assoc County Commr's.
Leon M Killian	Moore-Van Allen

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 15, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on April 15, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Kiser, Vice Chairman, called the meeting to order.

Those in attendance were Representatives Kiser, Baddour, Berry, Bowie, Cansler, Culpepper, Gardner, Goodwin, Hackney, Hensley, McMahan, Nesbitt, Russell, Shubert, Weatherly and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-205 MODIFY TWO DMV DEFINITIONS
HB-333 CLARIFY ATTORNEY-IN-FACT GIFTS
HB-427 ASSAULT CORRECTIONS OFFICER
HB-432 NATIONAL GUARD MOBILIZATION LESSONS

Representative Baddour was recognized to present a proposed committee substitute for HB-432. Representative Bowie moved the proposed committee substitute be adopted for purpose of discussion; motion passed. A copy of the bill, bill explanation prepared by Mr. Tim Hovis, Committee Counsel, and the proposed committee substitute are attached.

Mr. Dana Cope, North Carolina Department of Labor, Col. Doug Phelps, Vice Chief of Staff, North Carolina National Guard and Mr. Andy Willis, Fiscal Research Division, answered questions of committee members.

Representative Shubert was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Weatherly moved the amendment be incorporated in a new committee substitute bill, with a favorable report as to the committee substitute bill, unfavorable as to original bill; motion passed.

Representative Culpepper was recognized to review HB-333 and answer questions of committee members.

Representative Hackney moved for a favorable report as to the committee substitute bill, unfavorable as to original bill; motion passed.

Representative Kiser presented HB-427 and answered questions of committee members. A copy of the bill and bill explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Mr. Greg Stahl, North Carolina Department of Corrections, answered questions of committee members.

Representative Shubert moved for a favorable report; motion passed.

Representative Bowie was recognized to explain HB-205 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Ms. Ruth Sappie and Mr. Tony Spence, North Carolina Department of Transportation, Department of Motor Vehicles, answered questions of committee members.

No action was taken on HB-205

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 432

Short Title: N.C.N.G. Mobilization Lessons/AB. (Public)

Sponsors: Representatives Baddour, Justus, Sexton (Cosponsors); Adams, Alexander, Bonner, Boyd-McIntyre, Brawley, Brown, Davis, Decker, Dedmon, Dockham, Goodwin, Gulley, Hall, Hardy, Hiatt, Hightower, R. Hunter, Hurley, Ives, Jeffus, Kiser, McAllister, McMahan, Mercer, Moore, Morris, Mosley, Nesbitt, Oldham, Rayfield, Redwine, Russell, Saunders, Smith, Starnes, Sutton, Tolson, Warwick, C. Wilson, Wood, Wright, and Yongue.

Referred to: State Government, if favorable, Judiciary II.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE LESSONS LEARNED FROM HURRICANE FRAN WITH RESPECT TO THE MOBILIZATION OF THE NORTH CAROLINA NATIONAL GUARD.

The General Assembly of North Carolina enacts:

Section 1. Chapter 127A of the General Statutes is amended by adding a new section to read:

"**§ 127A-202.1. Discrimination against persons who serve in the North Carolina National Guard and acts of reprisal prohibited.**

(a) A person who is a member of the North Carolina National Guard who performs, has performed, applies to perform, or has an obligation to perform service in the North Carolina National Guard shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, applications for membership, performance of service, application for service, or obligation.

(b) An employer shall be considered to have denied a person initial employment, reemployment, retention in employment, promotion, or a benefit of employment in violation of this section if the person's membership, application for membership, service, application for service, or obligation for service in the North Carolina

National Guard is a motivation factor in the employer's action, unless the employer can prove that the action would have taken place in the absence of the membership, application for membership, performance of service, application for service, or obligation.

(c) An employer may not discriminate in employment against or take any adverse employment action against any person because that person has taken an action to enforce a protection afforded to any person under this Article, has testified or otherwise made a statement in or in connection with any proceeding under this Article, has assisted or otherwise participated in an investigation under this Article, or has exercised a right provided for in this Article.

(d) The prohibition in subsection (c) of this section shall apply to any person regardless of whether or not that person serves or has served with the North Carolina National Guard, and shall apply to any position of employment in this State.

(e) The Commissioner of Labor shall enforce the provisions of this section. The relevant procedures contained in G.S. 95-242, G.S. 95-243, and the rules issued pursuant to G.S. 95-245 shall be used in enforcing this section."

Section 2. G.S. 127A-105 reads as rewritten:

"**§ 127A-105. Rations and pay on State service.**

The militia of the State, both officers and enlisted personnel, when called into the service of the State by the Governor shall receive the same pay as when called or ordered into the service of the United States, and shall be rationed or paid the equivalent thereof, provided that no officer or enlisted personnel shall receive less than ~~12~~ 18 times the minimum hourly wage per day as provided for in ~~G.S. 95-87.~~ G.S. 95-25.3(a)."

Section 3. G.S. 127A-107 reads as rewritten:

"**§ 127A-107. Rate of pay for other service.**

The Governor may, whenever the public service requires it, order upon special or regular duty any officer or enlisted member of the national guard or naval militia, and the expenses and compensation therefor of such officer and enlisted member shall be paid out of the appropriations made to the Department of Crime Control and Public Safety. Such officers and enlisted members shall receive the same rate of pay as officers and enlisted members of the same grade and like service of the regular service, provided that no such officer or enlisted member shall receive less than ~~12~~ 18 times the minimum hourly wage per day as provided for in ~~G.S. 95-87.~~ G.S. 95-25.3(a). Officers and enlisted members when on duty in connection with examining boards, efficiency boards, advisory boards, courts of inquiry or similar duty shall be allowed per diem and subsistence prescribed for lawful State boards and commissions generally for such duty. Officers and enlisted members serving on general or special courts-martial shall receive the base pay of their rank. No staff officer or enlisted member who receives a salary from the State as such shall be entitled to any additional compensation other than actual and necessary expenses incurred while traveling upon orders issued by the proper authority."

Section 4. Chapter 127A of the General Statutes is amended by adding a new section to read:

"**§ 127A-111. Civilian leave option.** -- A member of the North Carolina National Guard called into service of the State by the Governor shall have the right to take leave without pay from his or her civilian employment. No member of the North Carolina National Guard shall be forced to use or exhaust his or her vacation or other accrued leaves from his or her civilian employment for a period of active service. The choice of leave shall be solely within the discretion of the member."

Section 5. Chapter 127A of the General Statutes is amended by adding a new section to read:

"**§ 127A-41.1. Stay of legal and court proceedings because of State military service.**

At any stage of any legal proceeding in any court in which a person called into service of the State by the Governor is involved, either as plaintiff or defendant, during the period of service or within 60 days after the conclusion of the period of active service, all actions and proceedings:

(1) May be stayed by the court on its own motion; or

(2) Shall be stayed on application by the member or by a person acting on behalf of the member, unless, in the opinion of the court, the ability of the plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of the military service."

Section 6. G.S. 127A-106 reads as rewritten:

"**§ 127A-106. Paid by the State.**

When the militia or any portion thereof shall be ordered by the Governor into State service, the ~~pay,~~ pay (including payment for any leave earned as a result of more than 30 days of continuous service), subsistence, transportation and other necessary expenses incident thereto shall be paid by the State Treasurer, upon the approval of the Governor."

Section 7. Sections 1 through 6 of this act shall become effective December 1, 1997. Section 7 of this act is effective when it becomes law.

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April 14, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Juduciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 432—N.C.N.G. Mobilization Lessons (Baddour, Justus, Sexton)

Section 1 of House Bill 432 adds a new section to Chapter 127A to provide that an individual who performs, has performed, applies to perform, or has an obligation to perform service in the National Guard may not be denied employment, reemployment, retention in employment, promotion, or any other benefit on the basis of that service or application for service in the National Guard. Discrimination is considered to have taken place if the service or application for service is a motivating factor in the employer's actions, unless the employer can prove by the greater weight of the evidence that the same unfavorable action would have occurred in the absence of service or application for service in the Guard. Section 7 makes conforming changes to the Retaliatory Discrimination Act to provide for enforcement of this section under the Act.

Sections 2 and 3 of the bill increase the minimum pay for Guard members when the Guard is called into service by the Governor from 12 to 18 times the minimum hourly wage per day.

Section 4 of the bill guarantees Guard members the right to take leave without pay from their civilian employment when called into service by the Governor. A member may not be forced to use or exhaust vacation or other accrued leaves for the period of active duty.

Section 5 of the bill places a stay on all proceedings in any court in the State when the plaintiff or the defendant is a Guard member. The proceeding **may** be stayed by the court on its own motion. The proceeding **must** be stayed on application of the Guard member, unless the court determines that the ability of the member to proceed with the action is not materially affected by the military service. A stay may be obtained under this section during the period of active service and up to 60 days following active service.

Section 6 includes in a member's pay payment for leave earned as a result of more than 30 days of continuous service.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H432-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 432
THIS IS A DRAFT 15-APR-97 08:34:29
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: N.C.N.G. Mobilization Lessons/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE LESSONS LEARNED FROM HURRICANE FRAN WITH RESPECT TO THE MOBILIZATION OF THE NORTH CAROLINA NATIONAL GUARD.

The General Assembly of North Carolina enacts:

Section 1. Chapter 127A of the General Statutes is amended by adding a new section to read:

"**§ 127A-202.1. Discrimination against persons who serve in the North Carolina National Guard and acts of reprisal prohibited.**

(a) It is the policy of this State that all individuals shall be afforded the right to perform, apply to perform, or have an obligation to perform service in the North Carolina National Guard without fear of discrimination or retaliatory action from their employer or prospective employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(b) An individual who is a member of the North Carolina National Guard who performs, has performed, applies to perform, or has an obligation to perform service in the North Carolina National Guard shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(c) A person shall be considered to have denied a member of the North Carolina National Guard initial employment, reemployment, retention in employment, promotion, or a benefit of employment in violation of this section if the member's membership, application for membership, performance of service, application for service, or obligation for service in the North Carolina National Guard is a motivating factor in that person's action, unless the person can prove by the greater weight of the evidence that the same unfavorable action would have taken place in the absence of the member's membership, application for membership, performance of service, application for service, or obligation.

(d) The Commissioner of Labor shall enforce the provisions of this section according to Article 21 of Chapter 95 of the General Statutes, including the rules and regulations issued pursuant to that Article."

Section 2. G.S. 127A-105 reads as rewritten:

"**§ 127A-105. Rations and pay on State service.**

The militia of the State, both officers and enlisted personnel, when called into the service of the State by the Governor shall receive the same pay as when called or ordered into the service of the United States, and shall be rationed or paid the equivalent thereof, provided that no officer or enlisted personnel shall receive less than ~~12~~ 18 times the minimum hourly wage per day as provided for in ~~G.S. 95-87.~~ G.S. 95-25.3(a)."

Section 3. G.S. 127A-107 reads as rewritten:

"**§ 127A-107. Rate of pay for other service.**

The Governor may, whenever the public service requires it, order upon special or regular duty any officer or enlisted member of the national guard or naval militia, and the expenses and compensation therefor of such officer and enlisted member shall be paid out of the appropriations made to the Department of Crime Control and Public Safety. Such officers and enlisted members

shall receive the same rate of pay as officers and enlisted members of the same grade and like service of the regular service, provided that no such officer or enlisted member shall receive less than ~~12~~ 18 times the minimum hourly wage per day as provided for in ~~G.S. 95-87.~~ G.S. 95-25.3(a). Officers and enlisted members when on duty in connection with examining boards, efficiency boards, advisory boards, courts of inquiry or similar duty shall be allowed per diem and subsistence prescribed for lawful State boards and commissions generally for such duty. Officers and enlisted members serving on general or special courts-martial shall receive the base pay of their rank. No staff officer or enlisted member who receives a salary from the State as such shall be entitled to any additional compensation other than actual and necessary expenses incurred while traveling upon orders issued by the proper authority."

Section 4. Chapter 127A of the General Statutes is amended by adding a new section to read:

"**§ 127A-111. Civilian leave option.**

(a) A member of the North Carolina National Guard called into service of the State by the Governor shall have the right to take leave without pay from his or her civilian employment. No member of the North Carolina National Guard shall be forced to use or exhaust his or her vacation or other accrued leaves from his or her civilian employment for a period of active service. The choice of leave shall be solely within the discretion of the member.

(b) The Commissioner of Labor shall enforce the provisions of this section pursuant to Chapter 95 of the General Statutes."

Section 5. Chapter 127A of the General Statutes is amended by adding a new section to read:

"**§ 127A-41.1. Stay of legal and court proceedings because of State military service.**

At any stage of any legal proceeding in any court in which a person called into service of the State by the Governor is involved, either as plaintiff or defendant, during the period of service or within 60 days after the conclusion of the period of active service, all actions and proceedings:

(1) May be stayed by the court on its own motion; or

(2) Shall be stayed on application by the member or by a person acting on behalf of the member, unless, in

the opinion of the court, the ability of the plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of the military service."

Section 6. G.S. 127A-106 reads as rewritten:

"**§ 127A-106. Paid by the State.**

When the militia or any portion thereof shall be ordered by the Governor into State service, the ~~pay,~~ pay (including payment for any leave earned as a result of more than 30 days of continuous service), subsistence, transportation and other necessary expenses incident thereto shall be paid by the State Treasurer, upon the approval of the Governor."

Section 7. G.S. 95-241(a) reads as rewritten:

"(a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to do any of the following:

(1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:
   a. Chapter 97 of the General Statutes.
   b. Article 2A or Article 16 of this Chapter.
   c. Article 2A of Chapter 74 of the General Statutes.
   d. G.S. 95-28.1.
   e. Article 16 of Chapter 127A.

(2) Cause any of the activities listed in subdivision (1) of this subsection to be initiated on an employee's behalf.

(3) Exercise any right on behalf of the employee or any other employee afforded by Article 2A or Article 16 of this Chapter or by Article 2A of Chapter 74 of the General Statutes."

Section 8. Sections 1 through 7 of this act shall become effective December 1, 1997. Section 8 of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 432 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Shubert
)
Sen.)

moves to amend the bill on page 2, lines 19-20

( ) WHICH CHANGES THE TITLE

by inserting between those lines the following:

(d) Nothing in this section shall be construed to require a person to pay salary or wages to a member during the member's period of active service.;

and on page 2, line 20 by deleting "(d)" and substituting "(e)".

SIGNED Jean H Shubert

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 432 A BILL TO BE ENTITLED AN ACT TO IMPLEMENT THE LESSONS LEARNED FROM HURRICANE FRAN WITH RESPECT TO THE MOBILIZATION OF THE NORTH CAROLINA NATIONAL GUARD.

☐ 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 432
Proposed Committee Substitute H432-PCS1283

Short Title: N.C.N.G. Mobilization Lessons/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE LESSONS LEARNED FROM HURRICANE FRAN WITH RESPECT TO THE MOBILIZATION OF THE NORTH CAROLINA NATIONAL GUARD.

The General Assembly of North Carolina enacts:

Section 1. Chapter 127A of the General Statutes is amended by adding a new section to read:

"**§ 127A-202.1. Discrimination against persons who serve in the North Carolina National Guard and acts of reprisal prohibited.**

(a) It is the policy of this State that all individuals shall be afforded the right to perform, apply to perform, or have an obligation to perform service in the North Carolina National Guard without fear of discrimination or retaliatory action from their employer or prospective employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(b) An individual who is a member of the North Carolina National Guard who performs, has performed, applies to perform, or has an obligation to perform service in the North Carolina National Guard shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(c) A person shall be considered to have denied a member of the North Carolina National Guard initial employment, reemployment, retention in employment, promotion, or a benefit of employment in violation of this section if the member's

membership, application for membership, performance of service, application for service, or obligation for service in the North Carolina National Guard is a motivating factor in that person's action, unless the person can prove by the greater weight of the evidence that the same unfavorable action would have taken place in the absence of the member's membership, application for membership, performance of service, application for service, or obligation.

(d) Nothing in this section shall be construed to require a person to pay salary or wages to a member of the North Carolina National Guard during the member's period of active service.

(e) The Commissioner of Labor shall enforce the provisions of this section according to Article 21 of Chapter 95 of the General Statutes, including the rules and regulations issued pursuant to that Article."

Section 2. G.S. 127A-105 reads as rewritten:

"**§ 127A-105. Rations and pay on State service.**

The militia of the State, both officers and enlisted personnel, when called into the service of the State by the Governor shall receive the same pay as when called or ordered into the service of the United States, and shall be rationed or paid the equivalent thereof, provided that no officer or enlisted personnel shall receive less than ~~12~~ 18 times the minimum hourly wage per day as provided for in ~~G.S. 95-87.~~ G.S. 95-25.3(a)."

Section 3. G.S. 127A-107 reads as rewritten:

"**§ 127A-107. Rate of pay for other service.**

The Governor may, whenever the public service requires it, order upon special or regular duty any officer or enlisted member of the national guard or naval militia, and the expenses and compensation therefor of such officer and enlisted member shall be paid out of the appropriations made to the Department of Crime Control and Public Safety. Such officers and enlisted members shall receive the same rate of pay as officers and enlisted members of the same grade and like service of the regular service, provided that no such officer or enlisted member shall receive less than ~~12~~ 18 times the minimum hourly wage per day as provided for in ~~G.S. 95-87.~~ G.S. 95-25.3(a). Officers and enlisted members when on duty in connection with examining boards, efficiency boards, advisory boards, courts of inquiry or similar duty shall be allowed per diem and subsistence prescribed for lawful State boards and commissions generally for such duty. Officers and enlisted members serving on general or special courts-martial shall receive the base pay of their rank. No staff officer or enlisted member who receives a salary from the State as such shall be entitled to any additional compensation other than actual and necessary expenses incurred while traveling upon orders issued by the proper authority."

Section 4. Chapter 127A of the General Statutes is amended by adding a new section to read:

"**§ 127A-111. Civilian leave option.**

(a) A member of the North Carolina National Guard called into service of the State by the Governor shall have the right to take leave without pay from his or her civilian employment. No member of the North Carolina National Guard shall be

forced to use or exhaust his or her vacation or other accrued leaves from his or her civilian employment for a period of active service. The choice of leave shall be solely within the discretion of the member.

(b) The Commissioner of Labor shall enforce the provisions of this section pursuant to Chapter 95 of the General Statutes."

Section 5. Chapter 127A of the General Statutes is amended by adding a new section to read:

"**§ 127A-41.1. Stay of legal and court proceedings because of State military service.**

At any stage of any legal proceeding in any court in which a person called into service of the State by the Governor is involved, either as plaintiff or defendant, during the period of service or within 60 days after the conclusion of the period of active service, all actions and proceedings:

(1) May be stayed by the court on its own motion; or

(2) Shall be stayed on application by the member or by a person acting on behalf of the member, unless, in the opinion of the court, the ability of the plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of the military service."

Section 6. G.S. 127A-106 reads as rewritten:

"**§ 127A-106. Paid by the State.**

When the militia or any portion thereof shall be ordered by the Governor into State service, the ~~pay,~~ pay (including payment for any leave earned as a result of more than 30 days of continuous service), subsistence, transportation and other necessary expenses incident thereto shall be paid by the State Treasurer, upon the approval of the Governor."

Section 7. G.S. 95-241(a) reads as rewritten:

"(a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to do any of the following:

(1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:
   a. Chapter 97 of the General Statutes.
   b. Article 2A or Article 16 of this Chapter.
   c. Article 2A of Chapter 74 of the General Statutes.
   d. G.S. 95-28.1.
   e. Article 16 of Chapter 127A.

(2) Cause any of the activities listed in subdivision (1) of this subsection to be initiated on an employee's behalf.

(3) Exercise any right on behalf of the employee or any other employee afforded by Article 2A or Article 16 of this Chapter or by Article 2A of Chapter 74 of the General Statutes."

Section 8. Sections 1 through 7 of this act become effective December 1, 1997. Section 8 of this act is effective when it becomes law.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

April 15, 1997 10:00 A.M. — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
N.C. CROOK, JR.	NC DOT
Sandra Byrd	NCBA
Anne Winner	NCBA
Wade Harrison	NCBA
Ann Wall	NCDOL
Ramel Sandy	NCDOL
Tony Spence	DOT/DMV
Boyd Cauble	City of Charlotte
Randy Jones	City of Charlotte
[illegible]	NCHA
Evelyn Hawthorne	NC HFA
Patricia Ramsey	NAMI
David Ferrell	Hoey, McNamara, Caldwell, McElroy & Cotta, PA
Curt Williams	Gov's Office
[illegible]	[illegible]
[illegible] Regan	N.C.A.C.C.
Jenny Hornback	NCVCDLFGJ
Jeri Stevens	Friends of State Parks
Eddie Caldwell	HMC&C, P.A.
Frank St. Clair	Sheriff - Union County

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H333-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 333
THIS IS A DRAFT 2-APR-97 17:12:14
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Clarify Atty-In-Fact Gifts. (Public)

Sponsors:

Referred to:

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE CIRCUMSTANCES UNDER WHICH AN ATTORNEY-IN-FACT MAY MAKE GIFTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32A-2(14) reads as rewritten:

"(14) Gifts to Charities, and to Individuals Other Than the Attorney-In-Fact. --

a. Except as provided in G.S. 32A-2(14)b., to make gifts of any of the principal's property to any individual other than the attorney-in-fact or to any organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subdivision

'Internal Revenue Code' means the 'Code' as defined in G.S. 105-2.1.

b. Except as provided in G.S. 32A-2(14)c., or unless gifts are expressly authorized by the power of attorney under G.S. 32A-2(15), a power described in G.S. 32A-2(14)a. may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or creditors of the estate of the attorney-in-fact.

c. If the power described in G.S. 32A-2(14)a. is conferred upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or attorneys-in-fact who are not disqualified by G.S. 32A-2(14)b. from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact.

d. An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request the clerk of the superior court to issue an order to make a gift of the property of the principal."

Section 2. G.S. 32A-2(15) reads as rewritten:

"(15) Gifts to the Named Attorney-In-Fact. -- To make gifts to the attorney-in-fact named in the power of attorney or the estate, creditors, or creditors of the estate of the ~~attorney-in-fact.~~ attorney-in-fact, in accordance with the principal's personal history of making or joining in the making of lifetime gifts."

Section 3. Section 1 of this act becomes effective July 1, 1997, and applies to all powers of attorney executed on or after October 1, 1995. Section 2 of this act becomes effective October 1, 1997 and applies to all powers of attorney executed on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 333 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE CIRCUMSTANCES UNDER WHICH AN ATTORNEY-IN-FACT MAY MAKE GIFTS.

☐ 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 333
Proposed Committee Substitute H333-PCSA320

Short Title: Clarify Atty-In-Fact Gifts. (Public)

Sponsors:

Referred to:

February 26, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE CIRCUMSTANCES UNDER WHICH AN ATTORNEY-IN-FACT MAY MAKE GIFTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32A-2(14) reads as rewritten:

"(14) Gifts to Charities, and to Individuals Other Than the Attorney-In-Fact. --

a. Except as provided in G.S. 32A-2(14)b., to make gifts of any of the principal's property to any individual other than the attorney-in-fact or to any organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subdivision 'Internal Revenue Code' means the 'Code' as defined in G.S. 105-2.1.

b. Except as provided in G.S. 32A-2(14)c., or unless gifts are expressly authorized by the power of attorney under G.S. 32A-2(15), a power described in G.S. 32A-2(14)a. may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or creditors of the estate of the attorney-in-fact.

c. If the power described in G.S. 32A-2(14)a. is conferred upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or attorneys-in-fact who are not disqualified by G.S. 32A-2(14)b. from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact.

d. An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request the clerk of the superior court to issue an order to make a gift of the property of the principal."

Section 2. G.S. 32A-2(15) reads as rewritten:

"(15) Gifts to the Named Attorney-In-Fact. -- To make gifts to the attorney-in-fact named in the power of attorney or the estate, creditors, or creditors of the estate of the ~~attorney-in-fact.~~ attorney-in-fact, in accordance with the principal's personal history of making or joining in the making of lifetime gifts."

Section 3. Section 1 of this act becomes effective July 1, 1997, and applies to all powers of attorney executed on or after October 1, 1995. Section 2 of this act becomes effective October 1, 1997, and applies to all powers of attorney executed on or after that date. Section 3 of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 427

Short Title: Assault Corrections Officer/AB. (Public)

Sponsors: Representatives Kiser; Barbee, Carpenter, Dedmon, Gulley, Hall, Hardy, Justus, Morris, Rayfield, Sexton, Shubert, Smith, Thompson, Weatherly, and G. Wilson.

Referred to: Judiciary II.

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTIES FOR CERTAIN ASSAULTS ON A PROBATION OFFICER, PAROLE OFFICER, OR STATE OR COUNTY CORRECTIONS EMPLOYEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-34.5 reads as rewritten:

"**§ 14-34.5. Assault with a firearm on a law ~~enforcement officer.~~ enforcement, probation, or parole officer or on a person employed at a State or local detention facility.**

(a) Any person who commits an assault with a firearm upon a law enforcement ~~officer~~ officer, probation officer, or parole officer while the ~~law enforcement~~ officer is in the performance of his or her duties is guilty of a Class E felony.

(b) Anyone who commits an assault with a firearm upon a person who is employed at a detention facility operated under the jurisdiction of the State or a local government while the employee is in the performance of the employee's duties is guilty of a Class E felony."

Section 2. G.S. 14-34.7 reads as rewritten:

"**§ 14-34.7. Assault on a law ~~enforcement officer.~~ enforcement, probation, or parole officer or on a person employed at a State or local detention facility.**

(a) Unless covered under some other provision of law providing greater punishment, a person is guilty of a Class F felony if the person assaults a law enforcement ~~officer~~ officer, probation officer, or parole officer while the ~~law~~

~~enforcement~~ officer is discharging or attempting to discharge his or her official duties and inflicts serious bodily injury on the ~~law enforcement~~ officer.

(b) Anyone who assaults a person who is employed at a detention facility operated under the jurisdiction of the State or a local government while the employee is in the performance of the employee's duties and inflicts serious bodily injury on the employee is guilty of a Class F felony, unless the person's conduct is covered under some other provision of law providing greater punishment."

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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Research Division
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April 15, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: House Bill 427 - Assault Corrections Officer/AB

Section 1 amends G.S. 14-34.5 to make assault with a firearm upon a probation or parole officer or an employee of a state or local detention facility a Class E felony.

Section 2 amends G.S. 14-34.7 to make assault that inflicts serious bodily injury upon a probation or parole officer or an employee of a state or local detention facility a Class F felony.

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

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1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 427 A BILL TO BE ENTITLED AN ACT TO INCREASE THE PENALTIES FOR CERTAIN ASSAULTS ON A PROBATION OFFICER, PAROLE OFFICER, OR STATE OR COUNTY CORRECTIONS EMPLOYEE.

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 205*

Short Title: Modify Two DMV Definitions. (Public)

Sponsors: Representative Bowie.

Referred to: Transportation, if favorable, Judiciary II.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE DEFINITIONS OF "OUT-OF-STATE DRIVING CONVICTION" AND "MOPED" USED IN THE MOTOR VEHICLE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-4.01(4a) reads as rewritten:

"(4a) Conviction. -- A conviction for an offense committed in North Carolina or another state:

a. In-State. When referring to an offense committed in North Carolina, the term means any of the following:

1. A final conviction of a criminal offense, including a no contest plea.

2. A determination that a person is responsible for an infraction, including a no contest plea.

3. An unvacated forfeiture of cash in the full amount of a bond required by Article 26 of Chapter 15A of the General Statutes.

4. A third or subsequent prayer for judgment continued within any five-year period.

b. Out-of-State. When referring to an offense committed outside North Carolina, the term means any of the following:

1. An unvacated adjudication of ~~guilt.~~ guilt, including a no contest plea.

2. A determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal.
3. An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
4. A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated."

Section 2. G.S. 20-4.01(27)d1. reads as rewritten:

"d1. Moped. -- ~~Vehicles having~~ A vehicle that has two or three wheels ~~and operable pedals~~ and ~~equipped with~~ a motor ~~which~~ that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface."

Section 3. Section 1 of this act becomes effective November 1, 1997, and applies to offenses committed on or after that date. The remaining sections of this act are effective when they become law.

North Carolina General Assembly
Legislative Services Office

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(919) 733-2578

April 14, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 205—Modify Two DMV Definitions (Bowie)

House Bill 205 is a recommendation of the Joint Transportation Oversight Committee.

Section 1 of the bill changes the definition of out-of-state conviction for drivers license purposes. The bill includes a plea of no contest in the definition. This change treats an out-of-state conviction in the same manner as an in-state conviction with respect to no contest pleas.

Section 2 of the bill deletes from the definition of moped the requirement that a moped have pedals. Some mopeds manufactured now do not have pedals.

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maximum effective use of permanent weigh stations and portable scales.

(b) Secondary Duties. — The secondary enforcement duties of the Division are as follows and are listed in the order of importance:

(1) Enforcement of the motor carrier safety regulations.
(2) Enforcement of the emissions inspection program.
(3) Inspection of salvage vehicles.
(4) Providing security at rest areas.
(5) Other duties set out in this Chapter.

(c) Restriction. — The Division shall not undertake an enforcement duty that is not listed in this section unless a law specifically authorizes the Division to do so or the duty is undertaken as a condition of receiving federal funds. (1941, c. 36, s. 5; 1975, c. 716, s. 5; 1996, 2nd Ex. Sess., c. 18, s. 19.3.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1. provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1996, substituted "Enforcement duties of the Division" for "Clarification of conflicts as to transfer of functions" in the catchline; and rewrote this section.

§ 20-4.01. Definitions.

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

(0.1) Alcohol. — Any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

(0.2) Alcohol Concentration. — The concentration of alcohol in a person, expressed either as:
a. Grams of alcohol per 100 milliliters of blood; or
b. Grams of alcohol per 210 liters of breath.

(1) Business District. — The territory prescribed as such by ordinance of the Board of Transportation.

(2) Canceled. — As applied to drivers' licenses and permits, a declaration that a license or permit which was issued through error or fraud is void and terminated.

(2a) Class A Motor Vehicle. — A combination of motor vehicles that meets either of the following descriptions:
a. Has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.
b. Has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

(2b) Class B Motor Vehicle. — Any of the following:
a. A single motor vehicle that has a GVWR of at least 26,001 pounds.
b. A combination of motor vehicles that includes as part of the combination a towing unit that has a GVWR of at least 26,001 pounds and a towed unit that has a GVWR of less than 10,001 pounds.

(2c) Class C Motor Vehicle. — Any of the following:
a. A single motor vehicle not included in Class B.

b. A combination of motor vehicles not included in Class A or Class B.

(3) Repealed by Session Laws 1979, c. 667, s. 1.

(3a) Chemical Analysis. — A test of the breath or blood of a person to determine his alcohol concentration, performed in accordance with G.S. 20-139.1. The term "chemical analysis" includes duplicate or sequential analyses when necessary or desirable to insure the integrity of test results.

(3b) Chemical Analyst. — A person granted a permit by the Department of Environment, Health, and Natural Resources under G.S. 20-139.1 to perform chemical analyses.

(3c) Commercial Drivers License (CDL). — A license issued by a state to an individual who resides in the state that authorizes the individual to drive a class of commercial motor vehicle. A "nonresident commercial drivers license (NRCDL)" is issued by a state to an individual who resides in a foreign jurisdiction.

(3d) Commercial Motor Vehicle. — Any of the following motor vehicles that are designed or used to transport passengers or property:

a. A Class A motor vehicle that has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

b. A Class B motor vehicle.

c. A Class C motor vehicle that meets either of the following descriptions:

1. Is designed to transport 16 or more passengers, including the driver.

2. Is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. Part 172, Subpart F.

d. Any other motor vehicle included by federal regulation in the definition of commercial motor vehicle pursuant to 49 U.S.C. Appdx. § 2716.

(4) Commissioner. — The Commissioner of Motor Vehicles.

(4a) Conviction. — A conviction for an offense committed in North Carolina or another state:

a. In-State. When referring to an offense committed in North Carolina, the term means any of the following:

1. A final conviction of a criminal offense, including a no contest plea.

2. A determination that a person is responsible for an infraction, including a no contest plea.

3. An unvacated forfeiture of cash in the full amount of a bond required by Article 26 of Chapter 15A of the General Statutes.

4. A third or subsequent prayer for judgment continued within any five-year period.

b. Out-of-State. When referring to an offense committed outside North Carolina, the term means any of the following:

1. An unvacated adjudication of guilt.

2. A determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal.

3. An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
4. A violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(5) Dealer. — Every person engaged in the business of buying, selling, distributing, or exchanging motor vehicles, trailers or semitrailers in this State, having an established place of business in this State and being subject to the tax levied by G.S. 105-89.

The terms "motor vehicle dealer," "new motor vehicle dealer," and "used motor vehicle dealer" shall have the meaning set forth in G.S. 20-286.

(5a) Disqualification. — A withdrawal of the privilege to drive a commercial motor vehicle.

(6) Division. — The Division of Motor Vehicles acting directly or through its duly authorized officers and agents.

(7) Driver. — The operator of a vehicle, as defined in subdivision (25). The terms "driver" and "operator" and their cognates are synonymous.

(7a) Employer. — Any person who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle.

(8) Essential Parts. — All integral and body parts of a vehicle of any type required to be registered hereunder, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

(9) Established Place of Business. — Except as provided in G.S. 20-286, the place actually occupied by a dealer or manufacturer at which a permanent business of bargaining, trading, and selling motor vehicles is or will be carried on and at which the books, records, and files necessary and incident to the conduct of the business of automobile dealers or manufacturers shall be kept and maintained.

(10) Explosives. — Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructible effects on contiguous objects or of destroying life or limb.

(11) Farm Tractor. — Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(11a) For-Hire Motor Carrier. — A person who transports passengers or property by motor vehicle for compensation.

(12) Foreign Vehicle. — Every vehicle of a type required to be registered hereunder brought into this State from another state, territory, or country, other than in the ordinary course of business, by or through a manufacturer or dealer and not registered in this State.

(12a) Gross Vehicle Weight Rating (GVWR). — The value specified by the manufacturer as the maximum loaded

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weight of a vehicle. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units.

(12b) Hazardous Materials. — Materials designated as hazardous by the United States Secretary of Transportation under 49 U.S.C. § 1803.

(13) Highway. — The entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic. The terms "highway" and "street" and their cognates are synonymous.

(14) House Trailer. — Any trailer or semitrailer designed and equipped to provide living or sleeping facilities and drawn by a motor vehicle.

(14a) Impairing Substance. — Alcohol, controlled substance under Chapter 90 of the General Statutes, any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances.

(15) Implement of Husbandry. — Every vehicle which is designed for agricultural purposes and used exclusively in the conduct of agricultural operations.

(16) Intersection. — The area embraced within the prolongation of the lateral curblines or, if none, then the lateral edge of roadway lines of two or more highways which join one another at any angle whether or not one such highway crosses the other.

Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event that such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(17) License. — Any driver's license or any other license or permit to operate a motor vehicle issued under or granted by the laws of this State including:

a. Any temporary license or learner's permit;

b. The privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and

c. Any nonresident's operating privilege.

(18) Local Authorities. — Every county, municipality, or other territorial district with a local board or body having authority to adopt local police regulations under the Constitution and laws of this State.

(19) Manufacturer. — Every person, resident, or nonresident of this State, who manufactures or assembles motor vehicles.

(20) Manufacturer's Certificate. — A certification on a form approved by the Division, signed by the manufacturer, indicating the name of the person or dealer to whom the therein-described vehicle is transferred, the date of transfer and that such vehicle is the first transfer of such vehicle in ordinary trade and commerce. The description of the vehicle shall include the make, model, year, type of body, identification number or numbers, and such other information as the Division may require.

(21) Metal Tire. — Every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

(21a) Moped. — A type of passenger vehicle as defined in G.S. 20-4.01(27).

(21b) Motor Carrier. — A for-hire motor carrier or a private motor carrier.

(22) Motorcycle. — A type of passenger vehicle as defined in G.S. 20-4.01(27).

(23) Motor Vehicle. — Every vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. This shall not include mopeds as defined in G.S. 20-4.01(27)d1.

(24) Nonresident. — Any person whose legal residence is in some state, territory, or jurisdiction other than North Carolina or in a foreign country.

(24a) Offense Involving Impaired Driving. — Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

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.

(25) Operator. — A person in actual physical control of a vehicle which is in motion or which has the engine running. The terms "operator" and "driver" and their cognates are synonymous.

(25a) Out of Service Order. — A temporary prohibition against driving a commercial motor vehicle.

(26) Owner. — A person holding the legal title to a vehicle, or in the event a vehicle is the subject of a chattel mortgage or an agreement for the conditional sale or lease thereof or other like agreement, with the right of purchase upon performance of the conditions stated in the agreement, and with the immediate right of possession vested in the mortgagor, conditional vendee or lessee, said mortgagor, conditional vendee or lessee shall be deemed the owner for the purpose of this Chapter. For the purposes of this Chapter, the lessee of a vehicle owned by the government of the United States shall be considered the owner of said vehicle.

(27) Passenger Vehicles. —

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(27) Passenger Vehicles. —

a. Excursion passenger vehicles. — Vehicles transporting persons on sight-seeing or travel tours.

b. For hire passenger vehicles. — Vehicles transporting persons for compensation. This classification shall not include vehicles operated as ambulances; vehicles operated by the owner where the costs of operation are shared by the passengers; vehicles operated pursuant to a ridesharing arrangement as defined in G.S. 136-44.21; vehicles transporting students for the public school system under contract with the State Board of Education or vehicles leased to the United States of America or any of its agencies on a nonprofit basis; or vehicles used for human service or volunteer transportation.

c. Common carriers of passengers. — Vehicles operated under a certificate of authority issued by the Utilities Commission for operation on the highways of this State between fixed termini or over a regular route for the transportation of persons for compensation.

d. Motorcycles. — Vehicles having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by law-enforcement agencies and mopeds as defined in subdivision d1 of this subsection.

d1. Moped. — Vehicles having two or three wheels and operable pedals and equipped with a motor which does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface.

d2. Motor home or house car. — A vehicular unit, designed to provide temporary living quarters, built into as an integral part, or permanently attached to, a self-propelled motor vehicle chassis or van. The vehicle must provide at least four of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, separate 110-125 volt electrical power supply, or an LP gas supply.

d3. School activity bus. — A vehicle, generally painted a different color from a school bus, whose primary purpose is to transport school students and others to or from a place for participation in an event other than regular classroom work. The term includes a public, private, or parochial vehicle that meets this description.

d4. School bus. — A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, and that bears the words "School Bus" on the front and rear

in letters at least 8 inches in height. The term includes a public, private, or parochial vehicle that meets this description.

e. U-drive-it passenger vehicles. — Vehicles rented or leased to be operated by the lessee. This shall not include vehicles of nine-passenger capacity or less which are leased for a term of one year or more to the same person or vehicles leased or rented to public school authorities for driver-training instruction.

f. Ambulances. — Vehicles equipped for transporting wounded, injured, or sick persons.

g. Private passenger vehicles. — All other passenger vehicles not included in the above definitions.

(28) Person. — Every individual, firm, partnership, association, corporation, governmental agency, or combination thereof of whatsoever form or character.

(29) Pneumatic Tire. — Every tire in which compressed air is designed to support the load.

(29a) Private Motor Carrier. — A person who transports passengers or property by motor vehicle in interstate commerce and is not a for-hire motor carrier.

(30) Private Road or Driveway. — Every road or driveway not open to the use of the public as a matter of right for the purpose of vehicular traffic.

(31) Property-Hauling Vehicles. —

a. Vehicles used for the transportation of property.

b., c. Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 4, effective June 21, 1996.

d. Semitrailers. — Vehicles without motive power designed for carrying property or persons and for being drawn by a motor vehicle, and so constructed that part of their weight or their load rests upon or is carried by the pulling vehicle.

e. Trailers. — Vehicles without motive power designed for carrying property or persons wholly on their own structure and to be drawn by a motor vehicle, including "pole trailers" or a pair of wheels used primarily to balance a load rather than for purposes of transportation.

f. Repealed by Session Laws 1995 (Regular Session, 1996), c. 756, s. 4, effective June 21, 1996.

(31a) Provisional Licensee. — A person under the age of 18 years.

(32) Public Vehicular Area. — Any area within the State of North Carolina that is generally open to and used by the public for vehicular traffic, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of:

a. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions; or

b. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other busi-

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ness, residential, or municipal establishment providing parking space for customers, patrons, or the public; or

c. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13.)

The term "public vehicular area" shall also include any beach area used by the public for vehicular traffic as well as any road opened to vehicular traffic within or leading to a subdivision for use by subdivision residents, their guests, and members of the public, whether or not the subdivision roads have been offered for dedication to the public. The term "public vehicular area" shall not be construed to mean any private property not generally open to and used by the public.

(32a) Regular Drivers License. — A license to drive a commercial motor vehicle that is exempt from the commercial drivers license requirements or a noncommercial motor vehicle.

(33)(a) Flood Vehicle. — A motor vehicle that has been submerged or partially submerged in water to the extent that damage to the body, engine, transmission, or differential has occurred.

(b) Non-U.S.A. Vehicle. — A motor vehicle manufactured outside of the United States and not intended by the manufacturer for sale in the United States.

(c) Reconstructed Vehicle. — A motor vehicle of a type required to be registered hereunder that has been materially altered from original construction due to removal, addition or substitution of new or used essential parts; and includes glider kits and custom assembled vehicles.

(d) Salvage Motor Vehicle. — Any motor vehicle damaged by collision or other occurrence to the extent that the cost of repairs to the vehicle and rendering the vehicle safe for use on the public streets and highways would exceed seventy-five percent (75%) of its fair retail market value, whether or not the motor vehicle has been declared a total loss by an insurer. Repairs shall include the cost of parts and labor. Fair market retail values shall be as found in the NADA Pricing Guide Book or other publications approved by the Commissioner.

(e) Salvage Rebuilt Vehicle. — A salvage vehicle that has been rebuilt for title and registration.

(f) Junk Vehicle. — A motor vehicle which is incapable of operation or use upon the highways and has no resale value except as a source of parts or scrap, and shall not be titled or registered.

(33a) Relevant Time after the Driving. — Any time after the driving in which the driver still has in his body alcohol consumed before or during the driving.

(33b) Reportable Accident. — An accident or collision involving a motor vehicle that results in either of the following:

a. Death or injury of a human being.
b. Total property damage of one thousand dollars ($1,000) or more.

(34) Resident. — Any person who resides within this State for other than a temporary or transitory purpose for more than six months shall be presumed to be a resident of this State; but absence from the State for more than six months shall raise no presumption that the person is not a resident of this State.

(35) Residential District. — The territory prescribed as such by ordinance of the Department of Transportation.

(36) Revocation or Suspension. — Termination of a licensee's or permittee's privilege to drive or termination of the registration of a vehicle for a period of time stated in an order of revocation or suspension. The terms "revocation" or "suspension" or a combination of both terms shall be used synonymously.

(37) Road Tractors. — Vehicles designed and used for drawing other vehicles upon the highway and not so constructed as to carry any part of the load, either independently or as a part of the weight of the vehicle so drawn.

(38) Roadway. — That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the shoulder. In the event a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

(39) Safety Zone. — Traffic island or other space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.

(40) Security Agreement. — Written agreement which reserves or creates a security interest.

(41) Security Interest. — An interest in a vehicle reserved or created by agreement and which secures payments or performance of an obligation. The term includes but is not limited to the interest of a chattel mortgagee, the interest of a vendor under a conditional sales contract, the interest of a trustee under a chattel deed of trust, and the interest of a lessor under a lease intended as security. A security interest is "perfected" when it is valid against third parties generally.

(41a) Serious Traffic Violation. — A conviction of one of the following offenses when operating a commercial motor vehicle:
a. Excessive speeding, involving a single charge of any speed 15 miles per hour or more above the posted speed limit.
b. Careless and reckless driving.
c. A violation of any State or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident.
d. Improper or erratic lane changes.
e. Following the vehicle ahead too closely.

(42) Solid Tire. — Every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

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(43) Specially Constructed Vehicles. — Vehicles of a type required to be registered hereunder not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from their original construction.

(44) Special Mobile Equipment. — Any of the following:

a. A vehicle that has a permanently attached crane, mill, well-boring apparatus, ditch-digging apparatus, air compressor, electric welder, feed mixer, grinder, or other similar apparatus, is driven on the highway only to get to and from a nonhighway job, and is not designed or used primarily for the transportation of persons or property.

b. A vehicle that has permanently attached special equipment and is used only for parade purposes.

c. A vehicle that is privately owned, has permanently attached fire-fighting equipment, and is used only for fire-fighting purposes.

d. A vehicle that has permanently attached playground equipment and is used only for playground purposes.

(45) State. — A state, territory, or possession of the United States, District of Columbia, Commonwealth of Puerto Rico, or a province of Canada.

(46) Street. — A highway, as defined in subdivision (13). The terms "highway" and "street" and their cognates are synonymous.

(47) Suspension. — Termination of a licensee's or permittee's privilege to drive or termination of the registration of a vehicle for a period of time stated in an order of revocation or suspension. The terms "revocation" or "suspension" or a combination of both terms shall be used synonymously.

(48) Truck Tractors. — Vehicles designed and used primarily for drawing other vehicles and not so constructed as to carry any load independent of the vehicle so drawn.

(48a) Under the Influence of an Impairing Substance. — The state of a person having his physical or mental faculties, or both, appreciably impaired by an impairing substance.

(49) Vehicle. — Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided, that for the purposes of this Chapter bicycles shall be deemed vehicles and every rider of a bicycle upon a highway shall be subject to the provisions of this Chapter applicable to the driver of a vehicle except those which by their nature can have no application. This term shall not include a device which is designed for and intended to be used as a means of transportation for a person with a mobility impairment, is suitable for use both inside and outside a building, and whose maximum speed does not exceed 12 miles per hour when the device is being operated by a person with a mobility impairment.

(50) Wreckers. — Vehicles with permanently attached cranes used to move other vehicles; provided, that said wreckers shall be equipped with adequate brakes for units being towed. (1973, c. 1330, s. 1; 1975, cc. 94, 208; c. 716, s. 5; c.

743; c. 859, s. 1; 1977, c. 313; c. 464, s. 34; 1979, c. 39; c. 423, s. 1; c. 574, ss. 1-4; c. 667, s. 1; c. 680; 1981, c. 606, s. 3; c. 792, s. 2; 1983, c. 435, s. 8; 1983 (Reg. Sess., 1984), c. 1101, ss. 1-3; 1985, c. 509, s. 6; 1987, c. 607, s. 2; c. 658, s. 1; 1987 (Reg. Sess., 1988), c. 1069; c. 1105, s. 1; c. 1112, ss. 1-3; 1989, c. 455, s. 1; c. 727, s. 219(1); c. 771, s. 1; 1991, c. 449, s. 2; c. 726, ss. 1-4; 1991 (Reg. Sess., 1992), c. 1015, s. 1; 1993 (Reg. Sess., 1994), c. 761, s. 22; 1995, c. 191, s. 1; 1995 (Reg. Sess., 1996), c. 756, ss. 2-4.)

Effect of Amendments. — The 1995 amendment, effective January 1, 1996, and applicable to accidents and offenses occurring on or after that date, added subdivision (33b).

Session Laws 1995 (Reg. Sess., 1996), c. 756, ss. 2, 3, and 4, effective June 21, 1996, inserted subdivisions (11a) and (21b); in subdivision (27)c., substituted "certificate of authority" for "franchise certificate", and deleted "or property" following "transportation of persons"; inserted subdivision (29a); and rewrote subdivision (31).

CASE NOTES

Trucks. — Trucks, even if used for private purposes, are not private passenger type autos. Harleysville Mut. Ins. Co. v. Packer, 60 F.3d 1116 (4th Cir. 1995).

Low-boy trailer and Mack truck were not private passenger motor vehicles as they did not have a pickup body and were not delivery sedans nor panel trucks. Nationwide Mut. Ins. Co. v. Mabe, 342 N.C. 482, 467 S.E.2d 34 (1996).

A mobile home is a motor vehicle, etc. —

It is clear under North Carolina law that a mobile home is a "motor vehicle" for purposes of the statutes dealing with registration and ownership of motor vehicles. In re Meade, 174 Bankr. 49 (Bankr. M.D.N.C. 1994).

Public Vehicular Area. —

Area where an accident between plaintiff and defendant's truck occurred was a public vehicular area and not a roadway. The accident occurred in the traffic lane of a parking lot generally open to and used by the public for vehicular traffic upon the premises of a business establishment which provided parking space for its customers. Although the lot was held open for use by the public, there was no evidence that the general public had a legally enforceable right to use the lot. Corns v. Hall, 112 N.C. App. 232, 435 S.E.2d 88 (1993).

Street in mobile home park, owned by one individual who had divided the property into lots for lease, that was not marked as private, and was available for use by residents, their guests and other visitors, was a public vehicular area within the meaning of subsection (32). State v. Turner, 117 N.C. App. 457, 451 S.E.2d 19 (1994).

Where the evidence established that a private club was licensed by the state to serve alcohol to guests of members as well as to members themselves, the club's parking lot could be used as a thoroughfare by members of the general public, there were no signs posted in the club's parking lot prohibiting the public from parking there and no signs posted stating that the parking lot was private property, nor was there any security or membership cards allowing members exclusive access to the parking lot, the evidence was sufficient to support a peremptory instruction that the club's parking lot was a "public vehicular area" as a matter of law. State v. Snyder, 343 N.C. 61, 468 S.E.2d 221 (1996).

Quoted in McLeod v. Nationwide Mut. Ins. Co., 115 N.C. App. 283, 444 S.E.2d 487, cert. denied, 337 N.C. 694, 448 S.E.2d 528 (1994).

Cited in State v. Stafford, 114 N.C. App. 101, 440 S.E.2d 846 (1994); State v. Priddy, 115 N.C. App. 547, 445 S.E.2d 610, cert. denied, 337 N.C. 805, 449 S.E.2d 751 (1994).

OPINIONS OF ATTORNEY GENERAL

Trailers designed to run upon the highways and pulled by a self-propelled vehicle are motor vehicles for the purposes of this Chapter. See opinion of the

Attorney General to Clyde
Asst. Comm'r of Motor
N.C.A.G. 90 (1992).

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§ 20-7. Issuance

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Attorney General to Clyde R. Cook, Jr., Asst. Comm'r of Motor Vehicles, 60 N.C.A.G. 90 (1992).

ARTICLE 2.

Uniform Driver's License Act.

§ 20-7. Issuance and renewal of drivers licenses.

(a) License Required. — To drive a motor vehicle on a highway, a person must be licensed by the Division under this Article or Article 2C of this Chapter to drive the vehicle and must carry the license while driving the vehicle. The Division issues regular drivers licenses under this Article and issues commercial drivers licenses under Article 2C.

A license authorizes the holder of the license to drive any vehicle included in the class of the license and any vehicle included in a lesser class of license, except a vehicle for which an endorsement is required. To drive a vehicle for which an endorsement is required, a person must obtain both a license and an endorsement for the vehicle. A regular drivers license is considered a lesser class of license than its commercial counterpart.

The classes of regular drivers licenses and the motor vehicles that can be driven with each class of license are:

(1) Class A. — A Class A license authorizes the holder to drive any of the following:
   a. A Class A motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.
   b. A Class A motor vehicle that has a combined GVWR of less than 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

(2) Class B. — A Class B license authorizes the holder to drive any Class B motor vehicle that is exempt under G.S. 20-37.16 from the commercial drivers license requirements.

(3) Class C. — A Class C license authorizes the holder to drive any of the following:
   a. A Class C motor vehicle that is not a commercial motor vehicle.
   b. When operated by a volunteer member of a fire department, a rescue squad, or an emergency medical service (EMS) in the performance of duty, a Class A or Class B fire-fighting, rescue, or EMS motor vehicle or a combination of these vehicles.

The Commissioner may assign a unique motor vehicle to a class that is different from the class in which it would otherwise belong.

A new resident of North Carolina who has a drivers license issued by another jurisdiction must obtain a license from the Division within 30 days after becoming a resident.

(a1) Motorcycles and Mopeds. — To drive a motorcycle, a person must have a drivers license and a motorcycle endorsement. To obtain a motorcycle endorsement, a person must demonstrate competence to drive a motorcycle by passing a road test and a written or oral test concerning a motorcycle and must pay the fee for a

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 15, 1997 1:00 P.M.

The North Carolina House of Representatives Judiciary II Committee met on April 15, 1997, at 1:00 P.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Bowie, Cansler, Gardner, Hackney, Hensley, McMahan, Nesbitt, Russell, Shubert, Weatherly and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-395 LEFT TURN ON RED-2
HB-205 MODIFY TWO DMV DEFINITIONS

Representative Gulley was recognized to present HB-395. A copy of the bill and bill explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached. Representative Gulley provided members with a Left Turn on Red handout. A copy of this handout is attached.

Mr. Randy Jones, Charlotte Transportation Department, and Representative McMahan spoke in favor of the bill and answered questions of committee members.

Mr. John DeLuca, Director, North Carolina Division of the Blind, and Mr. Mike Corbett, Mobility and Orientation Instructor, North Carolina Division of the Blind, spoke against the bill and answered questions of committee members.

Mr. N.C. Crow, Jr., North Carolina Department of Transportation, answered questions of committee members.

Mr. Theodore Bryant and Mr. William B. Waters, visitors, spoke of personal experiences.

Mr. Herman Gruber, Mr. Wayne, Shevlin, North Carolina Federation of the Blind, and Ms. Susan Crawford, Council of the Blind for Charlotte, spoke against the bill.

No action was taken on HB-395.

Representative Bowie was recognized to continue the presentation of HB-205.

Major Jerry Arrowood, Assistant Director, Enforcement Section, North Carolina Division of Motor Vehicles, answered questions of committee members.

No action was taken on HB-205.

The meeting was adjourned at 1:50 P.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 395

Short Title: Left Turn on Red. (Local)

Sponsors: Representatives Gulley; Allred, Cunningham, Dickson, Earle, Goodwin, McMahan, Moore, Rayfield, Starnes, and C. Wilson.

Referred to: Judiciary II.

March 4, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW LEFT TURNS ON RED IN CERTAIN SITUATIONS IN MECKLENBURG COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-158(b)(2) reads as rewritten:

"(2) Vehicles facing a red light controlling traffic passing straight through an intersection from a steady or strobe beam stoplight shall not enter the intersection while the steady or strobe beam stoplight is emitting a red light controlling traffic passing straight through an intersection; ~~provided that,~~ provided:

a. ~~except~~ Except where prohibited by an appropriate sign, vehicular traffic facing a red light controlling traffic passing straight through an intersection, after coming to a complete stop at the intersection, may enter the intersection to make a right turn but ~~such~~ the turning vehicle shall yield the right-of-way to pedestrians and to other traffic using the ~~intersection.~~ intersection; or

b. Except where prohibited by an appropriate sign, vehicular traffic that is:

1. In the leftmost lane of travel on a one-way street;
2. Facing a red light; and
3. At an intersection with another one-way street with traffic travelling from right to left

may enter the intersection and make a left turn into the extreme left-hand lane lawfully available to traffic. The turning vehicle shall yield the right-of-way to pedestrians and to other traffic using the intersection.

When the stoplight is emitting a steady yellow circular light on a traffic signal controlling traffic passing straight through an intersection or a steady yellow arrow light on a traffic signal controlling traffic turning at an intersection, vehicles facing the yellow light are warned that the related green light is being terminated or a red light will be immediately forthcoming. When the stoplight is emitting a steady green light, vehicles may proceed with due care through the intersection subject to the rights of pedestrians and other vehicles as may otherwise be provided by law."

Section 2. This act applies to Mecklenburg County only.

Section 3. This act becomes effective December 1, 1997.

North Carolina General Assembly
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March 11, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: HB395 - Left Turn on Red

Section 1 amends G.S. 20-158(b)(2) by creating a new subsection b. to allow a vehicle to make a left turn on red when the vehicle is in the leftmost lane of a one-way street at an intersection with another one-way street with traffic traveling from right to left.

Section 2 applies this act to Mecklenburg County only.

Section 3 makes this act effective December 1, 1997.

Left Turn on Red
at the intersection of two one-way streets

The Charlotte Department of Transportation contacted the National Federation of the Blind - North Carolina regarding its position on left-turns on red at the intersection of two one-way streets. Based on safety concerns, the Federation is opposed to such legislation, as well as current legislation permitting right-turns on red.

The City also contacted various cities regarding their experience with left-turns on red. Their information is provided below.

City	Contact	Experience
Richmond, Virginia	Traffic Engineer	• State law since 1977 • About 84 intersections where two one-way streets meet. • Does not know of any complaints about left turn on red • No accidents known involving blind pedestrian
Cincinnati, Ohio	Traffic Engineer	• State law for over 12 years • 100 intersections with two one-way streets • No accidents known involving blind pedestrian
Nashville, Tennessee	Traffic Engineer	• State law for over 4 years • About 25 intersections with two one-way streets • No accidents known involving blind pedestrian • No voiced opposition from blind community

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **April 15, 1997 1:00 P.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
NC CROWE SR.	NCDOT
HUGH TILSON	NCHA
Boyd Cauble	City of Charlotte
Randy Jones	City of Charlotte
Mike Corbett	NC Div Services for Blind
John DeLuca	11
Norma Young	NC DOJ (Fm DMV)
Tony Spence	DOT/DMV
Jerry Crawford	DOT
Wade Harrison	N.C. BA. Family Law Section
William B. Waters	NC Friends of the library for the Blind
William Ryan	Charlotte Council of the Blind
Susan Crayton	Charlotte Council of the Blind
Dixie P. Gruber	NFB
Herman Gruber	President NC NFBlind
Linda L. Sherlin	NFB of N. C
Wayne E. Sherlin	NFB
Kirstin Riesbeck	Membership - NCSSM
Duane Wiser	NCBT
Ruth Sakpie	NCDOT
M Tully	NCHA
Lavern Heiden	
Theodor Bryant	
~~Walter~~	

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 16, 1997 7:30 A.M.

The North Carolina House of Representatives Judiciary II Committee met on April 16, 1997, at 7:30 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Baddour, Cansler, Bowie, Gardner, Goodwin, Hackney, McMahan, Nesbitt, Redwine, Russell, Saunders, Weatherly and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-448 GOVERNOR;S D.W.I. INITIATIVE
HB-611 INCREASE COMPENSATION FOR ERRONEOUS CONVICTION
HB-613 COMPENSATE ERRONEOUSLY CONVICTED

Representative Hackney was recognized to explain HB-448 and answer questions of committee members. A copy of the bill and bill explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Mr. Ike Avery, Attorney General's Office, Mr. Joe Parker, North Carolina State Highway Patrol, and Mr. Joe Stewart, Crime Control and Public Safety, answered questions of committee members.

Ms. Sherry Dail, of Durham, North Carolina, spoke of a personal experience and in support of the bill.

No action was taken on HB-448.

Representatives Hackney, Goodwin and Reynolds were recognized to present House Bills 611 and 613. A copy of the bills and bill explanations prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Mr. Tom Lambeth, Attorney, gave an example of the reason for the legislation.

Mr. Richard Rosen, UNC School of Law, spoke in support of the bills.

No action was taken on House Bills 611 and 613.

The meeting was adjourned at 8:20 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 448*

Short Title: Governor's D.W.I. Initiative/AB. (Public)

Sponsors: Representatives Hackney, Bowie (Cosponsors); Baddour, Boyd-McIntyre, Culp, Decker, Gardner, Goodwin, Hardy, Jeffus, Luebke, Miller, Starnes, Thompson, and Wood.

Referred to: Judiciary II.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE GOVERNOR'S RECOMMENDATIONS ON DRIVING WHILE IMPAIRED.

The General Assembly of North Carolina enacts:

PART I. SEIZURE OF VEHICLES USED IN DRIVING WHILE IMPAIRED OFFENSES.

Section 1.1. G.S. 20-28.2 reads as rewritten:

"**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.**

(a) Meaning of 'Impaired Driving License Revocation'. -- The revocation of a person's driver's license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, ~~20-17(2),~~ 20-17(a)(2), or 20-17.2; or

(2) G.S. 20-16(a)(7), 20-17(1), or 20-17(9), if the offense involves impaired driving.

(b) When Motor Vehicle Becomes Property Subject to Forfeiture. -- If at a sentencing hearing conducted pursuant to G.S. 20-179 the judge determines that the grossly aggravating factor described in G.S. 20-179(c)(2) applies, the motor vehicle that was driven by the defendant at the time he committed the offense of impaired driving becomes property subject to forfeiture.

(c) Duty of Prosecutor to Notify Possible Innocent Parties. --In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture under this section, the prosecutor ~~must~~ shall determine the identity of the vehicle owner as shown on the certificate of title for the vehicle and he ~~must~~ shall also determine if there are any security interests noted on the vehicle's certificate of title. The State ~~must~~ shall notify the holder of each security interest that the vehicle may be subject to forfeiture and that he may intervene to protect his interest. If the defendant is not the owner, a similar notice ~~must~~ shall be served on the owner. The notice may be served by any means reasonably likely to provide actual notice, and ~~must~~ shall be served at least fourteen days before the forfeiture hearing.

(d) Duty of Judge. -- ~~The judge at sentencing must hold a hearing to determine if the vehicle should be forfeited. At the hearing the judge may order the forfeiture if he finds that:~~

~~(1) The vehicle is subject to forfeiture;~~

~~(2) The vehicle is not primarily used by a member of the defendant's family or household for a business purpose or for driving to and from work or school;~~

~~(3) All potential innocent parties have been notified as required in subsection (e); and~~

~~(4) No party has shown that he is an innocent party as described in subsection (f).~~

~~If the owner or the holder of a security interest has not been notified, the judge may continue the hearing to allow the State to serve the notice or he may decline to order forfeiture. In any case in which a judge does not order the forfeiture of a vehicle subject to forfeiture, he must enter into the record detailed, written reasons for his decision.~~ The trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 shall determine if the vehicle is subject to forfeiture under this section. If the judge determines that the requirements of subsections (a) through (c) of this section exist and the defendant was a registered owner of the vehicle at the time of the offense, the judge shall order the vehicle forfeited. If the defendant was not a registered owner of the vehicle at the time of the offense, the judge shall order the vehicle forfeited unless the registered owner of the vehicle establishes, by clear and convincing evidence, that he or she is an innocent party as defined by subsection (f) of this section, in which case the trial judge may order the vehicle released to the registered owner pursuant to the provisions of subsection (e) of this section. In any case where the vehicle is ordered forfeited, the judge shall either:

(1) Authorize the school board to sell the vehicle at public sale or retain the vehicle for its own use pursuant to G.S. 20-28.5; or

(2) Release the vehicle to an innocent party lienholder pursuant to the provisions of subsection (h) of this section.

~~(e) Sale of Forfeited Vehicle Required. -- If the judge orders forfeiture of the vehicle pursuant to this section, he must order the sale of the vehicle. Proceeds of the sale must be paid to the school fund of the county in which the property was seized.~~

~~(f) Innocent Party May Intervene. -- At any time before the forfeiture is ordered, the property owner or holder of a security interest, other than the defendant, may apply to protect his interest in the motor vehicle. The application may be made to a judge who has jurisdiction to try the impaired driving offense with which the motor vehicle is associated. The judge must order the vehicle returned to the owner if he finds that either the owner or the holder of a security interest is an innocent party. An owner or holder of a security interest is an innocent party if he:~~

~~(1) Did not know and had no reason to know that the defendant's driver's license was revoked; or~~

~~(2) Knew that the defendant's driver's license was revoked, but the defendant drove the vehicle without his consent.~~

~~If an innocent party applies after the forfeited motor vehicle has been sold and the judge finds no laches in the innocent party's delay, the judge may order a payment to the innocent party from the net proceeds of the sale equal to his equity or security interest in the vehicle.~~

(e) Return of Vehicle to Innocent Registered Owner. -- If the registered owner establishes, by clear and convincing evidence, that the vehicle was being driven by a person who was not a registered owner at the time of the underlying offense and that each registered owner is an 'innocent party', the sentencing judge may order the vehicle returned to the registered owner.

This release may only be ordered upon satisfactory proof of:

(1) The identity of the person as a registered owner;

(2) The existence of financial responsibility as required by Article 13 of this Chapter;

(3) The payment of towing and storage fees; and

(4) The execution of an acknowledgment as set forth in this section.

No vehicle subject to forfeiture under this section shall be released to a registered owner if the records of the Division indicate any registered owner had previously signed an acknowledgment as required by this section, and the same person was operating the owner's vehicle when that person's license was revoked.

(f) Innocent Party Defined. -- A registered owner or holder of a security is an 'innocent party' if he or she:

(1) Did not know and had no reason to know that the defendant's drivers license was revoked; or

(2) Knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without his or her consent.

(g) Acknowledgment Required. -- The 'innocent party' registered owner of a vehicle seeking release pursuant to this section shall sign a written document acknowledging that:

(1) His or her vehicle was operated by a person charged with an offense involving impaired driving while that drivers license was revoked as a result of a prior impaired drivers license revocation;

(2) If the vehicle is again operated by this particular person, at any time while that person's drivers license is revoked, that the vehicle

is subject to impoundment and forfeiture, even if the operator was not impaired; and

(3) A lack of knowledge or consent to the operation will not be a defense in the future.

(h) Release to Lienholder. -- The trial judge may order a forfeited vehicle released to the holder of a security interest if he determines by clear and convincing evidence, that the holder of the security interest is an 'innocent party', as defined in subsection (f) of this section, and:

(1) The lienholder's interest is not less than the fair market value of the vehicle;

(2) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited vehicle to a registered owner or any person acting on a registered owner's behalf; and

(3) The lienholder pays, in full, any towing and storage costs incurred as a result of the seizure of the vehicle.

(i) Possessory Lien. -- The county school board shall be entitled to a possessory lien for all costs and fees associated with the towing, storage, or sale of a vehicle pursuant to this section. This lien shall have priority over perfected and unperfected security interests. Storage fees subject to the lien shall not exceed five dollars ($5.00) per day."

Section 1.2. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.3. Seizure, impoundment, forfeiture of vehicles for offenses involving impaired driving while license revoked.**

(a) A motor vehicle that is driven by a person in violation of G.S. 20-138.1 is subject to seizure if at the time of the violation the drivers license was suspended as a result of a prior impaired drivers license revocation. The revocation of a person's drivers license is an impaired drivers license revocation for purposes of this section if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12) or 20-17.2; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), or 20-17(a)(9) if the offense involved impaired driving.

(b) Duty of Officer. -- In any case where the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the vehicle and have it impounded. Probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable source. If the registered owner was not operating or present in the vehicle at the time of the offense, the officer shall cause to be issued written notification of impoundment to the registered owner of the vehicle. This notice shall be sent by first-class mail to the most recent address contained in the Division registration records. This written notification shall inform the registered owner that the vehicle has been impounded, the reason for the impoundment, and the procedure for

requesting its release. Whether the registered owner was driving or present at the time of seizure, the seizing officer shall notify the Division of the seizure in accordance with procedures established by the Division. The officer shall also cause notice to be given to any lien holder of record with the Division of the impoundment and intent to forfeit the vehicle upon conviction.

(c) Review by Magistrate. -- Upon seizing the vehicle, the seizing officer shall present to the magistrate determining the operator's condition for pretrial release an affidavit of impoundment setting forth the requirements of this section. The magistrate shall review the affidavit of impoundment and if the magistrate determines the requirements of this section have been met, shall order the vehicle held in accordance with this section. The magistrate may request additional information and may hear from the operator if he is present. If the operator of the vehicle is not present at the time the affidavit of impoundment is presented, the seizing officer may present the affidavit to any judicial official who shall perform the review contained herein.

(d) Custody of Vehicle. -- The seized vehicle shall be towed to a location designated by the county school board for the county in which the operator of the vehicle is charged and placed under the constructive possession of the school board pending release or sale. Each county school board may elect to have seized vehicles stored on property owned or leased by the school board or, in the alternative, may contract with a commercial storage facility for the storage of such vehicles. In either event, a storage fee of not more than five dollars ($5.00) per day may be charged for the storage of any vehicle while in the constructive possession of the school board.

(e) Release of Vehicle Pending Trial. -- A registered owner of a vehicle, other than the driver at the time of the underlying offense resulting in the seizure, may apply to the Clerk of Superior Court in the county where the charges are pending for pretrial release of the vehicle. The Clerk may release the vehicle to the registered owner under the following conditions:

(1) The vehicle has been stored for not less than 24 hours;

(2) All towing and storage charges have been paid;

(3) Execution of a good and valid bond with sufficient sureties in an amount double the value of the seized vehicle, payable to the county school fund and conditioned on return of the vehicle, without the imposition of any additional liens or encumbrances, on the day of trial of the operator;

(4) Execution of a written acknowledgment as described in G.S. 20-28.2(g); and

(5) A check of the records of the Division indicates that the owner has not previously executed a written acknowledgment pertaining to the operator of the seized vehicle.

(f) Duty of Trial Judge. -- The trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 shall determine if the vehicle is subject to forfeiture pursuant to the provisions of G.S. 20-28.2.

(g) Possessory Lien. -- The county school board shall be entitled to a possessory lien for any and all costs and fees associated with the towing, storage, (not to exceed five dollars ($5.00) per day), and sale of a vehicle pursuant to this section. This lien shall have priority over perfected and unperfected security interests."

Section 1.3. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.4. Release of impounded vehicles by trial judge.**

(a) Release to Innocent Registered Owner. -- An innocent party registered owner may apply to the trial judge presiding over the underlying offense for return of the vehicle pursuant to the provisions of G.S. 20-28.2(e).

(b) Acknowledgment Required. -- The innocent party registered owner of a vehicle seeking release under this section or pretrial release under G.S. 20-28.3 shall sign a written acknowledgment as described in G.S. 20-28.2(g). The registered owner shall also acknowledge that if the vehicle is again operated by this particular person at any time while the person's license is revoked, the owner's vehicle is subject to seizure, impoundment, and forfeiture, even if the person is not [redacted] at the time he or she operates the vehicle. The registered owner shall ackno[redacted]rther that a lack of knowledge, or consent to the operation will not be a defens[redacted] future.

(c) Release to Lienholder. -- The trial judge may order a for[redacted]le released to the holder of a security interest if he determines, by clear an[redacted] evidence, that the holder of the security interest is an 'innocent party' [redacted].S. 20-28.2(f), and the lienholder satisfies the criteria as set out in G.S. [redacted]

Section 1.4. Chapter 20 of the General Statutes is am[redacted] by adding a new section to read:

"**§ 20-28.5. Forfeiture of impounded vehicle.**

(a) Sale. -- Unless the trial judge orders the vehicle returned to an innocent party pursuant to G.S. 20-28.2 or G.S. 20-28.4, the vehicle shall be ord[redacted] forfeited and sold or transferred to the school board in the county where the ch[redacted]es were filed. The sale of the vehicle shall be at public sale and shall be conducted by the county school board or a person acting on its behalf. Notice of sale shall be given to the Division in accordance with the procedures established by the Division.

(b) Proceeds of Sale. -- Proceeds of any sale conducted under this section shall first be applied to satisfy towing and storage liens and the cost of sale. If the vehicle was stored on property owned or leased by the county school board, the storage lien (not to exceed five dollars ($5.00) per day) shall be paid to the school fund of that county. The balance of the proceeds of sale, if any, shall be used to satisfy any other existing liens of record that were properly recorded with the Division prior to the date of initial seizure of the vehicle. Any remaining balance, shall be paid to the county school fund in the county in which the vehicle was ordered forfeited. Vehicles sold pursuant to this section shall be transferred free and clear of any liens.

(c) Retention of Vehicle. -- The county board may, at its option, retain any forfeited vehicle for its use. If the vehicle is retained, any valid lien of record at the time of the initial seizure of the vehicle shall be satisfied by the school board. If there is more than one school board in the county, then the fair market value of the

vehicle shall be used to determine the share of the school boards in the same manner as fines and other forfeitures."

Section 1.5. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.6. Responsibility of Division of Motor Vehicles.**

The Division shall establish procedures to provide for the orderly seizure, forfeiture, sale, and transfer of motor vehicles pursuant to the provisions of G.S. 20-28.2, et seq."

PART II. INCREASE PENALTY FOR DRIVING WHILE IMPAIRED OFFENDERS.

Section 2.1. G.S. 20-179(g) reads as rewritten:

"(g) Level One Punishment. -- A defendant subject to Level One punishment may be fined up to two thousand dollars ($2,000) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than ~~14~~ 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed ~~(i) to require the defendant to serve a term of imprisonment of at least 14 days, or (ii) to require the defendant to serve a term of imprisonment of at least four consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above.~~ [illegible] judge ~~may~~ shall impose [illegible] assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 2.2. G.S. 20-179(h) reads as rewritten:

"(h) Level Two Punishment. -- A defendant subject to Level Two punishment may be fined up to one thousand dollars ($1,000) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is ~~imposed (i) to require the defendant to serve a term of imprisonment of at least seven days or, (ii) to require the defendant to serve a term of imprisonment of at least two consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above.~~ imposed. If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 2.3. G.S. 20-179(i) reads as rewritten:

"(i) Level Three Punishment. -- A defendant subject to Level Three punishment may be fined up to five hundred dollars ($500.00) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment ~~must~~ may

be ~~suspended, on~~ suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or

(2) Perform community service for a term of at least 72 hours; or

(3) Not operate a motor vehicle for a term of at least 90 days; or

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation. ~~This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(e).~~"

Section 2.4. G.S. 20-179(j) reads as rewritten:

"(j) Level Four Punishment. -- A defendant subject to Level Four punishment may be fined up to two hundred fifty dollars ($250.00) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment ~~must~~ may be ~~suspended, on~~ suspended. However, the suspended sentence shall include the condition that the defendant:

~~(1) Be imprisoned for a term of 48 hours as a condition of special probation; or~~

(2) Perform community service for a term of 48 hours; or

(3) Not operate a motor vehicle for a term of 60 days; or

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation. ~~This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(e).~~"

Section 2.5. G.S. 20-179(k) reads as rewritten:

"(k) Level Five Punishment. -- A defendant subject to Level Five punishment may be fined up to one hundred dollars ($100.00) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment ~~must~~ may be ~~suspended, on~~ suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or

(2) Perform community service for a term of 24 hours; or

(3) Not operate a motor vehicle for a term of 30 days; or

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation. ~~This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(e).~~"

Section 2.6. G.S. 20-179(k1) reads as rewritten:

"(k1) Credit for Inpatient Treatment. -- Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any ~~treatment.~~ treatment unless the trial judge orders that the costs be absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. ~~The credit may not be used more than once during the seven-year period immediately preceding the date of the offense. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.~~"

Section 2.7. G.S. 20-179(p) reads as rewritten:

"(p) Limit on Amelioration of Punishment. -- For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(2) The defendant ~~must~~ shall serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.

(3) The defendant may not be released on parole unless he is otherwise ~~eligible and~~ eligible, has served the mandatory minimum period of ~~imprisonment.~~ imprisonment, and has obtained a substance abuse assessment and completed any recommended treatment or training program or is paroled into a residential treatment program.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial."

Section 2.8. G.S. 20-179(r) reads as rewritten:

"(r) Supervised Probation Terminated. -- Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of

an offense of impaired driving shall be placed on unsupervised probation if he meets ~~two~~ three conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced and that the defendant is sentenced under subsections (i), (j), and (k) of this ~~section.~~ section, and has obtained any necessary substance abuse assessment and completed any recommended treatment or training program.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or
(2) Repealed by Session Laws 1995 c. 496, s. 2.
(3) Payment of any fines, court costs, and fees; or
(4) Any combination of these conditions."

PART III. INCREASE ADMINISTRATIVE LICENSE REVOCATION PERIOD.

Section 3.1. G.S. 20-16.2(a) reads as rewritten:

"(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer ~~must~~ shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged ~~must~~ shall be taken before a chemical analyst authorized to administer a test of a person's breath, who ~~must~~ shall inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.
(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least ~~10~~ 30 days and an additional 12-month revocation by the Division of Motor Vehicles.
(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.
(4) The person's driving privilege will be revoked immediately for at least ~~10~~ 30 days if:
    a. The test reveals an alcohol concentration of 0.08 or more; or
    b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more.
(5) The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.
(6) The person has the right to call an attorney and select a witness to view for him or her the testing procedures, but the testing may not

be delayed for these purposes longer than 30 minutes from the time when the person is notified of his or her rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated."

Section 3.2. G.S. 20-16(e1) reads as rewritten:

"(e1) Limited Driving Privilege after Six Months in Certain Instances. -- A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid driver's license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied-consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving; ~~and~~

(7) The person's license has been revoked for at least six months for the ~~refusal.~~ refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing ~~must~~ shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing ~~must~~ shall be conducted in the superior court

district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid."

Section 3.3. G.S. 20-16.2(i) reads as rewritten:

"(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer ~~must~~ shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person ~~must~~ shall confirm the request in writing and ~~must~~ shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least ~~10~~ 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 3.4. G.S. 20-16.2 is amended by adding a new subsection to read:

"(j) A person whose license is administratively revoked for 30 days under subsections (a) and (i) of this section may apply for a limited driving privilege after the expiration of 10 days provided that the applicant:

(1) At the time of the alleged offense, held either a valid drivers license or a license that had been expired for less than one year;

(2) Does not have an unresolved pending charge for an offense involving impaired driving; and

(3) Obtains a substance abuse assessment from a mental health facility and registers for and agrees to participate in any recommended training or treatment program."

Section 3.5. G.S. 20-16.5(e) reads as rewritten:

"(e) Procedure if Report Filed with Judicial Official When Person Is Present. -- If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official ~~must,~~ shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he ~~must~~ shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official ~~must~~ shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official ~~must~~ shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official ~~must~~ shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. Unless the person is not currently licensed, the revocation under this subsection begins at the time the revocation order is issued and continues until the person's license has been surrendered for ~~10~~ 30 days and the person has paid the applicable costs. If the person is not currently licensed, the revocation continues until ~~10~~ 30 days from the date the revocation order is issued and the person has paid the applicable costs. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk ~~must~~ shall immediately issue a pick-up order. The pick-up order ~~must~~ shall be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order ~~must~~ shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division."

Section 3.6. G.S. 20-16.5(f) reads as rewritten:

"(f) Procedure if Report Filed with Clerk of Court When Person Not Present. -- When a clerk receives a properly executed report under subdivision (d)(3) and the person named in the revocation report is not present before the clerk, the clerk ~~must~~ shall determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he ~~must~~ shall mail to the person a revocation order by first-class mail. The order ~~must~~ shall direct that the person on or before the effective date of the order either surrender his license to the clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order ~~must~~ shall inform the person of the time and effective date of the revocation and of its duration, of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. Revocation orders mailed under this subsection become effective on the fourth day after the order is deposited in the United States mail. If within five working days of the effective date of the order, the person does not surrender his license to the clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk ~~must~~ shall immediately issue a pick-up order. The pick-up order ~~must~~ shall be issued and served in the same manner as specified in subsection (e) for

pick-up orders issued pursuant to that subsection. A revocation under this subsection begins at the date specified in the order and continues until the person's license has been revoked for the period specified in this subsection and the person has paid the applicable costs. The period of revocation under this subsection is:

(1) ~~Ten~~ Thirty days from the time the person surrenders his license to the court, if the surrender occurs within five working days of the effective date of the order; or

(2) ~~Ten~~ Thirty days after the person appears before the clerk and demonstrates that he is not currently licensed to drive, if the appearance occurs within five working days of the effective date of the revocation order; or

(3) ~~Thirty~~ Forty-five days from the time:

a. The person's driver's license is picked up by a law-enforcement officer following service of a pick-up order; or

b. The person demonstrates to a law-enforcement officer who has a pick-up order for his license that he is not currently licensed; or

c. The person's driver's license is surrendered to the court if the surrender occurs more than five working days after the effective date of the revocation order; or

d. The person appears before the clerk to demonstrate that he is not currently licensed, if he appears more than five working days after the effective date of the revocation order.

When a pick-up order is issued, it ~~must~~ shall inform the person of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. An officer serving a pick-up order under this subsection ~~must~~ shall return the order to the court indicating the date it was served or that he was unable to serve the order. If the license was surrendered, the officer serving the order ~~must~~ shall deposit it with the clerk within three days of the surrender."

Section 3.7. G.S. 20-16.5(i) reads as rewritten:

"(i) Effect of Revocations. -- A revocation under this section revokes a person's privilege to drive in North Carolina whatever the source of his authorization to drive. Revocations under this section are independent of and run concurrently with any other revocations. No court imposing a period of revocation following conviction of an offense involving impaired driving may give credit for any period of revocation imposed under this section. ~~A person is not eligible for a limited driving privilege under any statute while his license is revoked under this section.~~ A person whose license is revoked pursuant to this section is not eligible to receive a limited driving privilege except as specifically authorized by G.S. 20-16.2(j)."

Section 3.8. G.S. 20-16.5(k) reads as rewritten:

"(k) Report to Division. -- Except as provided below, the clerk ~~must~~ shall mail a report to the Division within 10 working days of the return of a license under this section or of the termination of a revocation of the driving privilege of a person not

currently licensed. The report ~~must~~ shall identify the person whose license has been revoked and specify the dates on which his license was revoked. No report need be made to the Division, however, if there was a surrender of the driver's license issued by the Division, a ~~ten-day~~ 30-day minimum revocation was imposed, and the license was properly returned to the person under subsection (h) within five working days after the ~~10-day~~ 30-day period had elapsed."

PART IV. MAKE ALCOHOL SCREENING TEST ADMISSIBLE TO PROVE OFFENSE OF DRIVING AFTER DRINKING BY A PERSON UNDER 21.

Section 4. G.S. 20-138.3 reads as rewritten:

"**§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or drugs.**

(a) Offense. -- It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his blood which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

~~(c)~~ (e) Punishment; effect when impaired driving offense also charged. -- The offense in this section is a Class 2 misdemeanor. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable ~~must~~ shall be imposed.

~~(d)~~ (f) Limited driving privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20-179.3.

This subsection shall apply only if the person meets both of the following requirements:

(1) Is 18, 19, or 20 years old on the date of the offense.

(2) Has not previously been convicted of a violation of this section.

The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

PART V. ALLOW DRUG TESTING FOR DRIVING WHILE IMPAIRED.

Section 5.1. G.S. 20-4.01(3a) reads as rewritten:

"(3a) Chemical Analysis. -- A test or tests of the ~~breath or blood~~ breath, blood, or other bodily fluid or substance of a person to determine ~~his~~ the person's alcohol ~~concentration,~~ concentration or presence of an impairing substance, performed in accordance with ~~G.S. 20-139.1.~~ G.S. 20-139.1, including duplicate or sequential analyses. ~~The term "chemical analysis" includes duplicate or sequential analyses when necessary or desirable to insure the integrity of test results.~~"

Section 5.2. G.S. 20-138.3(a) reads as rewritten:

"(a) Offense. -- It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or ~~in his blood a~~ controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his ~~blood~~ body which was lawfully obtained and taken in therapeutically appropriate amounts."

Section 5.3. G.S. 20-139.1(a) reads as rewritten:

"(a) Chemical Analysis Admissible. -- In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration or the presence of any other impairing substance in the person's body as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to ~~a defendant's~~ a person's alcohol ~~concentration,~~ concentration or results of other tests showing the presence of an impairing substance, including other chemical tests."

Section 5.4. G.S. 20-139.1 is amended by adding a new subsection to read:

"(b5) Subsequent Tests Allowed. -- A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of the charging officer. A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2."

Section 5.5. G.S. 20-139.1(e1) reads as rewritten:

"(e1) Use of Chemical Analyst's Affidavit in District Court. -- An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any hearing or trial in the District Court Division of the General Court of Justice with respect to the following matters:

(1) The alcohol concentration or concentrations or the presence or absence of an impairing substance of a person given a chemical analysis and who is involved in the hearing or trial.

(2) The time of the collection of the ~~blood or breath~~ blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.

(3) The type of chemical analysis administered and the procedures followed.

(4) The type and status of any permit issued by the Department of Environment, Health, and Natural Resources that he held on the date he performed the chemical analysis in question.

(5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Environment, Health, and Natural Resources ~~must~~ shall develop a form for use by chemical analysts in making this affidavit. If any person who submitted to a chemical analysis desires that a chemical analyst personally testify in the hearing or trial in the District Court Division, he may subpoena the chemical analyst and examine him as if he were an adverse witness."

Section 5.6. G.S. 20-179.3(h) reads as rewritten:

"(h) Other Mandatory and Permissive Conditions or Restrictions. -- In all limited driving privileges the judge ~~must~~ shall also include a restriction that the applicant not consume alcohol while driving or drive at any time while he has remaining in his body any alcohol or ~~in his blood a~~ controlled substance previously consumed, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts. The judge may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section."

PART VI. EXPAND THE DRUG ABUSE RESISTANCE EDUCATION (DARE) PROGRAM TO THE SEVENTH AND NINTH GRADES.

Section 6. G.S. 115C-47 is amended by adding a new subdivision to read:

"(38) Expand DARE Program to Seventh and Ninth Grades. -- Local boards of education shall use available State and federal resources to expand the Drug Abuse and Resistance Education Program to the seventh and ninth grades."

PART VII. HABITUAL IMPAIRED DRIVING.

Section 7. 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 and shall be sentenced to a minimum active term of not less than 12 months of imprisonment, which shall not be suspended and if paroled, the person shall be enrolled in the Department of Correction's Drug and Alcohol Rehabilitation Training (DART) or similar substance abuse program as a condition of parole. Sentences imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence being served."

PART VIII. EFFECTIVE DATES.

Section 8. Sections 1.1 thorough 1.5, 6, and 8 of this act are effective when they become law. The remaining sections of this act become effective December 1, 1997, and apply to offenses committed on or after that date. Sentencing for an offense committed before the effective date of this act is governed by the laws in effect at the time of the commission of the offense.

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April 16, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: House Bill 448 - Governor's D.W.I. Initiative/AB

Part I - Seizure of Vehicles Used in DWI Offenses

When vehicle subject to forfeiture:
Current law and House Bill 448: a vehicle is subject to forfeiture if the judge determines at sentencing that the defendant was driving with a revoked license, and that the revocation was an impaired driving revocation. The prosecutor is required to determine who owns the car and whether there are any security interests noted on the title. The State must then notify the holder of each security interest, and if the defendant is not the owner, notice must be served on the owner.

Determination of forfeiture:
Current law: The judge at sentencing must hold a hearing to determine if the vehicle should be forfeited.
House Bill 448: The trial judge at the sentencing hearing on the operator's DWI charge will determine if the vehicle is subject to forfeiture.

Order of Forfeiture:
Current law: The judge may order the forfeiture if he finds that the vehicle is not primarily used by a member of the defendant's family or household for business or for driving to and from work or school, that all potential innocent parties have been notified and no party has shown that he is an innocent party.
House Bill 448: ***If the defendant was a registered owner of the vehicle, the judge shall order forfeiture.*** If defendant was not a registered owner, judge shall order forfeiture unless the registered owner establishes by clear and convincing evidence that he or she is an innocent party, in which case the trial judge may order the vehicle released to the registered owner under specified conditions.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Innocent Parties Defined:
Current law and House Bill 448: Did not know and had no reason to know that defendant's license was revoked, or knew that defendant's license was revoked, but defendant drove vehicle without consent.

If Vehicle is Ordered Forfeited:
Current law: Vehicle must be sold; proceeds of sale must be paid to school fund of county where property was seized.
House Bill 448: Judge may authorize school board to sell at public sale or retain for its own use or judge may release vehicle to innocent party lienholder.

***Other provisions of** House Bill 448:* Adds provisions requiring officer to seize and impound vehicle when offer has probable cause to believe vehicle is subject to forfeiture. Includes provisions regarding review of impoundment by magistrate, and conditions allowing release of vehicle pending trial.

Part II - Increase Penalty for Driving While Impaired Offenders

Amends G.S. 20-179 to change the punishment for DWI offenses as follows.

(1) Level I Punishment - any term of imprisonment may only be suspended if a condition of special probation is imposed that requires the defendant to serve a minimum of 30 days. (Current law requires a minimum of 14 days or at least 4 consecutive days and house arrest for twice the number remaining of the 14 days.)

(2) Level II Punishment - any term of imprisonment may only be suspended if a condition of special probation is imposed, but the condition is not specified. (Current law requires a minimum of 7 days or at least 2 consecutive days and house arrest for twice the number remaining of the 7 days.)

(3) Levels III, IV and V Punishment - deletes the requirement that an active sentence be suspended, therefore allowing active time for these levels of punishment.

(4) Amends all levels of punishment to require all defendants placed on probation to obtain a substance abuse assessment. Also requires any defendant given active time to obtain a substance abuse assessment before becoming eligible for parole.

(5) Amends G.S. 20-179(k1) regarding credit for inpatient treatment, to allow the trial judge to order that costs of treatment be absorbed by the State.

Part III - Increase Administrative License Revocation Period

Amends G.S. 20-16.2 and G.S. 20-16.5 to increase the immediate civil revocation period from 10 days to 30 days. There is a provision to allow a limited driving privilege after 10 days if: 1) at the time of the offense, the defendant held either a valid driver's license or a license that had been

expired for less than one year; 2) the defendant has no unresolved pending DWI offenses; and 3) the defendant obtains a substance abuse assessment and registers for and agrees to participate in any recommended training or treatment program.

Part IV - Make Alcohol Screening Test Admissible to Prove Offense of Driving after Drinking by a Person Under 21

Amends G.S. 20-138.3 (driving by a person under 21 after consuming alcohol or drugs) to allow the results of an alcohol screening test or a refusal to test to be used by law enforcement, the court or an administrative agency in determining if alcohol was present in the driver's body. Also provides that the odor of alcohol is not sufficient evidence to prove beyond a reasonable doubt that alcohol was present in the driver's body, unless the driver was offered an alcohol screening test and refused to provide the required samples.

Part V - Allow Drug Testing for Driving While Impaired

Amends G.S. 20-139.1 to provide that a person may be requested, under G.S. 20-16.2, to submit to chemical analysis of blood or other bodily fluid in addition to or in lieu of breath analysis. Refusal of such testing is "willful refusal" under G.S. 20-16.2

Part VI - Expand the Drug Abuse Resistance Education (DARE) Program to the Seventh and Ninth Grades

Amends G.S. 115C-47 to require local boards of education to use available State and federal resources to expand the DARE program to the 7th and 9th grades.

Part VII - Habitual Impaired Driving

Amends G.S. 20-138.5 to require a minimum active sentence of 12 months for habitual impaired driving. Also provides that this sentence shall not be suspended, and if the defendant is paroled they must be enrolled in the Department of Correction's Drug and Alcohol Rehabilitation Training (DART) or a similar program as a condition of parole.

Part VIII - Effective Dates

The provisions regarding forfeiture of vehicles, expansion of the DARE program, and the effective dates section are effective upon becoming law. All other sections of the bill are effective December 1, 1997 and apply to offenses committed on or after that date.

Prepared in part from summary by Brenda Carter, Staff Attorney and IOG's Daily Bulletin

§ 20-16. Authority of Division to suspend license.

(a) The Division shall have authority to suspend the license of any operator with or without a preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

(1) to (4) Repealed by Session Laws 1979, c. 36;

(5) Has, under the provisions of subsection (c) of this section, within a three-year period, accumulated 12 or more points, or eight or more points in the three-year period immediately following the reinstatement of a license which has been suspended or revoked because of a conviction for one or more traffic offenses;

(6) Has made or permitted an unlawful or fraudulent use of such license or a learner's permit, or has displayed or represented as his own, a license or learner's permit not issued to him;

(7) Has committed an offense in another state, which if committed in this State would be grounds for suspension or revocation;

(8) Has been convicted of illegal transportation of alcoholic beverages;

(8a) Has been convicted of impaired instruction under G.S. 20-12.1;

(8b) Has violated on a military installation a regulation of that installation prohibiting conduct substantially equivalent to conduct that constitutes impaired driving under G.S. 20-138.1 and, as a result of that violation, has had his privilege to drive on that installation revoked or suspended after an administrative hearing authorized by the commanding officer of the installation and that commanding officer has general court martial jurisdiction;

(9) Has, within a period of 12 months, been convicted of two or more charges of speeding in excess of 55 and not more than 80 miles per hour, or of one or more charges of reckless driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour;

(10) Has been convicted of operating a motor vehicle at a speed in excess of 75 miles per hour on a public road or highway where the maximum speed is less than 70 miles per hour;

(10a) Has been convicted of operating a motor vehicle at a speed in excess of 80 miles per hour on a public highway where the maximum speed is 70 miles per hour; or

(11) Has been sentenced by a court of record and all or a part of the sentence has been suspended and a condition of suspension of the sentence is that the operator not operate a motor vehicle for a period of time.

However, if the Division revokes without a preliminary hearing and the person whose license is being revoked requests a hearing before the effective date of the revocation, the licensee retains his license unless it is revoked under some other provision of the law, until the hearing is held, the person withdraws his request, or he fails to appear at a scheduled hearing.

(b) Pending an appeal from a conviction of any violation of the motor vehicle laws of this State, no driver's license shall be suspended by the Division of Motor Vehicles because of such conviction or because of evidence of the commission of the offense for which the conviction has been had.

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(c) The Division shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this Article as an operator and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission of the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

Schedule of Point Values

Passing stopped school bus 5
Reckless driving 4
Hit and run, property damage only 4
Following too close 4
Driving on wrong side of road 4
Illegal passing 4
Running through stop sign 3
Speeding in excess of 55 miles per hour 3
Failing to yield right-of-way 3
Running through red light 3
No driver's license or license expired more than one year 3
Failure to stop for siren 3
Driving through safety zone 3
No liability insurance 3
Failure to report accident where such report is required 3
Speeding in a school zone in excess of the posted school zone speed limit 3
All other moving violations 2
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle 1

The above provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina.

No points shall be assessed for conviction of the following offenses:

Overloads

Over length

Over width

Over height

Illegal parking

Carrying concealed weapon

Improper plates

Improper registration

Improper muffler

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Public drunk within a vehicle

Possession of alcoholic beverages

Improper display of license plates or dealers' tags

Unlawful display of emblems and insignia

Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever any licensee accumulates as many as seven points or accumulates as many as four points during a three-year period immediately following reinstatement of his license after a period of suspension or revocation, the Division may request the licensee to attend a conference regarding such licensee's driving record. The Division may also afford any licensee who has accumulated as many as seven points or any licensee who has accumulated as many as four points within a three-year period immediately following reinstatement of his license after a period of suspension or revocation an opportunity to attend a driver improvement clinic operated by the Division and, upon the successful completion of the course taken at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one deduction of points shall be made on behalf of any licensee within any five-year period.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than 60 days; the second such suspension shall not exceed six months and any subsequent suspension shall not exceed one year.

Whenever the driver's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.

In the discretion of the Division, a period of probation not to exceed one year may be substituted for suspension or for any unexpired period of suspension under subsections (a)(1) through (a)(10a) of this section. Any violation of probation during the probation period shall result in a suspension for the unexpired remainder of the suspension period. Any accumulation of three or more points under this subsection during a period of probation shall constitute a violation of the condition of probation.

(d) Upon suspending the license of any person as authorized in this section, the Division shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing, unless a preliminary hearing was held before his license was suspended, as early as practical within not to exceed 30 days after receipt of such request. The hearing shall be conducted in the district court district as defined in G.S. 7A-133 wherein the licensee resides. Hearings shall be rotated among all the counties within that district if the district contains more than one county unless the Division and the licensee agree that such hearing may

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be held in some other district, and such notice shall contain the provisions of this section printed thereon. Upon such hearing the duly authorized agents of the Division may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the Division shall either rescind its order of suspension, or good cause appearing therefor, may extend the suspension of such license. Provided further upon such hearing, preliminary or otherwise, involving subsections (a)(1) through (a)(10a) of this section, the Division may for good cause appearing in its discretion substitute a period of probation not to exceed one year for the suspension or for any unexpired period of suspension. Probation shall mean any written agreement between the suspended driver and a duly authorized representative of the Division and such period of probation shall not exceed one year, and any violation of the probation agreement during the probation period shall result in a suspension for the unexpired remainder of the suspension period. The authorized agents of the Division shall have the same powers in connection with a preliminary hearing prior to suspension as this subsection provided in connection with hearings held after suspension. These agents shall also have the authority to take possession of a surrendered license on behalf of the Division if the suspension is upheld and the licensee requests that the suspension begin immediately.

(e) The Division may conduct driver improvement clinics for the benefit of those who have been convicted of one or more violations of this Chapter. Each driver attending a driver improvement clinic shall pay a fee of twenty-five dollars ($25.00).

(e1) Notwithstanding any other provision of this Chapter, if the Division suspends the license of an operator pursuant to subdivisions (a)(9), (a)(10), or (a)(10a) of this section, upon the first suspension only, a district court judge may allow the licensee a limited driving privilege or license for a period not to exceed 12 months, provided he has not been convicted of any other motor vehicle moving violation within the previous 12 months. The limited driving privilege shall be issued in the same manner and under the terms and conditions prescribed in G.S. 20-16.1(b)(1), (2), (3), (4), and (5).

(1935, c. 52, s. 11; 1947, c. 893, ss. 1, 2; c. 1067, s. 13; 1949, c. 373, ss. 1, 2; c. 1032, s. 2; 1953, c. 450; 1955, c. 1152, s. 15; c. 1187, ss. 9-12; 1957, c. 499, s. 1; 1959, c. 1242, ss. 1-2; 1961, c. 460, ss. 1, 2(a); 1963, c. 1115; 1965, c. 130; 1967, c. 16; 1971, c. 234, ss. 1, 2; c. 793, ss. 1, 2; c. 1198, ss. 1, 2; 1973, c. 17, ss. 1, 2; 1975, c. 716, s. 5; 1977, c. 902, s. 1; 1979, c. 36; c. 667, ss. 18, 41; 1981, c. 412, s. 4; c. 747, ss. 33, 66; 1981 (Reg. Sess., 1982), c. 1256; 1983, c. 435, s. 10; c. 538, ss. 3-5; c. 798; 1983 (Reg. Sess., 1984), c. 1101, s. 4; 1987, c. 744, ss. 1, 2; 1987 (Reg. Sess., 1988), c. 1037, s. 75; 1989, c. 784, s. 9; 1991, c. 682, s. 3.)

Cross References. - As to period of suspension or revocation, see § 20-19 and note to § 20-17.

Editor's Note. - A reference to subdivisions (a)(1) through (a)(10a) of this section appears in the last paragraph of subsection (c) and in subsection (d). Subdivisions (a)(1) through (a)(4) were repealed by Session Laws 1979, c. 36.

Legal Periodicals. - For brief discussion of the 1949 amendments, see 27 N.C.L. Rev. 371, 372 (1949).

For article on administrative hearing for suspension of driver's license, see 30 N.C.L. Rev. 27 (1951).

For note as to effect of plea of nolo contendere, see 32 N.C.L. Rev. 549 (1954).

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§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.

(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. - Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer must designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged must be taken before a chemical analyst authorized to administer a test of a person's breath, who must inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.

(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 10 days and an additional 12-month revocation by the Division of Motor Vehicles.

(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.

(4) The person's driving privilege will be revoked immediately for at least 10 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more.

(5) The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.

(6) The person has the right to call an attorney and select a witness to view for him or her the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time when the person is notified of his or her rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.

(a1) Meaning of Terms. - Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. A "charging officer" is a law-enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.

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(b) Unconscious Person May Be Tested. - If a charging officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the charging officer may direct the taking of a blood sample by a person qualified under G.S. 20-139.1 or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

(c) Request to Submit to Chemical Analysis; Procedure upon Refusal. - The charging officer, in the presence of the chemical analyst who has notified the person of his or her rights under subsection (a), must request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law. If the person refuses to submit to the chemical analysis, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit stating that the person charged, after being advised of his or her rights under subsection (a), willfully refused to submit to a chemical analysis at the request of the charging officer. The charging officer must immediately mail the affidavit to the Division. If the person's refusal to submit to a chemical analysis occurs in a case involving death or critical injury to another person, the charging officer must include that fact in the affidavit mailed to the Division. If the charging officer is also the chemical analyst who has notified the person of his or her rights under subsection (a), the charging officer may perform alone the duties of this subsection.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. - Upon receipt of a properly executed affidavit required by subsection (c), the Division must expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The person was charged with an implied-consent offense;

(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense;

(3) The implied-consent offense charged involved death or critical injury to another person, if

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this allegation is in the affidavit;

(4) The person was notified of his or her rights as required by subsection (a); and

(5) The person willfully refused to submit to a chemical analysis upon the request of the charging officer.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it must rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it must order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person must surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. - If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for such a hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. - If the revocation is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court for a hearing de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 where the charge was made.

(e1) Limited Driving Privilege after Six Months in Certain Instances. - A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid driver's license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied-consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

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b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving; and

(7) The person's license has been revoked for at least six months for the refusal.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing must be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing must be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. - When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division must give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. - A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer must afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person must confirm the request in writing and must be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least 10 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.

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(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant.

(1963, c. 966, s. 1; 1965, c. 1165; 1969, c. 1074, s. 1; 1971, c. 619, ss. 3-6; 1973, c. 206, ss. 1, 2; cc. 824, 914; 1975, c. 716, s. 5; 1977, c. 812; 1979, c. 423, s. 2; 1979, 2nd Sess., c. 1160; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 87; c. 435, s. 11; 1983 (Reg. Sess., 1984), c. 1101, ss. 5-8; 1987, c. 797, s. 3; 1987 (Reg. Sess., 1988), c. 1037, ss. 76, 77; 1989, c. 771, ss. 13, 14; 1991, c. 689, s. 233.1(c); 1993, c. 285, ss. 3, 4; 1995, c. 163, s. 1.)

Cross References. - For definition of "public vehicular area," see § 20-4.01, subdivision (32).

As to the availability of test records, see § 20-27.

Editor's Note. - Session Laws 1987 (Reg. Sess., 1988), c. 1112 would have amended subdivisions (a)(4) and (i)(2) of this section effective June 1, 1989, through June 30, 1989, to establish provisions for revocation of licenses for those subject to this section who were driving in commercial vehicles, with certain exceptions for persons holding a Class C license issued before June 1, 1989. Session Laws 1989, c. 771, s. 18, effective June 1, 1989, repealed Session Laws 1987 (Reg. Sess., 1988), c. 1112; therefore, the provisions of c. 1112 never went into effect.

Session Laws 1991, c. 689, s. 353 is a severability clause.

Session Laws 1993, c. 285, ss. 3 and 4, which amended this section, became effective October 1, 1993, and applied to all offenses committed on or after that date.

Effect of Amendments. - The 1995 amendment, effective June 5, 1995, made the section gender neutral throughout; in subdivision (a)(5) substituted "choose a qualified person to" for "have a qualified person of his own choosing"; in the last paragraph in subsection (a) deleted "and the charging officer designates a chemical analysis of the blood of the person charged" following "breath" and added the last sentence; in subsection (c), substituted "If the person refuses to submit to the chemical analysis" for "Then" in the third sentence and added the last sentence; and made stylistic changes throughout the section.

Legal Periodicals. - For comment on chemical tests and implied consent, see 42 N.C.L. Rev. 841 (1964).

For article on tests for intoxication, see 45 N.C.L. Rev. 34 (1966).

For survey of 1978 law on criminal procedure, see 57 N.C.L. Rev. 1007 (1979).

For survey of 1979 law on criminal procedure, see 58 N.C.L. Rev. 1404 (1980).

For note discussing North Carolina's Validation of the Warrantless Seizure of Blood from an Unconscious Suspect, in Light of State v. Hollingsworth, 77 N.C. App. 36, 334 S.E.2d 463 (1985), see 21 Wake Forest L. Rev. 1071 (1986).

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§ 20-16.5. Immediate civil license revocation for certain persons charged with implied-consent offenses.

(a) Definitions. - As used in this section the following words and phrases have the following meanings:

(1) Charging Officer. - As described in G.S. 20-16.2(a1).

(2) Clerk. - As defined in G.S. 15A-101(2).

(3) Judicial Official. - As defined in G.S. 15A-101(5).

(4) Revocation Report. - A sworn statement by a charging officer and a chemical analyst containing facts indicating that the conditions of subsection (b) have been met. When one chemical analyst analyzes a person's blood and another chemical analyst informs a person of his rights and responsibilities under G.S. 20-16.2, the report must include the statements of both analysts.

(5) Surrender of a Driver's License. - The act of turning over to a court or a law enforcement officer the person's most recent, valid driver's license or learner's permit issued by the Division or by a similar agency in another jurisdiction, or a limited driving privilege issued by a North Carolina court. A person who is validly licensed but who is unable to locate his license card may file an affidavit with the clerk setting out facts that indicate that he is unable to locate his license card and that he is validly licensed; the filing of the affidavit constitutes a surrender of the person's license.

(b) Revocations for Persons Who Refuse Chemical Analyses or Have Alcohol Concentrations of 0.08 or More After Driving a Motor Vehicle or of 0.04 or More After Driving a Commercial Vehicle. - A person's driver's license is subject to revocation under this section if:

(1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;

(2) The person is charged with that offense as provided in G.S. 20-16.2(a);

(3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and

(4) The person:

a. Willfully refuses to submit to the chemical analysis;

b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving; or

c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial vehicle.

(b1) Precharge Test Results as Basis for Revocation. - Notwithstanding the provisions of subsection (b), a person's driver's license is subject to revocation under this section if:

(1) He requests a precharge chemical analysis pursuant to G.S. 20-16.2(i); and

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(2) He has:

a. An alcohol concentration of 0.08 or more at any relevant time after driving; or

b. An alcohol concentration of 0.04 or more at any relevant time after driving a commercial motor vehicle; and

(3) He is charged with an implied-consent offense.

(c) Duty of Charging Officers and Chemical Analysts to Report to Judicial Officials. - If a person's driver's license is subject to revocation under this section, the charging officer and the chemical analyst must execute a revocation report. If the person has refused to submit to a chemical analysis, a copy of the affidavit to be submitted to the Division under G.S. 20-16.2(c) may be substituted for the revocation report if it contains the information required by this section. It is the specific duty of the charging officer to make sure that the report is expeditiously filed with a judicial official as required by this section.

(d) Which Judicial Official Must Receive Report. - The judicial official with whom the revocation report must be filed is:

(1) The judicial official conducting the initial appearance on the underlying criminal charge if:

a. No revocation report has previously been filed; and

b. At the time of the initial appearance the results of the chemical analysis, if administered, or the reports indicating a refusal, are available.

(2) A judicial official conducting any other proceeding relating to the underlying criminal charge at which the person is present, if no report has previously been filed.

(3) The clerk of superior court in the county in which the underlying criminal charge has been brought if subdivisions (1) and (2) are not applicable at the time the charging officer must file the report.

(e) Procedure if Report Filed with Judicial Official When Person Is Present. - If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official must, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he must enter an order revoking the person's driver's license for the period required in this subsection. The judicial official must order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official must give the person a copy of the revocation order. In addition to setting it out in the order the judicial official must personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. Unless the person is not currently licensed, the revocation under this subsection begins at the time the revocation order is issued and continues until the person's license has been surrendered for 10 days and the person has paid the applicable costs. If the person is not currently licensed, the revocation continues until 10 days from the date the revocation order is issued and the person has paid the applicable costs. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk must immediately issue a pick-up order. The pick-up

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order must be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order must be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division.

(f) Procedure if Report Filed with Clerk of Court When Person Not Present. - When a clerk receives a properly executed report under subdivision (d)(3) and the person named in the revocation report is not present before the clerk, the clerk must determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he must mail to the person a revocation order by first-class mail. The order must direct that the person on or before the effective date of the order either surrender his license to the clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order must inform the person of the time and effective date of the revocation and of its duration, of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. Revocation orders mailed under this subsection become effective on the fourth day after the order is deposited in the United States mail. If within five working days of the effective date of the order, the person does not surrender his license to the clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk must immediately issue a pick-up order. The pick-up order must be issued and served in the same manner as specified in subsection (e) for pick-up orders issued pursuant to that subsection. A revocation under this subsection begins at the date specified in the order and continues until the person's license has been revoked for the period specified in this subsection and the person has paid the applicable costs. The period of revocation under this subsection is:

(1) Ten days from the time the person surrenders his license to the court, if the surrender occurs within five working days of the effective date of the order; or

(2) Ten days after the person appears before the clerk and demonstrates that he is not currently licensed to drive, if the appearance occurs within five working days of the effective date of the revocation order; or

(3) Thirty days from the time:

a. The person's driver's license is picked up by a law-enforcement officer following service of a pick-up order; or

b. The person demonstrates to a law-enforcement officer who has a pick-up order for his license that he is not currently licensed; or

c. The person's driver's license is surrendered to the court if the surrender occurs more than five working days after the effective date of the revocation order; or

d. The person appears before the clerk to demonstrate that he is not currently licensed, if he appears more than five working days after the effective date of the revocation order.

When a pick-up order is issued, it must inform the person of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. An officer serving a pick-up order under this subsection must return the order to the court indicating the date it was served or that he was unable to serve the order. If the license was surrendered, the officer serving the order must deposit it with the clerk within three days of the surrender.

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(g) Hearing before Magistrate or Judge if Person Contests Validity of Revocation. - A person whose license is revoked under this section may request in writing a hearing to contest the validity of the revocation. The request may be made at the time of the person's initial appearance, or within 10 days of the effective date of the revocation to the clerk or a magistrate designated by the clerk, and may specifically request that the hearing be conducted by a district court judge. The Administrative Office of the Courts must develop a hearing request form for any person requesting a hearing. Unless a district court judge is requested, the hearing must be conducted within the county by a magistrate assigned by the chief district judge to conduct such hearings. If the person requests that a district court judge hold the hearing, the hearing must be conducted within the district court district as defined in G.S. 7A-133 by a district court judge assigned to conduct such hearings. The revocation remains in effect pending the hearing, but the hearing must be held within three working days following the request if the hearing is before a magistrate or within five working days if the hearing is before a district court judge. The request for the hearing must specify the grounds upon which the validity of the revocation is challenged and the hearing must be limited to the grounds specified in the request. A witness may submit his evidence by affidavit unless he is subpoenaed to appear. Any person who appears and testifies is subject to questioning by the judicial official conducting the hearing, and the judicial official may adjourn the hearing to seek additional evidence if he is not satisfied with the accuracy or completeness of evidence. The person contesting the validity of the revocation may, but is not required to, testify in his own behalf. Unless contested by the person requesting the hearing, the judicial official may accept as true any matter stated in the revocation report. If any relevant condition under subsection (b) is contested, the judicial official must find by the greater weight of the evidence that the condition was met in order to sustain the revocation. At the conclusion of the hearing the judicial official must enter an order sustaining or rescinding the revocation. The judicial official's findings are without prejudice to the person contesting the revocation and to any other potential party as to any other proceedings, civil or criminal, that may involve facts bearing upon the conditions in subsection (b) considered by the judicial official. The decision of the judicial official is final and may not be appealed in the General Court of Justice. If the hearing is not held and completed within three working days of the written request for a hearing before a magistrate or within five working days of the written request for a hearing before a district court judge, the judicial official must enter an order rescinding the revocation, unless the person contesting the revocation contributed to the delay in completing the hearing. If the person requesting the hearing fails to appear at the hearing or any rescheduling thereof after having been properly notified, he forfeits his right to a hearing.

(h) Return of License. - After the applicable period of revocation under this section, or if the magistrate or judge orders the revocation rescinded, the person whose license was revoked may apply to the clerk for return of his surrendered license. Unless the clerk finds that the person is not eligible to use the surrendered license, he must return it if:

(1) The applicable period of revocation has passed and the person has tendered payment for the costs under subsection (j); or

(2) The magistrate or judge has ordered the revocation rescinded.

If the license has expired, he may return it to the person with a caution that it is no longer valid. Otherwise, if the person is not eligible to use the license and the license was issued by the Division or in another state, the clerk must mail it to the Division. If the person has surrendered his copy of a limited driving privilege and he is no longer eligible to use it, the clerk must make a record that he has withheld the limited driving privilege and forward that record to the clerk in

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the county in which the limited driving privilege was issued for filing in the case file. If the person's license is revoked under this section and under another section of this Chapter, the clerk must surrender the license to the Division if the revocation under this section can terminate before the other revocation; in such cases, the costs required by subsection (j) must still be paid before the revocation under this section is terminated.

(i) Effect of Revocations. - A revocation under this section revokes a person's privilege to drive in North Carolina whatever the source of his authorization to drive. Revocations under this section are independent of and run concurrently with any other revocations. No court imposing a period of revocation following conviction of an offense involving impaired driving may give credit for any period of revocation imposed under this section. A person is not eligible for a limited driving privilege under any statute while his license is revoked under this section.

(j) Costs. - Unless the magistrate or judge orders the revocation rescinded, a person whose license is revoked under this section must pay a fee of fifty dollars ($50.00) as costs for the action before the person's license may be returned under subsection (h). The costs collected under this section shall be credited to the General Fund. Fifty percent (50%) of the costs collected shall be used to fund a statewide chemical alcohol testing program administered by the Injury Control Section of the Department of Environment, Health, and Natural Resources.

(k) Report to Division. - Except as provided below, the clerk must mail a report to the Division within 10 working days of the return of a license under this section or of the termination of a revocation of the driving privilege of a person not currently licensed. The report must identify the person whose license has been revoked and specify the dates on which his license was revoked. No report need be made to the Division, however, if there was a surrender of the driver's license issued by the Division, a ten-day minimum revocation was imposed, and the license was properly returned to the person under subsection (h) within five working days after the 10-day period had elapsed.

(*l*) Restoration Fee for Unlicensed Persons. - If a person whose license is revoked under this section has no valid license, he must pay the restoration fee required by G.S. 20-7 before he may apply for a license from the Division.

(m) Modification of Revocation Order. - Any judicial official presiding over a proceeding under this section may issue a modified order if he determines that an inappropriate order has been issued.

(n) Exception for Revoked Licenses. - Notwithstanding any other provision of this section, if the judicial official required to issue a revocation order under this section determines that the person whose license is subject to revocation under subsection (b):

(1) Has a currently revoked driver's license;

(2) Has no limited driving privilege; and

(3) Will not become eligible for restoration of his license or for a limited driving privilege during the period of revocation required by this section,

the judicial official need not issue a revocation order under this section. In this event the judicial official must file in the records of the civil proceeding a copy of any documentary evidence and set out in writing all other evidence on which he relies in making his determination.

(o) Designation of Proceedings. - Proceedings under this section are civil actions, and must

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be identified by the caption "In the Matter of _____" and filed as directed by the Administrative Office of the Courts.

(1983, c. 435, s. 14; 1983 (Reg. Sess., 1984), c. 1101, ss. 11-17; 1985, c. 690, ss. 1, 2; 1987 (Reg. Sess., 1988), c. 1037, s. 80; 1989, c. 771, ss. 15, 16; 1991, c. 689, s. 233.1(a); 1993, c. 285, ss. 5, 6.)

Editor's Note. - Session Laws 1987 (Reg. Sess., 1988), c. 1112 would have amended subsections (b) and (j) and subdivision (b1)(2) of this section effective June 1, 1989, through June 30, 1989, to establish provisions for those subject to this section who were driving in commercial vehicles, with certain exceptions for persons holding a Class C license issued before June 1, 1989. Session Laws 1989, c. 771, s. 18, effective June 1, 1989, repealed Session Laws 1987 (Reg. Sess., 1988), c. 1112; therefore, the provisions of c. 1112 never went into effect.

Session Laws 1991, c. 689, which amended this section, in s. 233.1(d) provides: "Amounts collected under G.S. 20-16.5(j) for fiscal years 1991-92 and 1992-93 and designated for the alcohol testing program of the Injury Control Section of the Department of Environment, Health, and Natural Resources shall not revert to the General Fund. The amount of funds collected under G.S. 20-16.5(j) that are designated for this alcohol testing program and have not been spent or obligated as of June 30, 1994, shall revert to the Highway Fund."

Session Laws 1991, c. 689, s. 352 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1991-93 biennium, the textual provisions of Titles I, II, and III of this act shall apply only to funds appropriated for and activities occurring during the 1991-93 biennium."

Session Laws 1993, c. 285, ss. 5 and 6, which amended this section, became effective October 1, 1993, and applicable to all offenses committed on or after that date.

Session Laws 1995, c. 324, s. 1.1 provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 26.5, provides that amounts collected under section (j) of this section and designated for the alcohol testing program of the Injury Control Section of the Department of Environment, Health, and Natural Resources, for fiscal years 1993-94 and 1994-95 shall not revert to the General Fund unless the amounts exceed the amounts appropriated for those years, and beginning with the 1995-96 fiscal year, funds not needed for that program shall be transferred annually to the Governor's Highway Safety Program for grants to local law enforcement agencies for training and enforcement of the laws on driving while impaired.

Session Laws 1995, c. 324, s. 28.3 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

CASE NOTES

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§ 20-138.5. Habitual impaired driving.

(a) A person commits the offense of habitual impaired driving if he drives while impaired as defined in G.S. 20-138.1 and has been convicted of three or more offenses involving impaired driving as defined in G.S. 20-4.01(24a) within seven years of the date of this offense.

(b) A person convicted of violating this section shall be punished as a Class G felon. Sentences imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence being served.

(c) An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2.

(d) A person convicted under this section shall have his license permanently revoked.

(e) If a person is convicted under this section, the motor vehicle that was driven by the defendant at the time the defendant committed the offense of impaired driving becomes property subject to forfeiture in accordance with the procedure set out in G.S. 20-28.2. In applying the procedure set out in that statute, an owner or a holder of a security interest is considered an innocent party with respect to a motor vehicle subject to forfeiture under this subsection if any of the following applies:

(1) The owner or holder of the security interest did not know and had no reason to know that the defendant had been convicted within the previous seven years of three or more offenses involving impaired driving.

(2) The defendant drove the motor vehicle without the consent of the owner or the holder of the security interest.

(1989 (Reg. Sess., 1990), c. 1039, s. 7; 1993, c. 539, s. 1258; 1994, Ex. Sess., c. 14, s. 32; c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 761, s. 34.1; c. 767, s. 32.)

Editor's Note. - Session Laws 1989 (Reg. Sess., 1990), c. 1039, s. 7, made this section effective October 1, 1990.

Section 1 of Session Laws 1989 (Reg. Sess., 1990), c. 1039 provided that the act would be known as the Omnibus Drug Act of 1990.

Session Laws 1993, c. 539, s. 1258, 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."

Session Laws 1994, Extra Session, c. 14, which amended this section, in s. 73 provides: "Prosecutions for offenses committed before the effective date of this act [October 1, 1994] are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Session Laws 1993 (Reg. Sess., 1994), c. 767, which amended this section, in s. 34 provides: "Prosecution for, or sentences based on, offenses occurring before the effective date of this act [October 1, 1994] are not abated or affected by the repeal or amendment in this act of any statute, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences."

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Session Laws 1994, Extra Session, c. 14, s. 32, was effective on the same date that Chapter 539 of the 1993 Session Laws became effective [October 1, 1994], and applicable to offenses occurring on or after that date.

Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 34.1, which amended this section, was effective October 1, 1994, and applicable to offenses occurring on or after that date.

Legal Periodicals. - For Survey of Developments in North Carolina Law (1992), see 71 N.C.L. Rev. 1893 (1993).

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§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.

(a) Chemical Analysis Admissible. - In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to a defendant's alcohol concentration, including other chemical tests.

(b) Approval of Valid Test Methods; Licensing Chemical Analysts. - A chemical analysis, to be valid, must be performed in accordance with the provisions of this section. The chemical analysis must be performed according to methods approved by the Commission for Health Services by an individual possessing a current permit issued by the Department of Environment, Health, and Natural Resources for that type of chemical analysis. The Commission for Health Services is authorized to adopt regulations approving satisfactory methods or techniques for performing chemical analyses, and the Department of Environment, Health, and Natural Resources is authorized to ascertain the qualifications and competence of individuals to conduct particular chemical analyses. The Department may issue permits to conduct chemical analyses to individuals it finds qualified subject to periodic renewal, termination, and revocation of the permit in the Department's discretion.

(b1) When Officer May Perform Chemical Analysis. - Except as provided in this subsection, a chemical analysis is not valid in any case in which it is performed by an arresting officer or by a charging officer under the terms of G.S. 20-16.2. A chemical analysis of the breath may be performed by an arresting officer or by a charging officer when both of the following apply:

(1) The officer possesses a current permit issued by the Department of Environment, Health, and Natural Resources for the type of chemical analysis.

(2) The officer performs the chemical analysis by using an automated instrument that prints the results of the analysis.

(b2) Breath Analysis Results Inadmissible if Preventive Maintenance Not Performed. - Notwithstanding the provisions of subsection (b), the results of a chemical analysis of a person's breath performed in accordance with this section are not admissible in evidence if:

(1) The defendant objects to the introduction into evidence of the results of the chemical analysis of his breath; and

(2) The defendant demonstrates that, with respect to the instrument used to analyse his breath, preventive maintenance procedures required by the regulations of the Commission for Health Services had not been performed within the time limits prescribed by those regulations.

(b3) Sequential Breath Tests Required. - By January 1, 1985, the regulations of the Commission for Health Services governing the administration of chemical analyses of the breath must require the testing of at least duplicate sequential breath samples. Those regulations must provide:

(1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.

(2) That the test results may only be used to prove a person's particular alcohol concentration

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if:

a. The pair of readings employed are from consecutively administered tests; and

b. The readings do not differ from each other by an alcohol concentration greater than 0.02.

(3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.

A person's willful refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a willful refusal under G.S. 20-16.2(c).

A person's willful refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving.

(b4) Introducing Routine Records Kept as Part of Breath-Testing Program. - In civil and criminal proceedings, any party may introduce, without further authentication, simulator logs and logs for other devices used to verify a breath-testing instrument, certificates and other records concerning the check of ampoules and of simulator stock solution and the stock solution used in any other equilibration device, preventive maintenance records, and other records that are routinely kept concerning the maintenance and operation of breath-testing instruments. In a criminal case, however, this subsection does not authorize the State to introduce records to prove the results of a chemical analysis of the defendant or of any validation test of the instrument that is conducted during that chemical analysis.

(c) Withdrawal of Blood for Chemical Analysis. - When a blood test is specified as the type of chemical analysis by the charging officer, only a physician, registered nurse, or other qualified person may withdraw the blood sample. If the person withdrawing the blood requests written confirmation of the charging officer's request for the withdrawal of blood, the officer must furnish it before blood is withdrawn. When blood is withdrawn pursuant to a charging officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing him, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions.

(d) Right to Additional Test. - A person who submits to a chemical analysis may have a qualified person of his own choosing administer an additional chemical test or tests, or have a qualified person withdraw a blood sample for later chemical testing by a qualified person of his own choosing. Any law-enforcement officer having in his charge any person who has submitted to a chemical analysis must assist the person in contacting someone to administer the additional testing or to withdraw blood, and must allow access to the person for that purpose. The failure or inability of the person who submitted to a chemical analysis to obtain any additional test or to withdraw blood does not preclude the admission of evidence relating to the chemical analysis.

(e) Recording Results of Chemical Analysis of Breath. - The chemical analyst who administers a test of a person's breath must record the following information after making any chemical analysis:

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(1) The alcohol concentration or concentrations revealed by the chemical analysis.

(2) The time of the collection of the breath sample or samples used in the chemical analysis.

A copy of the record of this information must be furnished to the person submitting to the chemical analysis, or to his attorney, before any trial or proceeding in which the results of the chemical analysis may be used.

(e1) Use of Chemical Analyst's Affidavit in District Court. - An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any hearing or trial in the District Court Division of the General Court of Justice with respect to the following matters:

(1) The alcohol concentration or concentrations of a person given a chemical analysis and who is involved in the hearing or trial.

(2) The time of the collection of the blood or breath sample or samples for the chemical analysis.

(3) The type of chemical analysis administered and the procedures followed.

(4) The type and status of any permit issued by the Department of Environment, Health, and Natural Resources that he held on the date he performed the chemical analysis in question.

(5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Environment, Health, and Natural Resources must develop a form for use by chemical analysts in making this affidavit. If any person who submitted to a chemical analysis desires that a chemical analyst personally testify in the hearing or trial in the District Court Division, he may subpoena the chemical analyst and examine him as if he were an adverse witness.

(f) Evidence of Refusal Admissible. - If any person charged with an implied-consent offense refuses to submit to a chemical analysis, evidence of that refusal is admissible in any criminal action against him for an implied-consent offense under G.S. 20-16.2.

(g) Controlled-Drinking Programs. - The Department of Environment, Health, and Natural Resources is empowered to make regulations concerning the ingestion of controlled amounts of alcohol by individuals submitting to chemical testing as a part of scientific, experimental, educational, or demonstration programs. These regulations must prescribe procedures consistent with controlling federal law governing the acquisition, transportation, possession, storage, administration, and disposition of alcohol intended for use in the programs. Any person in charge of a controlled-drinking program who acquires alcohol under these regulations must keep records accounting for the disposition of all alcohol acquired, and the records must at all reasonable times be available for inspection upon the request of any federal, State, or local law-enforcement officer with jurisdiction over the laws relating to control of alcohol. A controlled-drinking program exclusively using lawfully purchased alcoholic beverages in places in which they may be lawfully possessed, however, need not comply with the record-keeping requirements of the regulations authorized by this subsection. All acts pursuant to the regulations reasonably done in

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furtherance of bona fide objectives of a controlled-drinking program authorized by the regulations are lawful notwithstanding the provisions of any other general or local statute, regulation, or ordinance controlling alcohol.

(1963, c. 966, s. 2; 1967, c. 123; 1969, c. 1074, s. 2; 1971, c. 619, ss. 12, 13; 1973, c. 476, s. 128; c. 1081, s. 2; c. 1331, s. 3; 1975, c. 405; 1979, 2nd Sess., c. 1089; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 435, s. 26; 1983 (Reg. Sess., 1984), c. 1101, s. 20; 1989, c. 727, s. 219(2); 1991, c. 689, s. 233.1(b); 1993, c. 285, s. 7.)

Editor's Note. - Session Laws 1991, c. 689, s. 353 is a severability clause.

Session Laws 1991, c. 689, s. 233.1(b), effective January 1, 1993, which amended this section, became and applied to chemical analyses performed on or after that date.

Session Laws 1993, c. 285, s. 7, which amended this section, became effective October 1, 1993, and applied to all offenses committed on or after that date.

Cross References. - For provision regarding the offense of impaired driving, see § 20-138.1.

Legal Periodicals. - For article on tests for intoxication, see 45 N.C.L. Rev. 34 (1966).

For survey of 1978 law on criminal procedure, see 57 N.C.L. Rev. 1007 (1979).

For note discussing North Carolina's Validation of the Warrantless Seizure of Blood from an Unconscious Suspect, in Light of State v. Hollingsworth, 77 N.C. App. 36, 334 S.E.2d 463 (1985), see 21 Wake Forest L. Rev. 1071 (1986).

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§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.

(a) Sentencing Hearing Required. - After a conviction for impaired driving under G.S. 20-138.1, the judge must hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed. Before the hearing the prosecutor must make all feasible efforts to secure the defendant's full record of traffic convictions, and must present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor must furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor must present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor must present evidence of the resulting alcohol concentration.

(b) Repealed by Session Laws 1983, c. 435, s. 29.

(c) Determining Existence of Grossly Aggravating Factors. - At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge must first determine whether there are any grossly aggravating factors in the case. The judge must impose the Level One punishment under subsection (g) of this section if the judge determines that two or more grossly aggravating factors apply. The judge must impose the Level Two punishment under subsection (h) of this section if the judge determines that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

(1) A prior conviction for an offense involving impaired driving if:

a. The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or

b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing.

Each prior conviction is a separate grossly aggravating factor.

(2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

(4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f).

(d) Aggravating Factors to Be Weighed. - The judge must determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The

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judge must weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.16 or more within a relevant time after the driving.

(2) Especially reckless or dangerous driving.

(3) Negligent driving that led to a reportable accident.

(4) Driving by the defendant while his driver's license was revoked.

(5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.

(6) Conviction under G.S. 20-141(j) of speeding by the defendant while fleeing or attempting to elude apprehension.

(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.

(8) Passing a stopped school bus in violation of G.S. 20-217.

(9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor must occur during the same transaction or occurrence as the impaired driving offense.

(e) Mitigating Factors to Be Weighed. - The judge must also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge must weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.09 at any relevant time after the driving.

(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.

(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.

(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.

(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.

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(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.

(7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor must occur during the same transaction or occurrence as the impaired driving offense.

(f) Weighing the Aggravating and Mitigating Factors. - If the judge in the sentencing hearing determines that there are no grossly aggravating factors, he must weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the judge determines that:

(1) The aggravating factors substantially outweigh any mitigating factors, he must note in the judgment the factors found and his finding that the defendant is subject to the Level Three punishment and impose a punishment within the limits defined in subsection (i).

(2) There are no aggravating and mitigating factors, or that aggravating factors are substantially counterbalanced by mitigating factors, he must note in the judgment any factors found and his finding that the defendant is subject to the Level Four punishment and impose a punishment within the limits defined in subsection (j).

(3) The mitigating factors substantially outweigh any aggravating factors, he must note in the judgment the factors found and his finding that the defendant is subject to the Level Five punishment and impose a punishment within the limits defined in subsection (k).

It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism, drug addiction, diminished capacity, or mental disease or defect. Evidence of these matters may be received in the sentencing hearing, however, for use by the judge in formulating terms and conditions of sentence after determining which punishment level must be imposed.

(f1) Aider and Abettor Punishment. - Notwithstanding any other provisions of this section, a person convicted of impaired driving under G.S. 20-138.1 under the common law concept of aiding and abetting is subject to Level Five punishment. The judge need not make any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

(f2) Limit on Consolidation of Judgments. - Except as provided in subsection (f1), in each charge of impaired driving for which there is a conviction the judge must determine if the sentencing factors described in subsections (c), (d) and (e) are applicable unless the impaired driving charge is consolidated with a charge carrying a greater punishment. Two or more impaired driving charges may not be consolidated for judgment.

(g) Level One Punishment. - A defendant subject to Level One punishment may be fined up to two thousand dollars ($2,000) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 14 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed (i) to require the defendant to serve a term of imprisonment of at least 14 days, or (ii) to require the defendant to serve a term of imprisonment of at least four consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above. If the defendant is placed on probation, the judge may impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license. The judge may impose any other lawful condition

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of probation.

(h) Level Two Punishment. - A defendant subject to Level Two punishment may be fined up to one thousand dollars ($1,000) and must be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed (i) to require the defendant to serve a term of imprisonment of at least seven days or, (ii) to require the defendant to serve a term of imprisonment of at least two consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above. If the defendant is placed on probation, the judge may impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license. The judge may impose any other lawful condition of probation.

(i) Level Three Punishment. - A defendant subject to Level Three punishment may be fined up to five hundred dollars ($500.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment must be suspended, on the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or

(2) Perform community service for a term of at least 72 hours; or

(3) Not operate a motor vehicle for a term of at least 90 days; or

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge may impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license. The judge may impose any other lawful condition of probation. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(j) Level Four Punishment. - A defendant subject to Level Four punishment may be fined up to two hundred fifty dollars ($250.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment must be suspended, on the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or

(2) Perform community service for a term of 48 hours; or

(3) Not operate a motor vehicle for a term of 60 days; or

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge may impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license. The judge may impose any other lawful condition of probation. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(k) Level Five Punishment. - A defendant subject to Level Five punishment may be fined up

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to one hundred dollars ($100.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment must be suspended, on the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or

(2) Perform community service for a term of 24 hours; or

(3) Not operate a motor vehicle for a term of 30 days; or

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge may impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license. The judge may impose any other lawful condition of probation. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(k1) Credit for Inpatient Treatment. - Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any treatment. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. The credit may not be used more than once during the seven-year period immediately preceding the date of the offense. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

(*l*) Repealed by Session Laws 1989, c. 691, s. 3, effective January 1, 1990.

(m) Repealed by Session Laws 1995, c. 496, s. 2, effective January 1, 1996.

(n) Time Limits for Performance of Community Service. - If the judgment requires the defendant to perform a specified number of hours of community service as provided in subsections (i), (j), or (k), the community service must be completed:

(1) Within 90 days, if the amount of community service required is 72 hours or more; or

(2) Within 60 days, if the amount of community service required is 48 hours; or

(3) Within 30 days, if the amount of community service required is 24 hours.

The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection.

(o) Evidentiary Standards; Proof of Prior Convictions. - In the sentencing hearing, the State must prove any grossly aggravating or aggravating factor by the greater weight of the evidence, and the defendant must prove any mitigating factor by the greater weight of the evidence. Evidence adduced by either party at trial may be utilized in the sentencing hearing. Except as

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modified by this section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or absence of previous convictions that he finds reliable but he must give prima facie effect to convictions recorded by the Division or any other agency of the State of North Carolina. A copy of such conviction records transmitted by the police information network in general accordance with the procedure authorized by G.S. 20-26(b) is admissible in evidence without further authentication. If the judge decides to impose an active sentence of imprisonment that would not have been imposed but for a prior conviction of an offense, the judge must afford the defendant an opportunity to introduce evidence that the prior conviction had been obtained in a case in which he was indigent, had no counsel, and had not waived his right to counsel. If the defendant proves by the preponderance of the evidence all three above facts concerning the prior case, the conviction may not be used as a grossly aggravating or aggravating factor.

(p) Limit on Amelioration of Punishment. - For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(2) The defendant must serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.

(3) The defendant may not be released on parole unless he is otherwise eligible and has served the mandatory minimum period of imprisonment.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(q) Repealed by Session Laws 1991, c. 726, s. 20, effective October 1, 1991.

(r) Supervised Probation Terminated. - Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets two conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced and that the defendant is sentenced under subsections (i), (j), and (k) of this section.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or

(2) Repealed by Session Laws 1995, c. 496, s. 2, effective January 1, 1996.

(3) Payment of any fines, court costs, and fees; or

(4) Any combination of these conditions.

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(s) Method of Serving Sentence. - The judge in his discretion may order a term of imprisonment or community service to be served on weekends, even if the sentence cannot be served in consecutive sequence.

(t) Repealed by Session Laws 1995, c. 496, s. 2, effective January 1, 1996.

(1937, c. 407, s. 140; 1947, c. 1067, s. 18; 1967, c. 510; 1969, c. 50; c. 1283, ss. 1-5; 1971, c. 619, s. 16; c. 1133, s. 1; 1975, c. 716, s. 5; 1977, c. 125; 1977, 2nd Sess., c. 1222, s. 1; 1979, c. 453, ss. 1, 2; c. 903, ss. 1, 2; 1981, c. 466, ss. 4-6; 1983, c. 435, s. 29; 1983 (Reg. Sess., 1984), c. 1101, ss. 21-29, 36; 1985, c. 706, s. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 201(d); 1987, c. 139; c. 352, s. 1; c. 797, s. 1; 1989, c. 548, ss. 1, 2; c. 691, ss. 1-3, 4.1; 1989 (Reg. Sess., 1990), c. 1031, ss. 1, 2; c. 1039, s. 6; 1991, c. 636, s. 19(b), (c); c. 726, ss. 20, 21; 1993, c. 285, s. 9; 1995, c. 191, s. 3; c. 496, ss. 2-7; c. 506, ss. 11-13.)

Cross References. - For current provisions regarding limited driving privileges, see § 20-179.3.

Editor's Note. - Session Laws 1987, c. 797, s. 2 amended the provisions of subsection (m) of this section pertaining to the assessment of convicted impaired drivers to establish a pilot program in 10 counties effective January 1, 1988, until July 1, 1989. The program was to become statewide effective July 1, 1989. In 1989, Chapter 797 was amended twice, by Session Laws 1989, cc. 548 and 691. The general effect of these 1989 amendments was to extend and amend the provisions of the original pilot program, making changes retroactively effective January 1, 1988 until July 28, 1989; to make other changes to the pilot program effective July 28, 1989 until January 1, 1990; to make amendments to the version of subsection (m) effective statewide except for those counties in which the pilot program applied, effective July 28, 1989 until January 1, 1990; and finally to set out the version of subsection (m) which went into effect statewide on January 1, 1990, with conforming amendments to the rest of this section.

Session Laws 1993, c. 285, s. 9, which amended this section, became, effective October 1, 1993, and appled to all offenses committed on or after that date, rewrote subsection (c).

Session Laws 1995, c. 506, s. 13, effective September 15, 1995, substituted "0.13" for ".15" in the third sentence of the third paragraph of subsection (m) which was repealed by Session Laws 1995, c. 496, s. 2, effective January 1, 1996. As amended, that sentence read: "An order of the court shall not require the defendant to participate in any treatment program for more than 90 days unless a longer treatment program is recommended by the assessing agency and his alcohol concentration was 0.13 or greater as indicated by a chemical analysis taken when he was charged or this was a second or subsequent offence with five years."

Session Laws 1995, c. 506, which amended this section, in s. 15 provides that the act shall not be construed to abate or affect any charges or violations occurring before September 15, 1995.

Effect of Amendments. - Session Laws 1995, c. 191, s. 3, effective January 1, 1996, and applicable to accidents and offenses occurring on or after that date, substituted "a reportable accident" for "an accident causing property damage in excess of five hundred dollars ($500.00) or personal injury" in subdivision (d)(3).

Session Laws 1995, c. 496, ss. 2 through 7, effective January 1, 1996, and applicable to offenses occurring on or after that date, in subsections (g) and (h) rewrote the third sentences of both subsections, and deleted the last sentences, regarding the judge including in the record his reasons for not placing on probation a defendant who would otherwise be subject to the provisions of subsection (m); in subsections (i), (j) and (k), in the second paragraphs of those subsections added the first sentences, and rewrote the second sentences; and repealed subsections (m) and (t), and subdivision (r)(2), regarding substance abuse assessments.

Session Laws 1995, c. 506, ss. 11 through 13, effective September 15, 1995, and applicable to offenses committed on or after that date and to limited driving privileges issued on or after that date, substituted "0.16" for "0.20" in subdivision (d)(1); substituted "0.09" for "0.11" in subdivision (e)(1); and substituted "0.13" for ".15" in the third sentence of the third paragraph of former subsection (m).

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Legal Periodicals. - For survey of 1979 law on criminal procedure, see 58 N.C.L. Rev. 1404 (1980).

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§ 20-179.3. Limited driving privilege.

(a) Definition of Limited Driving Privilege. - A limited driving privilege is a judgment issued in the discretion of a court for good cause shown authorizing a person with a revoked driver's license to drive for essential purposes related to any of the following:

(1) His employment.

(2) The maintenance of his household.

(3) His education.

(4) His court-ordered treatment or assessment.

(5) Community service ordered as a condition of the person's probation.

(6) Emergency medical care.

(b) Eligibility. -

(1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:

a. At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;

b. At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;

c. Punishment Level Three, Four, or Five was imposed for the offense of impaired driving;

d. Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving; and

e. The person has obtained and filed with the court a substance abuse assessment of the type required by G.S. 20-17.6 for the restoration of a drivers license.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if he would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(2) Any person whose licensing privileges are forfeited pursuant to G.S. 15A-1331A is eligible for a limited driving privilege if the court finds that at the time of the forfeiture, the person held either a valid drivers license or a drivers license that had been expired for less than one year and

a. The person is supporting existing dependents or must have a drivers license to be gainfully employed; or

b. The person has an existing dependent who requires serious medical treatment and the defendant is the only person able to provide transportation to the dependent to the health care

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facility where the dependent can receive the needed medical treatment.

The limited driving privilege granted under this subdivision must restrict the person to essential driving related to the purposes listed above, and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege.

(c) Privilege Not Effective until after Compliance with Court-Ordered Revocation. - A person convicted of an impaired driving offense may apply for a limited driving privilege at the time the judgment is entered. If the judgment does not require the person to complete a period of nonoperation pursuant to G.S. 20-179, the privilege may be issued at the time the judgment is issued. If the judgment requires the person to complete a period of nonoperation pursuant to G.S. 20-179, the limited driving privilege may not be effective until the person successfully completes that period of nonoperation. A person whose license is revoked because of a conviction in another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.1 may apply for a limited driving privilege only after having completed at least 60 days of a court-imposed term of nonoperation of a motor vehicle, if the court in the other jurisdiction imposed such a term of nonoperation.

(d) Application for and Scheduling of Subsequent Hearing. - The application for a limited driving privilege made at any time after the day of sentencing must be filed with the clerk in duplicate, and no hearing scheduled may be held until a reasonable time after the clerk files a copy of the application with the district attorney's office. The hearing must be scheduled before:

(1) The presiding judge at the applicant's trial if that judge is assigned to a court in the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, in which the conviction for impaired driving was imposed.

(2) The senior regular resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-41.1 in which the conviction for impaired driving was imposed, if the presiding judge is not available within the district and the conviction was imposed in superior court.

(3) The chief district court judge of the district court district as defined in G.S. 7A-133 in which the conviction for impaired driving was imposed, if the presiding judge is not available within the district and the conviction was imposed in district court.

If the applicant was convicted of an offense in another jurisdiction, the hearing must be scheduled before the chief district court judge of the district court district as defined in G.S. 7A-133 in which he resides. G.S. 20-16.2(e1) governs the judge before whom a hearing is scheduled if the revocation was under G.S. 20-16.2(d). The hearing may be scheduled in any county within the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be.

(e) Limited Basis for and Effect of Privilege. - A limited driving privilege issued under this section authorizes a person to drive if his license is revoked solely under G.S. 20-17(2) or as a result of a conviction in another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.1; if the person's license is revoked under any other statute, the limited driving privilege is invalid.

(f) Overall Provisions on Use of Privilege. - Every limited driving privilege must restrict the applicant to essential driving related to the purposes listed in subsection (a), and any driving that

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is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege. If the privilege is granted, driving related to emergency medical care is authorized at any time and without restriction as to routes, but all other driving must be for a purpose and done within the restrictions specified in the privilege.

(f1) Definition of "Standard Working Hours". - Under this section, "standard working hours" are 6:00 A.M. to 8:00 P.M. on Monday through Friday.

(g) Driving for Work-Related Purposes in Standard Working Hours. - In a limited driving privilege, the court may authorize driving for work-related purposes during standard working hours without specifying the times and routes in which the driving must occur. If the applicant is not required to drive for essential work-related purposes except during standard working hours, the limited driving privilege must prohibit driving during nonstandard working hours unless the driving is for emergency medical care or is authorized by subsection (g2). The limited driving privilege must state the name and address of the applicant's place of work or employer, and may include other information and restrictions applicable to work-related driving in the discretion of the court.

(g1) Driving for Work-Related Purposes in Nonstandard Hours. - If the applicant is required to drive during nonstandard working hours for an essential work-related purpose, he must present documentation of that fact before the judge may authorize him to drive for this purpose during those hours. If the applicant is self-employed, the documentation must be attached to or made a part of the limited driving privilege. If the judge determines that it is necessary for the applicant to drive during nonstandard hours for a work-related purpose, he may authorize the applicant to drive subject to these limitations:

(1) If the applicant is required to drive to and from a specific place of work at regular times, the limited driving privilege must specify the general times and routes in which the applicant will be driving to and from work, and restrict driving to those times and routes.

(2) If the applicant is required to drive to and from work at a specific place, but is unable to specify the times at which that driving will occur, the limited driving privilege must specify the general routes in which the applicant will be driving to and from work, and restrict the driving to those general routes.

(3) If the applicant is required to drive to and from work at regular times but is unable to specify the places at which work is to be performed, the limited driving privilege must specify the general times and geographic boundaries in which the applicant will be driving, and restrict driving to those times and within those boundaries.

(4) If the applicant can specify neither the times nor places in which he will be driving to and from work, or if he is required to drive during these nonstandard working hours as a condition of employment, the limited driving privilege must specify the geographic boundaries in which he will drive and restrict driving to that within those boundaries.

The limited driving privilege must state the name and address of the applicant's place of work or employer, and may include other information and restrictions applicable to work-related driving, in the discretion of the court.

(g2) Driving for Other than Work-Related Purposes. - A limited driving privilege may not allow driving for maintenance of the household except during standard working hours, and the limited driving privilege may contain any additional restrictions on that driving, in the discretion

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of the court. The limited driving privilege must authorize driving essential to the completion of any community work assignments, course of instruction at an Alcohol and Drug Education Traffic School, or substance abuse assessment or treatment, to which the applicant is ordered by the court as a condition of probation for the impaired driving conviction. If this driving will occur during nonstandard working hours, the limited driving privilege must specify the same limitations required by subsection (g1) for work-related driving during those hours, and it must include or have attached to it the name and address of the Alcohol and Drug Education Traffic School, the community service coordinator, or mental health treatment facility to which the applicant is assigned. Driving for educational purposes other than the course of instruction at an Alcohol and Drug Education Traffic School is subject to the same limitations applicable to work related driving under subsections (g) and (g1).

(g3) Ignition Interlock Allowed. - A judge may include all of the following in a limited driving privilege order:

(1) A restriction that the applicant may operate only a designated motor vehicle.

(2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle.

(g4) The restrictions set forth in subsection (g3) of this section do not apply to a motor vehicle that meets all of the following requirements:

(1) Is owned by the applicant's employer.

(2) Is operated by the applicant solely for work-related purposes.

(3) Its owner has filed with the court a written document authorizing the applicant to drive the vehicle, for work-related purposes, under the authority of a limited driving privilege.

(h) Other Mandatory and Permissive Conditions or Restrictions. - In all limited driving privileges the judge must also include a restriction that the applicant not consume alcohol while driving or drive at any time while he has remaining in his body any alcohol or in his blood a controlled substance previously consumed, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts. The judge may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section.

(i) Modification or Revocation of Privilege. - A judge who issues a limited driving privilege is authorized to modify or revoke the limited driving privilege upon a showing that the circumstances have changed sufficiently to justify modification or revocation. If the judge who issued the privilege is not presiding in the court in which the privilege was issued, a presiding judge in that court may modify or revoke a privilege in accordance with this subsection. The judge must indicate in the order of modification or revocation the reasons for the order, or he must make specific findings indicating the reason for the order and those findings must be entered in the record of the case.

(j) Effect of Violation of Restriction. - A holder of a limited driving privilege who violates

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any of its restrictions commits the offense of driving while his license is revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law-enforcement officer has reasonable grounds to believe that the holder of a limited driving privilege has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a holder of a limited driving privilege is charged with driving while license revoked by violating a restriction contained in his limited driving privilege, and a judicial official determines that there is probable cause for the charge, the limited driving privilege is suspended pending the resolution of the case, and the judicial official must require the holder to surrender the limited driving privilege. The judicial official must also notify the holder that he is not entitled to drive until his case is resolved.

(k) Copy of Limited Driving Privilege to Division; Action Taken if Privilege Invalid. - The clerk of court or the child support enforcement agency must send a copy of any limited driving privilege issued in the county to the Division. A limited driving privilege that is not authorized by this section, G.S. 20-16.2(e1), 20-16.1, 50-13.12, or 110-142.2, or that does not contain the limitations required by law, is invalid. If the limited driving privilege is invalid on its face, the Division must immediately notify the court and the holder of the privilege that it considers the privilege void and that the Division records will not indicate that the holder has a limited driving privilege.

(*l*) Any judge granting limited driving privileges under this section shall, prior to granting such privileges, be furnished proof and be satisfied that the person being granted such privileges is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purpose of this subsection "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form

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approved by the Commissioner. Such granting of limited driving privileges shall be conditioned upon the maintenance of such financial responsibility during the period of the limited driving privilege. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter.

(1983, c. 435, s. 31; 1983 (Reg. Sess., 1984), c. 1101, ss. 30-33; 1985, c. 706, s. 2; 1987, c. 869, s. 13; 1987 (Reg. Sess., 1988), c. 1037, s. 78; 1989, c. 436, s. 6; 1994, Ex. Sess., c. 20, s. 3; 1995, c. 506, ss. 1, 2; c. 538, s. 2(h); 1995 (Reg. Sess., 1996), c. 756, s. 31.)

Editor's Note. - Session Laws 1983 (Reg. Sess., 1984) c. 1101, which amended this section, provided in s. 37: "Section 32 of this Act is effective upon ratification: Provided that a judge authorized to issue a limited driving privilege under G.S. 20-179.3(d) is authorized, upon application of a holder of a limited driving privilege who has been convicted of the offense of impaired driving under G.S. 20-138.1, to modify that limited driving privilege in accordance with G.S. 20-179.3, as amended by Section 32 of this act."

Session Laws 1995, c. 506, which amended this section, in s. 15 provides that the act shall not be construed to abate or affect any charges or violations occurring before September 15, 1995.

Session Laws 1994, Extra Session, c. 20, s. 3, which amended this section, was effective May 1, 1994, and applicable to offenses committed on or after that date.

Effect of Amendments. - Session Laws 1995, c. 506, ss. 1 and 2, effective September 15, 1995, and applicable to offenses committed on or after that date and to limited driving privileges issued after that date, added subsections (g3) and (g4) and subdivision (b)(1)e., and made related changes.

Session Laws 1995, c. 538, s. 2(h) effective January 1, 1996, and applicable to child support owed on or after that date, in subsection (k) inserted "or the child support enforcement agency" in the first sentence and substituted "G.S. 20-16.2(e1), 20-16.1, 50-13.12, or 110-142.2" for "G.S. 20-16.2(e1), or G.S. 20-16.1" in the second sentence.

The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, substituted "required by G.S. 20-17.6 for the restoration of a drivers license" for "specified in G.S. 20-179(m)" in subdivision (b)(1)e.

CASE NOTES

Discretion of Court in Granting Privilege. - The granting or denying of a limited driving privilege pursuant to subsection (a) of this section is for good cause shown, the decision resting in the sound discretion of the trial court. State v. Sigmon, 74 N.C. App. 479, 328 S.E.2d 843 (1985).

Defendant has no entitlement to a limited driving privilege. State v. Sigmon, 74 N.C. App. 479, 328 S.E.2d 843 (1985).

Probable Cause to Approach Defendant. - Officer who had specific knowledge that defendant's license had been revoked, that defendant held a limited driving privilege, and that he might have been violating his privilege by driving for a social purpose had a reasonable or founded suspicion base on articulable facts sufficient to justify his approach of defendant in a public place and ask to see a valid license and North Carolina permit. State v. Badgett, 82 N.C. App. 270, 346 S.E.2d 281 (1986).

Refusal to Allow Showing of Good Cause as Abuse of Discretion. - Trial court's refusal to allow defendant to show good cause for authorization of a limited driving privilege was an abuse of discretion, where defendant's official record of convictions for violations of motor vehicle laws and his driver's license record showed that he had no prior convictions for violations of this type, the court found no aggravating or grossly aggravating factors, and there was no showing of any subsequent violations of this nature. State v. Bailey, 93 N.C. App. 721, 379 S.E.2d 266 (1989).

Evidence Held Insufficient to Support Conviction Under Subsection (j). - State v. Cooney, 313 N.C. 594, 330 S.E.2d 206 (1985).

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 611

Short Title: Increase Comp. for Err. Conviction. (Public)

Sponsors: Representatives Hackney, Reynolds; Allred, Cole, Culpepper, Goodwin, Hardaway, and Insko.

Referred to: Judiciary II.

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE COMPENSATION PROVIDED TO PERSONS ERRONEOUSLY CONVICTED OF FELONIES WHO HAVE RECEIVED PARDONS OF INNOCENCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 148-84 reads as rewritten:

"**§ 148-84. Evidence; action by Parole Commission; payment and amount of compensation.**

At the hearing the claimant may introduce evidence in the form of affidavits to support the claim, and the Attorney General may introduce counter affidavits in refutation. If the Parole Commission finds from the evidence that the claimant was pardoned for the reason that the crime was not committed at all, or was not committed by the claimant, and that the claimant has been vindicated in connection with the alleged offense for which he was imprisoned; and that he has sustained pecuniary loss through such erroneous conviction and imprisonment, the Parole Commission shall report the facts, together with ~~his~~ its conclusions and recommendations to the Governor, and the Governor, with the approval of the Council of State, may pay to the claimant out of the Contingency and Emergency Fund, or out of any other available State fund, such amounts as may partially compensate the claimant for such pecuniary loss as he may be found to have suffered by reason of his erroneous conviction and imprisonment, such compensation not to be in excess of ~~five hundred dollars ($500.00)~~ five thousand dollars ($5,000) for each year of such imprisonment actually served; and in no event shall such compensation

exceed a total amount of ~~five thousand dollars ($5,000).~~ one hundred fifty thousand dollars ($150,000)."

Section 2. This act is effective when it becomes law and applies to persons pardoned on or after July 1, 1995.

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April 15, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 611—Increase Comp. For Err. Conviction (Hackney)

House Bill 611 would increase the amount of compensation an individual may receive who is erroneously convicted of a felony and imprisoned. The bill increases the amount of compensation from $500 for each year of imprisonment to $5,000 for each year. The total amount of compensation allowed under the law is increased from $5,000 to $150,000.

House Bill 611 is effective when it becomes law and applies to persons pardoned on or after July 1, 1995.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 613*

Short Title: Compensate Erroneously Convicted. (Public)

Sponsors: Representatives Goodwin; Hackney, Insko, and Cole.

Referred to: Judiciary II.

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE COMPENSATION PROVIDED TO PERSONS ERRONEOUSLY CONVICTED OF FELONIES, TO PROVIDE FOR THE INDUSTRIAL COMMISSION TO HANDLE THE CLAIMS OF THOSE PERSONS, AND TO PROVIDE THAT THOSE CLAIMS MUST BE BROUGHT WITHIN FIVE YEARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 148-82 reads as rewritten:

"**§ 148-82. Provision for compensation.**

Any person who, having been convicted of a felony and having been imprisoned therefor in a State prison of this State, and who was thereafter or who shall hereafter be pardoned by the Governor upon the grounds that the crime with which ~~he~~ the person was charged either was not committed at all or was not committed by ~~him,~~ that person, may as hereinafter provided present by petition a claim against the State for the pecuniary loss sustained by ~~him~~ the person through his erroneous conviction and ~~imprisonment.~~ imprisonment, provided the petition is presented within five years of the granting of the pardon."

Section 2. G.S. 148-83 reads as rewritten:

"**§ 148-83. Form, requisites and contents of petition; nature of hearing.**

Such petition shall be addressed to the ~~Department of Correction,~~ Industrial Commission, and must include a full statement of the facts upon which the claim is based, verified in the manner provided for verifying complaints in civil actions, and it may be supported by affidavits substantiating such claim. Upon its presentation the ~~Department of Correction~~ Industrial Commission shall fix a time and a place for a

hearing, and shall mail notice to the claimant, and shall notify the Attorney General, at least 15 days before the time fixed therefor."

Section 3. G.S. 148-84 reads as rewritten:

"**§ 148-84. Evidence; action by ~~Parole~~ Industrial Commission; payment and amount of compensation.**

At the hearing the claimant may introduce evidence in the form of affidavits to support the claim, and the Attorney General may introduce counter affidavits in refutation. If the ~~Parole~~ Industrial Commission finds from the evidence that the claimant was pardoned for the reason that the crime was not committed at all, or was not committed by the claimant, and that the claimant has been vindicated in connection with the alleged offense for which he was imprisoned; and that ~~he~~ the claimant has sustained pecuniary loss through such erroneous conviction and imprisonment, the ~~Parole~~ Industrial Commission shall report the facts, together with ~~his~~ its conclusions and recommendations to the Governor, and the Governor, with the approval of the Council of State, may pay to the claimant out of the Contingency and Emergency Fund, or out of any other available State fund, such amounts as may partially compensate the claimant for such pecuniary loss as ~~he~~ the claimant may be found to have suffered by reason of ~~his~~ the erroneous conviction and imprisonment, such compensation not to be in excess of ~~five hundred dollars ($500.00)~~ ten thousand dollars ($10,000) for each year or portion of a year of such imprisonment actually served; and in no event shall such compensation exceed a total amount of ~~five thousand dollars ($5,000).~~ one hundred fifty thousand dollars ($150,000)."

Section 4. This act is effective when it becomes law.

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April 15, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 613—Compensate Erroneously Convicted (Goodwin)

House Bill 613 amends the law concerning individuals seeking pecuniary damages for erroneous convictions.

Section 1 of the bill would require individuals who have been erroneously convicted of a felony, imprisoned and thereafter pardoned because of innocence to seek damages from the State **within 5 years** of their pardon.

Under current law, a petition to recover damages for erroneous conviction is presented to the Department of Correction for hearing before the Parole Commission. Section 2 of the bill would require such petition to be presented to the Industrial Commission, not the Department of Correction.

Section 3 of the bill increases the amount of money which may be recovered in such an action from a maximum of $500 for each year of imprisonment to $10,000 for each year, or portion of a year, of imprisonment. Total recovery allowed under the statute is increased from $5,000 to $150,000.

House Bill 613 is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

April 16, 1997 7:30 A.M. — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Richard Rosen	UNC, School of Law, Chapel Hill, NC
Joe Parker	6HSP
Secret Jackson	Lt. Gov.
Addie Soldin	Lt. Gov.
Sue Stewart	CCPS
John McMillan	Manning, Fulton & Skinner PA
Stephen Hamm	Carter Gazette
Karyn Brown	MADD-NC
Alice Avery	A 6
Lawrence Davis	NC Passenger Safety Ass'n
Paula Wolf	Covenant with NC's Children
John Bode	Bode Call & Stroupe
Tom Lambeth	Hemric, Lambeth & Champion, Burlington, N.C.
Dave Hunt	Smith Anderson
Barry Dail	310 Andover Dr. Durham 27712
Greg Dail	"

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 17, 1997 7:30 A.M.

The North Carolina House of Representatives Judiciary II Committee met on April 17, 1997, at 7:30 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Bowie, Baddour, Cansler, Gardner, Goodwin, Hackney, McMahan, Nesbitt, Redwine, Russell, Saunders, Shubert, Sutton, Weatherly and Wilkins. A list of visitors is attached.

The following bills were discussed:

Committee Bills: INCREASE COCK FIGHTING PENALTY
INCREASE CRUELTY TO ANIMALY PENALTY
HB-448 GOVERNOR'S D.W.I. INITIATIVE
HB-611 INCREASE COMPENSATION FOR ERRONEOUS CONVICTION
HB-613 COMPENSATE ERRONEOUSLY CONVICTED

Representative Saunders was recognized to explain Committee Bill Increase Cock Fighting Penalty and answer questions of committee members. A copy of the bill draft and explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Representative Sutton moved for a favorable report; motion passed.

Representative Sutton was recognized to explain Committee Bill Increase Cruelty to Animals Penalty and answer questions of committee members. A copy of the bill draft and explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Representative Kiser moved for a favorable report; motion passed.

Representative Hackney was recognized to send forth a proposed committee substitute for House Bill 448 and moved it be adopted for purpose of discussion; motion passed. A copy of the committee substitute bill is attached.

Mr. Ike Avery, Attorney General's Office, and Mr. Joe Stewart, Crime Control and Public Safety, answered questions of committee members.

No action was taken on HB-448.

Representative Goodwin provided members with handouts from Jennifer Thompson and Captain M. R. Gauldin, of the Burlington Police. A copy of the handouts are attached.

Representative Goodwin and Hackney recognized Mr. Ronald Cotton to speak on his personal experience.

No action was taken on House Bills 611 and 613.

The meeting was adjourned at 8:20 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., ~~Chairman~~

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 448*
Proposed Committee Substitute H448-CSSA-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Governor's D.W.I. Initiative/AB. (Public)

Sponsors:

Referred to: Judiciary II.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE GOVERNOR'S RECOMMENDATIONS ON DRIVING WHILE IMPAIRED.

The General Assembly of North Carolina enacts:

PART I. SEIZURE OF VEHICLES USED IN DRIVING WHILE IMPAIRED OFFENSES.

Section 1.1. G.S. 20-28.2 reads as rewritten:

"**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.**

(a) Meaning of 'Impaired Driving License Revocation'. -- The revocation of a person's driver's license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, ~~20-17(2),~~ 20-17(a)(2), or 20-17.2; or

(2) G.S. 20-16(a)(7), 20-17(1), or 20-17(9), if the offense involves impaired driving.

(b) When Motor Vehicle Becomes Property Subject to Forfeiture. -- If at a sentencing hearing conducted pursuant to G.S. 20-179 or 20-138.5 the judge determines that the grossly aggravating factor described in G.S. 20-179(c)(2) applies, the motor vehicle

that was driven by the defendant at the time he committed the offense of impaired driving becomes property subject to forfeiture.

(c) Duty of Prosecutor to Notify Possible Innocent Parties. --In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture under this section, the prosecutor ~~must~~ shall determine the identity of the vehicle owner as shown on the certificate of title for the vehicle and he ~~must~~ shall also determine if there are any security interests noted on the vehicle's certificate of title. The State ~~must~~ shall notify the holder of each security interest that the vehicle may be subject to forfeiture and that he may intervene to protect his interest. If the defendant is not the owner, a similar notice ~~must~~ shall be served on the owner. The notice may be served by any means reasonably likely to provide actual notice, and ~~must~~ shall be served at least fourteen days before the forfeiture hearing.

(d) Duty of Judge. -- ~~The judge at sentencing must hold a hearing to determine if the vehicle should be forfeited. At the hearing the judge may order the forfeiture if he finds that:~~

~~(1) The vehicle is subject to forfeiture;~~

~~(2) The vehicle is not primarily used by a member of the defendant's family or household for a business purpose or for driving to and from work or school;~~

~~(3) All potential innocent parties have been notified as required in subsection (c); and~~

~~(4) No party has shown that he is an innocent party as described in subsection (f).~~

~~If the owner or the holder of a security interest has not been notified, the judge may continue the hearing to allow the State to serve the notice or he may decline to order forfeiture. In any case in which a judge does not order the forfeiture of a vehicle subject to forfeiture, he must enter into the record detailed, written reasons for his decision.~~ The trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 or 20-138.5 shall determine if the vehicle is subject to forfeiture under this section. If the judge determines that the requirements of subsections (a) through (c) of this section exist and the defendant was a registered owner of the vehicle at the time of the offense, the judge shall order the vehicle forfeited. If the defendant was not a registered owner of the vehicle at the time of the offense, the judge shall order the vehicle forfeited unless the registered owner of the vehicle establishes, by clear and convincing evidence, that he or she is an innocent party as

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

97-SA-001
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Increase Cock Fighting Penalty. (Public)

Sponsors: Judiciary II Committee.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR COCK FIGHTING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-362 reads as rewritten:

"**§ 14-362. Cock fighting.**

(a) A person who instigates, promotes, conducts, is employed at, provides a cock for, allows property under his ownership or control to be used for, ~~participates as a spectator at,~~ gambles on, or profits from an exhibition featuring the fighting of a cock is guilty of a ~~Class 2 misdemeanor.~~ Class I felony. A lease of property that is used or is intended to be used for an exhibition featuring the fighting of a cock is void, and a lessor who knows this use is made or is intended to be made of his property is under a duty to evict the lessee immediately.

(b) A person who owns, possesses, or trains a cock with the intent that the cock be used in an exhibition featuring the fighting of that cock is guilty of a Class I felony.

(c) A person who participates as a spectator at an exhibition featuring the fighting of a cock is guilty of a Class 1 misdemeanor.

(d) A person who commits a second or subsequent offense under subsection (c) of this section within three years after being convicted of any offense under this section is guilty of a Class I felony."

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

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April 17, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: Proposed Committee Bill - Increase Cock Fighting Penalty

This bill would increase the penalty for any person who instigates, promotes, conducts, is employed at, provides a cock for, allows property to be used for, gambles on or profits from a cock fight from a Class 2 misdemeanor to a Class I felony.

This bill also increases the penalty for any person who owns, possesses, or trains a cock with the intent that the cock be used in fighting from a Class 2 misdemeanor to a Class I felony.

A person who participates as a spectator is guilty of a Class 1 misdemeanor for a first offense and a Class I felony for a second or subsequent offense.

As with G.S. 14-362.1, the bill places a duty upon a lessor to evict a tenant who is using or intends to use the rental property for dog fights.

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

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

REPORTS OF STANDING COMMITTEES AND PERMANENT SUBCOMMITTEES

The following report(s) from standing committee(s) is/are presented:

Rep. Neely for the Committee on Judiciary II

submits the following bill with a favorable report for introduction.

AN ACT TO INCREASE THE PENALTY FOR COCK FIGHTING.

_____ Pursuant to Rule 31(a), the bill is filed, assigned the number H.B. _____ and placed on the Calendar for _____ for its first reading.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

97-SA-002
(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

Short Title: Increase Cruelty to Animals Penalty. (Public)

Sponsors: Judiciary II Committee.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR CRUELTY TO ANIMALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-360 reads as rewritten:

"§ 14-360. Cruelty to animals; construction of section.

(a) If any person shall willfully overdrive, overload, wound, injure, ~~torture, torment,~~ or deprive of necessary sustenance, ~~cruelly beat, needlessly mutilate or kill~~ or cause or procure to be overdriven, overloaded, wounded, injured, ~~tortured, tormented,~~ or deprived of necessary sustenance, ~~cruelly beaten, needlessly mutilated or killed as aforesaid, any useful beast, fowl or~~ any animal, every such offender shall for every such offense be guilty of a Class 1 misdemeanor. ~~In this section, and in every law which may be enacted relating to animals, the words "animal" and "dumb animal" shall be held to include every living creature; the words "torture," "torment" or "cruelty" shall be held to include every act, omission or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted. Such terms shall not be construed to prohibit the lawful taking of~~

~~animals under the jurisdiction and regulation of the Wildlife Resources Commission.~~

(b) If any person shall willfully torture, torment, mutilate, maim, cruelly beat, disfigure, poison or kill, or cause or procure to be tortured, tormented, mutilated, maimed, cruelly beaten, disfigured, poisoned or killed, any animal, every such offender shall for every such offense be guilty of a Class I felony.

(c) In this section, the term "animal" shall be held to include every domestic or otherwise useful animal. This section shall not be construed to prohibit the lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission, lawful activities sponsored by agencies conducting biomedical research or training, lawful activities for sport, the production of livestock or poultry, or the lawful destruction of any animal for the purpose of protecting such livestock or poultry."

Section 2. This act becomes effective December 1, 19 and applies to offenses committed on or after that date.

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April 17, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: Proposed Committee Bill - Increase Cruelty to Animals Penalty

This bill would increase the penalty for any person who willfully tortures, torments, mutilates, maims, cruelly beats, disfigures, poisons or kills an animal from a Class 1 misdemeanor to a Class I felony.

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

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

REPORTS OF STANDING COMMITTEES AND PERMANENT SUBCOMMITTEES

The following report(s) from standing committee(s) is/are presented:

Rep. Neely for the Committee on Judiciary II

submits the following bill with a favorable report for introduction.

AN ACT TO INCREASE THE PENALTY FOR CURELTY TO ANIMALS.

_____ Pursuant to Rule 31(a), the bill is filed, assigned the number H.B. _____ and placed on the Calendar for _____ for its first reading.

defined by subsection (f) of this section, in which case the trial judge may order the vehicle released to the registered owner pursuant to the provisions of subsection (e) of this section. In any case where the vehicle is ordered forfeited, the judge shall either:

(1) Authorize the school board to sell the vehicle at public sale or retain the vehicle for its own use pursuant to G.S. 20-28.5; or

(2) Release the vehicle to an innocent party lienholder pursuant to the provisions of subsection (h) of this section.

~~(e) Sale of Forfeited Vehicle Required. -- If the judge orders forfeiture of the vehicle pursuant to this section, he must order the sale of the vehicle. Proceeds of the sale must be paid to the school fund of the county in which the property was seized.~~

~~(f) Innocent Party May Intervene. -- At any time before the forfeiture is ordered, the property owner or holder of a security interest, other than the defendant, may apply to protect his interest in the motor vehicle. The application may be made to a judge who has jurisdiction to try the impaired driving offense with which the motor vehicle is associated. The judge must order the vehicle returned to the owner if he finds that either the owner or the holder of a security interest is an innocent party. An owner or holder of a security interest is an innocent party if he:~~

~~(1) Did not know and had no reason to know that the defendant's driver's license was revoked; or~~

~~(2) Knew that the defendant's driver's license was revoked, but the defendant drove the vehicle without his consent.~~

~~If an innocent party applies after the forfeited motor vehicle has been sold and the judge finds no laches in the innocent party's delay, the judge may order a payment to the innocent party from the net proceeds of the sale equal to his equity or security interest in the vehicle.~~

(e) Return of Vehicle to Innocent Registered Owner. -- If the registered owner establishes, by clear and convincing evidence, that the vehicle was being driven by a person who was not a registered owner at the time of the underlying offense and that each registered owner is an 'innocent party', the sentencing judge may order the vehicle returned to the registered owner.

This release may only be ordered upon satisfactory proof of:

(1) The identity of the person as a registered owner;

(2) The existence of financial responsibility as required by Article 13 of this Chapter;
(3) The payment of towing and storage fees; and
(4) The execution of an acknowledgment as set forth in this section.

No vehicle subject to forfeiture under this section shall be released to a registered owner if the records of the Division indicate any registered owner had previously signed an acknowledgment as required by this section, and the same person was operating the owner's vehicle when that person's license was revoked.

(f) Innocent Party Defined. -- A registered owner or holder of a security is an 'innocent party' if he or she:
(1) Did not know and had no reason to know that the defendant's drivers license was revoked; or
(2) Knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without his or her consent.

(g) Acknowledgment Required. -- The 'innocent party' registered owner of a vehicle seeking release pursuant to this section shall sign a written document acknowledging that:
(1) His or her vehicle was operated by a person charged with an offense involving impaired driving while that drivers license was revoked as a result of a prior impaired drivers license revocation;
(2) If the vehicle is again operated by this particular person, at any time while that person's drivers license is revoked, that the vehicle is subject to impoundment and forfeiture, even if the operator was not impaired; and
(3) A lack of knowledge or consent to the operation will not be a defense in the future.

(h) Release to Lienholder. -- The trial judge may order a forfeited vehicle released to the holder of a security interest if he determines by clear and convincing evidence, that the holder of the security interest is an 'innocent party', as defined in subsection (f) of this section, and:
(1) The lienholder's interest is not less than the fair market value of the vehicle;
(2) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited vehicle to a registered owner or any person acting on a registered owner's behalf; and

(3) The lienholder pays, in full, any towing and storage costs incurred as a result of the seizure of the vehicle.

(i) Possessory Lien. -- The entity that tows or stores the motor vehicle, other than the county school board, shall be entitled to a possessory lien for all costs and fees associated with the towing, storage, or sale of a vehicle pursuant to this section. This lien shall have priority over perfected and unperfected security interests. Storage fees subject to the lien shall not exceed five dollars ($5.00) per day."

Section 1.2. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.3. Seizure, impoundment, forfeiture of vehicles for offenses involving impaired driving while license revoked.**

(a) A motor vehicle that is driven by a person in violation of G.S. 20-138.1 or 20-138.5 is subject to seizure if at the time of the violation the drivers license of the person driving the motor vehicle was revoked as a result of a prior impaired drivers license revocation. The revocation of a person's drivers license is an impaired drivers license revocation for purposes of this section if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12) or 20-17.2; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), or 20-17(a)(9) if the offense involved impaired driving.

(b) Duty of Officer. -- In any case where the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the vehicle and have it impounded. Probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable source. If the registered owner was not operating or present in the vehicle at the time of the offense, the officer shall cause to be issued written notification of impoundment to the registered owner of the vehicle. This notice shall be sent by first-class mail to the most recent address contained in the Division registration records. This written notification shall inform the registered owner that the vehicle has been impounded, the reason for the impoundment, and the procedure for requesting its release. Whether the registered owner was driving or present at the time of seizure, the seizing officer shall notify the Division of the seizure in accordance with procedures established by the Division. The officer shall also cause notice to be given to any lien holder of record with

the Division of the impoundment and intent to forfeit the vehicle upon conviction.

(c) Review by Magistrate. -- Upon seizing the vehicle, the seizing officer shall present to the magistrate determining the operator's condition for pretrial release an affidavit of impoundment setting forth the requirements of this section. The magistrate shall review the affidavit of impoundment and if the magistrate determines the requirements of this section have been met, shall order the vehicle held in accordance with this section. The magistrate may request additional information and may hear from the operator if he is present. If the operator of the vehicle is not present at the time the affidavit of impoundment is presented, the seizing officer may present the affidavit to any judicial official who shall perform the review contained herein.

(d) Custody of Vehicle. -- The seized vehicle shall be towed to a location designated by the county school board for the county in which the operator of the vehicle is charged and placed under the constructive possession of the school board pending release or sale. Each county school board may elect to have seized vehicles stored on property owned or leased by the school board and charge no fee for storage. In the alternative, the county school board may contract with a commercial storage facility for the storage of such vehicles and a storage fee of not more than five dollars ($5.00) per day may be charged.

(e) Release of Vehicle Pending Trial. -- A registered owner of a vehicle, other than the driver at the time of the underlying offense resulting in the seizure, may apply to the Clerk of Superior Court in the county where the charges are pending for pretrial release of the vehicle. The Clerk may release the vehicle to the registered owner under the following conditions:

(1) The vehicle has been stored for not less than 24 hours;

(2) All towing and storage charges have been paid;

(3) Execution of a good and valid bond with sufficient sureties in an amount double the value of the seized vehicle, payable to the county school fund and conditioned on return of the vehicle, without the imposition of any additional liens or encumbrances, on the day of trial of the operator;

(4) Execution of a written acknowledgment as described in G.S. 20-28.2(g); and

(5) A check of the records of the Division indicates that the owner has not previously executed a

written acknowledgment pertaining to the operator of the seized vehicle.

(f) Duty of Trial Judge. -- The trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 or 20-138.5 shall determine if the vehicle is subject to forfeiture pursuant to the provisions of G.S. 20-28.2.

(g) Possessory Lien. -- The entity that tows and stores the vehicle, other than the county school board, shall be entitled to a possessory lien for any and all costs and fees associated with the towing and storage (not to exceed five dollars ($5.00) per day). This lien shall have priority over perfected and unperfected security interests."

Section 1.3. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.4. Release of impounded vehicles by trial judge.**

(a) Release to Innocent Registered Owner. -- An innocent party registered owner may apply to the trial judge presiding over the underlying offense for return of the vehicle pursuant to the provisions of G.S. 20-28.2(e).

(b) Acknowledgment Required. -- The innocent party registered owner of a vehicle seeking release under this section or pretrial release under G.S. 20-28.3 shall sign a written acknowledgment as described in G.S. 20-28.2(g). The registered owner shall also acknowledge that if the vehicle is again operated by this particular person at any time while the person's license is revoked, the owner's vehicle is subject to seizure, impoundment, and forfeiture, even if the person is not impaired at the time he or she operates the vehicle. The registered owner shall acknowledge further that a lack of knowledge, or consent to the operation will not be a defense in the future.

(c) Release to Lienholder. -- The trial judge may order a forfeited vehicle released to the holder of a security interest if he determines, by clear and convincing evidence, that the holder of the security interest is an 'innocent party' as defined by G.S. 20-28.2(f), and the lienholder satisfies the criteria as set out in G.S. 20-28.2(h).

(d) Release upon conclusion of trial. -- If the driver of a motor vehicle seized pursuant to G.S. 20-28.3 is subsequently not convicted of either G.S. 20-138.1 or 20-138.5 due to dismissal or a finding of not guilty or the judge at the sentencing hearing fails to find the grossly aggravating factor described in G.S. 20-179(c)(2), the seized vehicle shall be returned to the registered owner upon payment of towing and storage fees. If the court finds that probable cause did not exist to seize the motor

vehicle, the court may order the vehicle released without payment of the towing and storage fees. Such a determination does not authorize the driver, registered owner or lien holder to recover towing or storage fees paid in order to obtain pretrial release of the motor vehicle."

Section 1.4. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.5. Forfeiture of impounded vehicle.**

(a) Sale. -- Unless the trial judge orders the vehicle returned to an innocent party pursuant to G.S. 20-28.2 or G.S. 20-28.4, the vehicle shall be ordered forfeited and sold or transferred to the school board in the county where the charges were filed. The sale of the vehicle shall be at public sale and shall be conducted by the county school board or a person acting on its behalf. Notice of sale shall be given to the Division in accordance with the procedures established by the Division.

(b) Proceeds of Sale. -- Proceeds of any sale conducted under this section shall first be applied to satisfy towing and storage liens and the cost of sale. The balance of the proceeds of sale, if any, shall be used to satisfy any other existing liens of record that were properly recorded with the Division prior to the date of initial seizure of the vehicle. Any remaining balance, shall be paid to the county school fund in the county in which the vehicle was ordered forfeited. Vehicles sold pursuant to this section shall be transferred free and clear of any liens.

(c) Retention of Vehicle. -- The county board may, at its option, retain any forfeited vehicle for its use. If the vehicle is retained, any valid lien of record at the time of the initial seizure of the vehicle shall be satisfied by the school board. If there is more than one school board in the county, then the fair market value of the vehicle shall be used to determine the share of the school boards in the same manner as fines and other forfeitures."

Section 1.5. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.6. Responsibility of Division of Motor Vehicles.**

The Division shall establish procedures to provide for the orderly seizure, forfeiture, sale, and transfer of motor vehicles pursuant to the provisions of G.S. 20-28.2, et seq."

Section 1.6. G.S. 20-219.10(a) reads as rewritten:

" (a) This Article applies to each towing of a vehicle that is carried out pursuant to G.S. 115C-46(d) or G.S. 143-340(19), or pursuant to the direction of a law-enforcement officer except:

(1) This Article applies to towings pursuant to G.S. 115D-21, 116-44.4, 116-229, 153A-132, 153A-132.2, 160A-303, and 160A-303.2 only insofar as specifically provided;
(2) This Article does not apply to a seizure of a vehicle under G.S. 14-86.1, 18B-504, 90-112, 113-137, 20-28.2, 20-28.3, or to any other seizure of a vehicle for evidence in a criminal proceeding or pursuant to any other statute providing for the forfeiture of a vehicle;
(3) This Article does not apply to a seizure of a vehicle pursuant to a levy under execution."

PART II. INCREASE PENALTY FOR DRIVING WHILE IMPAIRED OFFENDERS.

Section 2.1. G.S. 20-179(g) reads as rewritten:

"(g) Level One Punishment. -- A defendant subject to Level One punishment may be fined up to two thousand dollars ($2,000) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than ~~14~~ 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed ~~(i)~~ to require the defendant to serve a term of imprisonment of at least ~~14 days, or (ii) to require the defendant to serve a term of imprisonment of at least four consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above.~~ 30 days. If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 2.2. G.S. 20-179(h) reads as rewritten:

"(h) Level Two Punishment. -- A defendant subject to Level Two punishment may be fined up to one thousand dollars ($1,000) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed ~~(i)~~ to require the defendant to serve a term of imprisonment of at least seven ~~days or, (ii) to require the defendant to serve a term of imprisonment of at least two consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above.~~ days. If the defendant is placed on probation, the judge ~~may~~ shall impose a

requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 2.3. G.S. 20-179(i) reads as rewritten:

"(i) Level Three Punishment. -- A defendant subject to Level Three punishment may be fined up to five hundred dollars ($500.00) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment ~~must~~ may be ~~suspended, on~~ suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or

(2) Perform community service for a term of at least 72 hours; or

(3) Not operate a motor vehicle for a term of at least 90 days; or

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation. ~~This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).~~"

Section 2.4. G.S. 20-179(j) reads as rewritten:

"(j) Level Four Punishment. -- A defendant subject to Level Four punishment may be fined up to two hundred fifty dollars ($250.00) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment ~~must~~ may be ~~suspended, on~~ suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or

(2) Perform community service for a term of 48 hours; or

(3) Not operate a motor vehicle for a term of 60 days; or

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation. ~~This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).~~"

Section 2.5. G.S. 20-179(k) reads as rewritten:

"(k) Level Five Punishment. -- A defendant subject to Level Five punishment may be fined up to one hundred dollars ($100.00) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment ~~must~~ may be ~~suspended, on~~ suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or

(2) Perform community service for a term of 24 hours; or

(3) Not operate a motor vehicle for a term of 30 days; or

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation. ~~This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).~~"

Section 2.6. G.S. 20-179(k1) reads as rewritten:

"(k1) Credit for Inpatient Treatment. -- Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any ~~treatment.~~ treatment unless the trial judge orders that the costs be absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active

sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. ~~The credit may not be used more than once during the seven-year period immediately preceding the date of the offense.~~ This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law."

Section 2.7. G.S. 20-179(p) reads as rewritten:

"(p) Limit on Amelioration of Punishment. -- For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(2) The defendant ~~must~~ shall serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.

(3) The defendant may not be released on parole unless he is otherwise ~~eligible and~~ eligible, has served the mandatory minimum period of ~~imprisonment.~~ imprisonment, and has obtained a substance abuse assessment and completed any recommended treatment or training program or is paroled into a residential treatment program.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial."

Section 2.8. G.S. 20-179(r) reads as rewritten:

"(r) Supervised Probation Terminated. -- Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets ~~two~~ three conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced and that the defendant is sentenced under subsections (i), (j), and (k) of this ~~section.~~ section, and has obtained any necessary substance abuse assessment and completed any recommended treatment or training program.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or

(2) Repealed by Session Laws 1995 c. 496, s. 2.

(3) Payment of any fines, court costs, and fees; or

(4) Any combination of these conditions."

PART III. INCREASE ADMINISTRATIVE LICENSE REVOCATION PERIOD.

Section 3.1. G.S. 20-16.2(a) reads as rewritten:

"(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer ~~must~~ shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged ~~must~~ shall be taken before a chemical analyst authorized to administer a test of a person's breath, who ~~must~~ shall inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.

(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least ~~10~~ 30 days and an additional 12-month revocation by the Division of Motor Vehicles.

(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.

(4) The person's driving privilege will be revoked immediately for at least ~~10~~ 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more.

(5) The person may choose a qualified person to administer a chemical test or tests in addition to

any test administered at the direction of the charging officer.

(6) The person has the right to call an attorney and select a witness to view for him or her the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time when the person is notified of his or her rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated."

Section 3.2. G.S. 20-16.2(e1) reads as rewritten:

"(e1) Limited Driving Privilege after Six Months in Certain Instances. -- A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid ~~driver's~~ drivers license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied-consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional

convictions of an offense involving impaired driving; ~~and~~

(7) The person's license has been revoked for at least six months for the ~~refusal.~~ refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing ~~must~~ shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing ~~must~~ shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid."

Section 3.3. G.S. 20-16.2(i) reads as rewritten:

"(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer ~~must~~ shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person ~~must~~ shall confirm the request in writing and ~~must~~ shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least ~~10~~ 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 3.4. G.S. 20-16.5 is amended by adding a new subsection to read:

"(p) Limited Driving Privilege. A person whose drivers license has been revoked under this section may apply for a limited driving privilege if:

(1) At the time of the alleged offense the person held either a valid drivers license or a license that had been expired for less than one year;

(2) Does not have an unresolved pending charge for or additional convictions of an offense involving impaired driving;

(3) The person's license has been revoked for at least 10 days if the revocation is for 30 days or 30 days if the revocation is for 45 days; and

(4) The person has obtained a substance abuse assessment from a mental health facility and registers for and agrees to participate in any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. Any district court judge authorized to hold court in the judicial district is authorized to issue such a limited driving privilege. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section. If the person's license is revoked for any other reason, the limited driving privilege is invalid."

Section 3.5. G.S. 20-16.5(e) reads as rewritten:

"(e) Procedure if Report Filed with Judicial Official When Person Is Present. -- If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official ~~must,~~ shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he ~~must~~ shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official ~~must~~ shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official ~~must~~ shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official ~~must~~ shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. Unless the person is not currently licensed, the revocation under this subsection begins at the time the revocation order is issued and continues until the person's license has been surrendered for ~~10~~ 30 days and the person has paid the applicable costs. If the person is not currently licensed, the revocation continues until ~~10~~ 30 days from the date the revocation order is issued and the person has paid the applicable costs. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk ~~must~~ shall immediately issue a pick-up order. The pick-up order ~~must~~ shall be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order ~~must~~ shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division."

Section 3.6. G.S. 20-16.5(f) reads as rewritten:

"(f) Procedure if Report Filed with Clerk of Court When Person Not Present. -- When a clerk receives a properly executed report under subdivision (d)(3) and the person named in the revocation report is not present before the clerk, the clerk ~~must~~ shall determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he ~~must~~ shall mail to the

person a revocation order by first-class mail. The order ~~must~~ shall direct that the person on or before the effective date of the order either surrender his license to the clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order ~~must~~ shall inform the person of the time and effective date of the revocation and of its duration, of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. Revocation orders mailed under this subsection become effective on the fourth day after the order is deposited in the United States mail. If within five working days of the effective date of the order, the person does not surrender his license to the clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk ~~must~~ shall immediately issue a pick-up order. The pick-up order ~~must~~ shall be issued and served in the same manner as specified in subsection (e) for pick-up orders issued pursuant to that subsection. A revocation under this subsection begins at the date specified in the order and continues until the person's license has been revoked for the period specified in this subsection and the person has paid the applicable costs. The period of revocation under this subsection is:

(1) ~~Ten~~ Thirty days from the time the person surrenders his license to the court, if the surrender occurs within five working days of the effective date of the order; or

(2) ~~Ten~~ Thirty days after the person appears before the clerk and demonstrates that he is not currently licensed to drive, if the appearance occurs within five working days of the effective date of the revocation order; or

(3) ~~Thirty~~ Forty-five days from the time:

a. The person's driver's license is picked up by a law-enforcement officer following service of a pick-up order; or

b. The person demonstrates to a law-enforcement officer who has a pick-up order for his license that he is not currently licensed; or

c. The person's driver's license is surrendered to the court if the surrender occurs more than five working days after the effective date of the revocation order; or

d. The person appears before the clerk to demonstrate that he is not currently licensed, if he appears more than five working days

after the effective date of the revocation order.

When a pick-up order is issued, it ~~must~~ shall inform the person of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. An officer serving a pick-up order under this subsection ~~must~~ shall return the order to the court indicating the date it was served or that he was unable to serve the order. If the license was surrendered, the officer serving the order ~~must~~ shall deposit it with the clerk within three days of the surrender."

Section 3.7. G.S. 20-16.5(i) reads as rewritten:

"(i) Effect of Revocations. -- A revocation under this section revokes a person's privilege to drive in North Carolina whatever the source of his authorization to drive. Revocations under this section are independent of and run concurrently with any other revocations. No court imposing a period of revocation following conviction of an offense involving impaired driving may give credit for any period of revocation imposed under this section. ~~A person is not eligible for a limited driving privilege under any statute while his license is revoked under this section.~~ A person whose license is revoked pursuant to this section is not eligible to receive a limited driving privilege except as specifically authorized by G.S. 20-16.5(p)."

Section 3.8. G.S. 20-16.5(k) reads as rewritten:

"(k) Report to Division. -- Except as provided below, the clerk ~~must~~ shall mail a report to the Division within 10 working days of the return of a license under this section or of the termination of a revocation of the driving privilege of a person not currently licensed. The report ~~must~~ shall identify the person whose license has been revoked and specify the dates on which his license was revoked. No report need be made to the Division, however, if there was a surrender of the driver's license issued by the Division, a ~~ten-day~~ 30-day minimum revocation was imposed, and the license was properly returned to the person under subsection (h) within five working days after the ~~10-day~~ 30-day period had elapsed."

PART IV. MAKE ALCOHOL SCREENING TEST ADMISSIBLE TO PROVE OFFENSE OF DRIVING AFTER DRINKING BY A PERSON UNDER 21.

Section 4. G.S. 20-138.3 reads as rewritten:

"**§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or drugs.**

(a) Offense. -- It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has

remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his blood which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

~~(c)~~ (e) Punishment; effect when impaired driving offense also charged. -- The offense in this section is a Class 2 misdemeanor. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable ~~must~~ shall be imposed.

~~(d)~~ (f) Limited driving privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20-179.3. This subsection shall apply only if the person meets both of the following requirements:

(1) Is 18, 19, or 20 years old on the date of the offense.

(2) Has not previously been convicted of a violation of this section.

The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

PART V. ALLOW DRUG TESTING FOR DRIVING WHILE IMPAIRED.

Section 5.1. G.S. 20-4.01(3a) reads as rewritten:

"(3a) Chemical Analysis. -- A test or tests of the ~~breath or blood~~ breath, blood, or other bodily fluid or substance of a person to determine ~~his~~ the person's alcohol ~~concentration,~~ concentration or presence of an impairing substance, performed in accordance with ~~G.S. 20-139.1.~~ G.S. 20-139.1, including duplicate or sequential analyses. ~~The term "chemical analysis" includes duplicate or sequential analyses when necessary or desirable to insure the integrity of test results.~~"

Section 5.2. G.S. 20-138.3(a) reads as rewritten:

"(a) Offense. -- It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or ~~in his blood a~~ controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his ~~blood~~ body which was lawfully obtained and taken in therapeutically appropriate amounts."

Section 5.3. G.S. 20-139.1(a) reads as rewritten:

"(a) Chemical Analysis Admissible. -- In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration or the presence of any other impairing substance in the person's body as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to ~~a defendant's~~ a person's alcohol ~~concentration,~~ concentration or results of other tests showing the presence of an impairing substance, including other chemical tests."

Section 5.4. G.S. 20-139.1 is amended by adding a new subsection to read:

"(b5) Subsequent Tests Allowed. -- A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of the charging officer. A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2."

Section 5.5. G.S. 20-139.1(e1) reads as rewritten:

"(e1) Use of Chemical Analyst's Affidavit in District Court. -- An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any hearing or trial in the District Court Division of the General Court of Justice with respect to the following matters:

(1) The alcohol concentration or concentrations or the presence or absence of an impairing substance of a person given a chemical analysis and who is involved in the hearing or trial.

(2) The time of the collection of the ~~blood or breath~~ blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.

(3) The type of chemical analysis administered and the procedures followed.

(4) The type and status of any permit issued by the Department of Environment, Health, and Natural Resources that he held on the date he performed the chemical analysis in question.

(5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Environment, Health, and Natural Resources ~~must~~ shall develop a form for use by chemical analysts in making this affidavit. If any person who submitted to a chemical analysis desires that a chemical analyst personally testify in the hearing or trial in the District Court Division, he may subpoena the chemical analyst and examine him as if he were an adverse witness."

Section 5.6. G.S. 20-179.3(h) reads as rewritten:

"(h) Other Mandatory and Permissive Conditions or Restrictions. -- In all limited driving privileges the judge ~~must~~

shall also include a restriction that the applicant not consume alcohol while driving or drive at any time while he has remaining in his body any alcohol or ~~in his blood a~~ controlled substance previously consumed, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts. The judge may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section."

PART VI. EXPAND THE DRUG ABUSE RESISTANCE EDUCATION (DARE) PROGRAM TO THE SEVENTH AND NINTH GRADES.

Section 6. G.S. 115C-47 is amended by adding a new subdivision to read:

"(38) Expand DARE Program to Seventh and Ninth Grades. -- Local boards of education shall use available State and federal resources to expand the Drug Abuse and Resistance Education Program to the seventh and ninth grades."

PART VII. HABITUAL IMPAIRED DRIVING.

Section 7. 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 and shall be sentenced to a minimum active term of not less than 12 months of imprisonment, which shall not be suspended and if paroled, the person shall be enrolled in the Department of Correction's Drug and Alcohol Rehabilitation Training (DART) or similar substance abuse program as a condition of parole. Sentences imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence being served."

PART VIII. EFFECTIVE DATES.

Section 8. Sections 1.1 thorough 1.6, 6, and 8 of this act are effective when they become law. The remaining sections of this act become effective December 1, 1997, and apply to offenses committed on or after that date. Sentencing for an offense committed before the effective date of this act is governed by the laws in effect at the time of the commission of the offense.

To the Attention of: Joe Hackney
Dennis Reynolds
Wayne Goodwin

Dear Sirs:

Almost thirteen years ago my world was turned upside down by a brutal and violent attack against my body, my soul and my spirit. I survived and swore that my attacker would be punished and spend the rest of his life in what I hoped would be full of fear and regrets. I did what I thought was the right Thing. While in cooperation with the authorities I picked out a man named Ronald Cotton. I testified in a court of law that This was the man who raped me. "That's The man," I said, "he's The one who raped me."

Eleven years later, I found out that the face I had grown to fear, The name I had grown to loathe, was The wrong man. I would now begin a new journey, This one filled with guilt and regrets, The Two Things I had wished for Mr. Cotton This is part of my journey.

It is now clear to me That we were and are victims of the same man Bobby Lean Poole. I ask you to stop, close your eyes, open your hearts and try to imagine what it must have been like for Ronald Cotton. An innocent man, looking at spending his entire life behind bars for a crime he did not commit. Days turn into months months turn into years Birthdays

holidays and celebrations are gone forever. He is no longer twenty-two years old but is now thirty-three and is told, you are a free man. His world has been turned upside down by a brutal and violent attack against his body, his soul and his spirit. I know his pain all too well. Can you give him back his years, that life, those moments? No, but we can try to make his new life, his future and the dreams easier and real. Please consider his requests and others that are in the same situation as Mr. Cotton. He is an extraordinary man, with extraordinary potential. As a society, let's not make another mistake!

Sincerely,

Jennifer Thompson

Burlington Police

JOHN M. GLENN
CHIEF OF POLICE

April 16, 1997

Representative Joe Hackney
Representative Dennis Reynolds
Representative Wayne Goodwin
Raleigh, North Carolina

Dear Sir:

Mr. Tom Lambeth has brought to my attention the work of your committee in the development of a Bill intended to compensate wrongfully imprisoned defendants. I am told you are familiar with the Ronald Cotton Case. Mr. Cotton is a man, who at the age of twenty two in 1984, was arrested for Rape and later prosecuted receiving a life plus fifty four year sentence. Mr. Cotton served eleven years of his sentence before being released in 1995, cleared in large part by DNA evidence which subsequently identified the true rapist.

I am one of the original detectives involved in the Ronald Cotton investigation. His arrest and subsequent trails were supported by eye witness identification, as well as, circumstantial evidence that linked him to the rapes in which he was accused. I have known since June of 1995, as do the other investigators, District Attorneys, Judges, Jurors and Victims involved, that Mr. Cotton spent eleven years of his life in prison for crimes he did not commit.

I cannot express how much sorrow I feel for Mr. Cotton and his family for the eleven years they lost as a result of the " State of North Carolina vs. Ronald Junior Cotton " . I have conveyed to Mr. Cotton my feelings who seems to harbor no animosity for me or the other people involved. The Cotton Cases have been examined thoroughly just prior to his release and since, by other law enforcement officials, Attorneys on behalf of Mr. Cotton and the State not originally involved, Judicial Officials, and members of the media. All seem to concur that everyone originally involved properly carried out their responsibilities. Of course, this in no way can make up for the loss time of Mr. Cotton.

I personally support the effort of your committee in developing legislation to compensate the wrongfully accused who fall victim to a Criminal Justice System that is not perfect. Jennifer Thompson, one of the victims who identified Ronald Cotton as her assailant in 1984, also endorses your effort.

Sincerely,

M. R. Gauldin

Captain M. R. Gauldin

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

April 17, 1997 7:30 A.M. — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Anne Marie Kerr	Broughton High School
Traner Knott	Broughton High School
Lisa Logan	Broughton High School
Thomas Logan	Broughton High School
Lura Forcum	Broughton High School
Ssyeret Jackson	LT. GOV.
Kaayn Brown	MADD-NC
Sara Heldsmith	Broughton H.S.
Laura Goldsmith	Broughton high school
Jerome H. Askew, Jr.	Governor's Office of Substance Abuse Policy
Peter Nicholson	Broughton High school
Beth Nicholson	Broughton High School
Sherry Nicholson	4609 Lindsay dr. raleigh 27612
Grover Nicholson	" " " " "
Frank Nicholson	" " " "
Stephen Hayes	Carter Coppedge
Charles P. Wilkins	N.C. Assoc. Chiefs of Police
Lt. W.J. Wilson, Jr.	N.C. HIGHWAY PATROL
MAJOR W.R. PRICE	N.C. HIGHWAY PATROL
James B. Gray	DOJ
Joe Stewart	CCPS
Vicki Gwaltney	AG
Joni Foster	HIGH POINT POLICE DEPT.
Ryan N. Kearns	" " "
[illegible]	WRAL-TV
Jim CARVER	NC POLICE EXECUTIVES ASSOC.
Deborah Ross	ACLU

David Ferrell	Hofer, McNamara, Caldwell, McElroy & Cutler P.A.
Eddie Caldwell	NC Sheriffs Assn / NC Law Enf Off. Assn
[illegible]	Moore & Van Allen
Phillip Lyons	NCAG
Tom [illegible]	Henric, Lambeth & Champion
Richard Losen	UNC Law Sch
Ronald Cotton	
Kathleen Costello	Elon College
Thad Johnston	Broughton
Ross Cangelosi	Broughton
Emily Reynolds	Legis. Asst.
Paul B. Hoobson	Professional Engineers of NC

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 17, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on April 17, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Kiser, Vice Chairman, called the meeting to order.

Those in attendance were Representatives Kiser, Baddour, Berry, Bowie, Cansler, Creech, Gardner, Goodwin, Hackney, Hensley, McMahan, Nesbitt, Redwine, Russell, Saunders, Shubert, Sutton and Wilkins. A list of visitors is attached.

The following bill was discussed:

HB-448 GOVERNOR'S D.W.I. INITIATIVE

Representative Nesbitt was recognized to send forth an amendment and move it be adopted; motion passed. A copy of the amendment is attached.

Representative Cansler was recognized to send forth an amendment. A copy of the amendment is attached.

Representative Baddour sent forth a clarifying amendment and moved it be adopted; motion passed.

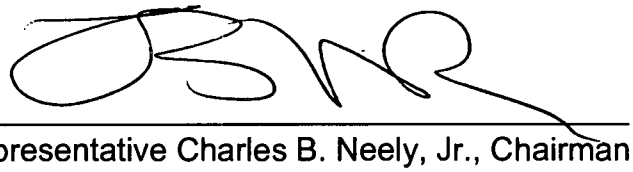
Representatives Hackney and Bowie and Ms. Susan Hayes, Committee Counsel, answered questions of committee members.

Mr. Franklin Freeman, Governor's Representative, answered questions of committee members.

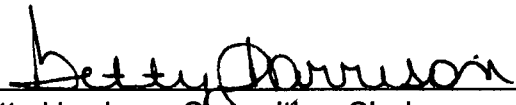
No action was taken on House Bill 448.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,



Representative Charles B. Neely, Jr., Chairman



Betty Harrison, Committee Clerk

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

April 17, 1997 10:00 A.M. — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Trayer Knott	BHS
Lisa Logan	Broughton High
Anne Marie Kerr	Broughton High School
Thaddeus Johnston	Broughton High School
Lura Forcum	Broughton High school
Thomas Logan	Broughton High School
Ross Cangelosi	Broughton High School
Syeret Jackson	LT. Gov
Sherry Nicholson	4609 Lindsay dr. Ral - 27612
Spencer Nicholson	4609 Lindsay Dr Ral. 27612
Joe Parker	GHSP
Kaum Brown	MADD-NC
David Fevrell	Hafer, McNamara, Caldwell, McElroy, + Cutler, PA
Eddie Caldwell	NC Law Enf. Off Assn / NC Sheriffs Assn.
NEIL KEARNS	HIGH POINT POLICE DEPT.
JODI CHASTAIN	" " " "
Ike Avery	AG
W.R. PRICE	SHP
WALTER WILSON	SHP
Jane O. Gray	DOJ
Joe Stewart	CCPS
Deborah Ross	ACLU
Charles P. Wilkins	NC Assoc. Chiefs of Police
Dawn McGowan	Student
Megan Carney	BSW Student - Meredith College
Kim Smith	NCLM
Katherine Hess	NC Psychiatric Assn

Tom Stephenson, M.D.	N. C. Psychiatric Association
Phillip Lopez	NCAG Office

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 448 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) NESBITT
Sen.)

moves to amend the bill on page 3, line 41

( ) WHICH CHANGES THE TITLE

by deleting "may" and inserting "shall"

and on page 3, line 42

by deleting "may" and inserting "shall"

and on page 4, line 33

by deleting "may" and inserting "shall"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 448

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

H448-ASA-010

Page 1 of __

Date_____,1997

Comm. Sub. [yes]
Amends Title []

moves to amend the bill on page 4, line 11,
by
rewriting the line to read:
"revoked. However, the sentencing judge may release the motor vehicle to the registered owner when the Division records indicate a previously signed acknowledgment, if the registered owner shows by clear and convincing evidence that the requirements of subsection (g)(3) have been met."

and on page 4, line 32,
by
rewriting the line to read:
"will not be a defense in the future, unless the registered owner has taken all reasonable precautions to prevent the use of the vehicle by this particular person and immediately reports any unauthorized use to the appropriate law enforcement agency.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 22, 1997

The North Carolina House of Representatives Judiciary II Committee met on April 22, 1997, at 7:30 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Bowie, Cansler, Creech, Culpepper, Goodwin, Hackney, McMahan, Redwine, Russell, Saunders, Shubert, Sutton and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-448 GOVERNOR'S D.WI. INITIATIVE
HB-465 VOLUNTARY DISMISSAL/NOTIFY DEFENDANT
HB-581 SEX EXPLOITATION ACT
HB-611 INCREASE COMPENSATION FOR ERRONEOUS CONVICTION
HB-613 COMPENSATE ERRONEOUSLY CONVICTED
HB-907 MEDIATED SETTLEMENT/FAMILY ISSUES

Representative Goodwin was recognized to present a proposed committee substitute for HB-613 and moved it be adopted for purpose of discussion. A copy of the proposed committee substitute is attached.

No action was taken on HB-613.

Representative Hackney was recognized to present a proposed committee substitute for HB-611 and moved it be adopted for purpose of discussion. A copy of the proposed committee substitute is attached.

Representative Cansler was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Goodwin moved the amendment be incorporated in a committee substitute with a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

Representative Hackney was recognized to present a proposed committee substitute for HB-448. A copy of the proposed committee substitute bill is attached.

Representative Hackney was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Hackney moved the amendment be incorporated in a committee substitute bill with a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

Representative Hackney was recognized to explain HB-581 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Representative Hackney was recognized to send forth and amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Sutton moved the amendment be incorporated in a committee substitute bill with a favorable report as to the committee substitute bill, unfavorable as to original bill; motion passed.

Representative Sutton was recognized to explain HB-465 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Representative Hackney moved for a favorable report; motion passed.

Representative Baddour was recognized to explain HB-907 and answer questions of committee members. A copy of the bill is attached.

Representative Russell moved for a favorable report; motion passed.

The meeting was adjourned at 8:20 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H613-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 613
THIS IS A DRAFT 16-APR-97 18:38:19
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Compensate Erroneously Convicted. (Public)

Sponsors:

Referred to:

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE COMPENSATION PROVIDED TO PERSONS ERRONEOUSLY CONVICTED OF FELONIES WHO HAVE RECEIVED PARDONS OF INNOCENCE, TO EXEMPT THE COMPENSATION FROM STATE INCOME TAX, AND TO PROVIDE FOR THE INDUSTRIAL COMMISSION TO HANDLE THE CLAIMS OF THOSE PERSONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 148-82 reads as rewritten:

"**§148-82. Provision for compensation.**

Any person who, having been convicted of felony and having been imprisoned therefor in a State prison of this State, and who was thereafter or who shall hereafter be ~~pardoned~~ granted a pardon of innocence by the Governor upon the grounds that the crime with which ~~he~~ the person was charged either was not committed at all or was not committed by ~~him,~~ that person, may as hereinafter provided present by petition a claim against the State for the

pecuniary loss sustained by ~~him~~ the person through his or her erroneous conviction and imprisonment."

Section 2. G.S. 148-83 reads as rewritten:

"**§148-83. Form, requisites and contents of petition; nature of hearing.**

Such petition shall be addressed to the ~~Department of Correction,~~ Industrial Commission, and must include a full statement of the facts upon which the claim is based, verified in the manner provided for verifying complaints in civil actions, and it may be supported by affidavits substantiating such claim. Upon its presentation the ~~Department of Correction~~ Industrial Commission shall fix a time and a place for a hearing, and shall mail notice to the claimant, and shall notify the Attorney General, at least 15 days before the time fixed therefor."

Section 3. G.S. 148-84 reads as rewritten:

"**§ 148-84. Evidence; action by ~~Parole~~ Industrial Commission; payment and amount of compensation.**

At the hearing the claimant may introduce evidence in the form of affidavits to support the claim, and the Attorney General may introduce counter affidavits in refutation. If the ~~Parole~~ Industrial Commission finds from the evidence that the claimant ~~was pardoned~~ received a pardon of innocence for the reason that the crime was not committed at all, or was not committed by the claimant, and that the claimant has been vindicated in connection with the alleged offense for which he was imprisoned; and that he has sustained pecuniary loss through such erroneous conviction and imprisonment, the ~~Parole~~ Industrial Commission shall report the facts, together with ~~his~~ its conclusions and recommendations to the Governor, and the Governor, with the approval of the Council of State, may pay to the claimant out of the Contingency and Emergency Fund, or out of any other available State fund, such amounts as may partially compensate the claimant for such pecuniary loss as he may be found to have suffered by reason of his erroneous conviction and imprisonment, such compensation not to be in excess of ~~five hundred dollars ($500.00)~~ ten thousand dollars ($10,000) for each year or portion of a year of such imprisonment actually served; and in no event shall such compensation exceed a total amount of ~~five thousand dollars ($5,000).~~ one hundred fifty thousand dollars ($150,000)."

Section 4. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(12) The amount paid to the taxpayer by the State under G.S. 148-84 as compensation for pecuniary loss suffered by reason of erroneous conviction and imprisonment."

Section 5. Section 4 of this act is effective for taxable years beginning on or after January 1, 1997. The remainder of this act is effective when it becomes law and applies to persons pardoned on or after July 1, 1995.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 613 (=Senate Bill 451)

SHORT TITLE: Compensate Erroneously Convicted

SPONSOR(S): Rep. Goodwin, Senator Ballance

FISCAL IMPACT

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

	FY 1997-98	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
REVENUES	None				
EXPENDITURES	$110,000 (NR)				
POSITIONS:	None				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Industrial Commission

EFFECTIVE DATE: Effective when it becomes law

BILL SUMMARY: H 613. COMPENSATE ERRONEOUSLY CONVICTED (=S 451). *TO INCREASE THE COMPENSATION PROVIDED TO PERSONS ERRONEOUSLY CONVICTED OF FELONIES, TO PROVIDE FOR THE INDUSTRIAL COMMISSION TO HANDLE THE CLAIMS OF THOSE PERSONS, AND TO PROVIDE THAT THOSE CLAIMS MUST BE BROUGHT WITHIN FIVE YEARS* Amends GS 148-82, 148-83 and 148-84 for purpose indicated in title. Compensation may not exceed $10,000 (now, $500) for each year or portion of year of imprisonment actually served, and total compensation may not exceed $150,000 (now, $5,000).[1]

ASSUMPTIONS AND METHODOLOGY: GS 148-82, GS 148-83 and GS148-84 specify a claims for pecuniary loss procedure for felons who were imprisoned and then pardoned by the

[1] *Daily Bulletin,* Institute of Government, UNC-Chapel Hill

Governor, on the ground that the crime for which they were convicted was not committed at all or not committed by them (a "pardon of innocence"). Current law specifies that the individual can petition the Department of Correction for a hearing before the Parole Commission. This bill moves the petition/hearing to the Industrial Commission and raises the limits on compensation from $500 per year of imprisonment to $10,000 per year and from a total of $5,000 to a total of $150,000. It also specifies claims must be made within 5 years of the pardon.

According to the Governor's Office of Pardon and the Post Release Supervision and Parole Commission, only one individual has received a pardon of innocence in memory. That individual was incarcerated roughly 11 years and pardoned in 1995. Their claim may be as high as $110,000 (11*10000) depending on the findings of the Industrial Commission.

Because pardons of innocence are rare events, no impact is projected on the Industrial Commission.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Elisa Wolper
APPROVED BY: TomCovington**TomC**
DATE: April 18, 1997

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H611-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 611
THIS IS A DRAFT 16-APR-97 18:03:02
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Increase Comp. for Err. Conviction. (Public)

Sponsors:

Referred to:

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE COMPENSATION PROVIDED TO PERSONS ERRONEOUSLY CONVICTED OF FELONIES WHO HAVE RECEIVED PARDONS OF INNOCENCE, TO EXEMPT THE COMPENSATION FROM STATE INCOME TAX, AND TO PROVIDE FOR THE INDUSTRIAL COMMISSION TO HANDLE THE CLAIMS OF THOSE PERSONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 148-82 reads as rewritten:

"**§148-82. Provision for compensation.**

Any person who, having been convicted of felony and having been imprisoned therefor in a State prison of this State, and who was thereafter or who shall hereafter be ~~pardoned~~ granted a pardon of innocence by the Governor upon the grounds that the crime with which ~~he~~ the person was charged either was not committed at all or was not committed by ~~him,~~ that person, may as hereinafter provided present by petition a claim against the State for the

pecuniary loss sustained by ~~him~~ the person through his or her erroneous conviction and imprisonment."

Section 2. G.S. 148-83 reads as rewritten:

"**§148-83. Form, requisites and contents of petition; nature of hearing.**

Such petition shall be addressed to the ~~Department of Correction,~~ Industrial Commission, and must include a full statement of the facts upon which the claim is based, verified in the manner provided for verifying complaints in civil actions, and it may be supported by affidavits substantiating such claim. Upon its presentation the ~~Department of Correction~~ Industrial Commission shall fix a time and a place for a hearing, and shall mail notice to the claimant, and shall notify the Attorney General, at least 15 days before the time fixed therefor."

Section 3. G.S. 148-84 reads as rewritten:

"**§ 148-84. Evidence; action by ~~Parole~~ Industrial Commission; payment and amount of compensation.**

At the hearing the claimant may introduce evidence in the form of affidavits to support the claim, and the Attorney General may introduce counter affidavits in refutation. If the ~~Parole~~ Industrial Commission finds from the evidence that the claimant ~~was pardoned~~ received a pardon of innocence for the reason that the crime was not committed at all, or was not committed by the claimant, and that the claimant has been vindicated in connection with the alleged offense for which he was imprisoned; and that he has sustained pecuniary loss through such erroneous conviction and imprisonment, the ~~Parole~~ Industrial Commission shall report the facts, together with ~~his~~ its conclusions and recommendations to the Governor, and the Governor, with the approval of the Council of State, may pay to the claimant out of the Contingency and Emergency Fund, or out of any other available State fund, such amounts as may partially compensate the claimant for such pecuniary loss as he may be found to have suffered by reason of his erroneous conviction and imprisonment, such compensation not to be in excess of ~~five hundred dollars ($500.00)~~ five thousand dollars ($5,000) for each year of such imprisonment actually served; and in no event shall such compensation exceed a total amount of ~~five thousand dollars ($5,000).~~ one hundred fifty thousand dollars ($150,000)."

Section 4. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(12) The amount paid to the taxpayer by the State under G.S. 148-84 as compensation for pecuniary loss suffered by reason of erroneous conviction and imprisonment."

Section 5. Section 4 of this act is effective for taxable years beginning on or after January 1, 1997. The remainder of this act is effective when it becomes law and applies to persons pardoned on or after July 1, 1995.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 611 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Cansler
)
Sen.)

moves to amend the bill on page 2, line ~~35~~ 36-37

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

" to be in excess of ~~five hundred dollars ($500.00)~~ ten thousand dollars ($ 10,000) for each year or portion of a year of such imprisonment actually

SIGNED Pam L. Cal

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 611 A BILL TO BE ENTITLED AN ACT TO INCREASE THE COMPENSATION PROVIDED TO PERSONS ERRONEOUSLY CONVICTED OF FELONIES WHO HAVE RECEIVED PARDONS OF INNOCENCE.

☐ 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, 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)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 611
Proposed Committee Substitute H611-PCS7273

Short Title: Increase Comp. for Err. Conviction. (Public)

Sponsors:

Referred to:

March 25, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE COMPENSATION PROVIDED TO PERSONS ERRONEOUSLY CONVICTED OF FELONIES WHO HAVE RECEIVED PARDONS OF INNOCENCE, TO EXEMPT THE COMPENSATION FROM STATE INCOME TAX, AND TO PROVIDE FOR THE INDUSTRIAL COMMISSION TO HANDLE THE CLAIMS OF THOSE PERSONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 148-82 reads as rewritten:

"**§ 148-82. Provision for compensation.**

Any person who, having been convicted of felony and having been imprisoned therefor in a State prison of this State, and who was thereafter or who shall hereafter be ~~pardoned~~ granted a pardon of innocence by the Governor upon the grounds that the crime with which ~~he~~ the person was charged either was not committed at all or was not committed by ~~him,~~ that person, may as hereinafter provided present by petition a claim against the State for the pecuniary loss sustained by ~~him~~ the person through his or her erroneous conviction and imprisonment."

Section 2. G.S. 148-83 reads as rewritten:

"**§ 148-83. Form, requisites and contents of petition; nature of hearing.**

Such petition shall be addressed to the ~~Department of Correction,~~ Industrial Commission, and must include a full statement of the facts upon which the claim is based, verified in the manner provided for verifying complaints in civil actions, and it may be supported by affidavits substantiating such claim. Upon its presentation the ~~Department of Correction~~ Industrial Commission shall fix a time and a place for a

hearing, and shall mail notice to the claimant, and shall notify the Attorney General, at least 15 days before the time fixed therefor."

Section 3. G.S. 148-84 reads as rewritten:

"**§ 148-84. Evidence; action by ~~Parole~~ Industrial Commission; payment and amount of compensation.**

At the hearing the claimant may introduce evidence in the form of affidavits to support the claim, and the Attorney General may introduce counter affidavits in refutation. If the ~~Parole~~ Industrial Commission finds from the evidence that the claimant ~~was pardoned~~ received a pardon of innocence for the reason that the crime was not committed at all, or was not committed by the claimant, and that the claimant has been vindicated in connection with the alleged offense for which he was imprisoned; and that he has sustained pecuniary loss through such erroneous conviction and imprisonment, the ~~Parole~~ Industrial Commission shall report the facts, together with ~~his~~ its conclusions and recommendations to the Governor, and the Governor, with the approval of the Council of State, may pay to the claimant out of the Contingency and Emergency Fund, or out of any other available State fund, such amounts as may partially compensate the claimant for such pecuniary loss as he may be found to have suffered by reason of his erroneous conviction and imprisonment, such compensation not to be in excess of ~~five hundred dollars ($500.00)~~ ten thousand dollars ($10,000) for each year or portion of a year of such imprisonment actually served; and in no event shall such compensation exceed a total amount of ~~five thousand dollars ($5,000).~~ one hundred fifty thousand dollars ($150,000)."

Section 4. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(12) The amount paid to the taxpayer by the State under G.S. 148-84 as compensation for pecuniary loss suffered by reason of erroneous conviction and imprisonment."

Section 5. Section 4 of this act is effective for taxable years beginning on or after January 1, 1997. The remainder of this act is effective when it becomes law and applies to persons pardoned on or after July 1, 1995.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 448*
Proposed Committee Substitute H448-CSSA-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Governor's D.W.I. Initiative/AB. (Public)

Sponsors:

Referred to: Judiciary II.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE GOVERNOR'S RECOMMENDATIONS ON DRIVING WHILE IMPAIRED.

The General Assembly of North Carolina enacts:

PART I. SEIZURE OF VEHICLES USED IN DRIVING WHILE IMPAIRED OFFENSES.

Section 1.1. G.S. 20-28.2 reads as rewritten:

"**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.**

(a) Meaning of 'Impaired Driving License Revocation'. -- The revocation of a person's driver's license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, ~~20-17(2),~~ 20-17(a)(2), or 20-17.2; or

(2) G.S. 20-16(a)(7), 20-17(1), or 20-17(9), if the offense involves impaired driving.

(b) When Motor Vehicle Becomes Property Subject to Forfeiture. -- If at a sentencing hearing conducted pursuant to G.S. 20-179 or 20-138.5 the judge determines that the grossly aggravating factor described in G.S. 20-179(c)(2) applies, the motor vehicle

that was driven by the defendant at the time he committed the offense of impaired driving becomes property subject to forfeiture.

(c) Duty of Prosecutor to Notify Possible Innocent Parties. --In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture under this section, the prosecutor ~~must~~ shall determine the identity of the vehicle owner as shown on the certificate of title for the vehicle and he ~~must~~ shall also determine if there are any security interests noted on the vehicle's certificate of title. The State ~~must~~ shall notify the holder of each security interest that the vehicle may be subject to forfeiture and that he may intervene to protect his interest. If the defendant is not the owner, a similar notice ~~must~~ shall be served on the owner. The notice may be served by any means reasonably likely to provide actual notice, and ~~must~~ shall be served at least fourteen days before the forfeiture hearing.

(d) Duty of Judge. -- ~~The judge at sentencing must hold a hearing to determine if the vehicle should be forfeited. At the hearing the judge may order the forfeiture if he finds that:~~

~~(1) The vehicle is subject to forfeiture;~~

~~(2) The vehicle is not primarily used by a member of the defendant's family or household for a business purpose or for driving to and from work or school;~~

~~(3) All potential innocent parties have been notified as required in subsection (c); and~~

~~(4) No party has shown that he is an innocent party as described in subsection (f).~~

~~If the owner or the holder of a security interest has not been notified, the judge may continue the hearing to allow the State to serve the notice or he may decline to order forfeiture. In any case in which a judge does not order the forfeiture of a vehicle subject to forfeiture, he must enter into the record detailed, written reasons for his decision.~~ The trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 or 20-138.5 shall determine if the vehicle is subject to forfeiture under this section. If the judge determines that the requirements of subsections (a) through (c) of this section exist and the defendant was a registered owner of the vehicle at the time of the offense, the judge shall order the vehicle forfeited. If the defendant was not a registered owner of the vehicle at the time of the offense, the judge shall order the vehicle forfeited unless the registered owner of the vehicle establishes, by clear and convincing evidence, that he or she is an innocent party as

defined by subsection (f) of this section, in which case the trial judge may order the vehicle released to the registered owner pursuant to the provisions of subsection (e) of this section. In any case where the vehicle is ordered forfeited, the judge shall either:

(1) Authorize the school board to sell the vehicle at public sale or retain the vehicle for its own use pursuant to G.S. 20-28.5; or

(2) Release the vehicle to an innocent party lienholder pursuant to the provisions of subsection (h) of this section.

~~(e) Sale of Forfeited Vehicle Required. -- If the judge orders forfeiture of the vehicle pursuant to this section, he must order the sale of the vehicle. Proceeds of the sale must be paid to the school fund of the county in which the property was seized.~~

~~(f) Innocent Party May Intervene. -- At any time before the forfeiture is ordered, the property owner or holder of a security interest, other than the defendant, may apply to protect his interest in the motor vehicle. The application may be made to a judge who has jurisdiction to try the impaired driving offense with which the motor vehicle is associated. The judge must order the vehicle returned to the owner if he finds that either the owner or the holder of a security interest is an innocent party. An owner or holder of a security interest is an innocent party if he:~~

~~(1) Did not know and had no reason to know that the defendant's driver's license was revoked; or~~

~~(2) Knew that the defendant's driver's license was revoked, but the defendant drove the vehicle without his consent.~~

~~If an innocent party applies after the forfeited motor vehicle has been sold and the judge finds no laches in the innocent party's delay, the judge may order a payment to the innocent party from the net proceeds of the sale equal to his equity or security interest in the vehicle.~~

(e) Return of Vehicle to Innocent Registered Owner. -- If the registered owner establishes, by clear and convincing evidence, that the vehicle was being driven by a person who was not a registered owner at the time of the underlying offense and that each registered owner is an 'innocent party', the sentencing judge shall order the vehicle returned to the registered owner.

This release shall only be ordered upon satisfactory proof of:

(1) The identity of the person as a registered owner;

(2) The existence of financial responsibility as required by Article 13 of this Chapter;
(3) The payment of towing and storage fees; and
(4) The execution of an acknowledgment as set forth in this section.

No vehicle subject to forfeiture under this section shall be released to a registered owner if the records of the Division indicate any registered owner had previously signed an acknowledgment as required by this section, and the same person was operating the owner's vehicle when that person's license was revoked. However, the sentencing judge may release the motor vehicle to the registered owner when the Division records indicate a previously signed acknowledgment, if the registered owner shows by clear and convincing evidence that the registered owner has taken all reasonable precautions to prevent the use of the vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.

(f) Innocent Party Defined. -- A registered owner or holder of a security is an 'innocent party' if he or she:
(1) Did not know and had no reason to know that the defendant's drivers license was revoked; or
(2) Knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without his or her consent.

(g) Acknowledgment Required. -- The 'innocent party' registered owner of a vehicle seeking release pursuant to this section shall sign a written document acknowledging that:
(1) His or her vehicle was operated by a person charged with an offense involving impaired driving while that drivers license was revoked as a result of a prior impaired drivers license revocation;
(2) If the vehicle is again operated by this particular person, at any time while that person's drivers license is revoked, that the vehicle is subject to impoundment and forfeiture, even if the operator was not impaired; and
(3) A lack of knowledge or consent to the operation will not be a defense in the future, unless the registered owner has taken all reasonable precautions to prevent the use of the vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.

(h) Release to Lienholder. -- The trial judge shall order a forfeited vehicle released to the holder of a security interest if he determines by clear and convincing evidence, that the holder of the security interest is an 'innocent party', as defined in subsection (f) of this section, and:

(1) The lienholder's interest is not less than the fair market value of the vehicle;

(2) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited vehicle to a registered owner or any person acting on a registered owner's behalf; and

(3) The lienholder pays, in full, any towing and storage costs incurred as a result of the seizure of the vehicle.

(i) Possessory Lien. -- The entity that tows or stores the motor vehicle, other than the county school board, shall be entitled to a possessory lien for all costs and fees associated with the towing, storage, or sale of a vehicle pursuant to this section. This lien shall have priority over perfected and unperfected security interests. Storage fees subject to the lien shall not exceed five dollars ($5.00) per day."

Section 1.2. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.3. Seizure, impoundment, forfeiture of vehicles for offenses involving impaired driving while license revoked.**

(a) A motor vehicle that is driven by a person in violation of G.S. 20-138.1 or 20-138.5 is subject to seizure if at the time of the violation the drivers license of the person driving the motor vehicle was revoked as a result of a prior impaired drivers license revocation. The revocation of a person's drivers license is an impaired drivers license revocation for purposes of this section if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12) or 20-17.2; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), or 20-17(a)(9) if the offense involved impaired driving.

(b) Duty of Officer. -- In any case where the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the vehicle and have it impounded. Probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable source. If the registered owner was not operating or present in the vehicle at the time of the offense,

the officer shall cause to be issued written notification of impoundment to the registered owner of the vehicle. This notice shall be sent by first-class mail to the most recent address contained in the Division registration records. This written notification shall inform the registered owner that the vehicle has been impounded, the reason for the impoundment, and the procedure for requesting its release. Whether the registered owner was driving or present at the time of seizure, the seizing officer shall notify the Division of the seizure in accordance with procedures established by the Division. The officer shall also cause notice to be given to any lien holder of record with the Division of the impoundment and intent to forfeit the vehicle upon conviction.

(c) Review by Magistrate. -- Upon seizing the vehicle, the seizing officer shall present to the magistrate determining the operator's condition for pretrial release an affidavit of impoundment setting forth the requirements of this section. The magistrate shall review the affidavit of impoundment and if the magistrate determines the requirements of this section have been met, shall order the vehicle held in accordance with this section. The magistrate may request additional information and may hear from the operator if he is present. If the operator of the vehicle is not present at the time the affidavit of impoundment is presented, the seizing officer may present the affidavit to any judicial official who shall perform the review contained herein.

(d) Custody of Vehicle. -- The seized vehicle shall be towed to a location designated by the county school board for the county in which the operator of the vehicle is charged and placed under the constructive possession of the school board pending release or sale. Each county school board may elect to have seized vehicles stored on property owned or leased by the school board and charge no fee for storage. In the alternative, the county school board may contract with a commercial storage facility for the storage of such vehicles and a storage fee of not more than five dollars ($5.00) per day may be charged.

(e) Release of Vehicle Pending Trial. -- A registered owner of a vehicle, other than the driver at the time of the underlying offense resulting in the seizure, may apply to the Clerk of Superior Court in the county where the charges are pending for pretrial release of the vehicle. The Clerk may release the vehicle to the registered owner under the following conditions:

(1) The vehicle has been stored for not less than 24 hours;

(2) All towing and storage charges have been paid;
(3) Execution of a good and valid bond with sufficient sureties in an amount double the value of the seized vehicle, payable to the county school fund and conditioned on return of the vehicle, without the imposition of any additional liens or encumbrances, on the day of trial of the operator;
(4) Execution of a written acknowledgment as described in G.S. 20-28.2(g); and
(5) A check of the records of the Division indicates that the owner has not previously executed a written acknowledgment pertaining to the operator of the seized vehicle.

(f) Duty of Trial Judge. -- The trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 or 20-138.5 shall determine if the vehicle is subject to forfeiture pursuant to the provisions of G.S. 20-28.2.

(g) Possessory Lien. -- The entity that tows and stores the vehicle, other than the county school board, shall be entitled to a possessory lien for any and all costs and fees associated with the towing and storage (not to exceed five dollars ($5.00) per day). This lien shall have priority over perfected and unperfected security interests."

Section 1.3. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.4. Release of impounded vehicles by trial judge.**

(a) Release to Innocent Registered Owner. -- An innocent party registered owner may apply to the trial judge presiding over the underlying offense for return of the vehicle pursuant to the provisions of G.S. 20-28.2(e).

(b) Acknowledgment Required. -- The innocent party registered owner of a vehicle seeking release under this section or pretrial release under G.S. 20-28.3 shall sign a written acknowledgment as described in G.S. 20-28.2(g). The registered owner shall also acknowledge that if the vehicle is again operated by this particular person at any time while the person's license is revoked, the owner's vehicle is subject to seizure, impoundment, and forfeiture, even if the person is not impaired at the time he or she operates the vehicle. The registered owner shall acknowledge further that a lack of knowledge, or consent to the operation will not be a defense in the future.

(c) Release to Lienholder. -- The trial judge may order a forfeited vehicle released to the holder of a security interest if he determines, by clear and convincing evidence, that the

holder of the security interest is an 'innocent party' as defined by G.S. 20-28.2(f), and the lienholder satisfies the criteria as set out in G.S. 20-28.2(h).

(d) Release upon conclusion of trial. -- If the driver of a motor vehicle seized pursuant to G.S. 20-28.3 is subsequently not convicted of either G.S. 20-138.1 or 20-138.5 due to dismissal or a finding of not guilty or the judge at the sentencing hearing fails to find the grossly aggravating factor described in G.S. 20-179(c)(2), the seized vehicle shall be returned to the registered owner upon payment of towing and storage fees. If the court finds that probable cause did not exist to seize the motor vehicle, the court may order the vehicle released without payment of the towing and storage fees. Such a determination does not authorize the driver, registered owner or lien holder to recover towing or storage fees paid in order to obtain pretrial release of the motor vehicle."

Section 1.4. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.5. Forfeiture of impounded vehicle.**

(a) Sale. -- Unless the trial judge orders the vehicle returned to an innocent party pursuant to G.S. 20-28.2 or G.S. 20-28.4, the vehicle shall be ordered forfeited and sold or transferred to the school board in the county where the charges were filed. The sale of the vehicle shall be at public sale and shall be conducted by the county school board or a person acting on its behalf. Notice of sale shall be given to the Division in accordance with the procedures established by the Division.

(b) Proceeds of Sale. -- Proceeds of any sale conducted under this section shall first be applied to satisfy towing and storage liens and the cost of sale. The balance of the proceeds of sale, if any, shall be used to satisfy any other existing liens of record that were properly recorded with the Division prior to the date of initial seizure of the vehicle. Any remaining balance, shall be paid to the county school fund in the county in which the vehicle was ordered forfeited. Vehicles sold pursuant to this section shall be transferred free and clear of any liens.

(c) Retention of Vehicle. -- The county board may, at its option, retain any forfeited vehicle for its use. If the vehicle is retained, any valid lien of record at the time of the initial seizure of the vehicle shall be satisfied by the school board. If there is more than one school board in the county, then the fair market value of the vehicle shall be used to determine the share of the school boards in the same manner as fines and other forfeitures."

Section 1.5. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.6. Responsibility of Division of Motor Vehicles.**

The Division shall establish procedures to provide for the orderly seizure, forfeiture, sale, and transfer of motor vehicles pursuant to the provisions of G.S. 20-28.2, et seq."

Section 1.6. G.S. 20-219.10(a) reads as rewritten:

" (a) This Article applies to each towing of a vehicle that is carried out pursuant to G.S. 115C-46(d) or G.S. 143-340(19), or pursuant to the direction of a law-enforcement officer except:

(1) This Article applies to towings pursuant to G.S. 115D-21, 116-44.4, 116-229, 153A-132, 153A-132.2, 160A-303, and 160A-303.2 only insofar as specifically provided;

(2) This Article does not apply to a seizure of a vehicle under G.S. 14-86.1, 18B-504, 90-112, 113-137, 20-28.2, 20-28.3, or to any other seizure of a vehicle for evidence in a criminal proceeding or pursuant to any other statute providing for the forfeiture of a vehicle;

(3) This Article does not apply to a seizure of a vehicle pursuant to a levy under execution."

PART II. INCREASE PENALTY FOR DRIVING WHILE IMPAIRED OFFENDERS.

Section 2.1. G.S. 20-179(g) reads as rewritten:

"(g) Level One Punishment. -- A defendant subject to Level One punishment may be fined up to two thousand dollars ($2,000) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than ~~14~~ 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed ~~(i)~~ to require the defendant to serve a term of imprisonment of at least ~~14 days, or (ii) to require the defendant to serve a term of imprisonment of at least four consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above.~~ 30 days. If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 2.2. G.S. 20-179(h) reads as rewritten:

"(h) Level Two Punishment. -- A defendant subject to Level Two punishment may be fined up to one thousand dollars ($1,000) and

~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed ~~(i)~~ to require the defendant to serve a term of imprisonment of at least seven ~~days or, (ii) to require the defendant to serve a term of imprisonment of at least two consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above.~~ days. If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 2.3. G.S. 20-179(i) reads as rewritten:

"(i) Level Three Punishment. -- A defendant subject to Level Three punishment may be fined up to five hundred dollars ($500.00) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment ~~must~~ may be ~~suspended, on~~ suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or

(2) Perform community service for a term of at least 72 hours; or

(3) Not operate a motor vehicle for a term of at least 90 days; or

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation. ~~This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).~~"

Section 2.4. G.S. 20-179(j) reads as rewritten:

"(j) Level Four Punishment. -- A defendant subject to Level Four punishment may be fined up to two hundred fifty dollars ($250.00) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a

maximum term of not more than 120 days. The term of imprisonment ~~must~~ may be ~~suspended, on~~ suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or

(2) Perform community service for a term of 48 hours; or

(3) Not operate a motor vehicle for a term of 60 days; or

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation. ~~This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).~~"

Section 2.5. G.S. 20-179(k) reads as rewritten:

"(k) Level Five Punishment. -- A defendant subject to Level Five punishment may be fined up to one hundred dollars ($100.00) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment ~~must~~ may be ~~suspended, on~~ suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or

(2) Perform community service for a term of 24 hours; or

(3) Not operate a motor vehicle for a term of 30 days; or

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation. ~~This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).~~"

Section 2.6. G.S. 20-179(k1) reads as rewritten:

"(k1) Credit for Inpatient Treatment. -- Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed

as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any ~~treatment.~~ treatment unless the trial judge orders that the costs be absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. ~~The credit may not be used more than once during the seven-year period immediately preceding the date of the offense.~~ This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law."

Section 2.7. G.S. 20-179(p) reads as rewritten:

"(p) Limit on Amelioration of Punishment. -- For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(2) The defendant ~~must~~ shall serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.

(3) The defendant may not be released on parole unless he is otherwise ~~eligible and~~ eligible, has served the mandatory minimum period of ~~imprisonment.~~ imprisonment, and has obtained a substance abuse assessment and completed any recommended treatment or training program or is paroled into a residential treatment program.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial."

Section 2.8. G.S. 20-179(r) reads as rewritten:

"(r) Supervised Probation Terminated. -- Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his

judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets ~~two~~ three conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced and that the defendant is sentenced under subsections (i), (j), and (k) of this ~~section.~~ section, and has obtained any necessary substance abuse assessment and completed any recommended treatment or training program.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or

(2) Repealed by Session Laws 1995 c. 496, s. 2.

(3) Payment of any fines, court costs, and fees; or

(4) Any combination of these conditions."

PART III. INCREASE ADMINISTRATIVE LICENSE REVOCATION PERIOD.

Section 3.1. G.S. 20-16.2(a) reads as rewritten:

"(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer ~~must~~ shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged ~~must~~ shall be taken before a chemical analyst authorized to administer a test of a person's breath, who ~~must~~ shall inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.

(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least ~~10~~ 30 days and an additional 12-month revocation by the Division of Motor Vehicles.

(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.

(4) The person's driving privilege will be revoked immediately for at least ~~10~~ 30 days if:
a. The test reveals an alcohol concentration of 0.08 or more; or
b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more.
(5) The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.
(6) The person has the right to call an attorney and select a witness to view for him or her the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time when the person is notified of his or her rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated."

Section 3.2. G.S. 20-16.2(e1) reads as rewritten:

"(e1) Limited Driving Privilege after Six Months in Certain Instances. -- A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:
(1) At the time of the refusal the person held either a valid ~~driver's~~ drivers license or a license that had been expired for less than one year;
(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;
(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;
(4) The implied-consent offense charged did not involve death or critical injury to another person;
(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:
a. Other than by conviction; or
b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing

issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving; ~~and~~

(7) The person's license has been revoked for at least six months for the ~~refusal.~~ refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing ~~must~~ shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing ~~must~~ shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid."

Section 3.3. G.S. 20-16.2(i) reads as rewritten:

"(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer ~~must~~ shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before

the chemical analysis is made, the person ~~must~~ shall confirm the request in writing and ~~must~~ shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least ~~10~~ 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 3.4. G.S. 20-16.5 is amended by adding a new subsection to read:

"(p) Limited Driving Privilege. A person whose drivers license has been revoked under this section may apply for a limited driving privilege if:

(1) At the time of the alleged offense the person held either a valid drivers license or a license that had been expired for less than one year;

(2) Does not have an unresolved pending charge for or additional convictions of an offense involving impaired driving;

(3) The person's license has been revoked for at least 10 days if the revocation is for 30 days or 30 days if the revocation is for 45 days; and

(4) The person has obtained a substance abuse assessment from a mental health facility and registers for and agrees to participate in any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications

under this subsection. Any district court judge authorized to hold court in the judicial district is authorized to issue such a limited driving privilege. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section. If the person's license is revoked for any other reason, the limited driving privilege is invalid."

Section 3.5. G.S. 20-16.5(e) reads as rewritten:

"(e) Procedure if Report Filed with Judicial Official When Person Is Present. -- If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official ~~must,~~ shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he ~~must~~ shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official ~~must~~ shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official ~~must~~ shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official ~~must~~ shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. Unless the person is not currently licensed, the revocation under this subsection begins at the time the revocation order is issued and continues until the person's license has been surrendered for ~~10~~ 30 days and the person has paid the applicable costs. If the person is not currently licensed, the revocation continues until ~~10~~ 30 days from the date the revocation order is issued and the person has paid the applicable costs. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk ~~must~~ shall immediately issue a pick-up order. The pick-up order ~~must~~ shall be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order ~~must~~ shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division."

Section 3.6. G.S. 20-16.5(f) reads as rewritten:

"(f) Procedure if Report Filed with Clerk of Court When Person Not Present. -- When a clerk receives a properly executed report under subdivision (d)(3) and the person named in the revocation report is not present before the clerk, the clerk ~~must~~ shall determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he ~~must~~ shall mail to the person a revocation order by first-class mail. The order ~~must~~ shall direct that the person on or before the effective date of the order either surrender his license to the clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order ~~must~~ shall inform the person of the time and effective date of the revocation and of its duration, of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. Revocation orders mailed under this subsection become effective on the fourth day after the order is deposited in the United States mail. If within five working days of the effective date of the order, the person does not surrender his license to the clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk ~~must~~ shall immediately issue a pick-up order. The pick-up order ~~must~~ shall be issued and served in the same manner as specified in subsection (e) for pick-up orders issued pursuant to that subsection. A revocation under this subsection begins at the date specified in the order and continues until the person's license has been revoked for the period specified in this subsection and the person has paid the applicable costs. The period of revocation under this subsection is:

(1) ~~Ten~~ Thirty days from the time the person surrenders his license to the court, if the surrender occurs within five working days of the effective date of the order; or

(2) ~~Ten~~ Thirty days after the person appears before the clerk and demonstrates that he is not currently licensed to drive, if the appearance occurs within five working days of the effective date of the revocation order; or

(3) ~~Thirty~~ Forty-five days from the time:

a. The person's driver's license is picked up by a law-enforcement officer following service of a pick-up order; or

b. The person demonstrates to a law-enforcement officer who has a pick-up order for his license that he is not currently licensed; or

c. The person's driver's license is surrendered to the court if the surrender occurs more than five working days after the effective date of the revocation order; or

d. The person appears before the clerk to demonstrate that he is not currently licensed, if he appears more than five working days after the effective date of the revocation order.

When a pick-up order is issued, it ~~must~~ shall inform the person of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. An officer serving a pick-up order under this subsection ~~must~~ shall return the order to the court indicating the date it was served or that he was unable to serve the order. If the license was surrendered, the officer serving the order ~~must~~ shall deposit it with the clerk within three days of the surrender."

Section 3.7. G.S. 20-16.5(i) reads as rewritten:

"(i) Effect of Revocations. -- A revocation under this section revokes a person's privilege to drive in North Carolina whatever the source of his authorization to drive. Revocations under this section are independent of and run concurrently with any other revocations. No court imposing a period of revocation following conviction of an offense involving impaired driving may give credit for any period of revocation imposed under this section. ~~A person is not eligible for a limited driving privilege under any statute while his license is revoked under this section.~~ A person whose license is revoked pursuant to this section is not eligible to receive a limited driving privilege except as specifically authorized by G.S. 20-16.5(p)."

Section 3.8. G.S. 20-16.5(k) reads as rewritten:

"(k) Report to Division. -- Except as provided below, the clerk ~~must~~ shall mail a report to the Division within 10 working days of the return of a license under this section or of the termination of a revocation of the driving privilege of a person not currently licensed. The report ~~must~~ shall identify the person whose license has been revoked and specify the dates on which his license was revoked. No report need be made to the Division, however, if there was a surrender of the driver's license issued by the Division, a ~~ten-day~~ 30-day minimum revocation was imposed, and the license was properly returned to the person under subsection (h) within five working days after the ~~10-day~~ 30-day period had elapsed."

PART IV. MAKE ALCOHOL SCREENING TEST ADMISSIBLE TO PROVE OFFENSE OF DRIVING AFTER DRINKING BY A PERSON UNDER 21.

Section 4. G.S. 20-138.3 reads as rewritten:

"**§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or drugs.**

(a) Offense. -- It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his blood which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

~~(c)~~ (e) Punishment; effect when impaired driving offense also charged. -- The offense in this section is a Class 2 misdemeanor. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable ~~must~~ shall be imposed.

~~(d)~~ (f) Limited driving privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20-179.3. This subsection shall apply only if the person meets both of the following requirements:

(1) Is 18, 19, or 20 years old on the date of the offense.

(2) Has not previously been convicted of a violation of this section.

The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

PART V. ALLOW DRUG TESTING FOR DRIVING WHILE IMPAIRED.

Section 5.1. G.S. 20-4.01(3a) reads as rewritten:

"(3a) Chemical Analysis. -- A test or tests of the ~~breath or blood~~ breath, blood, or other bodily fluid or substance of a person to determine ~~his~~ the person's alcohol ~~concentration,~~ concentration or presence of an impairing substance, performed in accordance with ~~G.S. 20-139.1.~~ G.S. 20-139.1, including duplicate or sequential analyses. ~~The term "chemical analysis" includes duplicate or sequential analyses when necessary or desirable to insure the integrity of test results.~~"

Section 5.2. G.S. 20-138.3(a) reads as rewritten:

"(a) Offense. -- It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or ~~in his blood a~~ controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his ~~blood~~ body which was lawfully obtained and taken in therapeutically appropriate amounts."

Section 5.3. G.S. 20-139.1(a) reads as rewritten:

"(a) Chemical Analysis Admissible. -- In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration or

the presence of any other impairing substance in the person's body as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to ~~a defendant's~~ a person's alcohol ~~concentration,~~ concentration or results of other tests showing the presence of an impairing substance, including other chemical tests."

Section 5.4. G.S. 20-139.1 is amended by adding a new subsection to read:

"(b5) Subsequent Tests Allowed. -- A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of the charging officer. A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2."

Section 5.5. G.S. 20-139.1(e1) reads as rewritten:

"(e1) Use of Chemical Analyst's Affidavit in District Court. -- An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any hearing or trial in the District Court Division of the General Court of Justice with respect to the following matters:

(1) The alcohol concentration or concentrations or the presence or absence of an impairing substance of a person given a chemical analysis and who is involved in the hearing or trial.

(2) The time of the collection of the ~~blood or breath~~ blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.

(3) The type of chemical analysis administered and the procedures followed.

(4) The type and status of any permit issued by the Department of Environment, Health, and Natural Resources that he held on the date he performed the chemical analysis in question.

(5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Environment, Health, and Natural Resources ~~must~~ shall develop a form for use by chemical analysts in making this

affidavit. If any person who submitted to a chemical analysis desires that a chemical analyst personally testify in the hearing or trial in the District Court Division, he may subpoena the chemical analyst and examine him as if he were an adverse witness."

Section 5.6. G.S. 20-179.3(h) reads as rewritten:

"(h) Other Mandatory and Permissive Conditions or Restrictions. -- In all limited driving privileges the judge ~~must~~ shall also include a restriction that the applicant not consume alcohol while driving or drive at any time while he has remaining in his body any alcohol or ~~in his blood a~~ controlled substance previously consumed, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts. The judge may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section."

PART VI. EXPAND THE DRUG ABUSE RESISTANCE EDUCATION (DARE) PROGRAM TO THE SEVENTH AND NINTH GRADES.

Section 6. G.S. 115C-47 is amended by adding a new subdivision to read:

"(38) Expand DARE Program to Seventh and Ninth Grades. -- Local boards of education shall use available State and federal resources to expand the Drug Abuse and Resistance Education Program to the seventh and ninth grades."

PART VII. HABITUAL IMPAIRED DRIVING.

Section 7. 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 and shall be sentenced to a minimum active term of not less than 12 months of imprisonment, which shall not be suspended and if paroled, the person shall be enrolled in the Department of Correction's Drug and Alcohol Rehabilitation Training (DART) or similar substance abuse program as a condition of parole. Sentences imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence being served."

PART VIII. EFFECTIVE DATES.

Section 8. Sections 1.1 thorough 1.6, 6, and 8 of this act are effective when they become law. The remaining sections of this act become effective December 1, 1997, and apply to offenses committed on or after that date. Sentencing for an offense committed before the effective date of this act is governed by the laws in effect at the time of the commission of the offense.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 448

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

H448-ASA-010 Page 1 of __

Date_____,1997

Comm. Sub. [yes]
Amends Title []

moves to amend the bill on page 4, line 11,
by
rewriting the line to read:
"revoked. However, the sentencing judge may release the motor vehicle to the registered owner when the Division records indicate a previously signed acknowledgment, if the registered owner shows by clear and convincing evidence that the registered owner has taken all reasonable precautions to prevent the use of the vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency."

and on page 4, line 32,
by
rewriting the line to read:
"will not be a defense in the future, unless the registered owner has taken all reasonable precautions to prevent the use of the

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 448

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

H448-ASA-010

vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 448 A BILL TO BE ENTITLED AN ACT TO IMPLEMENT THE GOVERNOR'S RECOMMENDATIONS ON DRIVING WHILE IMPAIRED.

☐ 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 448*
Proposed Committee Substitute H448-PCS1312

Short Title: Governor's D.W.I. Initiative/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE GOVERNOR'S RECOMMENDATIONS ON DRIVING WHILE IMPAIRED.

The General Assembly of North Carolina enacts:

PART I. SEIZURE OF VEHICLES USED IN DRIVING WHILE IMPAIRED OFFENSES.

Section 1.1. G.S. 20-28.2 reads as rewritten:

"**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.**

(a) Meaning of 'Impaired Driving License Revocation'. -- The revocation of a person's driver's license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, ~~20-17(2),~~ 20-17(a)(2), or 20-17.2; or

(2) G.S. 20-16(a)(7), 20-17(1), or 20-17(9), if the offense involves impaired driving.

(b) When Motor Vehicle Becomes Property Subject to Forfeiture. -- If at a sentencing hearing conducted pursuant to G.S. 20-179 or 20-138.5 the judge determines that the grossly aggravating factor described in G.S. 20-179(c)(2) applies, the motor vehicle that was driven by the defendant at the time he committed the offense of impaired driving becomes property subject to forfeiture.

(c) Duty of Prosecutor to Notify Possible Innocent Parties. --In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture under this section, the prosecutor ~~must~~ shall determine the identity of the vehicle owner as shown on the certificate of title for the vehicle and he ~~must~~ shall also determine if there are any security interests noted on the vehicle's certificate of title. The State ~~must~~ shall notify the holder of each security interest that the vehicle may be subject to forfeiture and that he may intervene to protect his interest. If the defendant is not the owner, a similar notice ~~must~~ shall be served on the owner. The notice may be served by any means reasonably likely to provide actual notice, and ~~must~~ shall be served at least fourteen days before the forfeiture hearing.

(d) Duty of Judge. -- ~~The judge at sentencing must hold a hearing to determine if the vehicle should be forfeited. At the hearing the judge may order the forfeiture if he finds that:~~

~~(1) The vehicle is subject to forfeiture;~~

~~(2) The vehicle is not primarily used by a member of the defendant's family or household for a business purpose or for driving to and from work or school;~~

~~(3) All potential innocent parties have been notified as required in subsection (c); and~~

~~(4) No party has shown that he is an innocent party as described in subsection (f).~~

~~If the owner or the holder of a security interest has not been notified, the judge may continue the hearing to allow the State to serve the notice or he may decline to order forfeiture. In any case in which a judge does not order the forfeiture of a vehicle subject to forfeiture, he must enter into the record detailed, written reasons for his decision.~~ The trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the vehicle is subject to forfeiture under this section. If the judge determines that the requirements of subsections (a) through (c) of this section exist and the defendant was a registered owner of the vehicle at the time of the offense, the judge shall order the vehicle forfeited. If the defendant was not a registered owner of the vehicle at the time of the offense, the judge shall order the vehicle forfeited unless the registered owner of the vehicle establishes, by clear and convincing evidence, that he or she is an innocent party as defined by subsection (f) of this section, in which case the trial judge may order the vehicle released to the registered owner pursuant to the provisions of subsection (e) of this section. In any case where the vehicle is ordered forfeited, the judge shall either:

(1) Authorize the school board to sell the vehicle at public sale or retain the vehicle for its own use pursuant to G.S. 20-28.5; or

(2) Release the vehicle to an innocent party lienholder pursuant to the provisions of subsection (h) of this section.

~~(e) Sale of Forfeited Vehicle Required. -- If the judge orders forfeiture of the vehicle pursuant to this section, he must order the sale of the vehicle. Proceeds of the sale must be paid to the school fund of the county in which the property was seized.~~

~~(f) Innocent Party May Intervene. -- At any time before the forfeiture is ordered, the property owner or holder of a security interest, other than the defendant, may apply to protect his interest in the motor vehicle. The application may be made to a judge who has jurisdiction to try the impaired driving offense with which the motor vehicle is associated. The judge must order the vehicle returned to the owner if he finds that either the owner or the holder of a security interest is an innocent party. An owner or holder of a security interest is an innocent party if he:~~

~~(1) Did not know and had no reason to know that the defendant's driver's license was revoked; or~~

~~(2) Knew that the defendant's driver's license was revoked, but the defendant drove the vehicle without his consent.~~

~~If an innocent party applies after the forfeited motor vehicle has been sold and the judge finds no laches in the innocent party's delay, the judge may order a payment to the innocent party from the net proceeds of the sale equal to his equity or security interest in the vehicle.~~

(e) Return of Vehicle to Innocent Registered Owner. -- If the registered owner establishes, by clear and convincing evidence, that the vehicle was being driven by a person who was not a registered owner at the time of the underlying offense and that each registered owner is an 'innocent party', the sentencing judge shall order the vehicle returned to the registered owner.

This release shall only be ordered upon satisfactory proof of:

(1) The identity of the person as a registered owner;

(2) The existence of financial responsibility as required by Article 13 of this Chapter;

(3) The payment of towing and storage fees; and

(4) The execution of an acknowledgment as set forth in this section.

No vehicle subject to forfeiture under this section shall be released to a registered owner if the records of the Division indicate any registered owner had previously signed an acknowledgment as required by this section, and the same person was operating the owner's vehicle when that person's license was revoked. However, the sentencing judge may release the motor vehicle to the registered owner when the Division records indicate a previously signed acknowledgment, if the registered owner shows by clear and convincing evidence that the registered owner has taken all reasonable precautions to prevent the use of the vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.

(f) Innocent Party Defined. -- A registered owner or holder of a security is an 'innocent party' if he or she:

(1) Did not know and had no reason to know that the defendant's drivers license was revoked; or

(2) Knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without his or her consent.

(g) Acknowledgment Required. -- The 'innocent party' registered owner of a vehicle seeking release pursuant to this section shall sign a written document acknowledging that:

(1) His or her vehicle was operated by a person charged with an offense involving impaired driving while that drivers license was revoked as a result of a prior impaired drivers license revocation;

(2) If the vehicle is again operated by this particular person, at any time while that person's drivers license is revoked, that the vehicle is subject to impoundment and forfeiture, even if the operator was not impaired; and

(3) A lack of knowledge or consent to the operation will not be a defense in the future, unless the registered owner has taken all reasonable precautions to prevent the use of the vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.

(h) Release to Lienholder. -- The trial judge shall order a forfeited vehicle released to the holder of a security interest if he determines by clear and convincing evidence, that the holder of the security interest is an 'innocent party', as defined in subsection (f) of this section, and:

(1) The lienholder's interest is not less than the fair market value of the vehicle;

(2) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited vehicle to a registered owner or any person acting on a registered owner's behalf; and

(3) The lienholder pays, in full, any towing and storage costs incurred as a result of the seizure of the vehicle.

(i) Possessory Lien. -- The entity that tows or stores the motor vehicle, other than the county school board, shall be entitled to a possessory lien for all costs and fees associated with the towing, storage, or sale of a vehicle pursuant to this section. This lien shall have priority over perfected and unperfected security interests. Storage fees subject to the lien shall not exceed five dollars ($5.00) per day."

Section 1.2. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.3. Seizure, impoundment, forfeiture of vehicles for offenses involving impaired driving while license revoked.**

(a) A motor vehicle that is driven by a person in violation of G.S. 20-138.1 or G.S. 20-138.5 is subject to seizure if at the time of the violation the drivers license of the person driving the motor vehicle was revoked as a result of a prior impaired drivers license revocation. The revocation of a person's drivers license is an impaired drivers license revocation for purposes of this section if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), or 20-17.2; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), or 20-17(a)(9) if the offense involved impaired driving.

(b) Duty of Officer. -- In any case where the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the vehicle and have it impounded. Probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable source. If the registered owner was not operating or present in the vehicle at the time of the offense, the officer shall cause to be issued written notification of impoundment to the registered owner of the vehicle. This notice shall be sent by first-class mail to the most recent address contained in the Division registration records. This written notification shall inform the registered owner that the vehicle has been impounded, the reason for the impoundment, and the procedure for requesting its release. Whether the registered owner was driving or present at the time of seizure, the seizing officer shall notify the Division of the seizure in accordance with procedures established by the Division. The officer shall also cause notice to be given to any lienholder of record with the Division of the impoundment and intent to forfeit the vehicle upon conviction.

(c) Review by Magistrate. -- Upon seizing the vehicle, the seizing officer shall present to the magistrate determining the operator's condition for pretrial release an affidavit of impoundment setting forth the requirements of this section. The magistrate shall review the affidavit of impoundment and if the magistrate determines the requirements of this section have been met, shall order the vehicle held in accordance with this section. The magistrate may request additional information and may hear from the operator if he is present. If the operator of the vehicle is not present at the time the affidavit of impoundment is presented, the seizing officer may present the affidavit to any judicial official who shall perform the review contained herein.

(d) Custody of Vehicle. -- The seized vehicle shall be towed to a location designated by the county school board for the county in which the operator of the vehicle is charged and placed under the constructive possession of the school board pending release or sale. Each county school board may elect to have seized vehicles stored on property owned or leased by the school board and charge no fee for storage. In the alternative, the county school board may contract with a commercial storage facility for the storage of such vehicles and a storage fee of not more than five dollars ($5.00) per day may be charged.

(e) Release of Vehicle Pending Trial. -- A registered owner of a vehicle, other than the driver at the time of the underlying offense resulting in the seizure, may apply to the clerk of superior court in the county where the charges are pending for pretrial release of the vehicle. The clerk may release the vehicle to the registered owner under the following conditions:

(1) The vehicle has been stored for not less than 24 hours;

(2) All towing and storage charges have been paid;

(3) Execution of a good and valid bond with sufficient sureties in an amount double the value of the seized vehicle, payable to the county school fund and conditioned on return of the vehicle,

without the imposition of any additional liens or encumbrances, on the day of trial of the operator;

(4) Execution of a written acknowledgment as described in G.S. 20-28.2(g); and

(5) A check of the records of the Division indicates that the owner has not previously executed a written acknowledgment pertaining to the operator of the seized vehicle.

(f) Duty of Trial Judge. -- The trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the vehicle is subject to forfeiture pursuant to the provisions of G.S. 20-28.2.

(g) Possessory Lien. -- The entity that tows and stores the vehicle, other than the county school board, shall be entitled to a possessory lien for any and all costs and fees associated with the towing and storage (not to exceed five dollars ($5.00) per day). This lien shall have priority over perfected and unperfected security interests."

Section 1.3. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.4. Release of impounded vehicles by trial judge.**

(a) Release to Innocent Registered Owner. -- An innocent party registered owner may apply to the trial judge presiding over the underlying offense for return of the vehicle pursuant to the provisions of G.S. 20-28.2(e).

(b) Acknowledgment Required. -- The innocent party registered owner of a vehicle seeking release under this section or pretrial release under G.S. 20-28.3 shall sign a written acknowledgment as described in G.S. 20-28.2(g). The registered owner shall also acknowledge that if the vehicle is again operated by this particular person at any time while the person's license is revoked, the owner's vehicle is subject to seizure, impoundment, and forfeiture, even if the person is not impaired at the time he or she operates the vehicle. The registered owner shall acknowledge further that a lack of knowledge, or consent to the operation will not be a defense in the future.

(c) Release to Lienholder. -- The trial judge may order a forfeited vehicle released to the holder of a security interest if he determines, by clear and convincing evidence, that the holder of the security interest is an 'innocent party' as defined by G.S. 20-28.2(f), and the lienholder satisfies the criteria as set out in G.S. 20-28.2(h).

(d) Release Upon Conclusion of Trial. -- If the driver of a motor vehicle seized pursuant to G.S. 20-28.3 is subsequently not convicted of either G.S. 20-138.1 or G.S. 20-138.5 due to dismissal or a finding of not guilty or the judge at the sentencing hearing fails to find the grossly aggravating factor described in G.S. 20-179(c)(2), the seized vehicle shall be returned to the registered owner upon payment of towing and storage fees. If the court finds that probable cause did not exist to seize the motor vehicle, the court may order the vehicle released without payment of the towing and storage fees. Such a determination does not authorize the driver, registered owner or lienholder to recover towing or storage fees paid in order to obtain pretrial release of the motor vehicle."

Section 1.4. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.5. Forfeiture of impounded vehicle.**

(a) Sale. -- Unless the trial judge orders the vehicle returned to an innocent party pursuant to G.S. 20-28.2 or G.S. 20-28.4, the vehicle shall be ordered forfeited and sold or transferred to the school board in the county where the charges were filed. The sale of the vehicle shall be at public sale and shall be conducted by the county school board or a person acting on its behalf. Notice of sale shall be given to the Division in accordance with the procedures established by the Division.

(b) Proceeds of Sale. -- Proceeds of any sale conducted under this section shall first be applied to satisfy towing and storage liens and the cost of sale. The balance of the proceeds of sale, if any, shall be used to satisfy any other existing liens of record that were properly recorded with the Division prior to the date of initial seizure of the vehicle. Any remaining balance shall be paid to the county school fund in the county in which the vehicle was ordered forfeited. Vehicles sold pursuant to this section shall be transferred free and clear of any liens.

(c) Retention of Vehicle. -- The county board may, at its option, retain any forfeited vehicle for its use. If the vehicle is retained, any valid lien of record at the time of the initial seizure of the vehicle shall be satisfied by the school board. If there is more than one school board in the county, then the fair market value of the vehicle shall be used to determine the share of the school boards in the same manner as fines and other forfeitures."

Section 1.5. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.6. Responsibility of Division of Motor Vehicles.**

The Division shall establish procedures to provide for the orderly seizure, forfeiture, sale, and transfer of motor vehicles pursuant to the provisions of G.S. 20-28.2, et seq."

Section 1.6. G.S. 20-219.10(a) reads as rewritten:

"(a) This Article applies to each towing of a vehicle that is carried out pursuant to G.S. 115C-46(d) or G.S. 143-340(19), or pursuant to the direction of a law-enforcement officer except:

(1) This Article applies to towings pursuant to G.S. 115D-21, 116-44.4, 116-229, 153A-132, 153A-132.2, 160A-303, and 160A-303.2 only insofar as specifically provided;

(2) This Article does not apply to a seizure of a vehicle under G.S. 14-86.1, 18B-504, 90-112, 113-137, 20-28.2, 20-28.3, or to any other seizure of a vehicle for evidence in a criminal proceeding or pursuant to any other statute providing for the forfeiture of a vehicle;

(3) This Article does not apply to a seizure of a vehicle pursuant to a levy under execution."

PART II. INCREASE PENALTY FOR DRIVING WHILE IMPAIRED OFFENDERS.

Section 2.1. G.S. 20-179(g) reads as rewritten:

"(g) Level One Punishment. -- A defendant subject to Level One punishment may be fined up to two thousand dollars ($2,000) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than ~~14~~ 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed ~~(i)~~ to require the defendant to serve a term of imprisonment of at least ~~14 days, or (ii) to require the defendant to serve a term of imprisonment of at least four consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above.~~ 30 days. If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 2.2. G.S. 20-179(h) reads as rewritten:

"(h) Level Two Punishment. -- A defendant subject to Level Two punishment may be fined up to one thousand dollars ($1,000) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed ~~(i)~~ to require the defendant to serve a term of imprisonment of at least seven ~~days or, (ii) to require the defendant to serve a term of imprisonment of at least two consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above.~~ days. If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 2.3. G.S. 20-179(i) reads as rewritten:

"(i) Level Three Punishment. -- A defendant subject to Level Three punishment may be fined up to five hundred dollars ($500.00) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment ~~must~~ may be ~~suspended, on~~ suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or
(2) Perform community service for a term of at least 72 hours; or
(3) Not operate a motor vehicle for a term of at least 90 days; or
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of

probation. ~~This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(e).~~"

Section 2.4. G.S. 20-179(j) reads as rewritten:

"(j) Level Four Punishment. -- A defendant subject to Level Four punishment may be fined up to two hundred fifty dollars ($250.00) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment ~~must~~ may be ~~suspended, on~~ suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or
(2) Perform community service for a term of 48 hours; or
(3) Not operate a motor vehicle for a term of 60 days; or
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation. ~~This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(e).~~"

Section 2.5. G.S. 20-179(k) reads as rewritten:

"(k) Level Five Punishment. -- A defendant subject to Level Five punishment may be fined up to one hundred dollars ($100.00) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment ~~must~~ may be ~~suspended, on~~ suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or
(2) Perform community service for a term of 24 hours; or
(3) Not operate a motor vehicle for a term of 30 days; or
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation. ~~This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(e).~~"

Section 2.6. G.S. 20-179(k1) reads as rewritten:

"(k1) Credit for Inpatient Treatment. -- Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The

defendant shall bear the expense of any ~~treatment.~~ treatment unless the trial judge orders that the costs be absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. ~~The credit may not be used more than once during the seven-year period immediately preceding the date of the offense.~~ This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law."

Section 2.7. G.S. 20-179(p) reads as rewritten:

"(p) Limit on Amelioration of Punishment. -- For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(2) The defendant ~~must~~ shall serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.

(3) The defendant may not be released on parole unless he is otherwise ~~eligible and~~ eligible, has served the mandatory minimum period of ~~imprisonment.~~ imprisonment, and has obtained a substance abuse assessment and completed any recommended treatment or training program or is paroled into a residential treatment program.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial."

Section 2.8. G.S. 20-179(r) reads as rewritten:

"(r) Supervised Probation Terminated. -- Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets ~~two~~ three conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced and that the defendant is sentenced under subsections (i), (j), and (k) of this ~~section.~~ section, and has obtained any necessary substance abuse assessment and completed any recommended treatment or training program.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or

(2) Repealed by Session Laws 1995 c. 496, s. 2.
(3) Payment of any fines, court costs, and fees; or
(4) Any combination of these conditions."

PART III. INCREASE ADMINISTRATIVE LICENSE REVOCATION PERIOD.

Section 3.1. G.S. 20-16.2(a) reads as rewritten:

"(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer ~~must~~ shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged ~~must~~ shall be taken before a chemical analyst authorized to administer a test of a person's breath, who ~~must~~ shall inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.
(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least ~~10~~ 30 days and an additional 12-month revocation by the Division of Motor Vehicles.
(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.
(4) The person's driving privilege will be revoked immediately for at least ~~10~~ 30 days if:
    a. The test reveals an alcohol concentration of 0.08 or more; or
    b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more.
(5) The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.
(6) The person has the right to call an attorney and select a witness to view for him or her the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time when the person is notified of his or her rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated."

Section 3.2. G.S. 20-16.2(e1) reads as rewritten:

"(e1) Limited Driving Privilege after Six Months in Certain Instances. -- A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid ~~driver's~~ drivers license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied-consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving; ~~and~~

(7) The person's license has been revoked for at least six months for the ~~refusal.~~ refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing ~~must~~ shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing ~~must~~ shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid."

Section 3.3. G.S. 20-16.2(i) reads as rewritten:

"(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a

chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer ~~must~~ shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person ~~must~~ shall confirm the request in writing and ~~must~~ shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least ~~10~~ 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 3.4. G.S. 20-16.5 is amended by adding a new subsection to read:

"(p) Limited Driving Privilege. -- A person whose drivers license has been revoked under this section may apply for a limited driving privilege if:

(1) At the time of the alleged offense the person held either a valid drivers license or a license that had been expired for less than one year;

(2) Does not have an unresolved pending charge for or additional convictions of an offense involving impaired driving;

(3) The person's license has been revoked for at least 10 days if the revocation is for 30 days or 30 days if the revocation is for 45 days; and

(4) The person has obtained a substance abuse assessment from a mental health facility and registers for and agrees to participate in any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. Any district court judge authorized to hold court in the judicial district is authorized to issue such a limited driving privilege. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section. If the person's license is revoked for any other reason, the limited driving privilege is invalid."

Section 3.5. G.S. 20-16.5(e) reads as rewritten:

"(e) Procedure if Report Filed with Judicial Official When Person Is Present. -- If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official ~~must,~~ shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he ~~must~~ shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official ~~must~~ shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official ~~must~~ shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official ~~must~~ shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. Unless the person is not currently licensed, the revocation under this subsection begins at the time the revocation order is issued and continues until the person's license has been surrendered for ~~10~~ 30 days and the person has paid the applicable costs. If the person is not currently licensed, the revocation continues until ~~10~~ 30 days from the date the revocation order is issued and the person has paid the applicable costs. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk ~~must~~ shall immediately issue a pick-up order. The pick-up order ~~must~~ shall be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order ~~must~~ shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division."

Section 3.6. G.S. 20-16.5(f) reads as rewritten:

"(f) Procedure if Report Filed with Clerk of Court When Person Not Present. -- When a clerk receives a properly executed report under subdivision (d)(3) and the person named in the revocation report is not present before the clerk, the clerk ~~must~~ shall determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he ~~must~~ shall mail to the person a revocation order by first-class mail. The order ~~must~~ shall direct that the person on or before the effective date of the order either surrender his license to the clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order ~~must~~ shall inform the person of the time and effective date of the revocation and of its duration, of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. Revocation orders mailed under this subsection become effective on the fourth day after the order is deposited in the United States mail. If within five working days of the effective date of the order, the person does not surrender his license to the clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk ~~must~~ shall immediately issue a pick-up order. The pick-up order

~~must~~ shall be issued and served in the same manner as specified in subsection (e) for pick-up orders issued pursuant to that subsection. A revocation under this subsection begins at the date specified in the order and continues until the person's license has been revoked for the period specified in this subsection and the person has paid the applicable costs. The period of revocation under this subsection is:

(1) ~~Ten~~ Thirty days from the time the person surrenders his license to the court, if the surrender occurs within five working days of the effective date of the order; or

(2) ~~Ten~~ Thirty days after the person appears before the clerk and demonstrates that he is not currently licensed to drive, if the appearance occurs within five working days of the effective date of the revocation order; or

(3) ~~Thirty~~ Forty-five days from the time:

a. The person's driver's license is picked up by a law-enforcement officer following service of a pick-up order; or

b. The person demonstrates to a law-enforcement officer who has a pick-up order for his license that he is not currently licensed; or

c. The person's driver's license is surrendered to the court if the surrender occurs more than five working days after the effective date of the revocation order; or

d. The person appears before the clerk to demonstrate that he is not currently licensed, if he appears more than five working days after the effective date of the revocation order.

When a pick-up order is issued, it ~~must~~ shall inform the person of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. An officer serving a pick-up order under this subsection ~~must~~ shall return the order to the court indicating the date it was served or that he was unable to serve the order. If the license was surrendered, the officer serving the order ~~must~~ shall deposit it with the clerk within three days of the surrender."

Section 3.7. G.S. 20-16.5(i) reads as rewritten:

"(i) Effect of Revocations. -- A revocation under this section revokes a person's privilege to drive in North Carolina whatever the source of his authorization to drive. Revocations under this section are independent of and run concurrently with any other revocations. No court imposing a period of revocation following conviction of an offense involving impaired driving may give credit for any period of revocation imposed under this section. ~~A person is not eligible for a limited driving privilege under any statute while his license is revoked under this section.~~ A person whose license is revoked pursuant to this section is not eligible to receive a limited driving privilege except as specifically authorized by G.S. 20-16.5(p)."

Section 3.8. G.S. 20-16.5(k) reads as rewritten:

"(k) Report to Division. -- Except as provided below, the clerk ~~must~~ shall mail a report to the Division within 10 working days of the return of a license under this

section or of the termination of a revocation of the driving privilege of a person not currently licensed. The report ~~must~~ shall identify the person whose license has been revoked and specify the dates on which his license was revoked. No report need be made to the Division, however, if there was a surrender of the driver's license issued by the Division, a ~~ten-day~~ 30-day minimum revocation was imposed, and the license was properly returned to the person under subsection (h) within five working days after the ~~10-day~~ 30-day period had elapsed."

PART IV. MAKE ALCOHOL SCREENING TEST ADMISSIBLE TO PROVE OFFENSE OF DRIVING AFTER DRINKING BY A PERSON UNDER 21.

Section 4. G.S. 20-138.3 reads as rewritten:

"**§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or drugs.**

(a) Offense. -- It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his blood which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

~~(c)~~ (e) Punishment; effect when impaired driving offense also charged. -- The offense in this section is a Class 2 misdemeanor. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable ~~must~~ shall be imposed.

~~(d)~~ (f) Limited driving privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20-179.3.

This subsection shall apply only if the person meets both of the following requirements:

(1) Is 18, 19, or 20 years old on the date of the offense.

(2) Has not previously been convicted of a violation of this section.

The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

PART V. ALLOW DRUG TESTING FOR DRIVING WHILE IMPAIRED.

Section 5.1. G.S. 20-4.01(3a) reads as rewritten:

"(3a) Chemical Analysis. -- A test or tests of the ~~breath or blood~~ breath, blood, or other bodily fluid or substance of a person to determine ~~his~~ the person's alcohol ~~concentration,~~ concentration or presence of an impairing substance, performed in accordance with ~~G.S. 20-139.1.~~ G.S. 20-139.1, including duplicate or sequential analyses. ~~The term "chemical analysis" includes duplicate or sequential analyses when necessary or desirable to insure the integrity of test results.~~"

Section 5.2. G.S. 20-138.3(a) reads as rewritten:

"(a) Offense. -- It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or ~~in his blood a~~ controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his ~~blood~~ body which was lawfully obtained and taken in therapeutically appropriate amounts."

Section 5.3. G.S. 20-139.1(a) reads as rewritten:

"(a) Chemical Analysis Admissible. -- In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration or the presence of any other impairing substance in the person's body as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to ~~a defendant's~~ a person's alcohol ~~concentration,~~ concentration or results of other tests showing the presence of an impairing substance, including other chemical tests."

Section 5.4. G.S. 20-139.1 is amended by adding a new subsection to read:

"(b5) Subsequent Tests Allowed. -- A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of the charging officer. A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2."

Section 5.5. G.S. 20-139.1(e1) reads as rewritten:

"(e1) Use of Chemical Analyst's Affidavit in District Court. -- An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any hearing or trial in the District Court Division of the General Court of Justice with respect to the following matters:

(1) The alcohol concentration or concentrations or the presence or absence of an impairing substance of a person given a chemical analysis and who is involved in the hearing or trial.

(2) The time of the collection of the ~~blood or breath~~ blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.

(3) The type of chemical analysis administered and the procedures followed.

(4) The type and status of any permit issued by the Department of Environment, Health, and Natural Resources that he held on the date he performed the chemical analysis in question.

(5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Environment, Health, and Natural Resources ~~must~~ shall develop a form for use by chemical analysts in making this affidavit. If any person who submitted to a chemical analysis desires that a chemical analyst personally testify in the hearing or trial in the District Court Division, he may subpoena the chemical analyst and examine him as if he were an adverse witness."

Section 5.6. G.S. 20-179.3(h) reads as rewritten:

"(h) Other Mandatory and Permissive Conditions or Restrictions. -- In all limited driving privileges the judge ~~must~~ shall also include a restriction that the applicant not consume alcohol while driving or drive at any time while he has remaining in his body any alcohol or ~~in his blood a~~ controlled substance previously consumed, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts. The judge may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section."

PART VI. EXPAND THE DRUG ABUSE RESISTANCE EDUCATION (DARE) PROGRAM TO THE SEVENTH AND NINTH GRADES.

Section 6. G.S. 115C-47 is amended by adding a new subdivision to read:

"(38) Expand DARE Program to Seventh and Ninth Grades. -- Local boards of education shall use available State and federal resources to expand the Drug Abuse and Resistance Education Program to the seventh and ninth grades."

PART VII. HABITUAL IMPAIRED DRIVING.

Section 7. 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 and shall be sentenced to a minimum active term of not less than 12 months of imprisonment, which shall not be suspended and if paroled, the person shall be enrolled in the Department of Correction's Drug and Alcohol Rehabilitation Training (DART) or similar substance abuse program as a condition of parole. Sentences imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence being served."

PART VIII. EFFECTIVE DATES.

Section 8. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date. Sentencing for an offense committed before the effective date of this act is governed by the laws in effect at the time of the commission of the offense.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 581

Short Title: Sex Exploitation Act. (Public)

Sponsors: Representatives Hackney, Neely (Cosponsors); Insko and Goodwin.

Referred to: Judiciary II.

March 24, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A CIVIL ACTION REMEDY FOR PERSONS WHO ARE SEXUALLY EXPLOITED BY THEIR PSYCHOTHERAPIST.

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 1F.

"Psychotherapy Patient/Client

Sexual Exploitation Act.

"**§ 90-21.41. Definitions.**

The following definitions apply in this Article:

(1) Client. -- A person who may also be called patient or counselee who seeks or obtains psychotherapy, whether or not the person is charged for the service. The term 'client' includes a former client.

(2) Psychotherapist. -- A physician, psychologist, nurse, counselor, substance abuse counselor, social worker, member of the clergy, marriage and family therapist, physician assistant, mental health service provider, or other person, regardless of license, certification, or registry status and regardless of employment setting, who performs or purports to perform psychotherapy.

(3) Psychotherapy. -- The professional treatment or counseling of a mental or emotional illness, symptom, condition, or problem of living.

(4) Sexual exploitation. -- Either of the following:

a. Sexual contact which includes any of the following actions whether or not they occurred with the consent of a client or during any treatment, consultation, evaluation, interview, or examination:

1. Sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, into the oral, genital, or anal openings of the client's body by any part of the psychotherapist's body or by any object used by the psychotherapist for the purpose of sexual stimulation or gratification of either the psychotherapist or the client; or any intrusion, however slight, into the oral, genital, or anal openings of the psychotherapist's body by any part of the client's body or by any object used by the client for the purpose of sexual stimulation or gratification of either the psychotherapist or the client, if agreed to, or not resisted by the psychotherapist.

2. Kissing of, or the intentional touching by the psychotherapist of, the client's lips, genital area, groin, inner thigh, buttocks, or breast, or of the clothing covering any of these body parts, or similar activities by the client that have been agreed to or not resisted by the psychotherapist.

b. Any act done or statement made by the psychotherapist for the purpose of sexual stimulation or gratification of the client or psychotherapist which includes any of the following actions:

1. The psychotherapist's relating to the client the psychotherapist's own sexual fantasies or the details of the psychotherapist's own sexual life.

2. The uncovering or display of breasts or genitals of the psychotherapist to the client.

3. The showing of sexually graphic pictures to the client for purposes other than diagnosis or treatment.

4. Statements containing sexual innuendo, threats, or suggestions regarding the relationship between the psychotherapist and the client.

(5) Sexual history. -- Sexual activity of the client other than that conduct alleged by the client to constitute sexual exploitation in an action pursuant to this Article.

(6) Therapeutic deception. -- A representation by a psychotherapist that sexual contact with the psychotherapist is consistent with or part of the client's treatment.

"**§ 90-21.42. Action for sexual exploitation.**

Any client who is sexually exploited by their psychotherapist shall have remedy by civil action for sexual exploitation if the sexual exploitation occurred:

(1) During the period the client was receiving psychotherapy from the psychotherapist.

(2) Within three years after the termination of the psychotherapy.

(3) By means of therapeutic deception.

"**§ 90-21.43. Remedies.**

A person found to have been sexually exploited as provided under this Article may recover from the defendant actual or nominal damages. In cases where the conduct is willful, wanton, malicious, or intentional, or the conduct evidences an intentional disregard by the psychotherapist of the needs of the client, or consists of continued, multiple acts of sexual exploitation, the trier of fact may award punitive damages in accordance with the provisions of Chapter 1D of the General Statutes. In addition, if a person bringing an action pursuant to this Article is found by the trier of fact to have been sexually exploited by the defendant, the court may allow reasonable attorneys' fees to the plaintiff's attorney, to be taxed as part of the court costs.

"**§ 90-21.44. Scope of discovery.**

(a) In an action under this Article, evidence of the plaintiff's sexual history is not subject to discovery, except under the following conditions:

(1) The plaintiff claims impairment of sexual functioning.

(2) The defendant requests a hearing prior to conducting discovery and makes an offer of proof of the relevancy of the evidence, and the court finds that the information is relevant and that the probative value of the history outweighs its prejudicial effect.

(b) The court shall allow the discovery only of specific information or examples of the plaintiff's conduct that are determined by the court to be relevant. The court order shall detail the information or conduct that is subject to discovery.

"**§ 90-21.45. Admissibility of evidence of sexual history.**

(a) At the trial of an action under this Article, evidence of the plaintiff's sexual history is not admissible unless:

(1) The defendant requests a hearing prior to trial and makes an offer of proof of the relevancy of the sexual history.

(2) The court finds that, in the interest of justice, the evidence is relevant and that the probative value of the evidence substantially outweighs its prejudicial effect.

(b) The court shall allow the admission only of specific information or examples of instances of the plaintiff's conduct that are determined by the court to be relevant. The court's order shall detail the conduct that is admissible, and no other such evidence may be introduced.

(c) Sexual history otherwise admissible pursuant to this section may not be proved by reputation or opinion.

(d) Violation of the terms of an order entered pursuant to this section may be grounds for a new trial.

"**§ 90-21.46. Prohibited defense.**

It shall not be a defense in any action brought pursuant to this Article that the client consented to the sexual exploitation or that the sexual contact with a client occurred outside a therapy or treatment session or that it occurred off the premises regularly used by the psychotherapist for therapy or treatment sessions.

"**§ 90-21.47. Statute of limitations.**

(a) An action for sexual exploitation must be commenced within three years after the cause of action accrues. A cause of action for sexual exploitation accrues at the later of either:

(1) The last act of the defendant giving rise to the cause of action.

(2) At the time the client discovers or reasonably should discover that the client was injured as a result of the sexual exploitation; however, no cause of action shall be commenced more than 15 years from the last act of the defendant giving rise to the cause of action.

(b) If a person is unable to bring an action due to the effects of sexual exploitation or due to any threats, instructions, or statements from the psychotherapist, the duration of the period of inability shall not be included in the statute of limitations for the commencement of the action for sexual exploitation.

"**§ 90-21.48. Agreements not to pursue complaint before licensing entity prohibited.**

It is prohibited for any person settling or compromising a claim involving the conduct defined herein as sexual exploitation to request or agree, as a term of settlement, not to pursue a complaint before the regulatory entity responsible for overseeing the conduct or licensing of the defendant."

Section 2. This act becomes effective October 1, 1997, and applies to exploitative conduct occurring on or after that date.

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April 17, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 581—Sex Exploitation Act (Hackney, Neely)

House Bill 581 creates a new Article 1F in Chapter 90 of the General Statutes entitled the Psychotherapy Patient/Client Sexual Exploitation Act which provides civil recourse for individuals who are sexually exploited by their psychotherapist.

The new Article defines a "psychotherapist" as a physician, psychologist, nurse, counselor, social worker, clergy member, family therapist, physician assistant, mental health service provider, or other person who, regardless of license, certification, registry status, or employment setting, performs or purports to perform psychotherapy. "Psychotherapy" is defined as the professional treatment or counseling of a mental or emotional illness, symptom, condition, or problem. A "client" is defined as someone who receives psychotherapy, whether or not the person is charged for the service. The Act contains a definition of "sexual contact" which includes a variety of actions and statements by the psychotherapist.

A client may bring a civil action under the Act if the sexual exploitation occurred during the period of psychotherapy, within 3 years after the termination of therapy, or occurred by means of therapeutic deception. "Therapeutic deception" is defined as a representation by a psychotherapist that sexual contact with the therapist is consistent with or part of the client's treatment.

Under the Act, a client may seek civil remedies in the form of actual or nominal damages, and attorneys fees. Punitive damages may be obtained under certain circumstances.

A client's sexual history is not subject to discovery under the Act except for cases in which the plaintiff claims impairment of sexual function, **or** the court determines in a hearing prior to the discovery that the information is relevant and that its probative value outweighs its prejudicial effect. Evidence of sexual history is not admissible at trial unless the court, at the request of the defendant, makes the same determinations of relevancy and probative value prior to trial. Sexual history may not be proved by reputation or opinion.

Consent is not a defense to an action under the Act, nor is the fact that the sexual exploitation occurred outside of therapy or off the premises of the therapist.

The Act contains a three year statute of limitation which begins to run from the last act of the therapist or from the discovery by the client of injury. In no event may an action be brought more than 15 years from the last act of the therapist. Time periods during which the client is unable to bring the action due to threats or statements of the therapist or due to the effects of the sexual exploitation are not included in the statute of limitations.

Settlement agreements in which a party agrees not to pursue a complaint before the therapist's licensing or regulatory entity are prohibited under the Act.

House Bill 581 becomes effective October 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 581

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

H581-ARG-001 Page 1 of __

Date_____,1997

Comm. Sub. []
Amends Title []

moves to amend the bill on page 3, line 9-13,
by rewriting the lines to read:
"may recover from the defendant actual or nominal damages. The trier of fact may award punitive damages in accordance with the provisions of Chapter 1D of the General Statutes. In".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 581 A BILL TO BE ENTITLED AN ACT TO PROVIDE A CIVIL ACTION REMEDY FOR PERSONS WHO ARE SEXUALLY EXPLOITED BY THEIR PSYCHOTHERAPIST.

☐ 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 581
Proposed Committee Substitute H581-PCS2299

Short Title: Sex Exploitation Act. (Public)

Sponsors:

Referred to:

March 24, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A CIVIL ACTION REMEDY FOR PERSONS WHO ARE SEXUALLY EXPLOITED BY THEIR PSYCHOTHERAPIST.

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 1F.

"Psychotherapy Patient/Client Sexual Exploitation Act.

"**§ 90-21.41. Definitions.**

The following definitions apply in this Article:

(1) Client. -- A person who may also be called patient or counselee who seeks or obtains psychotherapy, whether or not the person is charged for the service. The term 'client' includes a former client.

(2) Psychotherapist. -- A physician, psychologist, nurse, counselor, substance abuse counselor, social worker, member of the clergy, marriage and family therapist, physician assistant, mental health service provider, or other person, regardless of license, certification, or registry status and regardless of employment setting, who performs or purports to perform psychotherapy.

(3) Psychotherapy. -- The professional treatment or counseling of a mental or emotional illness, symptom, condition, or problem of living.

(4) Sexual exploitation. -- Either of the following:

a. Sexual contact which includes any of the following actions whether or not they occurred with the consent of a client or during any treatment, consultation, evaluation, interview, or examination:

1. Sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, into the oral, genital, or anal openings of the client's body by any part of the psychotherapist's body or by any object used by the psychotherapist for the purpose of sexual stimulation or gratification of either the psychotherapist or the client; or any intrusion, however slight, into the oral, genital, or anal openings of the psychotherapist's body by any part of the client's body or by any object used by the client for the purpose of sexual stimulation or gratification of either the psychotherapist or the client, if agreed to, or not resisted by the psychotherapist.

2. Kissing of, or the intentional touching by the psychotherapist of, the client's lips, genital area, groin, inner thigh, buttocks, or breast, or of the clothing covering any of these body parts, or similar activities by the client that have been agreed to or not resisted by the psychotherapist.

b. Any act done or statement made by the psychotherapist for the purpose of sexual stimulation or gratification of the client or psychotherapist which includes any of the following actions:

1. The psychotherapist's relating to the client the psychotherapist's own sexual fantasies or the details of the psychotherapist's own sexual life.

2. The uncovering or display of breasts or genitals of the psychotherapist to the client.

3. The showing of sexually graphic pictures to the client for purposes other than diagnosis or treatment.

4. Statements containing sexual innuendo, threats, or suggestions regarding the relationship between the psychotherapist and the client.

(5) Sexual history. -- Sexual activity of the client other than that conduct alleged by the client to constitute sexual exploitation in an action pursuant to this Article.

(6) Therapeutic deception. -- A representation by a psychotherapist that sexual contact with the psychotherapist is consistent with or part of the client's treatment.

"§ 90-21.42. Action for sexual exploitation.

Any client who is sexually exploited by the client's psychotherapist shall have remedy by civil action for sexual exploitation if the sexual exploitation occurred:

(1) During the period the client was receiving psychotherapy from the psychotherapist.

(2) Within three years after the termination of the psychotherapy.

(3) By means of therapeutic deception.

"§ 90-21.43. Remedies.

A person found to have been sexually exploited as provided under this Article may recover from the defendant actual or nominal damages. The trier of fact may award punitive damages in accordance with the provisions of Chapter 1D of the General Statutes. In addition, if a person bringing an action pursuant to this Article is found by the trier of fact to have been sexually exploited by the defendant, the court may allow reasonable attorneys' fees to the plaintiff's attorney, to be taxed as part of the court costs.

"§ 90-21.44. Scope of discovery.

(a) In an action under this Article, evidence of the plaintiff's sexual history is not subject to discovery, except under the following conditions:

(1) The plaintiff claims impairment of sexual functioning.

(2) The defendant requests a hearing prior to conducting discovery and makes an offer of proof of the relevancy of the evidence, and the court finds that the information is relevant and that the probative value of the history outweighs its prejudicial effect.

(b) The court shall allow the discovery only of specific information or examples of the plaintiff's conduct that are determined by the court to be relevant. The court order shall detail the information or conduct that is subject to discovery.

"§ 90-21.45. Admissibility of evidence of sexual history.

(a) At the trial of an action under this Article, evidence of the plaintiff's sexual history is not admissible unless:

(1) The defendant requests a hearing prior to trial and makes an offer of proof of the relevancy of the sexual history.

(2) The court finds that, in the interest of justice, the evidence is relevant and that the probative value of the evidence substantially outweighs its prejudicial effect.

(b) The court shall allow the admission only of specific information or examples of instances of the plaintiff's conduct that are determined by the court to be relevant. The court's order shall detail the conduct that is admissible, and no other such evidence may be introduced.

(c) Sexual history otherwise admissible pursuant to this section may not be proved by reputation or opinion.

(d) Violation of the terms of an order entered pursuant to this section may be grounds for a new trial.

"§ 90-21.46. Prohibited defense.

It shall not be a defense in any action brought pursuant to this Article that the client consented to the sexual exploitation or that the sexual contact with a client

occurred outside a therapy or treatment session or that it occurred off the premises regularly used by the psychotherapist for therapy or treatment sessions.

"§ 90-21.47. Statute of limitations.

(a) An action for sexual exploitation must be commenced within three years after the cause of action accrues. A cause of action for sexual exploitation accrues at the later of either:

(1) The last act of the defendant giving rise to the cause of action.

(2) At the time the client discovers or reasonably should discover that the client was injured as a result of the sexual exploitation; however, no cause of action shall be commenced more than 15 years from the last act of the defendant giving rise to the cause of action.

(b) If a person is unable to bring an action due to the effects of sexual exploitation or due to any threats, instructions, or statements from the psychotherapist, the duration of the period of inability shall not be included in the statute of limitations for the commencement of the action for sexual exploitation.

"§ 90-21.48. Agreements not to pursue complaint before licensing entity prohibited.

It is prohibited for any person settling or compromising a claim involving the conduct defined herein as sexual exploitation to request or agree, as a term of settlement, not to pursue a complaint before the regulatory entity responsible for overseeing the conduct or licensing of the defendant."

Section 2. This act becomes effective October 1, 1997, and applies to exploitative conduct occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 465

Short Title: Volun. Dismissal/Notify Defend. (Public)

Sponsors: Representatives Sutton, Yongue, Fitch, Hardaway, Blue, Hensley, R. Hunter, Boyd-McIntyre, Nesbitt, Braswell, Earle; and Goodwin.

Referred to: Judiciary II.

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A DEFENDANT BE NOTIFIED WHEN THE PROSECUTOR TAKES A VOLUNTARY DISMISSAL OF THE CHARGES AGAINST THE DEFENDANT AND NEITHER THE DEFENDANT NOR THE DEFENDANT'S ATTORNEY IS PRESENT AT THE TIME OF THE DISMISSAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-931 is amended by adding a new subsection to read:

"(a1) Unless made in open court in the presence of the defendant or the defendant's attorney, a written dismissal of the charges against the defendant filed by the prosecutor shall be served in the same manner prescribed for motions under G.S. 15A-951. In addition, the written dismissal shall also be served on the chief officer of the custodial facility when the record reflects that the defendant is in custody."

Section 2. This act becomes effective December 1, 1997.

North Carolina General Assembly
Legislative Services Office

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April 17, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 465—Volun. Dismissal/Notify Defend. (Sutton)

House Bill 465 amends G.S. 15A-931 to require a prosecutor to serve notice of a written dismissal of the charges against a defendant. The prosecutor need not serve notice if the dismissal were made in open court in the presence of the defendant or the defendant's attorney. If the defendant is in custody, the dismissal must also be served on the chief officer of the custodial facility.

House Bill 465 becomes effective December 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Newell v. Nationwide Mut. Ins. Co., 334 N.C. 391, 432 S.E.2d 284 (1993); State v. Floyd, 115 N.C. App. 412, 445 S.E.2d 54 (1994); State v. Mitchell, 342 N.C. 797, 467 S.E.2d 416 (1996).

Quoted in State v. Abraham, 338 N.C. 315, 451 S.E.2d 131 (1994).

Cited in State v. Styles, 116 N.C. App. 479, 448 S.E.2d 385, temporary stay granted, 338 N.C. 313, 450 S.E.2d 486 (1994).

§ 15A-928. Allegation and proof of previous convictions in superior court.

CASE NOTES

I. General Consideration.
II. Stipulation of Previous Convictions.

I. GENERAL CONSIDERATION.

The purpose of this section, etc. — The purpose of this section is to insure that the defendant is informed of the previous convictions the State intends to use and is given a fair opportunity to either admit or deny them or remain silent. State v. Jernigan, 118 N.C. App. 240, 455 S.E.2d 163 (1995).

If there is no doubt that defendant was fully aware of the charges against him and was in no way prejudiced by the omission of the arraignment required by subsection (c) of this section, the trial court's failure to arraign defendant is not reversible error. State v. Jernigan, 118 N.C. App. 240, 455 S.E.2d 163 (1995).

Prior Offense Was Required Before Higher Penalty Could Be Imposed. — Where the indictment did not charge defendant with a conviction for a prior offense and the State did not prove a prior conviction, the case was remanded for a new sentence hearing since both are required before the higher penalty can be imposed. State v. Williams, 93 N.C. App. 510, 378 S.E.2d 216 (1989).

Special Indictment. — When the State attempted to elevate a misdemeanor charge of breaking into a coin-operated machine to felony status, a special indictment charging defendant as being an habitual felon, based in part on an alleged prior conviction for feloniously breaking into a coin-operated machine, could not serve as a substitute for the special indictment required under this section. State v. Sullivan, 111 N.C. App. 441, 432 S.E.2d 376 (1993).

II. STIPULATION OF PREVIOUS CONVICTIONS.

Effect of Failure to Arraign Where Defendant Stipulates to Charges. — Fact that the trial court did not formally arraign defendant upon charge alleging previous convictions of habitual impaired driving and did not advise defendant that he could admit the previous convictions, deny them, or remain silent, as required by subsection (c) of this section, was not reversible error where defendant stipulated to his previous convictions. State v. Jernigan, 118 N.C. App. 240, 455 S.E.2d 163 (1995).

Relief precluded. — Where no fatal variance was shown between the indictment for felonious habitual impaired driving and proof at trial, since defendant's counsel stipulated to previous convictions as set out in the indictment, defendant failed to show that he was entitled to any relief with regard to the indictment. State v. Baldwin, 117 N.C. App. 713, 453 S.E.2d 193 (1995).

ARTICLE 50.

Voluntary Dismissal.

§ 15A-931. Voluntary dismissal of criminal charges by the State.

(a) Except as provided in G.S. 20-138.4, the prosecutor may dismiss any charges stated in a criminal pleading including those

…ferred for prosecution by enteri…
…fore or during the trial, or by f…
…clerk at any time. The clerk mus…
…the prosecutor and note in the c…
…impaneled or evidence has been i…
(b) No statute of limitations is …
…dismissed pursuant to this sectio…
…s. 27; 1983, c. 435, s. 5; 1991, c. …

Legal Periodicals. —
For note, "Double Jeopardy — When … Does Jeopardy Attach in a Non-Jury …

CASE …

Judicial Authority Is Not In…fringed. — Because the ultimate au…thority over managing the trial calenda… is retained in the court, it cannot be said that this statute infringes upon the court's inherent authority or vests the district attorney with judicial powers in violation of the separation of powers clause. Simeon v. Hardin, 339 N.C. 358, 451 S.E.2d 858 (1994).

When Double Jeopardy Attaches in Bench Trial. — In a bench trial double jeopardy does not attach until the introduction of evidence. State v. Brunson, 96 N.C. App. 347, 385 S.E.2…

§ 15A-932. Dismissal w… fails to app… found or p… ecution ag…

(a) The prosecutor may ent… pearance when a defendant:
(1) Cannot be readily fo… arrest after the gran…
(2) Fails to appear at … attendance is requi… defendant cannot be …
(a1) The prosecutor may en… a deferred prosecution agree… the provisions of Article 82 o…
(b) Dismissal with leave … deferred prosecution agreem… the docket of the court, bu… validity, and all necessary … investigate the case, or oth… taken, including the issuan… ders, search warrants, new… ceedings, and the like.
(c) The prosecutor may en… pearance or pursuant to a d… open court or by filing the d…

deferred for prosecution by entering an oral dismissal in open court before or during the trial, or by filing a written dismissal with the clerk at any time. The clerk must record the dismissal entered by the prosecutor and note in the case file whether a jury has been impaneled or evidence has been introduced.

(b) No statute of limitations is tolled by charges which have been dismissed pursuant to this section. (1973, c. 1286, s. 1; 1975, c. 166, s. 27; 1983, c. 435, s. 5; 1991, c. 109, s. 1.)

Legal Periodicals. —

For note, "Double Jeopardy — When Does Jeopardy Attach in a Non-Jury Trial in North Carolina? — State v. Brunson," see 13 Campbell L. Rev. 123 (1990).

CASE NOTES

Judicial Authority Is Not Infringed. — Because the ultimate authority over managing the trial calendar is retained in the court, it cannot be said that this statute infringes upon the court's inherent authority or vests the district attorney with judicial powers in violation of the separation of powers clause. Simeon v. Hardin, 339 N.C. 358, 451 S.E.2d 858 (1994).

When Double Jeopardy Attaches in Bench Trial. — In a bench trial, double jeopardy does not attach until the introduction of evidence. State v. Brunson, 96 N.C. App. 347, 385 S.E.2d 542 (1989), aff'd, 327 N.C. 244, 393 S.E.2d 860 (1990).

In a bench trial in district court where dismissal was taken to avert the necessity of introducing evidence rather than after its introduction, double jeopardy had not attached; jeopardy will attach only after introduction of evidence. State v. Brunson, 96 N.C. App. 347, 385 S.E.2d 542 (1989).

Cited in State v. Brunson, 327 N.C. 244, 393 S.E.2d 860 (1990); State v. Goodson, 101 N.C. App. 665, 401 S.E.2d 118 (1991).

§ 15A-932. Dismissal with leave when defendant fails to appear and cannot be readily found or pursuant to a deferred prosecution agreement.

(a) The prosecutor may enter a dismissal with leave for nonappearance when a defendant:

(1) Cannot be readily found to be served with an order for arrest after the grand jury had indicted him; or

(2) Fails to appear at a criminal proceeding at which his attendance is required, and the prosecutor believes the defendant cannot be readily found.

(a1) The prosecutor may enter a dismissal with leave pursuant to a deferred prosecution agreement entered into in accordance with the provisions of Article 82 of this Chapter.

(b) Dismissal with leave for nonappearance or pursuant to a deferred prosecution agreement results in removal of the case from the docket of the court, but all process outstanding retains its validity, and all necessary actions to apprehend the defendant, investigate the case, or otherwise further its prosecution may be taken, including the issuance of nontestimonial identification orders, search warrants, new process, initiation of extradition proceedings, and the like.

(c) The prosecutor may enter the dismissal with leave for nonappearance or pursuant to a deferred prosecution agreement orally in open court or by filing the dismissal in writing with the clerk. If the

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 465 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A DEFENDANT BE NOTIFIED WHEN THE PROSECUTOR TAKES A VOLUNTARY DISMISSAL OF THE CHARGES AGAINST THE DEFENDANT AND NEITHER THE DEFENDANT NOR THE DEFENDANT'S ATTORNEY IS PRESENT AT THE TIME OF THE DISMISSAL.

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 907

Short Title: Mediated Settlement/Family Issues. (Public)

Sponsors: Representatives Baddour, Hackney (Cosponsors); Bonner, Boyd-McIntyre, Braswell, Dedmon, Easterling, Gamble, Goodwin, Hensley, R. Hunter, Hurley, Insko, Mercer, Moore, Morris, Mosely, Nichols, Russell, Saunders, Sutton, Tolson, Wainwright, Warwick, Watson, C. Wilson, and Womble.

Referred to: Judiciary II.

April 10, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PILOT PROGRAM OF MEDIATED SETTLEMENT CONFERENCES IN DISTRICT COURT ACTIONS INVOLVING CERTAIN FAMILY ISSUES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 7A of the General Statutes is amended by adding the following new section to read:

"**§ 7A-38.4. Mediated settlement conferences in district court actions.**

(a) The purpose of this section is to authorize the design, implementation, and evaluation of a pilot program in which parties to district court actions involving equitable distribution, alimony, and support may be required to attend a pretrial mediated settlement conference or other settlement procedure.

(b) The Dispute Resolution Commission established under the Judicial Department shall, with the advice of the Director of the Administrative Office of the Courts, design the pilot program and its coordination with existing settlement programs. The pilot program may be implemented in any judicial district if the Director of the Administrative Office of the Courts and the chief district court judge of that district determine that use of the program is appropriate. A pilot program may be terminated by the Director of the Administrative Office of the Courts after consultation with the chief district court judge.

(c) The Supreme Court may adopt rules to implement this section. The definitions in G.S. 7A-38.1(b)(2) and (b)(3) apply to this section.

(d) The chief district court judge of any participating district may order a mediated settlement conference for any action pending in the district involving issues of equitable distribution, alimony, or child or spousal support. The chief district court judge may by local rule order all such cases, not otherwise exempted by Supreme Court rule, to mediated settlement conference.

(e) The parties to a district court action in which a mediated settlement conference is ordered, their attorneys, and other persons or entities with authority, by law or by contract, to settle the parties' claims shall attend the mediated settlement conference, or other settlement procedure ordered by the court, unless excused by the rules of the Supreme Court or by order of the chief district court judge. Nothing in this section shall require any party or other participant in the conference to make a settlement offer or demand which it deems is contrary to its best interests.

(f) Any person required to attend a mediated settlement conference or other settlement procedure ordered by the court who, without good cause, fails to attend in compliance with this section and the rules adopted under this section, shall be subject to any appropriate monetary sanction imposed by a chief or presiding district court judge, including the payment of attorneys' fees, mediator fees, and expenses incurred in attending the conference. If the court imposes sanctions, it shall do so, after notice and hearing, in a written order, making findings of fact and conclusions of law. An order imposing sanctions shall be reviewable upon appeal where the entire record as submitted shall be reviewed to determine whether the order is supported by substantial evidence.

(g) The parties to a district court action in which a mediated settlement conference is to be held pursuant to this section shall have the right to designate a mediator. Upon failure of the parties to designate within the time established by the rules of the Supreme Court, a mediator shall be appointed by the chief district court judge or its designee.

(h) The chief district court judge, at the request of and with the consent of the parties, may order the parties to attend and participate in any other settlement procedure authorized by rules of the Supreme Court or by local district court rules, in lieu of attending a mediated settlement conference. Neutral third parties acting pursuant to this section shall be selected and compensated in accordance with the rules or pursuant to agreement of the parties. Nothing herein shall prohibit the parties from participating in other dispute resolution procedures, including arbitration, to the extent authorized under State or federal law.

(i) Mediators and other neutrals acting pursuant to this section shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice, except that mediators and other neutrals may be disciplined in accordance with enforcement procedures adopted by the Supreme Court pursuant to G.S. 7A-38.2.

(j) Costs of mediated settlement conferences and other settlement procedures shall be borne by the parties. Unless otherwise ordered by the court or agreed to by the

parties, the mediator's fees shall be paid in equal shares by the parties. The rules adopted by the Supreme Court implementing this section shall set out a method whereby parties found by the court to be unable to pay the costs of settlement procedures are afforded an opportunity to participate without cost.

(k) Evidence of statements made and conduct occurring in a mediated settlement conference shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim. However, no evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediated settlement conference.

No mediator, or other neutral conducting a settlement procedure pursuant to this section, shall be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediated settlement conference or other settlement procedure in any civil proceeding for any purpose, except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators, and proceedings to enforce laws concerning juvenile or elder abuse.

(l) The Supreme Court may adopt standards for the certification and conduct of mediators and other neutrals who participate in the mediated settlement conference program established pursuant to this section. The standards may also regulate mediator training programs. The Supreme Court may adopt procedures for the enforcement of those standards. The administration of mediator certification, regulation of mediator conduct, and decertification shall be conducted through the Dispute Resolution Commission. An administrative fee not to exceed two hundred dollars ($200.00) may be charged by the Administrative Office of the Courts to applicants for certification and annual renewal of certification for mediators and mediator training programs operation under this section. The fees collected may be used by the Director of the Administrative Office of the Courts to establish and maintain the operations of the Commission and its staff.

(m) Nothing in this section or rules adopted pursuant to it shall restrict the right to jury trial."

Section 2. The Administrative Office of the Courts may solicit funds from private sources to design, establish, conduct, and evaluate the pilot program authorized under Section 1 of this act.

Section 3. The Administrative Office of the Courts shall evaluate the pilot program authorized under this act and shall report its findings and recommendations to the 1999 General Assembly upon its convening.

Section 4. The pilot program designed by the Dispute Resolution Commission becomes effective January 1, 1998, and expires September 1, 1999.

Section 5. This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 907 A BILL TO BE ENTITLED AN ACT TO ESTABLISH A PILOT PROGRAM OF MEDIATED SETTLEMENT CONFERENCES IN DISTRICT COURT ACTIONS INVOLVING CERTAIN FAMILY ISSUES.

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)

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **April 22, 1997 7:30 A.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Janis Blomquist	NCAJH
Steve Keene	NC MS
Dave Horne	Smith Anderson
Charles P. Wilkins	NC Assoc. Chiefs of Police
Pam Morgan	NFIB
Becki Stuart	PPAB
[illegible]	NC Assoc of Realtors
Bill Watson	NCAE

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 22, 1997

The North Carolina House of Representatives Judiciary II Committee met on April 22, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Berry, Bowie, Cansler, Creech, Culpepper, Gardner, Goodwin, Hackney, Hensley, Nesbitt, Redwine, Russell, Saunders, Shubert, Sutton, Weatherly and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-176 EQUINE ACTIVITIES/DUTIES AND LIABILITY
HB-222 HABITUAL FELON DETERMINATION
HB-584 ATTEMPTION TO ELUDE ARREST

Representative Culpepper was recognized to explain a proposed committee substitute for HB-176 and answer questions of committee members. A copy of the committee substitute bill is attached.

Representative Creech moved the proposed committee substitute be adopted for purpose of discussion; motion passed.

Representative Sutton moved for a favorable report as to committee substitute bill; unfavorable as to original bill; motion passed.

Representative Culpepper was recognized to explain a proposed committee substitute for HB-222 and answer questions of committee members. A copy of the proposed committee substitute bill is attached.

Representative Hensley was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

No action was taken on HB-222.

Representative Jarrell was recognized to present a proposed committee substitute for HB-584 and answer questions of committee members. A copy of the proposed committee substitute bill is attached.

Mr. Eddie Caldwell representing the North Carolina Sheriff's Association and The Law Enforcement Association, spoke in support of the committee substitute bill.

No action was taken on HB-584

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H176-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 176
THIS IS A DRAFT 22-APR-97 08:55:04
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Equine Activities/Duties and Liability. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY RESPONSIBILITIES AND LIABILITY FOR EQUINE ACTIVITIES.

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.

"Equine Activity Liability.

"§ 106-810. Purpose; findings.

The General Assembly finds that persons who participate in equine 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 equine activities by clarifying the responsibilitiesof equine activity sponsors, equine professionals, and participants in equine activities.

"§ 106-811. Definitions.

As used in this Article, the term:

(1) 'Engage in an equine activity' means participate in an equine activity, assist a participant in an equine activity, or assist an equine activity sponsor or equine professional. The term 'engage in an equine activity' does not include being a spectator at an equine activity, except in cases in which the spectator places himself in an unauthorized area and in immediate proximity to the equine activity.

(2) 'Equine' means a horse, pony, mule, donkey, or hinny.

(3) 'Equine activity' means any activity involving an equine.

(4) 'Equine activity sponsor' means an individual, group, club, partnership, or corporation, whether the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for an equine activity.The term includes operators and promoters of equine facilities.

(5) 'Equine professional' means a person engaged for compensation in:

a. Instructing a participant;

b. Renting an equine to a participant for the purpose of riding, driving, or being a passenger upon the equine;

c. Renting equipment or tack to a participant;

d. Examining or administering medical treatment to an equine; or

e. Hooftrimming or placing or replacing horseshoes on an equine.

(6) 'Inherent risks of equine activities' means those dangers or conditions which are an integral part of equine activities, including:

a. The possibility of an equine behaving in ways that may result in injury, harm, or death to persons on or around them; and

b. The unpredictability of an equine's reaction to such things as sounds, sudden movement, unfamiliar objects, persons, or other animals.

(7) 'Participant' means any person, whether amateur or professional, who engages in an equine activity, whether or not a fee is paid to participate in the equine activity.

"§ 106-812. Liability.

(a) Except as provided in subsection (b) of this section, an equine activity sponsor, an equine 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 equine 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 an equine activity sponsor, an equine professional, or any other person for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of equine activities.

(b) Nothing in subsection (a) of this section shall prevent or limit the liability of an equine activity sponsor, an equine professional, or any other person if the equine activity sponsor, equine 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 equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity or to safely manage the particular equine.

(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 an equine activity sponsor or an equine professional under liability provisions as set forth in the products liability laws.

"§ 106-813. Warning required.

(a) Every equine professional and every equine activity sponsor shall post and maintain signs which 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 equine professional or the equine activity sponsor conducts equine 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 an equine professional or by an equine activity sponsor for the providing of professional services, instruction, or the rental of equipment or tack or an equine to a participant, whether or not the contract involves equine activities on or off the location or site of the equine professional's or the equine 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, an equine activity sponsor or equine professional is not liable for an injury to or the death of a participant in equine activities resulting exclusively from the inherent risks of equine 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 an equine activity sponsor or equine 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.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 176 A BILL TO BE ENTITLED AN ACT TO CLARIFY RESPONSIBILITIES FOR EQUINE ACTIVITIES AND TO PROVIDE QUALIFIED IMMUNITY FROM LIABILITY.

☐ 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, 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)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 176
Proposed Committee Substitute H176-PCS1322

Short Title: Equine Activities/Duties and Liability. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY RESPONSIBILITIES AND LIABILITY FOR EQUINE ACTIVITIES.

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.

"Equine Activity Liability.

"**§ 106-810. Purpose; findings.**

The General Assembly finds that persons who participate in equine 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 equine activities by clarifying the responsibilities of equine activity sponsors, equine professionals, and participants in equine activities.

"**§ 106-811. Definitions.**

As used in this Article, the term:

(1) 'Engage in an equine activity' means participate in an equine activity, assist a participant in an equine activity, or assist an equine activity sponsor or equine professional. The term 'engage in an equine activity' does not include being a spectator at an equine activity, except in cases in which the spectator places

himself in an unauthorized area and in immediate proximity to the equine activity.

(2) 'Equine' means a horse, pony, mule, donkey, or hinny.

(3) 'Equine activity' means any activity involving an equine.

(4) 'Equine activity sponsor' means an individual, group, club, partnership, or corporation, whether the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for an equine activity. The term includes operators and promoters of equine facilities.

(5) 'Equine professional' means a person engaged for compensation in:

a. Instructing a participant;

b. Renting an equine to a participant for the purpose of riding, driving, or being a passenger upon the equine;

c. Renting equipment or tack to a participant;

d. Examining or administering medical treatment to an equine; or

e. Hooftrimming or placing or replacing horseshoes on an equine.

(6) 'Inherent risks of equine activities' means those dangers or conditions which are an integral part of equine activities, including:

a. The possibility of an equine behaving in ways that may result in injury, harm, or death to persons on or around them; and

b. The unpredictability of an equine's reaction to such things as sounds, sudden movement, unfamiliar objects, persons, or other animals.

(7) 'Participant' means any person, whether amateur or professional, who engages in an equine activity, whether or not a fee is paid to participate in the equine activity.

"**§ 106-812. Liability.**

(a) Except as provided in subsection (b) of this section, an equine activity sponsor, an equine 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 equine 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 an equine activity sponsor, an equine professional, or any other person for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of equine activities.

(b) Nothing in subsection (a) of this section shall prevent or limit the liability of an equine activity sponsor, an equine professional, or any other person if the equine activity sponsor, equine 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 equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity or to safely manage the particular equine;

(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 an equine activity sponsor or an equine professional under liability provisions as set forth in the products liability laws.

"§ 106-813. Warning required.

(a) Every equine professional and every equine activity sponsor shall post and maintain signs which 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 equine professional or the equine activity sponsor conducts equine 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 an equine professional or by an equine activity sponsor for the providing of professional services, instruction, or the rental of equipment or tack or an equine to a participant, whether or not the contract involves equine activities on or off the location or site of the equine professional's or the equine 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, an equine activity sponsor or equine professional is not liable for an injury to or the death of a participant in equine activities resulting exclusively from the inherent risks of equine 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 an equine activity sponsor or equine 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H222-PCSRG-002A
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 222
THIS IS A DRAFT 22-APR-97 09:19:58
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Habit. Felon Determination. (Public)

Sponsors:

Referred to:

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO RECODIFY THE LAW CONCERNING HABITUAL FELONS AND VIOLENT HABITUAL FELONS, TO PROVIDE THAT THE ISSUE OF WHETHER A DEFENDANT IS AN HABITUAL FELON OR A VIOLENT HABITUAL FELON SHALL BE DETERMINED BY THE TRIAL JUDGE, AND TO MAKE OTHER CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-7.1 is recodified as G.S. 15A-1340.13A; the remainder of Article 2A of Chapter 14 of the General Statutes is repealed.

Section 2. G.S. 14-7.1, as recodified by Section 1 of this act, reads as rewritten:

"**§ 15A-1340.13A.** ~~Persons defined as habitual~~ Habitual felons.

~~Any person who has been convicted of or pled guilty to three felony offenses in any federal court or state court in the United States or combination thereof is declared to be an habitual felon. For the purpose of this Article, a felony offense is defined as an offense which is a felony under the laws of the State or other sovereign wherein a plea of guilty was entered or a conviction was returned regardless of the sentence actually imposed. Provided, however, that federal offenses relating to the~~

~~manufacture, possession, sale and kindred offenses involving intoxicating liquors shall not be considered felonies for the purposes of this Article. For the purposes of this Article, felonies committed before a person attains the age of 18 years shall not constitute more than one felony. The commission of a second felony shall not fall within the purview of this Article unless it is committed after the conviction of or plea of guilty to the first felony. The commission of a third felony shall not fall within the purview of this Article unless it is committed after the conviction of or plea of guilty to the second felony. Pleas of guilty to or convictions of felony offenses prior to July 6, 1967, shall not be felony offenses within the meaning of this Article. Any felony offense to which a pardon has been extended shall not for the purpose of this Article constitute a felony. The burden of proving such pardon shall rest with the defendant and the State shall not be required to disprove a pardon.~~

(a) Definitions. -- The following definitions shall apply in this section when determining a person's status as an habitual felon:

(1) Felony. -- An offense that is a felony under the laws of the State or or other sovereign wherein a plea of guilty was entered or a conviction was returned regardless of the sentence actually imposed. The term does not include, however, federal offenses relating to the manufacture, possession, sale of, and kindred offenses involving intoxicating liquors. For the purposes of this section, felonies committed before a person attains the age of 18 years shall not constitute more than one felony. The commission of a second felony shall not fall within the purview of this section unless it is committed after the conviction of or plea of guilty to the first felony. The commission of a third felony shall not fall within the purview of this section unless it is committed after the conviction of or plea of guilty to the second felony. Pleas of guilty to or convictions of felonies before July 6, 1967, are not felonies for the purposes of this section. A felony offense to which a pardon has been extended is not a felony for the purposes of this section. The burden of proving the pardon shall rest with the defendant; the State is not required to disprove a pardon.

(2) Habitual felon. -- A person who has been convicted of or pled guilty to three or more felony offenses in any federal court or state court in the United States or combination thereof prior to committing the current offense.

(b) Sentencing of Habitual Felons. -- When a person is convicted of or pleads guilty to any felony under the laws of this State, the district attorney may, upon sentencing, submit to the trial judge, as an enhanced sentencing factor, the determination of the person's status as an habitual felon. If the trial judge determines, upon submission by the district attorney of the defendant's status as an habitual felon, that the felony was committed by an habitual felon, the trial judge shall sentence the person as a Class C felon, except where the felon has been sentenced as a Class A, B1, or B2 felon. In determining the prior record level of the person sentenced as an habitual felon, the convictions used to establish the person's status as an habitual felon shall not be used. A sentence imposed on an habitual felon pursuant to this section shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section.

(c) Disclosure of Habitual Felon Status.-- If the district attorney fails to serve notice upon the defendant no later than 20 working days before trial of the defendant's status as an habitual felon and the district attorney's intention to submit to the trial judge the defendant's status as an habitual felon, the defendant may not be sentenced as an habitual felon under this section.

(d) Evidence of Prior Convictions. -- In sentencing a person under this section, the record or records of prior convictions of felony offenses may be used by the court to determine if the person has been convicted of former felony offenses. A prior conviction may be shown 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 sufficient to show that the defendant named therein is the same as the defendant before the court and to show the facts set out in the record, and the burden of any showing to the contrary shall be upon the defendant."

Section 3. G.S. 14-7.7 is recodified as G.S. 15A-1340.13B; the remainder of Article 2B of Chapter 14 of the General Statutes is repealed.

Section 4. G.S. 14-7.7, as recodified by Section 3 of this act, reads as rewritten:

"§ 15A-1340.13B. ~~Persons defined as violent~~ Violent habitual felons.

~~(a) Any person who has been convicted of two violent felonies in any federal court, in a court of this or any other state of the United States, or in a combination of these courts is declared to be a violent habitual felon. For purposes of this Article, "convicted" means the person has been adjudged guilty of or has entered a plea of guilty or no contest to the violent felony charge, and judgment has been entered thereon when such action occurred on or after July 6, 1967. This Article does not apply to a second violent felony unless it is committed after the conviction or plea of guilty or no contest to the first violent felony. 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. Conviction as an habitual felon shall not, for purposes of this Article, constitute a violent felony.~~

~~(b) For purposes of this Article, "violent felony" includes the following offenses:~~

~~(1) All Class A through E felonies.~~

~~(2) Any repealed or superseded offense substantially equivalent to the offenses listed in subdivision (1).~~

~~(3) Any offense committed in another jurisdiction substantially equivalent to the offenses set forth in subdivision (1) or (2).~~

(a) Definitions.-- The following definitions shall apply in this section when determining a person's status as a violent habitual felon:

(1) Violent felony.-- An offense that is one of the following:

a. All Class A through E felonies.

b. Any repealed or superseded offense substantially equivalent to the offenses listed in sub-subdivision a.

c. Any offense committed in another jurisdiction substantially equivalent to the offenses set forth in sub-subdivisions a. or b.

A person is convicted of a violent felony if he or she has been adjudged guilty of or has entered a plea of guilty to a violent felony charge, and a judgment has been entered on or after July

6, 1967. This section does not apply to a second violent felony unless it is committed after the conviction or plea of guilty or no contest to the first violent felony. Any felony to which a pardon has been extended shall not, for the purposes of this section, constitute a violent felony. The burden of proving a pardon shall rest with the defendant, and the State shall not be required to disprove a pardon. Conviction and punishment as an habitual felon shall not, for the purposes of this section, constitute a violent felony.

(2) Violent habitual felon.-- Any person who has been convicted of two violent felonies in any federal court, in a court of this or any other state of the United States, or in a combination of these courts.

(b) Sentencing of Violent Habitual Felons.-- When a person is convicted of or pleads guilty to any violent felony under the laws of this State, the district attorney may, upon sentencing, submit to the trial judge, as an enhanced sentencing factor, the determination of the person's status as a violent habitual felon. If the trial judge determines, upon the submission by the district attorney of the person's status as a violent habitual felon, that the violent felony was committed by a violent habitual felon, the trial judge shall sentence the person to life imprisonment without parole, except where the death penalty is imposed. Life imprisonment without parole means that the person will spend the remainder of the person's natural life in prison. The sentencing judge may not suspend the sentence and may not place the person sentenced on probation. Sentences for violent habitual felons imposed under this Article shall run consecutively with and shall commence at the expiration of any other sentence being served by the person.

(c) Disclosure of Violent Habitual Felon Status.-- If the district attorney fails to serve notice upon the defendant no later than 20 working days before trial of the defendant's status as a violent habitual felon and the district attorney's intention to submit to the trial judge the defendant's status as a violent habitual felon, the defendant may not be sentenced as a violent habitual felon under this section.

(d) Evidence of Prior Convictions.-- In sentencing a person under this section, the records of prior convictions of violent felonies may be used by the court to determine if the person has been convicted of former violent felonies. A prior conviction may be shown 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, and the burden of any showing to the contrary shall be upon the defendant."

Sec. 6. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 222 DATE _____

S. B. No. _____ Amendment No. _____

Proposed Comm. Sub. (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Hensley

Sen.)

moves to amend the bill on page 3, line 23

( ) WHICH CHANGES THE TITLE

by inserting between the word "serve" and the word "notice" the word "written";

and on page 5, line 32,

by inserting between the word "serve" and the word "notice" the word "written"

SIGNED R J Hensley Jr

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 584
H584-CSLK-1
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Attempting to Elude Arrest. (Public)

Sponsors:

Referred to: Judiciary I

March 24, 1997

A BILL TO BE ENTITLED

AN ACT TO LIMIT, TO MODIFY, AND ENHANCE TO ATTEMPTING TO ELUDE ARREST STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-141.5. Speeding to elude arrest.

(a) It shall be unlawful for any person to operate a motor vehicle or knowingly allow a vehicle owned by him, or under his control, to be operated on a street, highway, or public vehicular area while fleeing or attempting to elude a law enforcement officer who is in the lawful performance of his duties.

(b) If two or more of the following aggravating factors are present at the time the violation occurs, the person operating the vehicle shall be guilty of a Class H felony.

(1) Speeding in excess of 15 miles per hour over the legal speed limit.

(2) Gross impairment of the person's faculties while driving due to:

a. Consumption of an impairing substance; or

b. A blood alcohol concentration of 0.14 or more within a relevant time after the driving.

(3) Especially reckless or dangerous driving.

(4) Negligent driving leading to an accident causing:
a. Property damage in excess of one thousand dollars ($1,000); or
b. Personal injury.
(5) Driving when his drivers license is revoked.
(6) Driving through a marked school zone or work zone.
(7) Passing a stopped school bus.
(8) Driving with a child under 12 years of age in the vehicle.

Any other violation of this section shall be punished as a Class 1 misdemeanor.

(c) Whenever evidence is presented in any court or administrative hearing of the fact that a vehicle was operated in violation of this section, it shall be prima facie evidence that the vehicle was operated by the person in whose name the vehicle was registered at the time of the violation, according to the Division's records. If the vehicle is rented, then proof of that rental shall be prima facie evidence that the vehicle was operated by the renter of the vehicle at the time of the violation.

(d) The Division shall revoke, for one year, the drivers license of any person convicted of a misdemeanor under this section. The Division shall revoke, for three years, the drivers license of any person convicted of a felony under this section. In the case of a first felony conviction under this section, the licensee may apply to the sentencing court for a limited driving privilege after a period of 18 months of revocation, provided the operator's license has not also been revoked or suspended under any other provision of law. A limited driving privilege issued under this subsection shall be valid for the period of revocation remaining in the same manner and under the terms and conditions prescribed in G.S. 20-16.1(b). If the person's license is revoked under any other statute, the limited driving privilege issued pursuant to this subsection is invalid.

(e) When the probable cause of the law enforcement officer is based on the prima facie evidence rule set forth in subsection (c) above, the officer shall make a reasonable effort to contact the registered owner of the vehicle prior to initiating criminal process."

Section 2. G.S. 20-141(j) and G.S. 20-17(10) are repealed.

Section 3. G.S. 20-179(d) reads as rewritten:

"(d) Aggravating Factors to Be Weighed. -- The judge must determine before sentencing under subsection (f) whether any of

the aggravating factors listed below apply to the defendant. The judge must weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.16 or more within a relevant time after the driving.

(2) Especially reckless or dangerous driving.

(3) Negligent driving that led to a reportable accident.

(4) Driving by the defendant while his driver's license was revoked.

(5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.

(6) Conviction under ~~G.S. 20-141(j)~~ G.S. 20-141.5 of speeding by the defendant while fleeing or attempting to elude apprehension.

(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.

(8) Passing a stopped school bus in violation of G.S. 20-217.

(9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor must occur during the same transaction or occurrence as the impaired driving offense."

Section 4. G.S. 58-36-75(c) reads as rewritten:

"(c) The subclassification plan promulgated pursuant to G.S. 58-36-65(b) shall provide for facility recoupment surcharges pursuant to G.S. 58-37-40(f) and G.S. 58-37-75, in addition to premium surcharges, for convictions for the following moving traffic violations:

General Statute	Description of Offense

20-12.1	Being impaired while accompanying a permittee who is learning to drive
20-28	Driving while license is suspended or revoked
20-138.1	Driving a vehicle while impaired
20-138.2	Driving a commercial vehicle while impaired
20-138.3	Driving by provisional licensee after consuming alcohol or drugs
20-140(a)	Driving carelessly and heedlessly in willful or wanton disregard of the rights of others
20-140(b)	Driving without due caution in a manner so as to endanger other people or property
20-141(a)	Only driving at least 11 miles per hour over the posted speed limit
~~20-141(j)~~	~~Driving in excess of 55 mph and at least 15 mph over legal limit, while fleeing or attempting to elude arrest by a law enforcement officer~~
20-141(j1)	Driving more than 15 mph over legal limit
20-141.1	Speeding in a school zone
20-141.3(a)	Engaging in prearranged speed competition with another motor vehicle
20-141.3(b)	Willfully engaging in speed competition with another motor vehicle (not prearranged)
20-141.3(c)	Allowing or authorizing others to use one's motor vehicle in prearranged speed competition or placing or receiving a bet or wager on a prearranged speed competition
20-141.4(a1)	Death by vehicle (unintentionally causing death of another while engaged in impaired driving)
20-141.4(a2)	Death by vehicle (unintentionally causing death of another as a result of a violation of motor vehicle law intended to regulate traffic or used to control operation of a vehicle)

20-141.5	Speeding while fleeing or attempting to elude arrest
20-166(a)	Failure to stop by driver who knew or should have known he was involved in accident and that accident caused death or injury to any person
20-166(c)	Failure of driver involved in accident causing property damage or personal injury or death (if driver did not know of injury or death) to stop at scene of accident
20-175.2	Failure to yield right-of-way to blind person at crossings, intersections, and traffic control signal points
20-217	Failure to stop and remain stopped when approaching a stopped school bus engaged in receiving or discharging passengers and while bus has mechanical stop signal displayed
14-18	Voluntary manslaughter
14-18	Involuntary manslaughter".

Section 5. G.S. 143-116.8(b) reads as rewritten:

"(b) (1) It shall be unlawful for a person to operate a vehicle in the State parks and forests road system at a speed in excess of twenty-five miles per hour (25 mph). When the Secretary of Environment, Health, and Natural Resources determines that this speed is greater than reasonable and safe under the conditions found to exist in the State parks and forests road system, the Secretary may establish a lower reasonable and safe speed limit. No speed limit established by the Secretary pursuant to this provision shall be effective until posted in the part of the system sought to be affected.

(2) Any person convicted of violating this subsection by operating a vehicle on the State parks and forests road system ~~in excess of twenty-five miles per hour (25 mph) and at least fifteen miles per hour (15 mph) over the legal limit~~ while fleeing or attempting to elude arrest or apprehension by a law enforcement officer with authority to enforce the motor vehicle laws, shall be punished as provided in ~~G.S. 20-141(j).~~ G.S. 20-141.5.

(3) For the purposes of enforcement and administration of Chapter 20, the speed limits stated and authorized to be adopted by this section are speed limits under Chapter 20.

(4) The Secretary may designate any part of the State parks and forests road system for one-way traffic and shall erect appropriate signs giving notice thereof. It shall be a violation of G.S. 20-165.1 for any person to willfully drive or operate any vehicle on any part of the State parks and forests road system so designated except in the direction indicated.

(5) The Secretary shall have power, equal to the power of local authorities under G.S. 20-158 and G.S. 20-158.1, to place vehicle control signs and signals and yield-right-of-way signs in the State parks and forests road system; the Secretary also shall have power to post such other signs and markers and mark the roads in accordance with Chapter 20 as the Secretary may determine appropriate for highway safety and traffic control. The failure of any vehicle driver to obey any vehicle control sign or signal, or any yield-right-of-way sign placed under the authority of this section in the State parks and forests road system shall be an infraction and shall be punished as provided in G.S. 20-176."

Section 6. This act becomes effective December 1, 1997.

Susan Hayes
from
Jane Gray

SPEEDING TO ELUDE

HB 584

PURPOSE

This legislation attempts to address the problem of police chases and pursuits by: (1) reducing the incentive to flee attempted vehicle stops by law enforcement, and (2) providing law enforcement officers tools to reduce the number of prolonged chases without foregoing apprehension and prosecution of the offender.

Incentive to flee. The penalty for attempting to elude a lawful police signal to stop is presently a Class 1 Misdemeanor (minimum 45 days community punishment to a maximum of 120 days active imprisonment). This current penalty sends the wrong message to those who endanger the general motoring public by attempting to elude arrest, usually by speeding recklessly.

Incentive to terminate chase. If officers have a means to proceed against the presumed operator (the owner) officers will be willing to let the offender go...for the moment. Officers will know that they have not let the offender go free, but following an effort to discuss the violation with the registered owner, will be able to initiate criminal process. The owner's rights are not compromise because the proposed legislation establishes a proceeding to determine whether or not the registered driver was the operator at the time of the offense.

Appropriate penalties. The proposed legislation scales the penalty to the amount of danger the offender poses to the motoring public and others. Absent clear proof of the aggravating circumstances, the offense would be a misdemeanor. Gross endangerment of the public, however, would subject the driver to a more severe penalty. In other words, less serious offenders would be charged with a misdemeanor while the most serious offenders who endanger the public would be subject to the felony penalty.

SUPPORT

This legislation has the support of the Attorney General and the 18 associations which comprise the Law Enforcement Association Presidents (LEAP) Council. (NC Association of Chiefs of Police, NC Sheriffs' Association, NC Law Enforcement Officers' Association, NC Police Executives' Association, NC Association of Police Attorneys, NC Law Enforcement Women's Association, North State Law Enforcement Officers' Association, NC Law Enforcement Planners' Association, NC Law Enforcement Training Officers' Association, NC Juvenile Officers' Association, NC Crime Prevention Officers' Association, NC Division of the Int'l Assoc. for Identification, Fraternal Order of Police, NC ABC Law Enforcement Officers' Association, NC Wildlife Officers' Association, NC Narcotic Officers Assoc., NC Retired Peace Officers' Association, NC Assoc. of Campus Law Enforcement Admin.)

THE SPECIFICS OF HB 584

1. **New Statutory Provision**. This bill creates a new section in Chapter 20 (Motor Vehicle Laws), specifically G.S. § 20-141.5, to divide the criminal offense of speeding to elude arrest by law enforcement into misdemeanor and felony categories. It repeals G.S. 20-141(j) (current misdemeanor speeding to elude provision) and § 20-17(10) (current license revocation provision relating to § 20-141(j)).

2. **Unlawful Acts**. It makes it unlawful to operate a motor vehicle, and flee or attempt to elude a law enforcement officer in the performance of his duties. Also make it unlawful for a person to knowingly allow another to operate his vehicle or one under his control in such a manner.

3. **Punishment Levels**. It is important to note that this law makes a distinction in punishment levels based upon the level of danger posed by the operator's behavior. The presence or absence of specified aggravating factors determines the level of danger for purposes of charging the operator under this section.

4. The violation becomes a felony **only if** two (2) or more of the eight (8) listed aggravating factors occur. Otherwise, the violation is Class 1 misdemeanor.

5. ***Prima Facie* Evidence**. Subsection (c), the *prima facie* evidence provision, is a key feature to this bill. This provision enables the officer chasing the vehicle to terminate the chase once he has the license tag number, and a description of the vehicle, driver, and other occupants, if any. *Prima facie* evidence does not change the legal principle that the accused is presumed innocent until proven guilty in a court of law (presumption of innocence), but merely establishes what constitutes a prima facie case (refer to Jane Gray's memo). Since vehicle registration creates merely *prima facie* evidence, which a jury can disregard if it chooses to do so and introduction of the registration does not shift the burden of proof to the defendant to disprove he was the driver of the fleeing vehicle, the proposed provision is constitutional.

6. The *prima facie* rule of evidence is not new. The General Assembly has used this *prima facie* rule on numerous occasions. (See attachment to Jane Gray's memo).

7. **License Revocation**. Upon conviction for misdemeanor, a person's license is revoked for one (1) year. Upon conviction for felony, the license revocation is for three (3) years (if first felony - can get limited driving privilege after 18 months of revocation)

PRIOR LEGISLATIVE HISTORY REGARDING SPEEDING TO ELUDE

See attached Bill History for SB 925 filed April 20, 1993.

DIFFERENCES BETWEEN THIS BILL AND PRIOR HB 434 - COMM. SUB. 5/3/95

1. § 20-141.5(b)(4) a. (page 1, line 21) Property damage > $1,000. (was $500.)

2. § 20-141.5(b)(8) (page 2, line 2) Additional factor added of "driving with a child under 12 in vehicle."

3. § 20-179(d)(1) (page 2, line 32) Aggravating factor for sentencing includes alcohol concentration of 0.14 or more (which is the current law). (was 0.20).

4. § 20-179(d)(3) (page 2, line 35) Aggravating factor for sentencing includes "negligent driving that let to a reportable accident" (which is current law) (was "accidents causing property damage > $500. or personal injury").

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **April 22, 1997 10:00 A.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alan Miles	Bailey & Dixon
[illegible]	NCCHA
Steve Keane	NCMS
[illegible]	NCSA
Jackie Street	APAB
John Madler	Sentencing Commission
[illegible]	News & Observer
[illegible]	ACC
[illegible]	NCAHC
Robin Henry	BHS student
Curt [illegible]	BHS Student
Ruth Sokpire	NCDOT
Tony Spence	DOT / DMV
Roselyn Sawtell	NC Coalition Against Domestic Violence
Gerald K. Robbins	Dept of Justice
Wade Harrison	N.C. BA Family Law Section
Jeanne Winner	NCBA
Leigh A Nobgood	NCBA Estate Planning/Fiduciary Section
Lyman Cooper	CSX Corp
Mary Lowry	Conf. of DA's, Raleigh
J. Craig Quick	PCMHH
[illegible]	Bailey & Dixon
Hugh Lee	
Kevin D. Johnson	High Point Econ. Dev. Corp.
Fred Baggett	High Point
Becky Smothers	Mayor, High Point

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 22, 1997

The North Carolina House of Representatives Judiciary II Committee met on April 22, 1997, at 1:00 P.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Berry, Cansler, Culpepper, Decker, Goodwin, Hackney, Hensley, McMahan, Nesbitt, Redwine, Russell, Shubert, Sutton and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-222 HABITUAL FELON DETERMINATION
HB-534 SUPPORT ORDERS ENFORCEMENT
HB-584 ATTEMPTION TO ELUDE ARREST

Representative Jarrell was recognized to continue her explanation of House Bill 584 and answer questions of committee members.

Ms. Jane Gray, Attorney General's Office, spoke on prima facie evidence and answered questions of committee members.

Representative Hackney was recognized to send forth an amendment and moved it be adopted; motion failed. A copy of the amendment is attached.

Representative Shubert was recognized to send forth an amendment and moved it be adopted; motion failed. A copy of the amendment is attached.

Representative Goodwin was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Berry was recognized to send forth an amendment and moved it be adopted; motion failed. A copy of the amendment is attached.

Representative Sutton moved the amendment be incorporated in a committee substitute bill with a favorable report as to committee substitute bill; unfavorable as to original bill; motion passed.

Representative Culpepper was recognized to review HB-222.

No action was taken on HB-222.

Representative Hackney was recognized to present a proposed committee substitute for HB-534 and moved it be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute is attached.

Mr. Wade Harrison, North Carolina Bar Association, Family Law Section, answered questions of committee members.

Representative Cansler was recognized to send forth an amendment and moved it be adopted; motion failed. A copy of the amendment is attached.

Mr. Bill Pulley, North Carolina Hospital Association, spoke in favor of Representative Cansler's amendment.

Representative Hackney was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Decker moved the amendment be incorporated in a committee substitute bill with a favorable report as to the committee substitute bill, unfavorable as to original bill; motion passed.

The meeting was adjourned at 1:50 P.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

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.) HENSLEY
)
Sen.)

moves to amend the bill on page 2, line 14

( ) WHICH CHANGES THE TITLE

by deleting "~~be~~ prima facie evidence" and inserting "~~a~~ rebuttable presumption" constitute

and on page 2, line 18

by deleting "~~be~~ prima facie evidence" and inserting "~~a~~ rebuttable presumption" constitute

and on page 2, lines 35-39 by deleting those lines

SIGNED R. J. Hensley Jr.

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 584

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

H584-ASA-012

Date_____,1997

Comm. Sub. [yes]
Amends Title []

Shubert

moves to amend the bill on page 1, line 15,
by

rewriting the line to read:

"the vehicle shall be guilty of a Class H felony. If one of the following aggravating factors is present at the time the violation occurs, the person operating the vehicle shall be guilty of a Class I felony.

and on page 2, line 10,

by rewriting the line to read:

"If no aggravating factors are present at the time the violation occurs, the person operating the vehicle shall be guilty of a"

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. ~~582~~ 584 DATE 4/22/97

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE 1

Rep.) Goodwin
Sen.)

1 moves to amend the bill on page 2, line 5

2 ( ) WHICH CHANGES THE TITLE

3 by removing "his" and inserting "~~the~~ person's"

4

5

6

7

9

10

11

12

13

14

15

16

17

18

19

SIGNED Wayne Goodwin

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 584

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

H584-ASA-011 Page 1 of __

Date_____,1997

Comm. Sub. [yes]
Amends Title []

Bowie

moves to amend the bill on page 2, lines 8-9,
by

rewriting the lines to read:

"(8) Driving with one or more passengers in the vehicle."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 584 A BILL TO BE ENTITLED AN ACT TO LIMIT, TO MODIFY, AND ENHANCE ATTEMPTING TO ELUDE ARREST 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 ☐

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 584
Proposed Committee Substitute H584-PCS1320

Short Title: Attempting to Elude Arrest. (Public)

Sponsors:

Referred to:

March 24, 1997

A BILL TO BE ENTITLED

AN ACT TO LIMIT, TO MODIFY, AND ENHANCE ATTEMPTING TO ELUDE ARREST STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-141.5. Speeding to elude arrest.**

(a) It shall be unlawful for any person to operate a motor vehicle or knowingly allow a vehicle owned by him, or under his control, to be operated on a street, highway, or public vehicular area while fleeing or attempting to elude a law enforcement officer who is in the lawful performance of his duties.

(b) If two or more of the following aggravating factors are present at the time the violation occurs, the person operating the vehicle shall be guilty of a Class H felony.

(1) Speeding in excess of 15 miles per hour over the legal speed limit.

(2) Gross impairment of the person's faculties while driving due to:

a. Consumption of an impairing substance; or

b. A blood alcohol concentration of 0.14 or more within a relevant time after the driving.

(3) Especially reckless or dangerous driving.

(4) Negligent driving leading to an accident causing:

a. Property damage in excess of one thousand dollars ($1,000); or

b. Personal injury.

(5) Driving when the person's drivers license is revoked.
(6) Driving through a marked school zone or work zone.
(7) Passing a stopped school bus.
(8) Driving with a child under 12 years of age in the vehicle.

Any other violation of this section shall be punished as a Class 1 misdemeanor.

(c) Whenever evidence is presented in any court or administrative hearing of the fact that a vehicle was operated in violation of this section, it shall be prima facie evidence that the vehicle was operated by the person in whose name the vehicle was registered at the time of the violation, according to the Division's records. If the vehicle is rented, then proof of that rental shall be prima facie evidence that the vehicle was operated by the renter of the vehicle at the time of the violation.

(d) The Division shall revoke, for one year, the drivers license of any person convicted of a misdemeanor under this section. The Division shall revoke, for three years, the drivers license of any person convicted of a felony under this section. In the case of a first felony conviction under this section, the licensee may apply to the sentencing court for a limited driving privilege after a period of 18 months of revocation, provided the operator's license has not also been revoked or suspended under any other provision of law. A limited driving privilege issued under this subsection shall be valid for the period of revocation remaining in the same manner and under the terms and conditions prescribed in G.S. 20-16.1(b). If the person's license is revoked under any other statute, the limited driving privilege issued pursuant to this subsection is invalid.

(e) When the probable cause of the law enforcement officer is based on the prima facie evidence rule set forth in subsection (c) above, the officer shall make a reasonable effort to contact the registered owner of the vehicle prior to initiating criminal process."

Section 2. G.S. 20-141(j) and G.S. 20-17(10) are repealed.

Section 3. G.S. 20-179(d) reads as rewritten:

"(d) Aggravating Factors to Be Weighed. -- The judge must determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The judge must weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.16 or more within a relevant time after the driving.
(2) Especially reckless or dangerous driving.
(3) Negligent driving that led to a reportable accident.
(4) Driving by the defendant while his driver's license was revoked.
(5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense

involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.

(6) Conviction under ~~G.S. 20-141(j)~~ G.S. 20-141.5 of speeding by the defendant while fleeing or attempting to elude apprehension.

(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.

(8) Passing a stopped school bus in violation of G.S. 20-217.

(9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor must occur during the same transaction or occurrence as the impaired driving offense."

Section 4. G.S. 58-36-75(c) reads as rewritten:

"(c) The subclassification plan promulgated pursuant to G.S. 58-36-65(b) shall provide for facility recoupment surcharges pursuant to G.S. 58-37-40(f) and G.S. 58-37-75, in addition to premium surcharges, for convictions for the following moving traffic violations:

General Statute	Description of Offense
20-12.1	Being impaired while accompanying a permittee who is learning to drive
20-28	Driving while license is suspended or revoked
20-138.1	Driving a vehicle while impaired
20-138.2	Driving a commercial vehicle while impaired
20-138.3	Driving by provisional licensee after consuming alcohol or drugs
20-140(a)	Driving carelessly and heedlessly in willful or wanton disregard of the rights of others
20-140(b)	Driving without due caution in a manner so as to endanger other people or property
20-141(a)	Only driving at least 11 miles per hour over the posted speed limit
~~20-141(j)~~	~~Driving in excess of 55 mph and at least 15 mph over legal limit, while fleeing or attempting to elude arrest by a law enforcement officer~~
20-141(j1)	Driving more than 15 mph over legal limit
20-141.1	Speeding in a school zone
20-141.3(a)	Engaging in prearranged speed competition with another motor vehicle
20-141.3(b)	Willfully engaging in speed competition with another motor vehicle (not prearranged)
20-141.3(c)	Allowing or authorizing others to use one's motor vehicle in prearranged speed

	competition or placing or receiving a bet or wager on a prearranged speed competition
20-141.4(a1)	Death by vehicle (unintentionally causing death of another while engaged in impaired driving)
20-141.4(a2)	Death by vehicle (unintentionally causing death of another as a result of a violation of motor vehicle law intended to regulate traffic or used to control operation of a vehicle)
20-141.5	Speeding while fleeing or attempting to elude arrest
20-166(a)	Failure to stop by driver who knew or should have known he was involved in accident and that accident caused death or injury to any person
20-166(c)	Failure of driver involved in accident causing property damage or personal injury or death (if driver did not know of injury or death) to stop at scene of accident
20-175.2	Failure to yield right-of-way to blind person at crossings, intersections, and traffic control signal points
20-217	Failure to stop and remain stopped when approaching a stopped school bus engaged in receiving or discharging passengers and while bus has mechanical stop signal displayed
14-18	Voluntary manslaughter
14-18	Involuntary manslaughter".

Section 5. G.S. 143-116.8(b) reads as rewritten:

"(b) (1) It shall be unlawful for a person to operate a vehicle in the State parks and forests road system at a speed in excess of twenty-five miles per hour (25 mph). When the Secretary of Environment, Health, and Natural Resources determines that this speed is greater than reasonable and safe under the conditions found to exist in the State parks and forests road system, the Secretary may establish a lower reasonable and safe speed limit. No speed limit established by the Secretary pursuant to this provision shall be effective until posted in the part of the system sought to be affected.

(2) Any person convicted of violating this subsection by operating a vehicle on the State parks and forests road system ~~in excess of twenty-five miles per hour (25 mph) and at least fifteen miles per hour (15 mph) over the legal limit~~ while fleeing or attempting to elude arrest or apprehension by a law enforcement officer with

authority to enforce the motor vehicle laws, shall be punished as provided in ~~G.S. 20-141(j).~~ G.S. 20-141.5.

(3) For the purposes of enforcement and administration of Chapter 20, the speed limits stated and authorized to be adopted by this section are speed limits under Chapter 20.

(4) The Secretary may designate any part of the State parks and forests road system for one-way traffic and shall erect appropriate signs giving notice thereof. It shall be a violation of G.S. 20-165.1 for any person to willfully drive or operate any vehicle on any part of the State parks and forests road system so designated except in the direction indicated.

(5) The Secretary shall have power, equal to the power of local authorities under G.S. 20-158 and G.S. 20-158.1, to place vehicle control signs and signals and yield-right-of-way signs in the State parks and forests road system; the Secretary also shall have power to post such other signs and markers and mark the roads in accordance with Chapter 20 as the Secretary may determine appropriate for highway safety and traffic control. The failure of any vehicle driver to obey any vehicle control sign or signal, or any yield-right-of-way sign placed under the authority of this section in the State parks and forests road system shall be an infraction and shall be punished as provided in G.S. 20-176."

Section 6. This act becomes effective December 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 432

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

H432-ARG-001 Page 2 of __

the debt that is or will be discharged under the terms of the medical insurance.

SIGNED _____
~~Amendment~~ Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

G.S. 110-136.3(b)(3):

(3) In the enforcement of alimony or postseparation support orders pursuant to G.S. 110-130.2, an obligor shall become subject to income withholding on the earlier of:

a. The date on which the obligor fails to make legally obligated alimony or postseparation payments; or

b. The date on which the obligor or obligee requests withholding.

G.S. 110-136.4(a)(2):

a. Whether the proposed withholding is based on the obligor's failure to make legally obligated child support, alimony or postseparation support payments ~~payments in an amount equal to the support payable for one month~~ or on the obligor's request for withholding or on the obligee's request for withholding;

b. The amount of overdue child support, overdue alimony or postseparation payments, the total amount to be withheld, and when the withholding will occur;

c. The name of each child for whose benefit the child support is due, and information sufficient to identify the court order under which the obligor has a duty to support the child, the name of the person for whose benefit the alimony or postseparation support payments are due, and information sufficient to identify the court order under which the obligor has a duty to support the spouse or former spouse;

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 534 A BILL TO BE ENTITLED AN ACT REGARDING THE CONTRACTUAL OBLIGATIONS OF SPOUSES, THE TRANSFER OF PROPERTY AND INCOME WITHHOLDING TO ENFORCE SUPPORT ORDERS, AND THE AWARDING OF ALIMONY, AS RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH CAROLINA BAR ASSOCIATION.

☐ 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

H534-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 534
THIS IS A DRAFT 15-APR-97 12:24:24
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Support Orders Enforcement. (Public)

Sponsors:

Referred to:

March 18, 1997

A BILL TO BE ENTITLED

AN ACT REGARDING THE CONTRACTUAL OBLIGATIONS OF SPOUSES, THE TRANSFER OF PROPERTY AND INCOME WITHHOLDING TO ENFORCE SUPPORT ORDERS, AND THE AWARDING OF ALIMONY, AS RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 52-2 reads as rewritten:

"**§ 52-2. Capacity to contract.**

(a) Subject to the provisions of G.S. 52-10 or 52-10.1, G.S. 39-7 and other regulations and limitations now or hereafter prescribed by the General Assembly, every married person is authorized to contract and deal so as to affect his or her real and personal property in the same manner and with the same effect as if he or she were unmarried.

(b) Except as otherwise provided by this section or by other State law, a spouse shall not be responsible for the other spouse's contract liability to a third party, whether the liability arose before or after the marriage. The doctrine of necessaries as it existed at common law, however, shall apply and shall apply equally to both spouses, except as provided in

subsection (c) of this section, but shall in no event create any liability between the spouses as to each other.

(c) The doctrine of necessaries shall not apply to either spouse when the spouses are living separate and apart with the intent on behalf of one of them to cease marital cohabitation, unless one of the following applies:

(1) The nondebtor spouse has willfully created the appearance of not being separated and has requested that the creditor extend credit to the estranged debtor spouse; or

(2) The debt is for medical expenses and the nondebtor spouse carries medical insurance on the debtor spouse, provided that the nondebtor spouse shall be liable only for the debt that is or will be discharged under the terms of the medical insurance."

Section 2. G.S. 50-13.4(e) reads as rewritten:

"(e) Payment for the support of a minor child shall be paid by lump sum payment, periodic payments, or by transfer of title or possession of personal property of any interest therein, or a security interest in or possession of real property, as the court may order. The court may order the transfer of title to real property in payment of arrearages of child support so long as the net value of the interest in the property being transferred does not exceed the amount of the arrearage being satisfied. In every case in which payment for the support of a minor child is ordered and alimony or postseparation support is also ordered, the order shall separately state and identify each allowance."

Section 3. G.S. 50-16.7(a) reads as rewritten:

"(a) Alimony or postseparation support shall be paid by lump sum payment, periodic payments, income withholding, or by transfer of title or possession of personal property or any interest therein, or a security interest in or possession of real property, as the court may order. The court may order the transfer of title to real property in payment of lump-sum payments of alimony or postseparation support or in payment of arrearages of alimony or postseparation support so long as the net value of the interest in the property being transferred does not exceed the amount of the arrearage being satisfied. In every case in which either alimony or postseparation support is allowed and provision is also made for support of minor children, the order shall separately state and identify each allowance."

Section 4. G.S. 50-16.7 is amended by adding the following new subsection to read:

"(11) The dependent spouse may apply to the court for an order of income withholding for current or delinquent payments of alimony or postseparation support or for any portion of the payments. If the court orders income withholding, a notice of obligation to withhold shall be served on the payor as required by G.S. 1A-1, Rule 4, Rules of Civil Procedure. Copies of the notice shall be filed with the clerk of court and served upon the supporting spouse by first-class mail."

Section 5. G.S. 110-136.6 is amended by adding the following new subsection to read:

"(b1) When there is an order of income withholding for current or delinquent payments of alimony or postseparation support or for any portion of the payments, the total amount withheld under this Article and under G.S. 50-16.7 shall not exceed the amounts allowed under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. § 1673(b)."

Section 6. G.S. 110-136.8(b) reads as rewritten:

"(b) Payor's responsibilities. A payor who has been properly served with a notice to withhold is required to:

(1) Withhold from the obligor's disposable income and, within 10 days of the date the obligor is paid, send to the clerk of superior court specified in the notice, the amount specified in the notice and the date the amount was withheld, but in no event more than the amount allowed by G.S. 110-136.6; however, if a lesser amount of disposable income is available for any pay period, the payor shall either: (a) compute and send the appropriate amount to the clerk of court, using the percentages as provided in G.S. 110-136.6, or (b) request the initiating party to inform the payor of the proper amount to be withheld for that period;

(2) Continue withholding until further notice from the IV-D agency or the clerk of superior court;

(3) Withhold for child support before withholding pursuant to any other legal process under State law against the same disposable income;

(4) Begin withholding from the first payment due the obligor in the first pay period that occurs 14 days following the date the notice of the obligation to withhold was served on the payor;

(5) Promptly notify the obligee in a IV-D case, or the clerk of superior court in a non-IV-D case, in writing:

a. If there ~~is more than one child support withholding for the obligor;~~ are one or more orders of child support withholding for the obligor;

a1. If there are one or more orders of alimony or postseparation support withholding for the obligor;

b. When the obligor terminates employment or otherwise ceases to be entitled to disposable income from the payor, and provide the obligor's last known address, and the name and address of his new employer, if known;

c. Of the payor's inability to comply with the withholding for any reason; and

(6) Cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income."

Section 7. G.S. 50-16.1A is amended by adding the following new subdivision to read:

"(4a) 'Payor' means any payor, including any federal, State, or local governmental unit, of disposable income to an obligor. When the payor is an employer, payor means employer as defined under 20 U.S.C. § 203(d) of the Fair Labor Standards Act."

Section 8. G.S. 110-129(11) reads as rewritten:

"(11) 'Obligee', in a IV-D case, means the child support enforcement agency, and in a non-IV-D case means the individual to whom a duty of ~~support~~ support, whether child support, alimony, or postseparation support, is owed or the individual's legal representative."

Section 9. G.S. 110-129(12) reads as rewritten:

"(12) 'Obligor' means the individual who owes a duty to make child support payments or payments of alimony or postseparation support under a court order."

Section 10. G.S. 50-16.3A(b) is amended by adding the following new subdivision to read:

"(16) Income being received by either party that was previously considered by the court in determining the value of a marital asset in an equitable distribution of the parties' marital property."

Section 11. This act becomes effective October 1, 1997. Section 1 of this act applies to contracts entered into and transactions occurring on and after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT 534
House Bill ~~432~~

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

H~~432~~ 534-ARG-001 Page 1 of __

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]
Proposed Committee Substitute

moves to amend the bill on page 2, lines 3-16,
by rewriting the lines to read:
"(c) As to a spouse who establishes by the greater weight of the evidence that he or she was living separate and apart from the other spouse at the time necessaries were provided to the other spouse, with the intent by either spouse to cease marital cohabitation, and that there was no resumption of marital relations while necessaries were being provided to the other spouse, liability under the doctrine of necessaries shall be limited to an amount equal to fifty percent (50%) of the net value of real or personal property subject to distribution under G.S. 50-20 unless one of the following applies:

(1) The non-debtor spouse has either willfully created the appearance of not being separated or has requested that the creditor extend credit to the estranged debtor spouse; or

(2) The debt is for medical expenses and the debtor spouse is insured under the non-debtor spouse's medical insurance plan or policy, provided that the non-debtor spouse shall be liable only for

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 534
Proposed Committee Substitute H534-PCS2301

Short Title: Support Orders Enforcement. (Public)

Sponsors:

Referred to:

March 18, 1997

A BILL TO BE ENTITLED

AN ACT REGARDING THE CONTRACTUAL OBLIGATIONS OF SPOUSES, THE TRANSFER OF PROPERTY AND INCOME WITHHOLDING TO ENFORCE SUPPORT ORDERS, AND THE AWARDING OF ALIMONY, AS RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 52-2 reads as rewritten:

"**§ 52-2. Capacity to contract.**

(a) Subject to the provisions of G.S. 52-10 or 52-10.1, G.S. 39-7 and other regulations and limitations now or hereafter prescribed by the General Assembly, every married person is authorized to contract and deal so as to affect his or her real and personal property in the same manner and with the same effect as if he or she were unmarried.

(b) Except as otherwise provided by this section or by other State law, a spouse shall not be responsible for the other spouse's contract liability to a third party, whether the liability arose before or after the marriage. The doctrine of necessaries as it existed at common law, however, shall apply and shall apply equally to both spouses, except as provided in subsection (c) of this section, but shall in no event create any liability between the spouses as to each other.

(c) The doctrine of necessaries shall not apply to either spouse when the spouses are living separate and apart with the intent on behalf of one of them to cease marital cohabitation, unless one of the following applies:

(1) The nondebtor spouse has willfully created the appearance of not being separated and has requested that the creditor extend credit to the estranged debtor spouse; or

(2) The debt is for medical expenses and the nondebtor spouse carries medical insurance on the debtor spouse, provided that the nondebtor spouse shall be liable only for the debt that is or will be discharged under the terms of the medical insurance."

Section 2. G.S. 50-13.4(e) reads as rewritten:

"(e) Payment for the support of a minor child shall be paid by lump sum payment, periodic payments, or by transfer of title or possession of personal property of any interest therein, or a security interest in or possession of real property, as the court may order. The court may order the transfer of title to real property in payment of arrearages of child support so long as the net value of the interest in the property being transferred does not exceed the amount of the arrearage being satisfied. In every case in which payment for the support of a minor child is ordered and alimony or postseparation support is also ordered, the order shall separately state and identify each allowance."

Section 3. G.S. 50-16.7(a) reads as rewritten:

"(a) Alimony or postseparation support shall be paid by lump sum payment, periodic payments, income withholding, or by transfer of title or possession of personal property or any interest therein, or a security interest in or possession of real property, as the court may order. The court may order the transfer of title to real property in payment of lump-sum payments of alimony or postseparation support or in payment of arrearages of alimony or postseparation support so long as the net value of the interest in the property being transferred does not exceed the amount of the arrearage being satisfied. In every case in which either alimony or postseparation support is allowed and provision is also made for support of minor children, the order shall separately state and identify each allowance."

Section 4. G.S. 50-16.7 is amended by adding the following new subsection to read:

"(l1) The dependent spouse may apply to the court for an order of income withholding for current or delinquent payments of alimony or postseparation support or for any portion of the payments. If the court orders income withholding, a notice of obligation to withhold shall be served on the payor as required by G.S. 1A-1, Rule 4, Rules of Civil Procedure. Copies of the notice shall be filed with the clerk of court and served upon the supporting spouse by first-class mail."

Section 5. G.S. 110-136.3(b) is amended by adding a new subdivision to read:

"(3) In the enforcement of alimony or postseparation support orders pursuant to G.S. 110-130.2, and obligor shall become subject to income withholding on the earlier of:

a. The date on which the obligor fails to make legally obligated alimony or postseparation payments; or

b. The date on which the obligor or obligee requests withholding."

Section 6. G.S. 110-136.4(a)(2) reads as rewritten:

"(2) Contents of advance notice. The advance notice to the obligor shall contain, at a minimum, the following information:

a. Whether the proposed withholding is based on the obligor's failure to make legally obligated ~~payments in an amount equal to the support payable for one month~~ alimony or postseparation support payments or on the obligor's request for withholding or on the obligee's request for withholding;

b. The amount of overdue child support, overdue alimony or postseparation support payments, the total amount to be withheld, and when the withholding will occur;

c. The name of each child or person for whose benefit the child ~~support is~~ support, alimony or postseparation support payments are due and information sufficient to identify the court order under which the obligor has a duty to support the ~~child;~~ child, spouse, or former spouse;

d. The amount and sources of disposable income;

e. That the withholding will apply to the obligor's wages or other sources of disposable income from current payors and all subsequent payors once the procedures under this section are invoked;

f. An explanation of the obligor's rights and responsibilities pursuant to this section;

g. That withholding will be continued until terminated pursuant to G.S. 110-136.10."

Section 7. G.S. 110-136.6 is amended by adding the following new subsection to read:

"(b1) When there is an order of income withholding for current or delinquent payments of alimony or postseparation support or for any portion of the payments, the total amount withheld under this Article and under G.S. 50-16.7 shall not exceed the amounts allowed under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. § 1673(b)."

Section 8. G.S. 110-136.8(b) reads as rewritten:

"(b) Payor's responsibilities. A payor who has been properly served with a notice to withhold is required to:

(1) Withhold from the obligor's disposable income and, within 10 days of the date the obligor is paid, send to the clerk of superior court specified in the notice, the amount specified in the notice and the date the amount was withheld, but in no event more than the amount allowed by G.S. 110-136.6; however, if a lesser amount of disposable income is available for any pay period, the payor shall either: (a) compute and send the appropriate amount to the clerk

of court, using the percentages as provided in G.S. 110-136.6, or (b) request the initiating party to inform the payor of the proper amount to be withheld for that period;

(2) Continue withholding until further notice from the IV-D agency or the clerk of superior court;

(3) Withhold for child support before withholding pursuant to any other legal process under State law against the same disposable income;

(4) Begin withholding from the first payment due the obligor in the first pay period that occurs 14 days following the date the notice of the obligation to withhold was served on the payor;

(5) Promptly notify the obligee in a IV-D case, or the clerk of superior court in a non-IV-D case, in writing:

a. If there ~~is more than one child support withholding for the obligor;~~ are one or more orders of child support withholding for the obligor;

a1. If there are one or more orders of alimony or postseparation support withholding for the obligor;

b. When the obligor terminates employment or otherwise ceases to be entitled to disposable income from the payor, and provide the obligor's last known address, and the name and address of his new employer, if known;

c. Of the payor's inability to comply with the withholding for any reason; and

(6) Cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income."

Section 9. G.S. 50-16.1A is amended by adding the following new subdivision to read:

"(4a) 'Payor' means any payor, including any federal, State, or local governmental unit, of disposable income to an obligor. When the payor is an employer, payor means employer as defined under 20 U.S.C. § 203(d) of the Fair Labor Standards Act."

Section 10. G.S. 110-129(11) reads as rewritten:

"(11) 'Obligee', in a IV-D case, means the child support enforcement agency, and in a non-IV-D case means the individual to whom a duty of ~~support~~ support, whether child support, alimony, or postseparation support, is owed or the individual's legal representative."

Section 11. G.S. 110-129(12) reads as rewritten:

"(12) 'Obligor' means the individual who owes a duty to make child support payments or payments of alimony or postseparation support under a court order."

Section 12. G.S. 50-16.3A(b) is amended by adding the following new subdivision to read:

"(16) Income being received by either party that was previously considered by the court in determining the value of a marital asset in an equitable distribution of the parties' marital property."

Section 13. This act becomes effective October 1, 1997. Section 1 of this act applies to contracts entered into and transactions occurring on and after that date.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **April 22, 1997 1:00 P.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Wade Harrison	N.C.B.A Family Law Section
Brenda Little	DSS/CSE
[illegible]	[illegible]
[illegible]	NCHA
Tony Sparks	DOT / DMV
David Ferrell	Hofer McNamara Caldwell, McElroy & Cutler P.A.
Edwina Caldwell	NC Sheriffs Assn/NC Law Enf. Off. Assn.
[illegible]	[illegible]
[illegible]	NCSA
Jane O. Gray	DOJ
[illegible]	NC Med. Soc.
[illegible]	Conf of DA's, Raleigh
[illegible]	Bailey & Dixon

Box 18

1. 1997 House Judiciary II (begin April 23, 1997)
2. 1998 House Judiciary II

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 23, 1997

The North Carolina House of Representatives Judiciary II Committee met on April 23, 1997, at 7:30 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Bowie, Cansler, Culpepper, Goodwin, Hackney, Hensley, McMahan, Redwine, Russell, Saunders and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-222 HABITUAL FELON DETERMINATION
HB-523 CONFISCATED GUN/LAW OFFICER USE
HB-915 FIREFIGHTERS/NO CONFLICT
HB-929 DOMESTIC VIOLENCE CHANGES-2

Representative Baddour was recognized to explain HB-915 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Mr. David Andes, North Carolina Association of Professional Firefighters, spoke in support of the bill and answered questions of committee members.

Representative Wilkins moved for a favorable report; motion passed.

Representative Morris was recognized to present a proposed committee substitute for HB-929 and answer questions of committee members. Representative Russell moved the proposed committee substitute be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute and bill explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Mr. Rob Schofield, North Carolina Justice and Community Service, and Ms. Roz Savitt, North Carolina Coalition Against Domestic Violence, spoke in support of the proposed committee substitute and answered questions of committee members.

Representative Russell moved for a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

Representative Culpepper was recognized to review HB-222 and answer questions of committee members.

Representative Russell moved for a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

Representative Wilkins was recognized to present a proposed committee substitute for HB-523. Representative Culpepper moved the committee substitute be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute and bill explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Mr. Eddie Caldwell, North Carolina Sheriff's Association and North Carolina Law Enforcement Association, spoke in support of the bill and answered questions of committee members.

Representative McMahan moved for a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

The meeting was adjourned at 8:20 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 915

Short Title: Firefighters/No Conflict. (Public)

Sponsors: Representatives Mercer; Moore, Baddour, and Mosley.

Referred to: Judiciary II.

April 10, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT FIREFIGHTERS WHO ENGAGE IN SOME FIRE INSPECTION ACTIVITIES AS A SECONDARY RESPONSIBILITY ARE NOT COVERED BY THE LAW PROHIBITING CONFLICTS OF INTEREST BY INSPECTION DEPARTMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-415 reads as rewritten:

"**§ 160A-415. Conflicts of interest.**

No member of an inspection department or other individual contracting with a city to conduct inspections shall be financially interested or employed by a business that is financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of any building within the city's jurisdiction or any part or system thereof, or in the making of plans or specifications therefor, unless he is the owner of the building. No member of an inspection department or other individual contracting with a city to conduct inspections shall engage in any work that is inconsistent with his duties or with the interest of the city. The provisions of this section do not apply to firefighters whose primary duties are fire protection and rescue, but who engage in some fire inspection activities as a secondary responsibility of their employment."

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

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Terrence D. Sullivan, Director
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April 22, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 915—Firefighters/No Conflict (Mercer)

House Bill 915 amends G.S. 160A-415 which governs conflicts of interest of inspections departments. Under current law, a member of an inspections department or an individual contracting with a city to conduct inspections may not be financially interested in the furnishing of labor, material, or appliances for construction, alteration, or maintenance of any building within the city's jurisdiction, unless he or she owns the building.

The bill would create an exception from this provision for firefighters whose primary duties are fire protection and rescue, but who engage in some fire inspection activities as a secondary responsibility of employment.

House Bill 915 is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 915 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT FIREFIGHTERS WHO ENGAGE IN SOME FIRE INSPECTION ACTIVITIES AS A SECONDARY RESPONSIBILITY ARE NOT COVERED BY THE LAW PROHIBITING CONFLICTS OF INTEREST BY INSPECTION DEPARTMENTS.

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 D

HOUSE BILL 929
Proposed Committee Substitute H929-PCSA356

Short Title: Domestic Violence Changes. (Public)

Sponsors:

Referred to:

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND EXPAND THE CLASSIFICATION OF PERSONS WHO MAY OBTAIN A PROTECTIVE ORDER; TO CLARIFY THE CIRCUMSTANCES UNDER WHICH MAGISTRATES MAY ISSUE PROTECTIVE ORDERS; AND TO IMPOSE A CRIMINAL PENALTY FOR VIOLATION OF A PROTECTIVE ORDER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50B-1 reads as rewritten:

"**§ 50B-1. Domestic violence; definition.**

(a) Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a ~~familial~~ personal relationship, but does not include acts of self-defense:

(1) Attempting to cause bodily injury, or intentionally causing bodily injury; or

(2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury; or

(3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7.

(b) For purposes of this section, the term ~~'familial~~ 'personal relationship' means a relationship wherein the parties involved:

(1) Are current or former spouses;

(2) Are persons of opposite sex who live together or have lived together;

(3) ~~Are parents, grandparents, or others acting in loco parentis to a minor child, or children and grandchildren;~~ Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;

(4) Have a child in ~~common.~~ common;

(5) Are current or former household members;

(6) Are persons of the opposite sex who are dating or have dated. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship."

Section 2. G.S. 50B-2(c1) reads as rewritten:

"(c1) Ex Parte Orders by Authorized Magistrate. -- The chief district court judge may authorize a magistrate or magistrates to hear any motions for emergency relief ex parte. Prior to the hearing, if the magistrate determines that at the time the party is seeking emergency relief ex parte ~~the clerk of superior court is not available,~~ the district court is not in ~~session,~~ session and a district court judge is not and will not be available to hear the motion for a period of four or more hours, the motion may be heard by the magistrate. If it clearly appears to the magistrate from specific facts shown that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the magistrate may enter such orders as it deems necessary to protect the aggrieved party or minor children from such acts, except that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the magistrate finds that the child is exposed to a substantial risk of bodily injury or sexual abuse. An ex parte order entered under this subsection shall expire and the magistrate shall schedule an ex parte hearing before a district court judge within 72 hours of the filing for relief under this subsection, or by the end of the next day on which the district court is in session in the county in which the action was filed, whichever occurs first. A party who has paid court costs due for seeking an order from the magistrate under this subsection shall not be liable for court costs for a hearing before the district court judge scheduled and heard pursuant to an order entered by the magistrate under this subsection. Ex parte orders entered by the district court judge pursuant to this subsection shall be entered and scheduled in accordance with subsection (c) of this section."

Section 3. Chapter 50B is amended by adding the following new section to read:

"**§ 50B-4A. Violation of valid protective order a misdemeanor.**

A person who violates a valid protective order entered pursuant to this Chapter shall be guilty of a Class A1 misdemeanor."

Section 4. 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 23, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: House Bill 929 - Domestic Violence Changes

House Bill 929 amends Chapter 50B of the general statutes regarding domestic violence protective orders. Specifically, it makes the following changes:

1) Adds 2 new categories of persons to the definition of "familial relationship" to include "current or former household members" and also persons who are "dating or have dated". A dating relationship is defined as one where the parties are romantically involved over time and on a continuous basis, and does not include casual acquaintance or socialization. Also allows protective orders between parents and children (including persons acting in loco parentis to a minor child) and grandparents and grandchildren, but prohibits issuance of an order of protection against a child under the age of 16.

2) Clarifies when an ex parte protective order may be issued by removing the requirement that the clerk of superior court by unavailable. An ex parte protective order may be granted by a magistrate if the district court is not in session.

3) Creates a new G.S. 50B-4A to make it a Class 1 misdemeanor to violate a valid protective order.

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

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§ 50B-1. Domestic violence; definition.

(a) Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a familial relationship, but does not include acts of self-defense:

(1) Attempting to cause bodily injury, or intentionally causing bodily injury; or

(2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury; or

(3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7.

(b) For purposes of this section, the term "familial relationship" means a relationship wherein the parties involved:

(1) Are current or former spouses;

(2) Are persons of opposite sex who live together or have lived together;

(3) Are parents, grandparents, or others acting in loco parentis to a minor child, or children and grandchildren;

(4) Have a child in common.

(1979, c. 561, s. 1; 1985, c. 113, s. 1; 1987, c. 828; 1987 (Reg. Sess., 1988), c. 893, ss. 1, 3; 1995 (Reg. Sess., 1996), c. 591, s. 1.)

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§ 50B-2. Institution of civil action; motion for emergency relief; temporary orders.

(a) Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this Chapter may file a civil action and proceed pro se, without the assistance of legal counsel. The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter.

(b) Emergency Relief. - A party may move the court for emergency relief if he or she believes there is a danger of serious and immediate injury to himself or herself or a minor child. A hearing on a motion for emergency relief, where no ex parte order is entered, shall be held after five days' notice of the hearing to the other party or after five days from the date of service of process on the other party, whichever occurs first, provided, however, that no hearing shall be required if the service of process is not completed on the other party. If the party is proceeding pro se and does not request an ex parte hearing, the clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the summons, complaint, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served, upon payment of the required service fees.

(c) Ex Parte Orders. - Prior to the hearing, if it clearly appears to the court from specific facts shown, that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the court may enter such orders as it deems necessary to protect the aggrieved party or minor children from such acts provided, however, that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the court finds that the child is exposed to a substantial risk of bodily injury or sexual abuse. Upon the issuance of an ex parte order under this subsection, a hearing shall be held within 10 days from the date of issuance of the order or within seven days from the date of service of process on the other party, whichever occurs later. If an aggrieved party acting pro se requests ex parte relief, the clerk of superior court shall schedule an ex parte hearing with the district court division of the General Court of Justice within 72 hours of the filing for said relief, or by the end of the next day on which the district court is in session in the county in which the action was filed, whichever shall first occur. If the district court is not in session in said county, the aggrieved party may contact the clerk of superior court in any other county within the same judicial district who shall schedule an ex parte hearing with the district court division of the General Court of Justice by the end of the next day on which said court division is in session in that county. Upon the issuance of an ex parte order under this subsection, if the party is proceeding pro se, the Clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the summons, complaint, notice, order and other papers through the appropriate law enforcement agency where the defendant is to be served, upon payment of the required service fees.

(c1) Ex Parte Orders by Authorized Magistrate. - The chief district court judge may authorize a magistrate or magistrates to hear any motions for emergency relief ex parte. Prior to the hearing, if the magistrate determines that at the time the party is seeking emergency relief ex parte the clerk of superior court is not available, the district court is not in session, and a district court judge is not and will not be available to hear the motion for a period of four or more hours, the motion may be heard by the magistrate. If it clearly appears to the magistrate from specific

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facts shown that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the magistrate may enter such orders as it deems necessary to protect the aggrieved party or minor children from such acts, except that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the magistrate finds that the child is exposed to a substantial risk of bodily injury or sexual abuse. An ex parte order entered under this subsection shall expire and the magistrate shall schedule an ex parte hearing before a district court judge within 72 hours of the filing for relief under this subsection, or by the end of the next day on which the district court is in session in the county in which the action was filed, whichever occurs first. A party who has paid court costs due for seeking an order from the magistrate under this subsection shall not be liable for court costs for a hearing before the district court judge scheduled and heard pursuant to an order entered by the magistrate under this subsection. Ex parte orders entered by the district court judge pursuant to this subsection shall be entered and scheduled in accordance with subsection (c) of this section.

(c2) The authority granted to authorized magistrates to award temporary child custody to pursuant subsection (c1) of this section and pursuant to G.S. 50B-3(a)(4) is granted subject to custody rules to be established by the supervising chief district judge of each judicial district.

(d) Pro Se Forms. - The clerk of superior court of each county shall provide to pro se complainants all forms which are necessary or appropriate to enable them to proceed pro se pursuant to this section. The Clerk shall provide a supply of pro se forms to authorized magistrates who shall make the forms available to complainants seeking relief under subsection (c1) of this section.

(1979, c. 561, s. 1; 1985, c. 113, ss. 2, 3; 1987 (Reg. Sess., 1988), c. 893, s. 2; 1989, c. 461, s. 1; 1994, Ex. Sess., c. 4, s. 1.)

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1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 929 A BILL TO BE ENTITLED AN ACT TO CLARIFY AND EXPAND THE CLASSIFICATION OF PERSONS WHO MAY OBTAIN A PROTECTIVE ORDER; TO CLARIFY THE CIRCUMSTANCES UNDER WHICH MAGISTRATES MAY ISSUE PROTECTIVE ORDERS; AND TO IMPOSE A CRIMINAL PENALTY FOR VIOLATION OF A PROTECTIVE ORDER.

☐ 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 929
Proposed Committee Substitute H929-PCSA356

Short Title: Domestic Violence Changes. (Public)

Sponsors:

Referred to:

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND EXPAND THE CLASSIFICATION OF PERSONS WHO MAY OBTAIN A PROTECTIVE ORDER; TO CLARIFY THE CIRCUMSTANCES UNDER WHICH MAGISTRATES MAY ISSUE PROTECTIVE ORDERS; AND TO IMPOSE A CRIMINAL PENALTY FOR VIOLATION OF A PROTECTIVE ORDER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50B-1 reads as rewritten:

"**§ 50B-1. Domestic violence; definition.**

(a) Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a ~~familial~~ personal relationship, but does not include acts of self-defense:

(1) Attempting to cause bodily injury, or intentionally causing bodily injury; or

(2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury; or

(3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7.

(b) For purposes of this section, the term '~~familial~~ 'personal relationship' means a relationship wherein the parties involved:

(1) Are current or former spouses;

(2) Are persons of opposite sex who live together or have lived together;

(3) ~~Are parents, grandparents, or others acting in loco parentis to a minor child, or children and grandchildren;~~ Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;

(4) Have a child in ~~common.~~ common;

(5) Are current or former household members;

(6) Are persons of the opposite sex who are dating or have dated. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship."

Section 2. G.S. 50B-2(c1) reads as rewritten:

"(c1) Ex Parte Orders by Authorized Magistrate. -- The chief district court judge may authorize a magistrate or magistrates to hear any motions for emergency relief ex parte. Prior to the hearing, if the magistrate determines that at the time the party is seeking emergency relief ex parte ~~the clerk of superior court is not available,~~ the district court is not in ~~session,~~ session and a district court judge is not and will not be available to hear the motion for a period of four or more hours, the motion may be heard by the magistrate. If it clearly appears to the magistrate from specific facts shown that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the magistrate may enter such orders as it deems necessary to protect the aggrieved party or minor children from such acts, except that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the magistrate finds that the child is exposed to a substantial risk of bodily injury or sexual abuse. An ex parte order entered under this subsection shall expire and the magistrate shall schedule an ex parte hearing before a district court judge within 72 hours of the filing for relief under this subsection, or by the end of the next day on which the district court is in session in the county in which the action was filed, whichever occurs first. A party who has paid court costs due for seeking an order from the magistrate under this subsection shall not be liable for court costs for a hearing before the district court judge scheduled and heard pursuant to an order entered by the magistrate under this subsection. Ex parte orders entered by the district court judge pursuant to this subsection shall be entered and scheduled in accordance with subsection (c) of this section."

Section 3. Chapter 50B is amended by adding the following new section to read:

"**§ 50B-4A. Violation of valid protective order a misdemeanor.**

A person who violates a valid protective order entered pursuant to this Chapter shall be guilty of a Class A1 misdemeanor."

Section 4. 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 D

H222-PCSRG-002A
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 222
THIS IS A DRAFT 22-APR-97 09:19:58
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Habit. Felon Determination. (Public)

Sponsors:

Referred to:

February 13, 1997

A BILL TO BE ENTITLED

AN ACT TO RECODIFY THE LAW CONCERNING HABITUAL FELONS AND VIOLENT HABITUAL FELONS, TO PROVIDE THAT THE ISSUE OF WHETHER A DEFENDANT IS AN HABITUAL FELON OR A VIOLENT HABITUAL FELON SHALL BE DETERMINED BY THE TRIAL JUDGE, AND TO MAKE OTHER CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-7.1 is recodified as G.S. 15A-1340.13A; the remainder of Article 2A of Chapter 14 of the General Statutes is repealed.

Section 2. G.S. 14-7.1, as recodified by Section 1 of this act, reads as rewritten:

"**§ 15A-1340.13A.** ~~Persons defined as habitual~~ Habitual felons.

~~Any person who has been convicted of or pled guilty to three felony offenses in any federal court or state court in the United States or combination thereof is declared to be an habitual felon. For the purpose of this Article, a felony offense is defined as an offense which is a felony under the laws of the State or other sovereign wherein a plea of guilty was entered or a conviction was returned regardless of the sentence actually imposed. Provided, however, that federal offenses relating to the~~

~~manufacture, possession, sale and kindred offenses involving intoxicating liquors shall not be considered felonies for the purposes of this Article. For the purposes of this Article, felonies committed before a person attains the age of 18 years shall not constitute more than one felony. The commission of a second felony shall not fall within the purview of this Article unless it is committed after the conviction of or plea of guilty to the first felony. The commission of a third felony shall not fall within the purview of this Article unless it is committed after the conviction of or plea of guilty to the second felony. Pleas of guilty to or convictions of felony offenses prior to July 6, 1967, shall not be felony offenses within the meaning of this Article. Any felony offense to which a pardon has been extended shall not for the purpose of this Article constitute a felony. The burden of proving such pardon shall rest with the defendant and the State shall not be required to disprove a pardon.~~

(a) Definitions. -- The following definitions shall apply in this section when determining a person's status as an habitual felon:

(1) Felony. -- An offense that is a felony under the laws of the State or or other sovereign wherein a plea of guilty was entered or a conviction was returned regardless of the sentence actually imposed. The term does not include, however, federal offenses relating to the manufacture, possession, sale of, and kindred offenses involving intoxicating liquors. For the purposes of this section, felonies committed before a person attains the age of 18 years shall not constitute more than one felony. The commission of a second felony shall not fall within the purview of this section unless it is committed after the conviction of or plea of guilty to the first felony. The commission of a third felony shall not fall within the purview of this section unless it is committed after the conviction of or plea of guilty to the second felony. Pleas of guilty to or convictions of felonies before July 6, 1967, are not felonies for the purposes of this section. A felony offense to which a pardon has been extended is not a felony for the purposes of this section. The burden of proving the pardon shall rest with the defendant; the State is not required to disprove a pardon.

(2) Habitual felon. -- A person who has been convicted of or pled guilty to three or more felony offenses in any federal court or state court in the United States or combination thereof prior to committing the current offense.

(b) Sentencing of Habitual Felons. -- When a person is convicted of or pleads guilty to any felony under the laws of this State, the district attorney may, upon sentencing, submit to the trial judge, as an enhanced sentencing factor, the determination of the person's status as an habitual felon. If the trial judge determines, upon submission by the district attorney of the defendant's status as an habitual felon, that the felony was committed by an habitual felon, the trial judge shall sentence the person as a Class C felon, except where the felon has been sentenced as a Class A, B1, or B2 felon. In determining the prior record level of the person sentenced as an habitual felon, the convictions used to establish the person's status as an habitual felon shall not be used. A sentence imposed on an habitual felon pursuant to this section shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section.

(c) Disclosure of Habitual Felon Status.-- If the district attorney fails to serve notice upon the defendant no later than 20 working days before trial of the defendant's status as an habitual felon and the district attorney's intention to submit to the trial judge the defendant's status as an habitual felon, the defendant may not be sentenced as an habitual felon under this section.

(d) Evidence of Prior Convictions. -- In sentencing a person under this section, the record or records of prior convictions of felony offenses may be used by the court to determine if the person has been convicted of former felony offenses. A prior conviction may be shown 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 sufficient to show that the defendant named therein is the same as the defendant before the court and to show the facts set out in the record, and the burden of any showing to the contrary shall be upon the defendant."

Section 3. G.S. 14-7.7 is recodified as G.S. 15A-1340.13B; the remainder of Article 2B of Chapter 14 of the General Statutes is repealed.

Section 4. G.S. 14-7.7, as recodified by Section 3 of this act, reads as rewritten:

"§ 15A-1340.13B. ~~Persons defined as violent~~ Violent habitual felons.

~~(a) Any person who has been convicted of two violent felonies in any federal court, in a court of this or any other state of the United States, or in a combination of these courts is declared to be a violent habitual felon. For purposes of this Article, "convicted" means the person has been adjudged guilty of or has entered a plea of guilty or no contest to the violent felony charge, and judgment has been entered thereon when such action occurred on or after July 6, 1967. This Article does not apply to a second violent felony unless it is committed after the conviction or plea of guilty or no contest to the first violent felony. 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. Conviction as an habitual felon shall not, for purposes of this Article, constitute a violent felony.~~

~~(b) For purposes of this Article, "violent felony" includes the following offenses:~~

~~(1) All Class A through E felonies.~~

~~(2) Any repealed or superseded offense substantially equivalent to the offenses listed in subdivision (1).~~

~~(3) Any offense committed in another jurisdiction substantially equivalent to the offenses set forth in subdivision (1) or (2).~~

(a) Definitions.-- The following definitions shall apply in this section when determining a person's status as a violent habitual felon:

(1) Violent felony.-- An offense that is one of the following:

a. All Class A through E felonies.

b. Any repealed or superseded offense substantially equivalent to the offenses listed in sub-subdivision a.

c. Any offense committed in another jurisdiction substantially equivalent to the offenses set forth in sub-subdivisions a. or b.

A person is convicted of a violent felony if he or she has been adjudged guilty of or has entered a plea of guilty to a violent felony charge, and a judgment has been entered on or after July

6, 1967. This section does not apply to a second violent felony unless it is committed after the conviction or plea of guilty or no contest to the first violent felony. Any felony to which a pardon has been extended shall not, for the purposes of this section, constitute a violent felony. The burden of proving a pardon shall rest with the defendant, and the State shall not be required to disprove a pardon. Conviction and punishment as an habitual felon shall not, for the purposes of this section, constitute a violent felony.

(2) Violent habitual felon.-- Any person who has been convicted of two violent felonies in any federal court, in a court of this or any other state of the United States, or in a combination of these courts.

(b) Sentencing of Violent Habitual Felons.-- When a person is convicted of or pleads guilty to any violent felony under the laws of this State, the district attorney may, upon sentencing, submit to the trial judge, as an enhanced sentencing factor, the determination of the person's status as a violent habitual felon. If the trial judge determines, upon the submission by the district attorney of the person's status as a violent habitual felon, that the violent felony was committed by a violent habitual felon, the trial judge shall sentence the person to life imprisonment without parole, except where the death penalty is imposed. Life imprisonment without parole means that the person will spend the remainder of the person's natural life in prison. The sentencing judge may not suspend the sentence and may not place the person sentenced on probation. Sentences for violent habitual felons imposed under this Article shall run consecutively with and shall commence at the expiration of any other sentence being served by the person.

(c) Disclosure of Violent Habitual Felon Status.-- If the district attorney fails to serve notice upon the defendant no later than 20 working days before trial of the defendant's status as a violent habitual felon and the district attorney's intention to submit to the trial judge the defendant's status as a violent habitual felon, the defendant may not be sentenced as a violent habitual felon under this section.

(d) Evidence of Prior Convictions.-- In sentencing a person under this section, the records of prior convictions of violent felonies may be used by the court to determine if the person has been convicted of former violent felonies. A prior conviction may be shown 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, and the burden of any showing to the contrary shall be upon the defendant."

Sec. 6. 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 from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 222 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE ISSUE OF WHETHER A DEFENDANT IS A HABITUAL FELON OR A VIOLENT HABITUAL FELON SHALL BE DETERMINED BY THE TRIAL JUDGE.

☐ 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, 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)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 222
Proposed Committee Substitute H222-PCS8186

Short Title: Habit. Felon Determination. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO RECODIFY THE LAW CONCERNING HABITUAL FELONS AND VIOLENT HABITUAL FELONS, TO PROVIDE THAT THE ISSUE OF WHETHER A DEFENDANT IS AN HABITUAL FELON OR A VIOLENT HABITUAL FELON SHALL BE DETERMINED BY THE TRIAL JUDGE, AND TO MAKE OTHER CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-7.1 is recodified as G.S. 15A-1340.13A; the remainder of Article 2A of Chapter 14 of the General Statutes is repealed.

Section 2. G.S. 14-7.1, as recodified by Section 1 of this act, reads as rewritten:

"**§ 15A-1340.13A. ~~Persons defined as habitual~~ Habitual felons.**

~~Any person who has been convicted of or pled guilty to three felony offenses in any federal court or state court in the United States or combination thereof is declared to be an habitual felon. For the purpose of this Article, a felony offense is defined as an offense which is a felony under the laws of the State or other sovereign wherein a plea of guilty was entered or a conviction was returned regardless of the sentence actually imposed. Provided, however, that federal offenses relating to the manufacture, possession, sale and kindred offenses involving intoxicating liquors shall not be considered felonies for the purposes of this Article. For the purposes of this Article, felonies committed before a person attains the age of 18 years shall not constitute more than one felony. The commission of a second felony shall not fall within the purview of this Article unless it is committed after the conviction of or~~

~~plea of guilty to the first felony. The commission of a third felony shall not fall within the purview of this Article unless it is committed after the conviction of or plea of guilty to the second felony. Pleas of guilty to or convictions of felony offenses prior to July 6, 1967, shall not be felony offenses within the meaning of this Article. Any felony offense to which a pardon has been extended shall not for the purpose of this Article constitute a felony. The burden of proving such pardon shall rest with the defendant and the State shall not be required to disprove a pardon.~~

(a) Definitions. -- The following definitions shall apply in this section when determining a person's status as an habitual felon:

(1) Felony. -- An offense that is a felony under the laws of the State or other sovereign wherein a plea of guilty was entered or a conviction was returned regardless of the sentence actually imposed. The term does not include, however, federal offenses relating to the manufacture, possession, sale of, and kindred offenses involving intoxicating liquors. For the purposes of this section, felonies committed before a person attains the age of 18 years shall not constitute more than one felony. The commission of a second felony shall not fall within the purview of this section unless it is committed after the conviction of or plea of guilty to the first felony. The commission of a third felony shall not fall within the purview of this section unless it is committed after the conviction of or plea of guilty to the second felony. Pleas of guilty to or convictions of felonies before July 6, 1967, are not felonies for the purposes of this section. A felony offense to which a pardon has been extended is not a felony for the purposes of this section. The burden of proving the pardon shall rest with the defendant; the State is not required to disprove a pardon.

(2) Habitual felon. -- A person who has been convicted of or pled guilty to three or more felony offenses in any federal court or state court in the United States or combination thereof prior to committing the current offense.

(b) Sentencing of Habitual Felons. -- When a person is convicted of or pleads guilty to any felony under the laws of this State, the district attorney may, upon sentencing, submit to the trial judge, as an enhanced sentencing factor, the determination of the person's status as an habitual felon. If the trial judge determines, upon submission by the district attorney of the defendant's status as an habitual felon that the felony was committed by an habitual felon, the trial judge shall sentence the person as a Class C felon, except where the felon has been sentenced as a Class A, B1, or B2 felon. In determining the prior record level of the person sentenced as an habitual felon, the convictions used to establish the person's status as an habitual felon shall not be used. A sentence imposed on an habitual felon pursuant to this section shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section.

(c) Disclosure of Habitual Felon Status. -- If the district attorney fails to serve written notice upon the defendant no later than 20 working days before trial of the defendant's status as an habitual felon and the district attorney's intention to submit to the trial judge the defendant's status as an habitual felon, the defendant may not be sentenced as an habitual felon under this section.

(d) Evidence of Prior Convictions. -- In sentencing a person under this section, the record or records of prior convictions of felony offenses may be used by the court to determine if the person has been convicted of former felony offenses. A prior conviction may be shown 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 sufficient to show that the defendant named therein is the same as the defendant before the court and to show the facts set out in the record, and the burden of any showing to the contrary shall be upon the defendant."

Section 3. G.S. 14-7.7 is recodified as G.S. 15A-1340.13B; the remainder of Article 2B of Chapter 14 of the General Statutes is repealed.

Section 4. G.S. 14-7.7, as recodified by Section 3 of this act, reads as rewritten:

"**§ 15A-1340.13B. ~~Persons defined as violent~~ Violent habitual felons.**

~~(a) Any person who has been convicted of two violent felonies in any federal court, in a court of this or any other state of the United States, or in a combination of these courts is declared to be a violent habitual felon. For purposes of this Article, "convicted" means the person has been adjudged guilty of or has entered a plea of guilty or no contest to the violent felony charge, and judgment has been entered thereon when such action occurred on or after July 6, 1967. This Article does not apply to a second violent felony unless it is committed after the conviction or plea of guilty or no contest to the first violent felony. 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. Conviction as an habitual felon shall not, for purposes of this Article, constitute a violent felony.~~

~~(b) For purposes of this Article, "violent felony" includes the following offenses:~~

~~(1) All Class A through E felonies.~~

~~(2) Any repealed or superseded offense substantially equivalent to the offenses listed in subdivision (1).~~

~~(3) Any offense committed in another jurisdiction substantially equivalent to the offenses set forth in subdivision (1) or (2).~~

(a) Definitions. -- The following definitions shall apply in this section when determining a person's status as a violent habitual felon:

(1) Violent felony. -- An offense that is one of the following:

a. All Class A through E felonies.

b. Any repealed or superseded offense substantially equivalent to the offenses listed in sub-subdivision a.

c. Any offense committed in another jurisdiction substantially equivalent to the offenses set forth in sub-subdivisions a. or b.

A person is convicted of a violent felony if he or she has been adjudged guilty of or has entered a plea of guilty to a violent felony charge, and a judgment has been entered on or after July 6, 1967. This section does not apply to a second violent felony unless it is committed after the conviction or plea of guilty or no contest to the first violent felony. Any felony to which a pardon has been extended shall not, for the purposes of this section, constitute a violent felony. The burden of proving a pardon shall rest with the defendant, and the State shall not be required to disprove a pardon. Conviction and punishment as an habitual felon shall not, for the purposes of this section, constitute a violent felony.

(2) Violent habitual felon. -- Any person who has been convicted of two violent felonies in any federal court, in a court of this or any other state of the United States, or in a combination of these courts.

(b) Sentencing of Violent Habitual Felons. -- When a person is convicted of or pleads guilty to any violent felony under the laws of this State, the district attorney may, upon sentencing, submit to the trial judge, as an enhanced sentencing factor, the determination of the person's status as a violent habitual felon. If the trial judge determines, upon the submission by the district attorney of the person's status as a violent habitual felon that the violent felony was committed by a violent habitual felon, the trial judge shall sentence the person to life imprisonment without parole, except where the death penalty is imposed. Life imprisonment without parole means that the person will spend the remainder of the person's natural life in prison. The sentencing judge may not suspend the sentence and may not place the person sentenced on probation. Sentences for violent habitual felons imposed under this Article shall run consecutively with and shall commence at the expiration of any other sentence being served by the person.

(c) Disclosure of Violent Habitual Felon Status. -- If the district attorney fails to serve written notice upon the defendant no later than 20 working days before trial of the defendant's status as a violent habitual felon and the district attorney's intention to submit to the trial judge the defendant's status as a violent habitual felon, the defendant may not be sentenced as a violent habitual felon under this section.

(d) Evidence of Prior Convictions. -- In sentencing a person under this section, the records of prior convictions of violent felonies may be used by the court to determine if the person has been convicted of former violent felonies. A prior conviction may be shown 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, and the burden of any showing to the contrary shall be upon the defendant."

Section 5. 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 D

HOUSE BILL 523
Proposed Committee Substitute H523-CSSA-002
WARINING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Confiscated Gun/Law Officer Use. (Public)

Sponsors:

Referred to: Judiciary II.

March 17, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CONFISCATED WEAPONS MAY BE KEPT FOR DEPARTMENTAL USE BY LAW ENFORCEMENT OFFICERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-269.1 reads as rewritten:

"**§ 14-269.1. Confiscation and disposition of deadly weapons.**

Upon conviction of any person for violation of G.S. 14-2.2, 14-269, 14-269.7, or any other offense involving the use of a deadly weapon of a type referred to in G.S. 14-269, the deadly weapon with reference to which the defendant shall have been convicted shall be ordered confiscated and disposed of by the presiding judge at the trial in one of the following ways in the discretion of the presiding judge.

(1) By ordering the weapon returned to its rightful owner, but only when such owner is a person other than the defendant and has filed a petition for the recovery of such weapon with the presiding judge at the time of the defendant's conviction, and upon a finding by the presiding judge that petitioner is entitled to possession of same and that he was

unlawfully deprived of the same without his consent.

(2), (3) Repealed by Session Laws 1994, Ex. Sess., c. 16, s. 2.

(4) By ordering such weapon turned over to the sheriff of the county in which the trial is held or his duly authorized agent to be destroyed. The sheriff shall maintain a record of the destruction thereof.

(4a) By ordering the weapon turned over to a law-enforcement agency in the county of trial for the use of such agency or to be transferred by the agency to a licensed firearm dealer in exchange for other law enforcement supplies, but only upon the written request by the head or chief of such agency. The receiving law-enforcement agency shall maintain a record and inventory of all such weapons received.

(4b) By ordering the weapon turned over to the sheriff of the county in which the trial is held to be sold as herein provided. Under the direction of the sheriff, the weapon shall be sold at public auction after one advertisement in a newspaper having general circulation in the county, which advertisement shall be at least seven days prior to sale. The proceeds of such sale shall go to the general fund of the county in which such weapons are sold. The sheriff shall maintain a record and inventory of all such weapons received and sold by him. Sales of such weapons by the sheriff shall be held at least once each year.

(5) By ordering such weapon turned over to the North Carolina State Bureau of Investigation's Crime Laboratory Weapons Reference Library for official use by that agency. The State Bureau of Investigation shall maintain a record and inventory of all such weapons received.

(6) By ordering such weapons turned over to the North Carolina Justice Academy for official use by that agency. The North Carolina Justice Academy shall maintain a record and inventory of all such weapons received."

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

North Carolina General Assembly
Legislative Services Office

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April 15, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: House Bill 523 - Confiscated Gun/Law Officer Use - Proposed Committee Substitute

House Bill 523 amends 14-269.1 to provide a judge two additional alternatives when ordering disposition of weapons confiscated for violation of certain offenses. The judge would be allowed to order the weapon turned over to a local law-enforcement agency for their use or transfer to a licensed dealer in return for law-enforcement supplies. Also, the judge would be allowed to order the weapon turned over to the sheriff to be sold, the proceeds to be remitted to the county's general fund.

This act becomes effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§ 14-2.2. Sentencing of a person convicted of a Class A, B, B1, B2, C, D, or E felony who used, displayed, or threatened to use or display a firearm during the commission of the crime; confiscation and disposition of a firearm used in a felony.

(a) If a person is convicted of a Class A, B, B1, B2, C, D, or E felony and the person used, displayed, or threatened to use or display a firearm during the commission of the felony, the person shall, in addition to the punishment for the underlying felony, be sentenced to a minimum term of imprisonment for 60 months as provided by G.S. 15A-1340.16A.

The court shall not suspend any sentence imposed under this section and shall not place a person sentenced under this section on probation for the sentence imposed under this section. Sentences imposed pursuant to this section shall be consecutive to all other sentences imposed and shall begin at the expiration of any other sentence being served by the person.

(b) Subsection (a) of this section does not apply in any of the following circumstances:

(1) The person is not sentenced to an active term of imprisonment.

(2) The evidence of the use, display, or threatened use or display of a firearm is needed to prove an element of the underlying Class A, B, B1, B2, C, D, or E felony.

(3) The person did not actually possess a firearm about his or her person.

(c) When a person is found to have personally used a firearm in the commission or attempted commission of a felony and the firearm is owned by that person, or the serial number on the firearm has been defaced such that ownership is not traceable, the court shall order that the firearm be confiscated and disposed of in any of the ways provided by G.S. 14-269.1 that the court in its discretion deems appropriate.

(d) Repealed by Session Laws 1994, Extra Session, c. 22, s. 19(b), effective October 1, 1994.

(1979, c. 760, s. 2; 1979, 2nd Sess., c. 1316, ss. 34, 47, 48; 1981, c. 63, s. 1; c. 179, s. 14; 1993, c. 538, s. 4; 1994, Ex. Sess., c. 22, ss. 18, 19(a), (b).)

Cross References. - As to structured sentencing of persons convicted of crimes, effective October 1, 1994, see § 15A-1340.10 et seq.

Editor's Note. - The above section was enacted as § 15A-1340.5 by Session Laws 1979, c. 760, s. 2 and was amended, transferred and renumbered as § 14-2.2 by Session Laws 1979, 2nd Sess., c. 1316, s. 34. The section became effective July 1, 1981, and is applicable to offenses committed on or after that date. See Session Laws 1979, c. 760, s. 6; 1979, 2nd Sess., c. 1316, ss. 47, 48; 1981, c. 63; c. 179, s. 14.

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 19(c) repealed Session Laws 1993, c. 538, s. 4, which as amended by Session Laws 1994, Extra Session, c. 24, s. 14(b), would have repealed this section effective October 1, 1994.

Subsection (a) was amended by Session Laws 1994, Extra Session, c. 22, s. 19(a), in the coded bill drafting format provided by § 120-20.1. Without engrossing the amendment added a sentence to the end of the first paragraph in subsection (a) which read "Evidence of the use, display, or threatened use or display of a firearm that is needed to prove an element of the underlying felony shall not be used to establish the enhancement under this section." This language is similar to present subsection (b)(2). The section has been set out in the form above at the direction of the Revisor of Statutes.

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 1 provides: "This act shall

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be known as the Crime Control Act of 1994."

Session Laws 1994, Extra Session, c. 22, which amended this section, in s. 24 provides: "Prosecution for, or sentences based on, offenses committed before the effective dates of this Part are not abated or affected by this Part, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this Part remain applicable to those prosecutions or sentences."

Session Laws 1994, Extra Session, which amended this section, made the amendment by c. 22, s. 18, effective May 1, 1994, and applicable to offenses committed on or after that date.

Session Laws 1994, Extra Session, which amended this section, made the amendment by c. 22, s. 19(a) and (b), which was effective on the date that Section 56 of Chapter 538 of the 1993 Session Laws became effective (October 1, 1994), and applicable to offenses committed on or after that date.

Legal Periodicals. - For comment discussing the North Carolina Fair Sentencing Act, see 60 N.C.L. Rev. 631 (1982).

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§ 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.

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(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.)

Local Modification. - Caswell: 1941, c. 90; Halifax: 1943, c. 34.

Cross References. - As to counties still governed by a former subdivision (b) of this section, which was eliminated by the 1965 amendment, see note to § 14-269.1.

As to going armed on Sunday, see § 103-2.

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).

Legal Periodicals. - For note on control of firearms, see 35 N.C.L. Rev. 149 (1956).

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§ 14-269.7. Prohibitions on handguns for minors.

(a) Any minor who possesses or carries a handgun is guilty of a Class 2 misdemeanor.

(b) This section does not apply:

(1) To officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties or acting under orders requiring them to carry handguns.

(2) To a minor who possesses a handgun for educational or recreational purposes while the minor is supervised by an adult who is present.

(3) To an emancipated minor who possesses such handgun inside his or her residence.

(4) To a minor who possesses a handgun while hunting or trapping outside the limits of an incorporated municipality if he has on his person written permission from a parent, guardian, or other person standing in loco parentis.

(c) The following definitions apply in this section:

(1) Handgun. - A firearm that has a short stock and is designed to be fired by the use of a single hand, or any combination of parts from which such a firearm can be assembled.

(2) Minor. - Any person under 18 years of age.

(1993, c. 259, s. 1; 1994, Ex. Sess., c. 14, s. 5; 1993 (Reg. Sess., 1994), c. 597, s. 1.)

Editor's Note. - Session Laws 1993, c. 259, s. 4 makes this section effective September 1, 1993, and applicable to offenses committed on or after that date.

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "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."

Session Laws 1994, Extra Session, which amended this section, was effective on the same date that Chapter 539 of the 1993 Session Laws became effective (October 1, 1994), and applicable to offenses occurring on or after that date.

Effect of Amendments. - The 1993 (Reg. Sess., 1994) amendment, effective January 1, 1995 and applicable to offenses committed on or after that date, in subdivision (c)(1) substituted "A" for "Any dangerous," substituted "that has a short stock and is" for "including a pistol or revolver" and added at the end "or any combination of parts from which such a firearm can be assembled"; and in subdivision (c)(2) deleted "the age of" preceding "18."

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1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 523 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT CONFISCATED WEAPONS MAY BE KEPT FOR DEPARTMENTAL USE BY LAW ENFORCEMENT OFFICERS.

☐ 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 523
Proposed Committee Substitute H523-PCS7276

Short Title: Confiscated Gun/Law Officer Use. (Public)

Sponsors:

Referred to:

March 17, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CONFISCATED WEAPONS MAY BE KEPT FOR DEPARTMENTAL USE BY LAW ENFORCEMENT OFFICERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-269.1 reads as rewritten:

"**§ 14-269.1. Confiscation and disposition of deadly weapons.**

Upon conviction of any person for violation of G.S. 14-2.2, 14-269, 14-269.7, or any other offense involving the use of a deadly weapon of a type referred to in G.S. 14-269, the deadly weapon with reference to which the defendant shall have been convicted shall be ordered confiscated and disposed of by the presiding judge at the trial in one of the following ways in the discretion of the presiding judge.

(1) By ordering the weapon returned to its rightful owner, but only when such owner is a person other than the defendant and has filed a petition for the recovery of such weapon with the presiding judge at the time of the defendant's conviction, and upon a finding by the presiding judge that petitioner is entitled to possession of same and that he was unlawfully deprived of the same without his consent.

(2), (3) Repealed by Session Laws 1994, Ex. Sess., c. 16, s. 2.

(4) By ordering such weapon turned over to the sheriff of the county in which the trial is held or his duly authorized agent to be destroyed. The sheriff shall maintain a record of the destruction thereof.

(4a) By ordering the weapon turned over to a law enforcement agency in the county of trial for the use of such agency or to be transferred by the agency to a licensed firearm dealer in exchange for other law enforcement supplies, but only upon the written request by the head or chief of such agency. The receiving law enforcement agency shall maintain a record and inventory of all such weapons received.

(4b) By ordering the weapon turned over to the sheriff of the county in which the trial is held to be sold as herein provided. Under the direction of the sheriff, the weapon shall be sold at public auction after one advertisement in a newspaper having general circulation in the county, which advertisement shall be at least seven days prior to sale. The proceeds of such sale shall go to the general fund of the county in which such weapons are sold. The sheriff shall maintain a record and inventory of all such weapons received and sold by him. Sales of such weapons by the sheriff shall be held at least once each year.

(5) By ordering such weapon turned over to the North Carolina State Bureau of Investigation's Crime Laboratory Weapons Reference Library for official use by that agency. The State Bureau of Investigation shall maintain a record and inventory of all such weapons received.

(6) By ordering such weapons turned over to the North Carolina Justice Academy for official use by that agency. The North Carolina Justice Academy shall maintain a record and inventory of all such weapons received."

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

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **April 23, 1997 7:30 A.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rob Schofield	NCJCDC
Roz Savitt	NC Coalition Against Domestic Violence
Paul B. Wiedenhoeft	Bolton Corp.
Jerry T. Carter	N.C. Bd. of Registration
Joe Lee	Lee Air Conditioners Inc.
David Ferrell	Hafer, McNamara, Coltrane, McElroy & Cutler, PA.
David Anders	PFFNC
Tim Kent	American Institute of Architects/N.C.
Henry Jones	Attorney - Raleigh
Eddie Caldwell	NC Sheriffs Assn/NC Law Enf. Off. Assn.
Bill Brooks	NCFRE
Robert Newcomb	Newcomb & Co.
Bernard Allen	SOS
Richard O'Brien	PFFNC
Michael K. Sykes	CISNC

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 23, 1997

The North Carolina House of Representatives Judiciary II Committee met on April 23, 1997, at 1:00 P.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Berry, Bowie, Creech, Culpepper, Decker, Goodwin, Nesbitt, Redwine, Saunders, Sutton, Weatherly and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-415 GRANDPARENT'S CHILD SUPPORT CLARIFICATION
HB-530 PROFESSIONAL CORPORATION ACT AMENDMENT
HB-954 SUPREME COURT SESSION
HB-997 NOTARY COMMISSION AMENDMENT
HB-1049 PREVENT CRUELTY TO ANIMALS

Representative Culpepper presided and recognized Representative Neely to present a proposed committee substitute for HB-530 and moved it be adopted for purpose of discussion; motion passed. A copy of the bill, bill explanation prepared by Mr. Tim Hovis, Committee Counsel, and the proposed committee substitute are attached.

Representative Creech moved for a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

Representative Culpepper was recognized to explain HB-954 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Representative Goodwin moved for a favorable report; motion passed.

Representative Kiser presided and recognized Representative Neely to explain HB-997 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Representative Decker moved for a favorable report; motion passed.

Representative Berry was recognized to explain HB-415 and answer questions of committee members. A copy of the bill is attached.

No action was taken on HB-415.

Representative Culpepper was recognized to explain HB-1049 and answer questions of committee members. A copy of HB-1049 is attached.

No action was taken on HB-1049.

The meeting was adjourned at 1:45 P.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 530

Short Title: Professional Corporation Act Amendment. (Public)

Sponsors: Representatives Neely; and Brawley.

Referred to: Judiciary II.

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT SOME CORPORATIONS FROM THE APPLICABILITY OF THE PROFESSIONAL CORPORATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55B-15 reads as rewritten:

"**§ 55B-15. Applicability of Chapter.**

(a) This Chapter shall not apply to the following:

(1) ~~any~~ A corporation which prior to June 5, 1969, was permitted by law to render professional services ~~as herein defined~~ or ~~to~~ the corporate successor of ~~any such~~ that corporation by merger or otherwise by operation of law, provided there is no substantial change in the direct or indirect beneficial ownership of the shares of ~~such~~ that corporation as the result of ~~such~~ the merger or other ~~transaction;~~ transaction. ~~for~~ For purposes of this ~~section,~~ subdivision, a change of twenty percent (20%) or less shall not be considered substantial.

(2) A corporation that renders integral services defined in Chapters 83A, 89A, 89C, and 89E that are related to the planning and design of utilities, structures, buildings, machines or equipment to be manufactured, installed, constructed, or serviced by the employees of the corporation or firm. For purposes of this subdivision, 'integral services' means services subordinate to and reasonably necessary to support the primary services offered or

rendered by a corporation. This subdivision does not limit or modify the applicability of G.S. 55B-8.

(b) ~~Any such corporation or successor corporation rendering "professional service" as defined in G.S. 55B-2(6)~~ A corporation or its successor exempt under subsection (a) of this section may be brought within the provisions of this Chapter by the filing of an amendment to its articles of incorporation declaring that its shareholders have elected to bring the corporation within the provisions of this Chapter and to make the same conform to all of the provisions of this Chapter."

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

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April 21. 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chariman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 530-Professional Corporation Act Amendment (Neely)

House Bill 530 amends G.S. 55B-15 to exempt corporations which render services through licensed engineers, landscape architects, and geologists from the Professional Corporation Act. The Professional Corporation Act does not allow these firms to offer design services unless they are organized as professional corporations. A firm can only organize as a professional corporation if at least two-thirds of the stock is owned by a licensed design professional. However, many contracting firms cannot fail to meet this stock requirement. The bill would allow these firms to offer such services without meeting this requirement. The services must be integral to and in connection with the planning and design of utilities, structures, engineering components, and engineering systems of buildings, machines, or equipment to be manufactured, installed, constructed or serviced by the corporation.

House Bill 530 is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H530-PCSRG-002
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 530
THIS IS A DRAFT 22-APR-97 18:25:50
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Professional Corporation Act Amendment. (Public)

Sponsors:

Referred to:

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN CORPORATIONS WHICH OFFER ENGINEERING, LANDSCAPE ARCHITECTURAL, AND GEOLOGICAL SERVICES FROM THE APPLICABILITY OF THE PROFESSIONAL CORPORATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55B-15 reads as rewritten:

"**§ 55B-15. Applicability of Chapter.**

(a) This Chapter shall not apply to the following:

(1) ~~any~~ A corporation which prior to June 5, 1969, was permitted by law to render professional services ~~as herein defined~~ or ~~to~~ the corporate successor of ~~any such~~ that corporation by merger or otherwise by operation of law, provided there is no substantial change in the direct or indirect beneficial ownership of the shares of ~~such~~ that corporation as the result of ~~such~~ the merger or other ~~transaction;~~ transaction. ~~for~~ For purposes of this ~~section,~~

subdivision, a change of twenty percent (20%) or less shall not be considered substantial.

(2) A corporation that renders services as defined in Chapters 89A, 89C, and 89E that are integral to and in connection with the primary services performed by the employees of the corporation. For the purposes of this subdivision, integral services are defined as services that are reasonably necessary to support the primary services offered or rendered by a corporation. Such services may not be offered, performed, or rendered independently from the primary services rendered by the corporation. This subdivision does not restrict, limit or modify the requirement that professional services may only be provided by a corporation's officers, employees, and agents who are duly licensed to render such professional services."

(b) ~~Any such corporation or successor corporation rendering "professional service" as defined in G.S. 55B-2(6)~~ A corporation or its successor exempt under subsection (a) of this section may be brought within the provisions of this Chapter by the filing of an amendment to its articles of incorporation declaring that its shareholders have elected to bring the corporation within the provisions of this Chapter and to make the same conform to all of the provisions of this Chapter."

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 530 A BILL TO BE ENTITLED AN ACT TO EXEMPT SOME CORPORATIONS FROM THE APPLICABILITY OF THE PROFESSIONAL CORPORATION ACT.

☐ 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, 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)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 530
Proposed Committee Substitute H530-PCS1328

Short Title: Professional Corporation Act Amendment. (Public)

Sponsors:

Referred to:

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO EXEMPT CERTAIN CORPORATIONS WHICH OFFER ENGINEERING, LANDSCAPE ARCHITECTURAL, AND GEOLOGICAL SERVICES FROM THE APPLICABILITY OF THE PROFESSIONAL CORPORATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55B-15 reads as rewritten:

"**§ 55B-15. Applicability of Chapter.**

(a) This Chapter shall not apply to the following:

(1) ~~any~~ A corporation which prior to June 5, 1969, was permitted by law to render professional services ~~as herein defined~~ or ~~to~~ the corporate successor of ~~any such~~ that corporation by merger or otherwise by operation of law, provided there is no substantial change in the direct or indirect beneficial ownership of the shares of ~~such~~ that corporation as the result of ~~such~~ the merger or other ~~transaction;~~ transaction. ~~for~~ For purposes of this ~~section,~~ subdivision, a change of twenty percent (20%) or less shall not be considered substantial.

(2) A corporation that renders services as defined in Chapters 89A, 89C, and 89E that are integral to and in connection with the primary services performed by the employees of the corporation. For the purposes of this subdivision, integral services are defined as services that are reasonably necessary to support the primary

services offered or rendered by a corporation. Such services may not be offered, performed, or rendered independently from the primary services rendered by the corporation. This subdivision does not restrict, limit, or modify the requirement that professional services may only be provided by a corporation's officers, employees, and agents who are duly licensed to render such professional services.

(b) ~~Any such corporation or successor corporation rendering "professional service" as defined in G.S. 55B-2(6)~~ A corporation or its successor exempt under subsection (a) of this section may be brought within the provisions of this Chapter by the filing of an amendment to its articles of incorporation declaring that its shareholders have elected to bring the corporation within the provisions of this Chapter and to make the same conform to all of the provisions of this Chapter."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 954*

Short Title: Supreme Court Sessions. (Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary II.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND EXISTING LAW PERTAINING TO SESSIONS OF THE SUPREME COURT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-10(a) reads as rewritten:

"(a) The Supreme Court shall consist of a Chief Justice and six associate justices, elected by the qualified voters of the State for terms of eight years. Before entering upon the duties of his office, each justice shall take an oath of office. Four justices shall constitute a quorum for the transaction of the business of the court. ~~Sessions~~ Except as otherwise provided in this subsection, sessions of the court shall be held in the city of Raleigh, and scheduled by rule of court so as to discharge expeditiously the court's business. The court may by rule hold sessions not more than twice annually in the Old Chowan County Courthouse (1767) in the Town of Edenton, which is a State-owned court facility that is designated as a National Historic Landmark by the United States Department of the Interior."

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

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Legislative Services Office

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April 22, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 954—Supreme Court Sessions (Culpepper)

House Bill 954 amends G.S. 7A-10 to provide that the North Carolina Supreme Court may, by rule, hold two sessions annually in the Old Chowan County Courthouse in Edenton. The bill notes that the facility is designated as a National Historic Landmark.

House Bill 954 is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§§ 7A-8, 7A-9: Reserved for future codification purposes.

ARTICLE 3.

The Supreme Court.

§ 7A-10. Organization; compensation of justices.

(a) The Supreme Court shall consist of a Chief Justice and six associate justices, elected by the qualified voters of the State for terms of eight years. Before entering upon the duties of his office, each justice shall take an oath of office. Four justices shall constitute a quorum for the transaction of the business of the court. Sessions of the court shall be held in the city of Raleigh, and scheduled by rule of court so as to discharge expeditiously the court's business.

(b) The Chief Justice and each of the associate justices shall receive the annual salary provided in Current Operations Appropriations Act. Each justice is entitled to reimbursement for travel and subsistence expenses at the rate allowed State employees generally.

(c) In lieu of merit and other increment raises paid to regular State employees, the Chief Justice and each of the Associate Justices shall receive as longevity pay an annual amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, nine and six-tenths percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of service, and nineteen and two-tenths percent (19.2%) after 20 years of service. "Service" means service as a justice or judge of the General Court of Justice or as a member of the Utilities Commission. Service shall also mean service as a district attorney or as a clerk of superior court. (1967, c. 108, s. 1; 1983, c. 761, s. 242; 1983 (Reg. Sess., 1984), c. 1034, s. 165; c. 1109, ss. 11, 13.1; 1985, c. 698, s. 10(a).)

Editor's Note. — Session Laws 1995, c. 333 requests the Supreme Court of North Carolina to develop and implement a case flow management plan designed to administer justice without delay and to increase efficiency in the handling of cases in the state's trial courts. The Supreme Court is requested to make a report detailing the plan to the 1995 General Assembly, Regular Session 1996, by May 1, 1996.

CASE NOTES

Cited in Bradshaw v. Administrative Office of Courts, 83 N.C. App. 237, 349 S.E.2d 621 (1986).

§ 7A-10.1. Authority to prescribe standards of judicial conduct.

The Supreme Court is authorized, by rule, to prescribe standards of judicial conduct for the guidance of all justices and judges of the General Court of Justice. (1973, c. 89.)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 954 A BILL TO BE ENTITLED AN ACT TO AMEND EXISTING LAW PERTAINING TO SESSIONS OF THE SUPREME COURT.

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 997

Short Title: Notary Commission Amendment. (Public)

Sponsors: Representatives Neely; and Thompson.

Referred to: Judiciary II.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE REQUIREMENT THAT NOTARIES PUBLIC OBTAIN THE RECOMMENDATION OF A PUBLICLY ELECTED OFFICIAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 10A-4(b)(5) reads as rewritten:

"(5) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary of State and be available at the register of deeds office in each county. Every application shall bear the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. ~~The applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.~~"

Section 2. This act becomes effective October 1, 1997, and applies to all initial applications submitted on or after that date.

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Legislative Services Office

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April 22, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 997—Notary Commission Amendment (Neely)

House Bill 997 deletes the requirement that a notary public obtain a recommendation from one publicly elected official in the State when submitting an application to the Secretary of State for notarial commission.

House Bill 997 becomes effective October 1, 1997 and applies to applications submitted on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Chapter 10A.

Notaries.

Sec.
10A-4. Commissioning.
10A-6. Recommissioning.
10A-12. Enforcement and penalties.
10A-13. Change of status.

§ 10A-4. Commissioning.

(a) Except as provided in subsection (c) of this section, the Secretary of State shall commission as a notary any qualified person who submits an application in accordance with this Chapter.

(b) A person qualified for a notarial commission shall meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Reside or work in this State.

(3) Satisfactorily complete a course of study that is approved by the Secretary of State and consists of not less than three hours nor more than six hours of classroom instruction provided by community colleges throughout the State, unless the person is a licensed member of the Bar of this State.

(4) Purchase and keep as a reference a manual approved by the Secretary of State that describes the duties, authority, and ethical responsibilities of notaries public.

(5) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary of State and be available at the register of deeds office in each county. Every application shall bear the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. The applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.

(c) The Secretary of State may deny an application if any of the following applies to the applicant:

(1) The applicant has been convicted of a crime involving dishonesty or moral turpitude.

(2) The applicant has had a notarial commission or professional license revoked, suspended, or restricted by this or any other state.

(3) The applicant has engaged in official misconduct, whether or not disciplinary action resulted.

(d) The course of study required by subsection (b) of this section shall be taught by an instructor certified in accordance with rules adopted by the Secretary of State. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:

(1) Complete and pass a six-hour instructor's course taught by the notaries public director or other person approved by the Secretary of State.

(2) Have six months of active experience as a notary public.

(3) Maintain a current commission as a notary public.

(4) Purchase the current notary public guidebook.

Registers of deeds, assistant and deputy registers of deeds, clerks of court, and assistant and deputy clerks of court are exempt from the requirements set forth in subdivisions (2) and (3) of this subsection while they remain actively employed in the capacities named.

(e) Certification to teach a course of study shall be effective for two years and may be renewed by passing a recertification course taught by the notaries public director or other person approved by the Secretary of State. (Code, ss. 3304, 3305; Rev., ss. 2347, 2348; C.S., s. 3172; 1927, c. 117; 1959, c. 1161, s. 2; 1969, c. 563, s. 1; c. 912, s. 1; 1973, c. 680, s. 1; 1983, c. 427, ss. 1, 2; c. 713, s. 22; 1991, c. 683, s. 2; 1995, c. 226, s. 1.)

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, and applicable to applications for recommission on or after that date, added subsections (d) and (e).

CASE NOTES

Cited in Baker v. Martin, 330 N.C. 331, 410 S.E.2d 887 (1991).

§ 10A-6. Recommissioning.

An applicant for recommissioning as a notary shall submit a new application and comply anew with the provisions of G.S. 10A-4, except that the applicant shall not be required to complete the course of study described in subdivision (b)(3) nor to obtain the recommendation of a publicly elected official. (1991, c. 683, s. 2; 1995, c. 226, s. 2.)

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, and applicable to applications for recommission on or after that date, substituted "that the applicant shall not be required to complete the course of study described in subdivision (b)(3) nor to obtain the recommendation of a publicly elected official" for "for subdivision (b)(3)" at the end of the section.

§ 10A-9. Powers and limitations.

Editor's Note. — The citations to McNeal Pipe & Foundry Co. v. Woltman, Keith & Co., which appear under this section in the main volume, are incorrect. The correct citation is McNeal Pipe & Foundry Co. v. Woltman, Keith & Co., 114 N.C. 113, 19 S.E. 109 (1894).

§ 10A-12. Enforcement and penalties.

(a) Any person who holds himself or herself out to the public as a notary or who performs notarial acts and is not commissioned is guilty of a Class 1 misdemeanor.

(b) Any notary who takes an acknowledgment or performs a verification or proof without personal knowledge of the signer's identity or without satisfactory evidence of the signer's identity is guilty of a Class 2 misdemeanor.

(c) Any notary who takes an acknowledgment or performs a verification or proof knowing it is false or fraudulent is guilty of a Class I felony.

(d) Any person wh
commit official miscon
(e) For purposes of
agents of the Departm
jurisdiction and have
enforcement officers v
have the authority to a
investigations and to
coordination with loca
violations of this Chap
1121; 1994, Ex. Sess.,

Editor's Note. — Session
c. 539, ss. 6-8, 1121, which a
section, in s. 1359, as amen
sion Laws 1994, Extra Sess
14(c), provides: "This act be
tive October 1, 1994, and a
fenses occurring on or after
Prosecutions for offenses co
fore the effective date of this
abated or affected by this a

§ 10A-13. Change

(a) Within 30 days
address, the notary sha
registered mail, and pr
both the old and new a
(b) Within 30 days af
Secretary of State of th
The Secretary of State
the old name, issue a c
notary to reappear befo
office, and direct the
Notaries Public.
(c) A notary who re
Secretary of State, by ce
the effective date of re
work in the State shall
(d) The Secretary of
any ground for which ar
under G.S. 10A-4(c). T
mission of a notary wh
when performing a not
an oath or affirmation.

Effect of Amendments.
amendment, effective Octob
and applicable to applications

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 997 A BILL TO BE ENTITLED AN ACT TO REPEAL THE REQUIREMENT THAT NOTARIES PUBLIC OBTAIN THE RECOMMENDATION OF A PUBLICLY ELECTED OFFICIAL.

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 415

Short Title: Grandparents' Child Support Clarification. (Public)

Sponsors: Representatives Berry; and Culp.

Referred to: Judiciary II.

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING GRANDPARENTS' LIABILITY FOR CERTAIN CHILD SUPPORT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-13.4(b) reads as rewritten:

"(b) In the absence of pleading and proof that the circumstances otherwise warrant, the father and mother shall be primarily liable for the support of a minor child. In the absence of pleading and proof that the circumstances otherwise warrant, parents of a minor, unemancipated child who is the custodial or noncustodial parent of a child shall share this primary liability for their grandchild's support with the minor parent, the court determining the proper share, until the minor parent reaches the age of 18 or becomes emancipated. If both the parents of the child requiring support were unemancipated minors at the time of the child's conception, the parents of both minor parents share primary liability for their grandchild's support until both minor parents reach the age of 18 or become emancipated. If only one parent of the child requiring support was an unemancipated minor at the time of the child's conception, the parents of both parents are liable for any arrearages in child support owed by the adult or emancipated parent until the other parent reaches the age of 18 or becomes emancipated. In the absence of pleading and proof that the circumstances otherwise warrant, any other person, agency, organization or institution standing in loco parentis shall be secondarily liable for ~~such~~ this support. Such other circumstances may include, but shall not be limited to, the relative ability of all the above-mentioned parties to provide support or the inability of one or more of them to provide support, and the needs and estate of the child. The judge may enter an

order requiring any one or more of the above-mentioned parties to provide for the support of the child as may be appropriate in the particular case, and if appropriate the court may authorize the application of any separate estate of the child to his support. However, the judge ~~may~~ shall not order support to be paid by a person who is not the child's ~~parent~~ parent, grandparent, or an agency, organization or institution standing in loco parentis absent evidence and a finding that ~~such~~ the person, agency, organization or institution has voluntarily assumed the obligation of support in writing. The preceding sentence shall not be construed to prevent any court from ordering the support of a child by an agency of the State or county which agency may be responsible under law for ~~such~~ the support."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1049

Short Title: Increase Cruelty to Animals Penalty. (Public)

Sponsors: Judiciary II Committee; Hensley and McComas.

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR CRUELTY TO ANIMALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-360 reads as rewritten:

"**§ 14-360. Cruelty to animals; construction of section.**

(a) If any person shall willfully overdrive, overload, wound, injure, ~~torture, torment,~~ or deprive of necessary sustenance, ~~cruelly beat, needlessly mutilate or kill~~ or cause or procure to be overdriven, overloaded, wounded, injured, ~~tortured, tormented,~~ or deprived of necessary sustenance, ~~cruelly beaten, needlessly mutilated or killed as aforesaid, any useful beast, fowl or~~ any animal, every such offender shall for every such offense be guilty of a Class 1 misdemeanor. ~~In this section, and in every law which may be enacted relating to animals, the words "animal" and "dumb animal" shall be held to include every living creature; the words "torture," "torment" or "cruelty" shall be held to include every act, omission or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted. Such terms shall not be construed to prohibit the lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission.~~

(b) If any person shall willfully torture, torment, mutilate, maim, cruelly beat, disfigure, poison or kill, or cause or procure to be tortured, tormented, mutilated, maimed, cruelly beaten, disfigured, poisoned or killed, any animal, every such offender shall for every such offense be guilty of a Class I felony.

(c) In this section, the term 'animal' shall be held to include every domestic or otherwise useful animal. This section shall not be construed to prohibit the ~~lawful~~ taking of animals under the jurisdiction and regulation of the Wildlife Resources

Commission, lawful activities sponsored by agencies conducting biomedical research or training, lawful activities for sport, the production of livestock or poultry, or the lawful destruction of any animal for the purpose of protecting ~~such livestock or poultry.~~"

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

the public, other animals, or the public health, or for lawful veterinary purposes.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **April 23, 1997 1:00 P.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Henry Liles	DSAtlantic Corp & Prof. Engs of N.C.
Ed Scott	PENC
[illegible]	N.C. State Bd. of Reg.
Paul B. Wiggerhold	
Joe Lee	Lee NC
Bo Newcomb	Newcomb & Co
Robert T. Newcomb	Newcomb & Co.
Mary Lowry	Conf. of DA's
[illegible]	NCSSA
[illegible]	BPOPAL
[illegible]	Governor's Office
R. Paul Wilms	NCMBA
John Crell	Attorney

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 24, 1997

The North Carolina House of Representatives Judiciary II Committee met on April 24, 1997, at 7:30 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Cansler, Culpepper, Goodwin, Hackney, McMahan, Russell, Saunders, Shubert, Sutton, Weatherly and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-908 MODIFY RIGHTS OF DECEDENT'S SPOUSE
HB-1028 TOWING PROCEDURES
HB-1045 RED LIGHT PHOTO CITATIONS

Representatives Baddour and Russell were recognized to present House Bill 908 and answer questions of committee members. A copy of the bill and explanation provided by Representatives Baddour and Russell are attached.

Mr. John Hines, Attorney, Baddour, Parker, Hines, of Goldsboro, explained the bill and answered questions of committee members.

Representative Hackney was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Shubert was recognized to explain HB-1045 and answer questions of committee members. A copy of the bill and bill explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Representative Shubert provided members with handouts. A copy of the handouts are attached.

Mr. Boyd F. Cauble, Executive Assistant to the Manager, City of Charlotte, spoke in support of the bill and answered questions of committee members.

No action was taken on HB-1045.

The meeting was adjourned at 8:20 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 908

Short Title: Modify Rights of Decedent's Spouse. (Public)

Sponsors: Representatives Baddour, Russell (Cosponsors); Bowie, Easterling, Gardner, Jarrell, Jeffus, Mitchell, Mosely, Wainwright, and Watson.

Referred to: Judiciary II.

April 10, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE RIGHTS OF A DECEDENT'S SPOUSE.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 30 of the General Statutes is repealed.

Section 2. Chapter 30 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.

"Elective Share.

"§ 30-3.1. Right of elective share.

(a) Elective Share. -- The surviving spouse of a decedent who dies domiciled in this State has a right to claim an 'elective share', which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(c), less (ii) the value of Property Passing to Surviving Spouse, as defined in G.S. 30-3.3(a). The applicable share of the Total Net Assets is as follows:

(1) If the decedent is not survived by any lineal descendants, one-half of the Total Net Assets.

(2) If the decedent is survived by one child, or lineal descendants of one deceased child, one-half of the Total Net Assets.

(3) If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the Total Net Assets.

(b) Reduction of Applicable Share. -- In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants surviving by a prior marriage but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one-half.

(c) Minimum Applicable Share. -- In no event shall the applicable share of the Total Net Assets be less than twenty-five thousand dollars ($25,000).

(d) Death Taxes. -- Death taxes shall be taken into account as a claim against the estate in determining Total Net Assets only to the extent that such taxes are increased because the assets received by the surviving spouse do not qualify for the federal estate tax marital deduction pursuant to section 2056 of the Code, the North Carolina exemption from inheritance and estate tax pursuant to G.S. 105-3(10) and (11), or similar provisions under the laws of any other applicable taxing jurisdiction.

"**§ 30-3.2. Definitions.**

(a) 'Code' means the Internal Revenue Code in effect at the time of the decedent's death.

(b) 'Death taxes' means any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.

(c) 'Total Net Assets' means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the surviving spouse, debts, claims, and administration expenses, the sum of the following:

(1) All property to which the decedent had legal and equitable title immediately prior to death;

(2) All property received by the decedent's personal representative by reason of the decedent's death;

(3) All proceeds of insurance on the life of the decedent of which the decedent is the owner, or which is payable to the surviving spouse;

(4) One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship;

(5) The entire value of any property held by the decedent and another person, other than the surviving spouse, as joint tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;

(6) The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, 2040, or 2042 of the Code;

(7) Any donative transfers of property made by the decedent to donees other than the surviving spouse within three years of the decedent's death, excluding:

a. Any gifts within the annual exclusion provisions of section 2503 of the Code; and

b. Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent;

(8) Any proceeds of any individual retirement account, pension or profit-sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal Social Security system;

(9) Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and

(10) In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value.

"**§ 30-3.3. Property Passing to Surviving Spouse.**

(a) Property Passing to Surviving Spouse. -- For purposes of this Article, 'Property Passing to Surviving Spouse' means the sum of the following:

(1) One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship;

(2) The value of any interest in property (outright or in trust, including any interest subject to a general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system.

(3) Any year's allowance awarded to the surviving spouse;

(4) The value of any property renounced by the surviving spouse;

(5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent; and

(6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be valued at one-half of the entire value of that property at the time the gift is made.

(b) Death Taxes. -- The value of Property Passing to Surviving Spouse shall be reduced by any death taxes that are a charge against or apportioned against the surviving spouse on property interests included in Property Passing to Surviving Spouse.

(c) No Duplication. -- In case of overlapping application of the same property under more than one provision, the property shall be included only once, under the provision yielding the greatest value.

"**§ 30-3.4. Procedure for determining the elective share.**

(a) Exercisable Only During Lifetime. -- The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, the surviving spouse's agent under a power of attorney, or the guardian of the surviving spouse's estate. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. -- A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration by (i) filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) Time for Hearing. -- Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The clerk shall give notice of the hearing to the surviving spouse, personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.

(d) Preparation of Tax Form. -- In every case in which a petition to determine an elective share has been filed, and within two months of the filing of the petition, the personal representative shall prepare and submit to the clerk a proposed Form 706, federal estate tax return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 as the clerk sees fit.

(e) Valuation. -- The valuation of interests in property for purposes of G.S. 30-3.2 and G.S. 30-3.3 shall be determined as follows:

(1) Basic principles. -- Each interest shall be valued at its fair market value, reduced by all liens, claims or encumbrances against the interest. For interests passing at the decedent's death, valuation shall be as of the date of death, and for interests transferred during the decedent's lifetime, valuation shall be as of the date of transfer.

(2) Valuation of partial and contingent interests in property. -- The valuation of interests in property, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the

occurrence of one or more contingencies, shall be determined by computations based upon the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%) of the gross value of the underlying property in which those interests are limited. However, in valuing interests passing to the surviving spouse, the following special rules apply:

a. To the extent that the interest is dependent upon the exercise of discretion by a fiduciary, the interest shall have no value unless the spouse is serving as that fiduciary and the power to distribute the trust property constitutes a general power of appointment held by the spouse, as defined in section 2041 of the Code;

b. To the extent that the interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate only upon the earlier of the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage; and

c. To the extent that the valuation of an interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.

(3) Determination of fair market value. -- The fair market value of each asset comprising Total Net Assets shall be determined as follows:

a. Probate assets and assets passing to spouse. -- The value of each probate asset and Property Passing to Surviving Spouse, other than assets held in trust, shall be established by the good faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative, or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse.

b. Trust assets. -- The value of each trust asset shall be established by good faith agreement of the surviving spouse and the trustee, unless either (i) the surviving spouse is the trustee, or (ii) the clerk determines that the trustee may not

be able to represent the trust adversely to the surviving spouse.

c. Other assets. -- The value of any other asset shall be established by the good faith agreement of the surviving spouse and each person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share because of that person's interest in the asset, unless the clerk determines that valuation under sub-subdivision d. of this subdivision is more appropriate.

d. Use of disinterested persons. -- If the value of any asset is not established by agreement, the clerk shall appoint one or more qualified and disinterested persons to determine a value of each asset. That determination of the value of an asset shall be final for the exclusive purposes of this Article.

(f) Findings and Conclusions. -- After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

(g) Appeals. -- Any party in interest may appeal from the decision of the clerk to the superior court, and in such event the procedure shall be the same as in other special proceedings as now provided by law. If an appeal is taken from the decision of the clerk, that appeal shall have the effect of staying the judgment and order of the clerk until the cause is heard and determined by the superior court upon the appeal taken. Upon an appeal taken from the clerk to the superior court, the judge may review the findings of fact by the clerk and may find the facts or take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the Appellate Division.

"**§ 30-3.5. Recovery of assets by personal representative.**

(a) Recovery of Assets. -- The personal representative is entitled to recover proportionately from all persons, other than the surviving spouse, receiving or in possession of any of the decedent's Total Net Assets a sufficient amount to enable the personal representative to pay the elective share. The apportionment shall be made in the proportion that the value of the interest of each person receiving or in possession of any of Total Net Assets bears to Total Net Assets, excluding any Property Passing to Surviving Spouse. The only persons subject to contribution to make up the elective share are (i) original recipients of property comprising the decedent's Total Net Assets, and subsequent gratuitous inter vivos donees or persons claiming by testate or intestate succession to the extent those persons have the property or its proceeds on or after the date of decedent's death, and (ii) a fiduciary, as to the property under the fiduciary's control at or after the time a fiduciary receives notice that a surviving spouse has claimed an elective share. A fiduciary shall not be considered to have notice until it receives notice at its address as shown

in the decedent's estate papers in the clerk's office or, if there are no such papers or no such address is shown in those papers, at the fiduciary's residence or the office of its registered agent.

The personal representative may withhold from any property of the decedent in his possession, distributable to any person subject to apportionment, the amount of the elective share apportioned to such person. If the property in possession of the personal representative and distributable to any person subject to apportionment is insufficient to satisfy the proportionate amount of the elective share determined to be due from that person, the personal representative may recover the deficiency from that person. If the property is not in possession of the personal representative, the personal representative may recover from the person the amount of the elective share apportioned to that person in accordance with this Article. If the personal representative cannot reasonably collect from any person subject to apportionment the amount of the elective share apportioned to that person, the amount not reasonably recoverable shall, with the approval of the clerk, be apportioned among the other persons who are subject to apportionment. The apportionment shall be made in the proportion that the value of the interest of each remaining person bears to the total value of the interests of all remaining persons.

(b) Standstill Order. -- After the filing of the petition demanding an elective share, either the personal representative or surviving spouse may request the clerk to issue an order that any recipients not dispose of any of the decedent's Total Net Assets pending the hearing. The decision to issue such an order shall be in the discretion of the clerk.

(c) Satisfaction of Liability. -- A person receiving or in possession of any of the decedent's Total Net Assets may pay his proportionate elective share liability with respect to that property by any of the following methods:

(1) Conveyance of the property included in the decedent's Total Net Assets;

(2) Payment of the value of his liability in cash or, upon agreement of the surviving spouse, other property; or

(3) Partial conveyance and partial payment under subdivisions (1) and (2) of this subsection, provided the value conveyed and paid is equal to his liability.

(d) Expenses. -- The expenses reasonably incurred by the personal representative in connection with the appraisal or recovery of assets shall be apportioned as provided for the elective share under this Article. If the personal representative finds that it is inequitable to apportion the expenses because those expenses were incurred because of the fault of one or more persons subject to apportionment, the personal representative may direct other more equitable apportionment, with the approval of the clerk.

(e) Bond. -- If property held by the personal representative is distributed prior to final apportionment of the elective share, the personal representative may require the distributee to provide a bond or other security for the apportionment liability in the

form and amount prescribed by the personal representative, with the approval of the clerk.

"§ 30-3.6. Waiver of rights.

(a) The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving spouse.

(b) A waiver is not enforceable if the surviving spouse proves that:

(1) The waiver was not executed voluntarily; or

(2) The surviving spouse was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure."

Section 3. G.S. 29-30 reads as rewritten:

"**§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share provided.**

(a) In lieu of the intestate share provided in G.S. 29-14 or ~~29-21,~~ G.S. 29-21, or of the elective share provided in G.S. 30-3.1, the surviving spouse of an intestate or the surviving spouse who ~~dissents from the will of a testator~~ has petitioned for an elective share shall be entitled to take as his or her intestate share or elective share a life estate in one third in value of all the real estate of which the deceased spouse was seised and possessed of an estate of inheritance at any time during coverture, except that real estate as to which the surviving spouse:

(1) Has waived his or her rights by joining with the other spouse in a conveyance thereof, or

(2) Has release or quitclaimed his or her interest therein in accordance with G.S. 52-10, or

(3) Was not required by law to join in conveyance thereof in order to bar the elective life estate, or

(4) Is otherwise not legally entitled to the election provided in this section.

(b) Regardless of the value thereof and despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a), the life estate provided for in subsection (a) shall at the election of the surviving spouse include a life estate in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse if such dwelling house were owned by the deceased spouse at the time of his or her death, together with the outbuildings, improvements and easements thereunto belonging or appertaining, and lands upon which situated and reasonably necessary to the use and enjoyment thereof, as well as a fee simple ownership in the household furnishings therein.

(c) The election provided for in subsection (a) shall be made by the filing of a notice thereof with the clerk of the superior court of the county in which the administration of the estate is pending, or, if no administration is pending, then with the clerk of the superior court of any county in which the administration of the estate could be commenced. Such election shall be made:

(1) At any time within one month after the expiration of the time fixed for the filing of ~~a dissent,~~ the petition for elective share under Article 1A of Chapter 30, or

(2) In case of intestacy, then within 12 months after the death of the deceased spouse if letters of administration are not issued within that period, or

(3) If letters of administration are issued within 12 months after the date of the death of the deceased spouse, then within one month after the expiration of the time limited for filing claims against the estate, or

(4) If litigation that affects the share of the surviving spouse in the estate is pending, then within such reasonable time as may be allowed by written order of the clerk of the superior court.

The notice of election shall:

(1) Be directed to the clerk with whom filed;

(2) State that the surviving spouse making the same elects to take under this section rather than under the provisions of ~~G.S. 29-14 or 29-21,~~ G.S. 29-14, G.S. 29-21, or G.S. 30-3.1, as applicable;

(3) Set forth the names of all heirs, devisees, legatees, personal representatives and all other persons in possession of or claiming an estate or an interest in the property described in subsection (a); and

(4) Request the allotment of the life estate provided for in subsection (a).

The notice of election may be in person, or by attorney authorized in a writing executed and duly acknowledged by the surviving spouse and attested by at least one witness. If the surviving spouse is a minor or an incompetent, the notice of election may be executed and filed by a general guardian or by the guardian of the person or estate of the minor or incompetent spouse. If the minor or incompetent spouse has no guardian, the notice of election may be executed and filed by a next friend appointed by the clerk. The notice of election, whether in person or by attorney, shall be filed as a record of the court, and a summons together with a copy of the notice shall be served upon each of the interested persons named in the notice of election.

(d) In case of election to take a life estate in lieu of an intestate ~~share,~~ share or elective share, as provided in either G.S. 29-14, 29-21, or ~~30-3(a),~~ 30-3.3(a), the clerk of superior court, with whom the notice of election has been filed, shall summon and appoint a jury of three disinterested persons who being first duly sworn shall promptly allot and set apart to the surviving spouse the life estate provided for in subsection (a) and make a final report of such action to the clerk.

(e) The final report shall be filed by the jury not more than 60 days after the summoning and appointment thereof, shall be signed by all jurors, and shall describe by metes and bounds the real estate in which the surviving spouse shall have been allotted and set aside a life estate. It shall be filed as a record of court and a certified copy thereof shall be filed and recorded in the office of the register of deeds of each

county in which any part of the real property of the deceased spouse, affected by the allotment, is located.

(f) In the election and procedure to have the life estate allotted and set apart provided for in this section, the rules of procedure relating to partition proceedings shall apply except insofar as the same would be inconsistent with the provisions of this section.

(g) Neither the household furnishings in the dwelling house nor the life estates taken by election under this section shall be subject to the payment of debts due from the estate of the deceased spouse, except those debts secured by such property as follows:

(1) By a mortgage or deed of trust in which the surviving spouse has waived his or her rights by joining with the other spouse in the making thereof; or

(2) By a purchase money mortgage or deed of trust, or by a conditional sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage; or

(3) By a mortgage or deed of trust made prior to the marriage; or

(4) By a mortgage or deed of trust constituting a lien on the property at the time of its acquisition by the deceased spouse either before or during the marriage.

(h) If no election is made in the manner and within the time provided for in subsection (c) the surviving spouse shall be conclusively deemed to have waived his or her right to elect to take under the provisions of this section, and any interest which the surviving spouse may have had in the real estate of the deceased spouse by virtue of this section shall terminate."

Section 4. G.S. 30-15 reads as rewritten:

"**§ 30-15. When spouse entitled to allowance.**

Every surviving spouse of an intestate or of a testator, whether or not he has petitioned for an elective share, ~~dissented from the will,~~ shall, unless he has forfeited his right thereto, as provided by law, be entitled, out of the personal property of the deceased spouse, to an allowance of the value of ten thousand dollars ($10,000) for his support for one year after the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of the deceased spouse, and shall, in cases of testacy, be charged against the share of the surviving spouse."

Section 5. G.S. 31-5.3 reads as rewritten:

"**§ 31-5.3. Will not revoked by marriage; dissent from will made prior to marriage.**

A will is not revoked by a subsequent marriage of the maker; and the surviving spouse may ~~dissent from such~~ petition for an elective share when there is a will made prior to the marriage in the same manner, upon the same conditions, and to the same extent, as a surviving spouse may ~~dissent from~~ petition for an elective share when there is a will made subsequent to marriage."

Section 6. G.S. 31A-1(b) reads as rewritten:

"(b) The rights lost as specified in subsection (a) of this section shall be as follows:

(1) All rights of intestate succession in the estate of the other spouse;
(2) All right to claim or succeed to a homestead in the real property of the other spouse;
(3) All right to ~~dissent from the will~~ petition for an elective share of the estate of the other spouse and take either the elective intestate share provided or the life interest in lieu thereof;
(4) All right to any year's allowance in the personal property of the other spouse;
(5) All right to administer the estate of the other spouse; and
(6) Any rights or interests in the property of the other spouse which by a settlement before or after marriage were settled upon the offending spouse solely in consideration of the marriage."

Section 7. G.S. 31C-3 reads as rewritten:

"**§ 31C-3. Disposition of community property upon death.**

Upon death of a married person, one half of the property to which this Chapter applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws or succession of this State. One half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this State. With respect to property to which this Chapter applies, the one half of the property of the decedent is not subject to the surviving spouse's right to ~~dissent from the will~~ petition for an elective share under the provisions of Article ~~1~~ 1A of Chapter 30, and is not subject to the right to elect a life estate under the provisions of Article 8 of Chapter 29."

Section 8. G.S. 84-5(2) reads as rewritten:

"(2) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, said acts shall be performed for the corporation by a duly licensed attorney, not a salaried employee of the corporation, retained to perform legal services required in connection with the particular estate, trust or other fiduciary matter:
a. Offering wills for probate.
b. Preparing and publishing notice of administration to creditors.
c. Handling formal court proceedings.
d. Drafting legal papers or giving legal advice to spouses concerning ~~dissent from their spouses' will.~~ rights to an elective share under Article 1A of Chapter 30 of the General Statutes.
e. Resolving questions of domicile and residence of a decedent.
f. Handling proceedings involving year's allowances of widows and children.
g. Drafting deeds, notes, deeds of trust, leases, options and other contracts.

h. Drafting instruments releasing deeds of trust.
i. Drafting assignments of rent.
j. Drafting any formal legal document to be used in the discharge of the corporate fiduciary's duty.
k. In matters involving estate and inheritance taxes, gift taxes, and federal and State income taxes:
1. Preparing and filing protests or claims for refund, except requests for a refund based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
2. Conferring with tax authorities regarding protests or claims for refund, except those based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
3. Handling petitions to the tax court.
l. Performing legal services in insolvency proceedings or before a referee in bankruptcy or in court.
m. In connection with the administration of an estate or trust:
1. Making application for letters testamentary or letters or administration.
2. Abstracting or passing upon title to property.
3. Handling litigation relating to claims by or against the estate or trust.
4. Handling foreclosure proceedings of deeds of trust or other security instruments which are in default."

Section 9. This act is effective when it becomes law and applies to estates of decedents dying on or after that date.

An Act to Modify the Rights of a Decedent's Spouse: The Elective Share Statute

This bill repeals North Carolina's dissent statute (Article 1 of Chapter 30 of the General Statutes) and replaces it with an "elective share" statute. The elective share statute solves two problems: (1) the failure of the dissent statute and the Intestate Succession Act to provide a surviving spouse with rights in a decedent's non-probate property, and (2) an anomaly, explained below, in the dissent statute's determination of how much property the spouse may claim. The elective share statute: includes rules for determining the value of property; provides the procedure for claiming and determining the elective share; apportions the liability for satisfaction of the elective share among the beneficiaries of the probate and non-probate assets; and provides a method for spouses to waive their elective share rights by agreement.

The Treatment of Non-probate Property

North Carolina's current dissent statute and Intestate Succession Act (Chapter 29 of the General Statutes) provide a decedent's spouse with certain rights in the decedent's property. The dissent statute applies if the decedent dies with a will; the Intestate Succession Act applies if the decedent dies without a will. Both statutes appear to have been enacted to prevent the decedent from disinheriting his or her spouse and to protect the spouse against the loss of support upon the decedent's death.

Each statute, however, gives the spouse rights only to the decedent's probate property. Probate property is generally all property that the decedent owns other than non-probate property. Non-probate property includes life insurance, IRAs, employee retirement plan accounts, annuities, revocable or "living" trusts, irrevocable trusts, and property owned jointly with one or more other persons with right of survivorship.

Both statutes were enacted in 1959. Since then, the "non-probate revolution" has occurred. Federal tax and employee benefit law has encouraged huge investments of wealth in employee qualified retirement plan accounts, IRAs, tax-deferred annuities and life insurance, all of which are non-probate property. At the same time, an increased awareness of the costs, publicity and delay imposed by court jurisdiction over probate property has motivated many people to transfer large amounts of property into revocable or "living" trusts and joint with right of survivorship property.

Today, it is commonplace for a decedent to die owning a substantial amount of non-probate property, yet very little probate property. Neither the Intestate Succession Act nor the dissent statute, however, provides a decedent's spouse with any rights in the decedent's non-probate property. Accordingly, a decedent can bypass his or her spouse and leave all his or her property to someone else by placing all the property in non-probate form: either owning it jointly with the non-spousal beneficiaries with right of survivorship; or investing it in life

insurance, annuities, IRAs, employee benefit plan accounts, or irrevocable trusts that designate the non-spousal persons as beneficiaries.

The elective share statute restores to the surviving spouse the protection that the dissent statute and Intestate Succession Act originally intended to provide. The elective share statute gives the surviving spouse the right to an "elective share" of the decedent's "Total Net Assets", whether the decedent dies with or without a will.

How Much Property the Surviving Spouse May Claim

The current dissent statute determines a surviving spouse's rights in two steps. The statute first determines whether the spouse has the right to dissent at all (§ 30-1 of the dissent statute). If the spouse has the right to dissent, then the statute determines how much probate property the spouse may receive (§ 30-3 of the dissent statute). The two steps are inconsistent. The first step takes into account the non-probate property that the spouse receives. Generally, the spouse has a right to dissent if the amount of property, probate and non-probate, that the spouse is entitled to receive is less than a threshold amount. If the spouse passes this first step and thus has the right to dissent, the second step generally gives the spouse a share of the probate property equal to the step-one threshold amount without regard to how much non-probate property the spouse receives. Because the first step takes the spouse's share of non-probate property into account and the second step does not, an anomaly results:

> Example 1. Decedent dies survived by a spouse (sole marriage) and three children. Decedent owns $600,000 of probate property and $200,000 of non-probate property. Decedent's will leaves all the probate property to the children. All the non-probate property passes to the spouse.
>
> Example 2. The facts are the same as Example 1 except that Decedent's probate property is worth $600,001.

Assume that the step-one threshold amount and the step-two dissent share amount are both equal to one-third of the probate property. In Example 1, the step-one threshold is $200,000. Decedent's spouse may not dissent, as that share is not less than the threshold amount. The spouse receives $200,000 in non-probate property but receives none of the probate property.

In Example 2, the step-one threshold is $200,000.33. Accordingly, Decedent's spouse may dissent. The spouse then receives not only $200,000 in non-probate property, but also $200,000.33 worth of the probate property, for a total of $400,000.33.

The elective share statute avoids this unfairness by eliminating the dissent statute's first step, while maintaining a similar distribution under the second step. § 30-3.1 simply provides that a spouse always has the right to claim an elective share; and that the elective share amount is

equal to a defined share of the decedent's probate and non-probate property ("Total Net Assets") reduced by the amount of probate and non-probate property that the spouse is already entitled to receive ("Property Passing to Surviving Spouse").

Comparing the Shares Under the Dissent Statute and the Elective Share Statute

The elective share amount is:

1. If the decedent has no surviving descendants, one-half of Total Net Assets less Property Passing to Surviving Spouse.

2. If the decedent's only surviving descendants are either one child or the issue of one deceased child, one-half of Total Net Assets less Property Passing to Surviving Spouse.

3. Otherwise, one-third of Total Net Assets less Property Passing to Surviving Spouse.

Under the current dissent statute, if the surviving spouse has the right to dissent (passes the "step one" threshold described above) the dissent share equals:

A If the decedent has no surviving descendants or parents, approximately one-half of the decedent's net probate property.

B Otherwise, the spouse's share under the Intestate Succession Act if the decedent had died without a will. Under the Intestate Succession Act, the spouse's share equals:

   i. If the decedent's only surviving descendants are either one child or the issue of one deceased child, approximately one-half of the decedent's net probate property.

   ii. Otherwise, approximately one-third of the decedent's net probate property.

Thus, a similar distribution system is maintained. Like the current dissent statute, under the elective share statute, if the decedent has surviving descendants by a prior marriage and no descendants by the marriage to the surviving spouse, then the elective share amount is determined by reducing the prescribed share of Total Net Assets by one-half. (So, in #2 above, the elective share is one-fourth of Total Net Assets less Property Passing to Surviving Spouse, and in #3 one-sixth.)

An Act to Modify the Rights of a Decedent's Spouse

North Carolina's current dissent statute (Article 1 of Chapter 30) and Intestate Succession Act (Chapter 29) provide a decedent's spouse with certain rights in the decedent's property. The dissent statute applies if the decedent dies with a will; the Intestate Succession Act applies if the decedent dies without a will. Each statute gives the spouse rights only to the decedent's probate property and property held in a revocable or living trust. Today, it is commonplace for a decedent to die owning a substantial amount of non-probate property, yet very little probate property. Examples of non-probate property are life insurance, IRAs, employee retirement plan accounts, annuities, irrevocable trusts and property owned jointly with one or more other persons with right of survivorship. Therefore, a decedent can bypass his or her spouse by leaving property to someone else in non-probate form by owning property jointly with non-spousal beneficiaries with right of survivorship, or investing it in life insurance, annuities, IRAs, employee benefit plan accounts or irrevocable trusts that designate non-spousal persons as beneficiaries. Under the current statute, if a surviving spouse has a right to dissent, the share that the surviving spouse takes is a share of the probate property without regard to how much non-probate property the spouse receives.

The elective share statute gives the surviving spouse the right to an "elective share" of the decedent's "total net assets" whether the decedent dies with or without a will. The elective share amount is equal to the applicable share of the decedent's total net assets to which the surviving spouse is entitled less the value of property passing to the surviving spouse. The applicable share parallels the fraction of probate assets prescribed by the current dissent statute. The decedent's total net assets include probate, non-probate property and certain property given away during the decedent's lifetime. The value of property passing to the surviving spouse includes the spouse's interest in the decedent's probate and non-probate property and certain gifts made by the decedent to the spouse during life. The elective share is satisfied proportionately from the non-spousal beneficiaries' shares.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 908 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) HACKNEY
Sen.)

moves to amend the bill on page 12, line 26-27

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"Section 9. This act is effective October 1, 1997 and applies to estates of decedents dying on or after that date."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

HOUSE BILL 1045

Short Title: Red Light Photo Citations. (Public)

Sponsors: Representative Shubert.

Referred to: Judiciary II.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE LOCAL GOVERNMENTS TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-300.1. Use of traffic control photographic systems.**

(a) Traffic control photographic systems.

(1) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(2) Any traffic control photographic system, as described in subdivision (1) of this subsection or any device which is a part of that system deployed on a street or highway which is a part of the State highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system deployed on a municipal street shall meet standards established by the municipality and shall be consistent with any standards set by the Department of Transportation.

(b) Municipalities and counties may adopt ordinances for the enforcement of G.S. 20-141, 20-141.1, 20-143, or 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation under this section unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. In those instances, the owner of the vehicle shall, within 21 days after notification of the violation, furnish the officials or agents of the municipality or county which issued the citation, the name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle. The owner of the vehicle shall not be responsible for the violation if the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) The violation of this section detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed and a violation for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle.

(3) The owner of the vehicle shall be issued a citation and shall comply with the directions on the citation. The citation shall be processed by officials or agents of the municipality or county and shall be forwarded by first-class mail to the address given on the motor vehicle registration. Personal service on the owner of the vehicle shall not be required. In the event that payment of the civil penalty is not received or a response to the citation is not made within the time period specified on the citation, the owner shall be deemed to have waived his right to pay the civil penalty, and the officials or agents making the original mailing of the citation shall submit a copy of the citation to the district attorney for submission to the district court. The court shall find that failing to make payment of the civil penalty the owner shall be deemed to have been convicted of a violation under this section and shall be subject to a fine not to exceed one hundred dollars ($100.00), and the court shall take appropriate measures to enforce collection of the fine. A municipality or county may substitute a nonjudicial administrative hearing for the process of submittal to the district attorney and the court. The owner of the vehicle issued the citation under this section shall have a right to appeal from the administrative hearing to the district court.

(4) Any person who elects to appear before a district court to present evidence shall be deemed to have waived his right to pay a civil

penalty. A certificate sworn to or affirmed by a technical employed by or under contract to the municipality or county where the violation occurred, or a facsimile of that certificate, based on the inspection of photographs or other recorded images produced by a traffic control photographic system shall be prima facie evidence of the facts contained in the sworn certificate. The court, after a hearing, shall make a determination as to whether a violation of this section has been committed and, if a violation is determined, shall impose a fine not to exceed one hundred dollars ($100.00) and additional court costs. If the fine and court costs have not been paid within the time specified by the court, the court shall take appropriate measures to enforce collection."

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

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April 24, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel
(based in part on the IOG Daily Bulletin)

RE: House Bill 1045 - Red Light Photo Citations

House Bill 1045 would allow cities and counties to adopt local ordinances to enforce traffic offenses such as speeding and running a red light through the use of a "traffic control photographic system". A traffic control photographic system is an electronic system consisting of a photographic, video or electronic camera and a vehicle sensor which works in conjunction with a traffic control device to automatically produce photographs, video or digital images of vehicles violating these types of statutes or ordinances.

The owner of a vehicle photographed would be responsible for the violation, unless they can furnish evidence that at the time of the offense, the vehicle was under the care, custody or control of another person. The violation is noncriminal and a civil penalty of $50 shall be assessed. The citation will be mailed to the owner, with no personal service required. If the owner fails to provide evidence or pay the civil penalty, the matter will be referred to the district attorney who will submit the matter to the district court. The court shall convict the owner of the violation and assess a fine not to exceed $100. The city or county may choose to use a nonjudicial administrative hearing instead of the district court proceeding, but the owner has the right to appeal to the district court. A sworn certificate by a technical employee of the city or county constitutes a prima facie case of the facts in the certificate.

This act is effective when it becomes law.

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Our view

Stoplight violators cannot be tolerated

A traffic light turns from red to green and a driver pulls forward into the intersection only to be slammed in the side by an oncoming vehicle.

It happened at U.S. 74's intersection with Waxhaw-Indian Trail Road on March 17 with deadly consequences and that wasn't the first time. Less than a month before, it happened at the Unionville-Indian Trail Road intersection and landed a senior citizen in intensive care.

Four years ago, a similar accident at the took the life of the director of the Union County Community Arts Council.

These accidents involved tractor-trailer trucks running red lights. But it isn't just truck drivers who are creating such a danger, it's all kinds of arrogant leadfoots who seem to think traffic lights don't apply to them. Or maybe they simply see yellow as a signal to floor it and race through before the light turns to red rather than as a warning to slow down.

Whichever the case, the situation cannot be tolerated.

Monroe Public Safety officers write between 650 and 700 tickets in a month's time, but only 50 to 60 for failure to stop at red lights.

We think that number should be higher and we're calling on Public Safety, the North Carolina Highway Patrol and the Union County Sheriff's Office's new traffic unit to make traffic light enforcement a priority.

A few well-placed officers along Roosevelt Boulevard shouldn't have trouble catching dozens of violaters in just a day's time.

And while the traffic tickets themselves won't keep these speed demons off the road for long, they should serve as a deterrent to the drivers who receive them and to passing motorists who see cars being pulled over.

Lawmakers in Raleigh are right now considering taking away vehicles of habitual drunken drivers or perhaps even labeling their cars with an "I've been convicted of DWI" sign. We support these measures, but before we go too far with additional laws, we need to fully enforce the most basic of traffic rules — for all of you who don't seem to have noticed, red means stop.

Randy Jones brought up

Red Light Violation Monitoring

FACT SHEET

- In Charlotte, at the intersection of Albemarle Road and Harris Boulevard, the Charlotte Department of Transportation recorded **170 motorists running the red light during a six hour period from 7:00 a.m. to 1:00 p.m., March 6, 1997.** The light had been red for 3 seconds prior to car entering.
- Twenty-five percent (25%), about 7,829, of Charlotte's 1995's total traffic accidents occurred at signalized intersections -- **A majority of those 7,829 accidents occurred from illegal red-light running**

- A violation occurs when a motorist enters an intersection after the signal light has turned red, not on yellow.

- No photographs will be taken of vehicles that have entered the intersection on a yellow light. Also, if a motorist is in an intersection waiting to make a turn and the light turns red, they would not be photographed.

- All photographs of the violations are taken of the rear of the vehicle. Occupants are not photographed.

- All photographs are reviewed by trained technical personnel to verify vehicle information and ensure the vehicle is in violation

- The red-light violation would be considered a civil penalty and therefore does not add points to the driver's driving record or affect insurance rates (Insurance companies are not given access to these violation records.)

- The program would have a new customer friendly hearing process, in addition to the standard recourse of appeal to the court system.

- **The Program is self-supporting.**

- New York City has installed monitoring cameras at 18 intersections:
  - **Red-light running has decreased by 20% since 1993**
  - **Accidents at these intersections have decreased by up to 30%.**
  - **80% of violators pay their fines** ($50)

RED LIGHT CAMERAS

Q&A: GENERAL

Red light cameras can help communities enforce traffic laws by automatically photographing the license plates of vehicles whose drivers run red lights. A red light camera system is connected to the traffic signal and to sensors buried in the pavement at the crosswalk or stop line. The system continuously monitors the traffic signal, and the camera itself is triggered by any vehicle passing over the sensors above a pre-set minimum speed and a specified time after the signal has turned red. A second photograph is taken that typically shows the red light violator in the intersection. The camera records the date, time of day, time elapsed since the beginning of the red signal, and the speed of the vehicle. Electronic flash produces clear images of vehicles under all light and weather conditions. Tickets typically are sent by mail to owners of violating vehicles, based on review of photographic evidence.

What is red light running? A violation occurs when a motorist deliberately enters an intersection after the signal light has turned red. Motorists inadvertently in an intersection when the signal changes to red — when waiting to turn, for example — aren't red light runners.

Is red light running a big problem? Institute research shows that running red lights and other traffic controls like stop and yield signs is the most frequent type of urban crash. Researchers studied police reports of crashes on public roads in four urban areas during 1990 and 1991. Of 13 crash types researchers identified, running traffic controls accounted for 22 percent of all crashes. Among crashes involving running traffic controls, 24 percent involved running red lights. The same study shows that motorists are more likely to be injured in crashes involving red light running than in other types of crashes. Occupant injuries occurred in 45 percent of the red light running crashes studied, compared with 30 percent for other crash types.

How often do drivers run red lights? A study conducted over several months at a busy intersection in Arlington County, Virginia, an urban area outside Washington, D.C., indicates that motorists frequently run red lights. On average, a motorist ran a red light every 12 minutes. During peak travel times, red light running was more frequent. For example, between 8 and 9 a.m., a motorist ran a red light every 5 minutes.

Isn't conventional police enforcement sufficient? Enforcing traffic laws in dense urban areas by traditional means poses special difficulties for police, who in most cases must follow a violating vehicle through a red light to stop it. This can endanger motorists and pedestrians as well as officers, and police can't be everywhere at once. Communities don't have the resources to allow police to patrol intersections as often as would be needed to ticket all motorists who run red lights. The cameras allow police to focus on other enforcement needs.

What safety benefits do red light cameras provide? They've been shown to reduce red light violations and intersection crashes. Victoria, Australia began using them at traffic signal intersections in 1983 and posted signs alerting motorists of the cameras' presence. A sub-

The Insurance Institute for Highway Safety is an independent, nonprofit, scientific and educational organization. It is dedicated to reducing the losses — deaths, injuries, and property damage — resulting from crashes on the nation's highways. The Institute is supported by the American Insurance Highway Safety Association, the American Insurers Highway Safety Alliance, the National Association of Independent Insurers Safety Association, and a number of individual insurance companies. 1005 North Glebe Road, Arlington, VA 22201 703-247-1500 October 1995

INSURANCE INSTITUTE FOR HIGHWAY SAFETY

sequent report by the Road Traffic Authority found a 32 percent decrease in right-angle collisions and a 10 percent reduction in injuries after the cameras were installed.

Who runs red lights? The Institute created a profile of red light runners by studying driver behavior at an Arlington County, Virginia intersection equipped with a red light camera. The study compared red light runners to motorists who had an opportunity to run a red light but didn't. As a group, red light runners were younger, less likely to use safety belts, had poorer driving records, and drove smaller and older vehicles than drivers who stopped for red lights. Red light runners were more than three times as likely to have multiple speeding convictions on their driver records. No gender differences were found between violators and drivers who didn't run red lights.

Do the cameras photograph every vehicle passing through an intersection? No. The cameras typically are set so only those vehicles that *enter* an intersection after the light has turned red are photographed. Drivers who enter on yellow and find themselves in an intersection when the light changes to red aren't photographed. This technology is intended to catch vehicles driven by motorists who intentionally enter an intersection well after the signal has turned red.

Does someone review the photographs before motorists are ticketed? Yes. Trained police officers or other officials review every picture to verify vehicle information and ensure that the vehicle is in violation. Tickets are mailed to vehicle owners only in cases where it's clear the vehicle ran the red light.

Do red light cameras violate motorists' privacy? No. Driving is a regulated activity on public roads. By obtaining a license, motorists agree to abide by certain rules — to obey traffic signals, for example. Neither the law nor common sense suggests drivers shouldn't be observed on the road or have their violations documented. In addition, most red light camera systems photograph only a vehicle's rear license plate — not vehicle occupants.

Are special laws needed to allow localities to use red light cameras to cite violators? In order for localities to use the cameras for law enforcement purposes, laws must authorize enforcement agencies to cite red light violators by mail. The legislation also must make the vehicle owner responsible for the ticket, establishing a presumption that the registered owner is the vehicle driver at the time of the offense. Violations photographed by red light cameras are most commonly treated in two ways — as traffic violations or as the equivalent of parking tickets, depending on state law. If, as in New York, red light camera violations are treated like a parking citation, the law can make the registered vehicle owner responsible without regard to who is driving at the time of the offense. Virginia makes red light camera violations a civil offense like New York, but unlike New York, it allows the registered owner to avoid the citation by filing an affidavit swearing that he or she wasn't driving at the time of the violation.

Are red light camera programs expensive? A red light camera costs about $50,000. Installation and sensors cost about $5,000. A single red light camera can be used at several locations once the sites are equipped to work with the camera, allowing communities to move cameras between sites without drivers knowing which ones are active at any given time. Startup costs can be offset by fines paid by violators, savings from crashes prevented, and by freeing police to focus on other enforcement efforts.

Does the American public support the use of red light cameras? The U.S. public strongly supports red light cameras, two 1995 surveys sponsored by the Institute reveal. Nationwide, 66 percent of 1,006 people surveyed said they favor the use of red light cameras, compared with 28 percent who opposed. A survey of 500 northern Virginia residents shows similar results. Sixty-three percent of those interviewed said they favor red light cameras, compared with 35 percent opposed. Virginia respondents also were asked to rate the extent to which red light running is a traffic safety problem in their communities. Forty-seven percent said it's a big problem, 30 percent rated it as medium, and 21 percent said it's not much of one.

What U.S. communities use red light cameras? They're used for law enforcement in New York City and at railroad crossings in Los Angeles. Other communities including Fort Meade, Florida; Arlington, Virginia; and Jackson, Michigan are experimenting with them, and some are using them to issue warning notices to vehicle owners.

What other countries use red light cameras? Photographic detection devices are used extensively in many other countries including Australia, Austria, Belgium, Germany, Israel, the Netherlands, Singapore, South Africa, Switzerland, Taiwan, and the United Kingdom.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **April 24, 1997 7:30 A.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Scoggin	NCBA
John Hine	Baddour, Parker & Hine
Anne Wilner	NCBA
Don Howe	NCAPA
Charles Moore	Sec of State
Georgia Rowe	Lenoir Co Register of Deeds
Ann Shaw	Randolph Co. Registry of Deeds
Judy Hinson	Mecklenburg Co. Register of Deeds
Randy Jones	City of Charlotte
Boyd Courtney	City of Charlotte
[illegible]	NCSSA
John Aldridge	NC Dept of Justice
Rhonda Little	DSS-CSE
Jim Blackburn	Assoc. County Commissioners
Charles P. Williams	NC Assn. Chiefs of Police
Mary Lowry	Conf of DA's - Raleigh

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 24, 1997

The North Carolina House of Representatives Judiciary II Committee met on April 24, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Cansler, Bowie, Cansler, Creech, Culpepper, Decker, Gardner, Goodwin, Hackney, Hensley, McMahan, Nesbitt, Russell, Saunders, Shubert and Sutton. A list of visitors is attached.

The following bills were discussed:

HB-908 MODIFY RIGHTS OF DECEDENT'S SPOUSE
HB-1028 TOWING PROCEDURES
HB-1045 RED LIGHT PHOTO CITATIONS

Representative Shubert was recognized to review HB-1045 and answer questions of committee members.

Representative McMahan spoke in support of the bill.

No action was taken on HB-1045.

Representative Baddour was recognized to present a proposed committee substitute for HB-908. Representative Cansler moved the proposed committee substitute be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute is attached.

Representative Culpepper was recognized to send forth an amendment and moved it be adopted; motion failed. A copy of the amendment is attached.

Representative Russell moved for a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

Representative Owens was recognized to explain HB-1028 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

No action was taken on HB-1028.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1045
Proposed Committee Substitute H1045-PCSSA-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Red Light Photo Citations. (Public)

Sponsors:

Referred to: Judiciary II.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE LOCAL GOVERNMENTS TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-300.1. Use of traffic control photographic systems.

(a) Traffic control photographic systems.

(1) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(2) Any traffic control photographic system, as described in subdivision (1) of this subsection or any device which is a part of that system deployed on a street or highway which is a part of the State highway system shall meet requirements established by the North Carolina Department of Transportation.

Any traffic control system deployed on a municipal street shall meet standards established by the municipality and shall be consistent with any standards set by the Department of Transportation.

(b) Municipalities and counties may adopt ordinances for the enforcement of G.S. 20-141, 20-141.1, or 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation under this section unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. In those instances, the owner of the vehicle shall, within 21 days after notification of the violation, furnish the officials or agents of the municipality or county which issued the citation, the name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle. The owner of the vehicle shall not be responsible for the violation if the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) The violation of this section detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed and a violation for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle.

(3) The owner of the vehicle shall be issued a citation and shall comply with the directions on the citation. The citation shall be processed by officials or agents of the municipality or county and shall be forwarded by first-class mail to the address given on the motor vehicle registration. Personal service on the owner of the vehicle shall not be required. In the event that payment of the civil penalty is not received or a response to the citation is not made within the time period specified on the citation, the owner shall be deemed to have waived his right to pay the civil

penalty, and the officials or agents making the original mailing of the citation shall submit a copy of the citation to the district attorney for submission to the district court. The owner shall be provided notice of the date the citation is to be presented to the district court. If the owner does not appear or fails to provide sufficient evidence to the contrary, the court shall find the owner responsible for violation under this section and shall impose a fine not to exceed one hundred dollars ($100.00). If the owner is not present, the court shall take appropriate measures to enforce collection of the fine. A municipality or county may substitute a nonjudicial administrative hearing for the process of submittal to the district attorney and the court. The owner must be notified of any administrative hearing. The owner of the vehicle issued the citation under this section shall have a right to appeal from the administrative hearing to the district court.

(4) Any person who elects to appear before a district court to present evidence shall be deemed to have waived his right to pay a civil penalty. A certificate sworn to or affirmed by a technical employed by or under contract to the municipality or county where the violation occurred, or a facsimile of that certificate, based on the inspection of photographs or other recorded images produced by a traffic control photographic system shall be prima facie evidence of the facts contained in the sworn certificate. The court, after a hearing, shall make a determination as to whether a violation of this section has been committed and, if a violation is determined, shall impose a fine not to exceed one hundred dollars ($100.00) and additional court costs. If the fine and court costs have not been paid within the time specified by the court, the court shall take appropriate measures to enforce collection."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 908
Proposed Committee Substitute H908-PCSSA-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Modify Rights of Decedent's Spouse. (Public)

Sponsors:

Referred to: Judiciary II.

April 10, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE RIGHTS OF A DECEDENT'S SPOUSE.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 30 of the General Statutes is repealed.

Section 2. Chapter 30 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.

"Elective Share.

"§ 30-3.1. Right of elective share.

(a) Elective Share. -- The surviving spouse of a decedent who dies domiciled in this State has a right to claim an 'elective share', which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(c), less (ii) the value of Property Passing to Surviving Spouse, as defined in G.S. 30-3.3(a). The applicable share of the Total Net Assets is as follows:

(1) If the decedent is not survived by any lineal descendants, one-half of the Total Net Assets.

(2) If the decedent is survived by one child, or lineal descendants of one deceased child, one-half of the Total Net Assets.

(3) If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the Total Net Assets.

(b) Reduction of Applicable Share. -- In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants surviving by a prior marriage but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one-half.

(c) Minimum Applicable Share. -- In no event shall the applicable share of the Total Net Assets be less than twenty-five thousand dollars ($25,000).

(d) Death Taxes. -- Death taxes shall be taken into account as a claim against the estate in determining Total Net Assets only to the extent that such taxes are increased because the assets received by the surviving spouse do not qualify for the federal estate tax marital deduction pursuant to section 2056 of the Code, the North Carolina exemption from inheritance and estate tax pursuant to G.S. 105-3(10) and (11), or similar provisions under the laws of any other applicable taxing jurisdiction.

"**§ 30-3.2. Definitions.**

(a) 'Code' means the Internal Revenue Code in effect at the time of the decedent's death.

(b) 'Death taxes' means any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.

(c) 'Total Net Assets' means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the surviving spouse, debts, claims, and administration expenses, the sum of the following:

(1) All property to which the decedent had legal and equitable title immediately prior to death;

(2) All property received by the decedent's personal representative by reason of the decedent's death;

(3) All proceeds of insurance on the life of the decedent of which the decedent is the owner, or which is payable to the surviving spouse;

(4) One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship;

(5) The entire value of any property held by the decedent and another person, other than the surviving spouse, as joint tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;

(6) The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, 2040, or 2042 of the Code;

(7) Any donative transfers of property made by the decedent to donees other than the surviving spouse within three years of the decedent's death, excluding:

a. Any gifts within the annual exclusion provisions of section 2503 of the Code; and

b. Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent;

(8) Any proceeds of any individual retirement account, pension or profit-sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal Social Security system;

(9) Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and

(10) In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value.

(d) 'Nonadverse trustee' means a trustee who would be deemed nonadverse under section 672 of the Code.

"§ 30-3.3. Property Passing to Surviving Spouse.

(a) Property Passing to Surviving Spouse. -- For purposes of this Article, 'Property Passing to Surviving Spouse' means the sum of the following:

(1) One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship;

(2) The value of any interest in property (outright or in trust, including any interest subject to a

general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system.

(3) Any year's allowance awarded to the surviving spouse;

(4) The value of any property renounced by the surviving spouse;

(5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent;

(6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of survivorship shall be valued at one-half of the entire value of that property at the time the gift is made; and

(7) The entire value of any property held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, where the trust requires a Nonadverse Trustee to utilize the principal and income of the trust for the support and maintenance of the surviving spouse.

(b) Death Taxes. -- The value of Property Passing to Surviving Spouse shall be reduced by any death taxes that are a charge against or apportioned against the surviving spouse on property interests included in Property Passing to Surviving Spouse.

(c) No Duplication. -- In case of overlapping application of the same property under more than one provision, the property shall be included only once, under the provision yielding the greatest value.

"§ 30-3.4. Procedure for determining the elective share.

(a) Exercisable Only During Lifetime. -- The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, the surviving spouse's agent under a power of attorney, or the guardian of the surviving spouse's estate. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. -- A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration by (i) filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) Time for Hearing. -- Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The clerk shall give notice of the hearing to the surviving spouse, personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.

(d) Preparation of Tax Form. -- In every case in which a petition to determine an elective share has been filed, and within two months of the filing of the petition, the personal representative shall prepare and submit to the clerk a proposed Form 706, federal estate tax return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 as the clerk sees fit.

(e) Valuation. -- The valuation of interests in property for purposes of G.S. 30-3.2 and G.S. 30-3.3 shall be determined as follows:

(1) Basic principles. -- Each interest shall be valued at its fair market value, reduced by all liens, claims or encumbrances against the interest. For interests passing at the decedent's death, valuation shall be as of the date of death, and for interests transferred during the decedent's

lifetime, valuation shall be as of the date of transfer.

(2) Valuation of partial and contingent interests in property. -- The valuation of interests in property, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%) of the gross value of the underlying property in which those interests are limited. However, in valuing interests passing to the surviving spouse, the following special rules apply:

a. To the extent that the interest is dependent upon the exercise of discretion by a fiduciary, the interest shall have no value unless the spouse is serving as that fiduciary and the power to distribute the trust property constitutes a general power of appointment held by the spouse, as defined in section 2041 of the Code or the fiduciary is a Nonadverse Trustee required to utilize the income and principal for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime;

b. To the extent that the interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate only upon the earlier of the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage; and

c. To the extent that the valuation of an interest is dependent upon the life expectancy

of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.

(3) Determination of fair market value. -- The fair market value of each asset comprising Total Net Assets shall be determined as follows:

a. Probate assets and assets passing to spouse. -- The value of each probate asset and Property Passing to Surviving Spouse, other than assets held in trust, shall be established by the good faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative, or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse.

b. Trust assets. -- The value of each trust asset shall be established by good faith agreement of the surviving spouse and the trustee, unless either (i) the surviving spouse is the trustee, or (ii) the clerk determines that the trustee may not be able to represent the trust adversely to the surviving spouse.

c. Other assets. -- The value of any other asset shall be established by the good faith agreement of the surviving spouse and each person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share because of that person's interest in the asset, unless the clerk determines that valuation under sub-subdivision d. of this subdivision is more appropriate.

d. Use of disinterested persons. -- If the value of any asset is not established by agreement, the clerk shall appoint one or more qualified and disinterested persons to determine a value of each asset. That determination of the value of an asset shall be final for the exclusive purposes of this Article.

(f) Findings and Conclusions. -- After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

(g) Appeals. -- Any party in interest may appeal from the decision of the clerk to the superior court, and in such event the procedure shall be the same as in other special proceedings as now provided by law. If an appeal is taken from the decision of the clerk, that appeal shall have the effect of staying the judgment and order of the clerk until the cause is heard and determined by the superior court upon the appeal taken. Upon an appeal taken from the clerk to the superior court, the judge may review the findings of fact by the clerk and may find the facts or take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the Appellate Division.

"**§ 30-3.5. Recovery of assets by personal representative.**

(a) Recovery of Assets. -- The personal representative is entitled to recover proportionately from all persons, other than the surviving spouse, receiving or in possession of any of the decedent's Total Net Assets a sufficient amount to enable the personal representative to pay the elective share. The apportionment shall be made in the proportion that the value of the interest of each person receiving or in possession of any of Total Net Assets bears to Total Net Assets, excluding any Property Passing to Surviving Spouse. The only persons subject to contribution to make up the elective share are (i) original recipients of property comprising the decedent's Total Net Assets, and subsequent gratuitous inter vivos donees or persons claiming by testate or intestate succession to the extent those persons have the property or its proceeds on or after the date of decedent's death, and (ii) a fiduciary, as to the property under the fiduciary's control at or after the time a fiduciary receives notice that a surviving spouse has claimed an elective share. A fiduciary shall not be considered to have notice until it receives notice at its address as shown in the decedent's estate papers in the clerk's office or, if there are no such papers or no such address is shown in those papers, at the fiduciary's residence or the office of its registered agent.

The personal representative may withhold from any property of the decedent in his possession, distributable to any person subject to apportionment, the amount of the elective share apportioned to such person. If the property in possession of the personal representative and distributable to any person subject to apportionment is insufficient to satisfy the proportionate amount of the elective share determined to be due from that person, the personal representative may recover the deficiency from that person. If the property is not in possession of the personal representative, the personal representative may recover from the person the amount of the elective share apportioned to that person in accordance with this Article. If the personal representative cannot reasonably collect from any person subject to apportionment the amount of the elective share apportioned to that person, the amount not reasonably recoverable shall, with the approval of the clerk, be apportioned among the other persons who are subject to apportionment. The apportionment shall be made in the proportion that the value of the interest of each remaining person bears to the total value of the interests of all remaining persons.

(b) Standstill Order. -- After the filing of the petition demanding an elective share, either the personal representative or surviving spouse may request the clerk to issue an order that any recipients not dispose of any of the decedent's Total Net Assets pending the hearing. The decision to issue such an order shall be in the discretion of the clerk.

(c) Satisfaction of Liability. -- A person receiving or in possession of any of the decedent's Total Net Assets may pay his proportionate elective share liability with respect to that property by any of the following methods:

(1) Conveyance of the property included in the decedent's Total Net Assets;

(2) Payment of the value of his liability in cash or, upon agreement of the surviving spouse, other property; or

(3) Partial conveyance and partial payment under subdivisions (1) and (2) of this subsection, provided the value conveyed and paid is equal to his liability.

(d) Expenses. -- The expenses reasonably incurred by the personal representative in connection with the appraisal or recovery of assets shall be apportioned as provided for the elective share under this Article. If the personal representative finds that it is inequitable to apportion the

expenses because those expenses were incurred because of the fault of one or more persons subject to apportionment, the personal representative may direct other more equitable apportionment, with the approval of the clerk.

(e) Bond. -- If property held by the personal representative is distributed prior to final apportionment of the elective share, the personal representative may require the distributee to provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative, with the approval of the clerk.

"**§ 30-3.6. Waiver of rights.**

(a) The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving spouse.

(b) A waiver is not enforceable if the surviving spouse proves that:

(1) The waiver was not executed voluntarily; or

(2) The surviving spouse was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure."

Section 3. G.S. 29-30 reads as rewritten:

"**§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share provided.**

(a) In lieu of the intestate share provided in G.S. 29-14 or ~~29-21,~~ G.S. 29-21, or of the elective share provided in G.S. 30-3.1, the surviving spouse of an intestate or the surviving spouse who ~~dissents from the will of a testator~~ has petitioned for an elective share shall be entitled to take as his or her intestate share or elective share a life estate in one third in value of all the real estate of which the deceased spouse was seised and possessed of an estate of inheritance at any time during coverture, except that real estate as to which the surviving spouse:

(1) Has waived his or her rights by joining with the other spouse in a conveyance thereof, or

(2) Has release or quitclaimed his or her interest therein in accordance with G.S. 52-10, or

(3) Was not required by law to join in conveyance thereof in order to bar the elective life estate, or

(4) Is otherwise not legally entitled to the election provided in this section.

(b) Regardless of the value thereof and despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a), the life estate provided for in subsection (a) shall at the election of the surviving spouse include a life estate in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse if such dwelling house were owned by the deceased spouse at the time of his or her death, together with the outbuildings, improvements and easements thereunto belonging or appertaining, and lands upon which situated and reasonably necessary to the use and enjoyment thereof, as well as a fee simple ownership in the household furnishings therein.

(c) The election provided for in subsection (a) shall be made by the filing of a notice thereof with the clerk of the superior court of the county in which the administration of the estate is pending, or, if no administration is pending, then with the clerk of the superior court of any county in which the administration of the estate could be commenced. Such election shall be made:

(1) At any time within one month after the expiration of the time fixed for the filing of ~~a dissent,~~ the petition for elective share under Article 1A of Chapter 30, or

(2) In case of intestacy, then within 12 months after the death of the deceased spouse if letters of administration are not issued within that period, or

(3) If letters of administration are issued within 12 months after the date of the death of the deceased spouse, then within one month after the expiration of the time limited for filing claims against the estate, or

(4) If litigation that affects the share of the surviving spouse in the estate is pending, then within such reasonable time as may be allowed by written order of the clerk of the superior court.

The notice of election shall:

(1) Be directed to the clerk with whom filed;

(2) State that the surviving spouse making the same elects to take under this section rather than under the provisions of ~~G.S. 29-14 or 29-21,~~ G.S. 29-14, G.S. 29-21, or G.S. 30-3.1, as applicable;

(3) Set forth the names of all heirs, devisees, legatees, personal representatives and all other persons in possession of or claiming an estate or an interest in the property described in subsection (a); and

(4) Request the allotment of the life estate provided for in subsection (a).

The notice of election may be in person, or by attorney authorized in a writing executed and duly acknowledged by the surviving spouse and attested by at least one witness. If the surviving spouse is a minor or an incompetent, the notice of election may be executed and filed by a general guardian or by the guardian of the person or estate of the minor or incompetent spouse. If the minor or incompetent spouse has no guardian, the notice of election may be executed and filed by a next friend appointed by the clerk. The notice of election, whether in person or by attorney, shall be filed as a record of the court, and a summons together with a copy of the notice shall be served upon each of the interested persons named in the notice of election.

(d) In case of election to take a life estate in lieu of an intestate ~~share,~~ share or elective share, as provided in either G.S. 29-14, 29-21, or ~~30-3(a),~~ 30-3.3(a), the clerk of superior court, with whom the notice of election has been filed, shall summon and appoint a jury of three disinterested persons who being first duly sworn shall promptly allot and set apart to the surviving spouse the life estate provided for in subsection (a) and make a final report of such action to the clerk.

(e) The final report shall be filed by the jury not more than 60 days after the summoning and appointment thereof, shall be signed by all jurors, and shall describe by metes and bounds the real estate in which the surviving spouse shall have been allotted and set aside a life estate. It shall be filed as a record of court and a certified copy thereof shall be filed and recorded in the office of the register of deeds of each county in which any part of the real property of the deceased spouse, affected by the allotment, is located.

(f) In the election and procedure to have the life estate allotted and set apart provided for in this section, the rules of procedure relating to partition proceedings shall apply except insofar as the same would be inconsistent with the provisions of this section.

(g) Neither the household furnishings in the dwelling house nor the life estates taken by election under this section shall be subject to the payment of debts due from the estate of the

deceased spouse, except those debts secured by such property as follows:

(1) By a mortgage or deed of trust in which the surviving spouse has waived his or her rights by joining with the other spouse in the making thereof; or

(2) By a purchase money mortgage or deed of trust, or by a conditional sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage; or

(3) By a mortgage or deed of trust made prior to the marriage; or

(4) By a mortgage or deed of trust constituting a lien on the property at the time of its acquisition by the deceased spouse either before or during the marriage.

(h) If no election is made in the manner and within the time provided for in subsection (c) the surviving spouse shall be conclusively deemed to have waived his or her right to elect to take under the provisions of this section, and any interest which the surviving spouse may have had in the real estate of the deceased spouse by virtue of this section shall terminate."

Section 4. G.S. 30-15 reads as rewritten:

"**§ 30-15. When spouse entitled to allowance.**

Every surviving spouse of an intestate or of a testator, whether or not he has petitioned for an elective share, ~~dissented from the will,~~ shall, unless he has forfeited his right thereto, as provided by law, be entitled, out of the personal property of the deceased spouse, to an allowance of the value of ten thousand dollars ($10,000) for his support for one year after the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of the deceased spouse, and shall, in cases of testacy, be charged against the share of the surviving spouse."

Section 5. G.S. 31-5.3 reads as rewritten:

"**§ 31-5.3. Will not revoked by marriage; dissent from will made prior to marriage.**

A will is not revoked by a subsequent marriage of the maker; and the surviving spouse may ~~dissent from such~~ petition for an elective share when there is a will made prior to the marriage in the same manner, upon the same conditions, and to the same extent, as a surviving spouse may ~~dissent from~~ petition for an elective share when there is a will made subsequent to marriage."

Section 6. G.S. 31A-1(b) reads as rewritten:

"(b) The rights lost as specified in subsection (a) of this section shall be as follows:

(1) All rights of intestate succession in the estate of the other spouse;

(2) All right to claim or succeed to a homestead in the real property of the other spouse;

(3) All right to ~~dissent from the will~~ petition for an elective share of the estate of the other spouse and take either the elective intestate share provided or the life interest in lieu thereof;

(4) All right to any year's allowance in the personal property of the other spouse;

(5) All right to administer the estate of the other spouse; and

(6) Any rights or interests in the property of the other spouse which by a settlement before or after marriage were settled upon the offending spouse solely in consideration of the marriage."

Section 7. G.S. 31C-3 reads as rewritten:

"**§ 31C-3. Disposition of community property upon death.**

Upon death of a married person, one half of the property to which this Chapter applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws or succession of this State. One half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this State. With respect to property to which this Chapter applies, the one half of the property of the decedent is not subject to the surviving spouse's right to ~~dissent from the will~~ petition for an elective share under the provisions of Article ~~1~~ 1A of Chapter 30, and is not subject to the right to elect a life estate under the provisions of Article 8 of Chapter 29."

Section 8. G.S. 84-5(2) reads as rewritten:

"(2) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, said acts shall be performed for the corporation by a duly licensed attorney, not a salaried employee of the corporation, retained to perform legal services required in connection with the particular estate, trust or other fiduciary matter:

a. Offering wills for probate.

b. Preparing and publishing notice of administration to creditors.
c. Handling formal court proceedings.
d. Drafting legal papers or giving legal advice to spouses concerning ~~dissent from their spouses' will.~~ rights to an elective share under Article 1A of Chapter 30 of the General Statutes.
e. Resolving questions of domicile and residence of a decedent.
f. Handling proceedings involving year's allowances of widows and children.
g. Drafting deeds, notes, deeds of trust, leases, options and other contracts.
h. Drafting instruments releasing deeds of trust.
i. Drafting assignments of rent.
j. Drafting any formal legal document to be used in the discharge of the corporate fiduciary's duty.
k. In matters involving estate and inheritance taxes, gift taxes, and federal and State income taxes:
    1. Preparing and filing protests or claims for refund, except requests for a refund based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
    2. Conferring with tax authorities regarding protests or claims for refund, except those based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
    3. Handling petitions to the tax court.
l. Performing legal services in insolvency proceedings or before a referee in bankruptcy or in court.
m. In connection with the administration of an estate or trust:
    1. Making application for letters testamentary or letters or administration.
    2. Abstracting or passing upon title to property.

3. Handling litigation relating to claims by or against the estate or trust.
4. Handling foreclosure proceedings of deeds of trust or other security instruments which are in default."

Section 9. This act is effective when it becomes law and applies to estates of decedents dying on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 908

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

H908-ASA-016

Date_____,1997

Comm. Sub. [yes]
Amends Title []

Rep. Culpepper

moves to amend the bill on page 10, line 27,
by

rewriting the line to read:

"(a) Except as provided in subsection (a1), in ~~In~~ lieu of the intestate share provided in G.S. 29-14 or";

and on page 11, between lines 2 and 3,
by inserting a new subsection as follows:

"(a1) The surviving spouse shall have no election to take a life estate in lieu of an intestate share in any real property acquired by the decedent spouse prior to marriage to the surviving spouse or acquired by the decedent spouse by inheritance, devise OR."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 908 A BILL TO BE ENTITLED AN ACT TO MODIFY THE RIGHTS OF A DECEDENT'S SPOUSE.

☐ 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 908
Proposed Committee Substitute H908-PCS7282

Short Title: Modify Rights of Decedent's Spouse. (Public)

Sponsors:

Referred to:

April 10, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE RIGHTS OF A DECEDENT'S SPOUSE.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 30 of the General Statutes is repealed.

Section 2. Chapter 30 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 1A.

"Elective Share.

"§ 30-3.1. Right of elective share.

(a) Elective Share. -- The surviving spouse of a decedent who dies domiciled in this State has a right to claim an 'elective share', which means an amount equal to (i) the applicable share of the Total Net Assets, as defined in G.S. 30-3.2(c), less (ii) the value of Property Passing to Surviving Spouse, as defined in G.S. 30-3.3(a). The applicable share of the Total Net Assets is as follows:

(1) If the decedent is not survived by any lineal descendants, one-half of the Total Net Assets.

(2) If the decedent is survived by one child, or lineal descendants of one deceased child, one-half of the Total Net Assets.

(3) If the decedent is survived by two or more children, or by one or more children and the lineal descendants of one or more deceased children, or by the lineal descendants of two or more deceased children, one-third of the Total Net Assets.

(b) Reduction of Applicable Share. -- In those cases in which the surviving spouse is a second or successive spouse, and the decedent has one or more lineal descendants surviving by a prior marriage but there are no lineal descendants surviving by the surviving spouse, the applicable share as determined in subsection (a) of this section shall be reduced by one-half.

(c) Minimum Applicable Share. -- In no event shall the applicable share of the Total Net Assets be less than twenty-five thousand dollars ($25,000).

(d) Death Taxes. -- Death taxes shall be taken into account as a claim against the estate in determining Total Net Assets only to the extent that such taxes are increased because the assets received by the surviving spouse do not qualify for the federal estate tax marital deduction pursuant to section 2056 of the Code, the North Carolina exemption from inheritance and estate tax pursuant to G.S. 105-3(10) and (11), or similar provisions under the laws of any other applicable taxing jurisdiction.

"§ 30-3.2. Definitions.

(a) 'Code' means the Internal Revenue Code in effect at the time of the decedent's death.

(b) 'Death taxes' means any estate, inheritance, succession, and similar taxes imposed by any taxing authority, reduced by any applicable credits against those taxes.

(c) 'Total Net Assets' means, after the payment or provision for payment of the decedent's funeral expenses, year's allowances to persons other than to the surviving spouse, debts, claims, and administration expenses, the sum of the following:

(1) All property to which the decedent had legal and equitable title immediately prior to death;

(2) All property received by the decedent's personal representative by reason of the decedent's death;

(3) All proceeds of insurance on the life of the decedent of which the decedent is the owner, or which is payable to the surviving spouse;

(4) One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety, or as joint tenants with rights of survivorship;

(5) The entire value of any property held by the decedent and another person, other than the surviving spouse, as joint tenants with right of survivorship, except to the extent that contribution can be proven by clear and convincing evidence;

(6) The value of any property which would be included in the taxable estate of the decedent pursuant to sections 2033, 2035, 2036, 2037, 2038, 2039, 2040, or 2042 of the Code;

(7) Any donative transfers of property made by the decedent to donees other than the surviving spouse within three years of the decedent's death, excluding:

a. Any gifts within the annual exclusion provisions of section 2503 of the Code; and

b. Any gifts to which the surviving spouse consented. A signing of a deed, or income or gift tax return reporting such gift shall be considered consent;

(8) Any proceeds of any individual retirement account, pension or profit-sharing plan, or any private or governmental retirement plan or annuity of which the decedent controlled the designation of beneficiary, excluding any benefits under the federal social security system;

(9) Any other Property Passing to Surviving Spouse under G.S. 30-3.3; and

(10) In case of overlapping application of the same property under more than one provision, the property shall be included only once under the provision yielding the greatest value.

(d) 'Nonadverse trustee' means a trustee who would be deemed nonadverse under section 672 of the Code.

"**§ 30-3.3. Property Passing to Surviving Spouse.**

(a) Property Passing to Surviving Spouse. -- For purposes of this Article, 'Property Passing to Surviving Spouse' means the sum of the following:

(1) One-half of the value of any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with rights of survivorship;

(2) The value of any interest in property (outright or in trust, including any interest subject to a general power of appointment held by the surviving spouse, as defined in section 2041 of the Code) devised by the decedent to the surviving spouse, or which passes to the surviving spouse by intestacy, or by beneficiary designation, or by exercise of or in default of the exercise of the decedent's testamentary general or limited power of appointment, or by operation of law or otherwise by reason of the decedent's death, excluding any benefits under the federal social security system;

(3) Any year's allowance awarded to the surviving spouse;

(4) The value of any property renounced by the surviving spouse;

(5) The value of the surviving spouse's interest, outright or in trust, in any life insurance proceeds on the life of the decedent;

(6) The value of any interest in property, outright or in trust, transferred from the decedent to the surviving spouse during the lifetime of decedent for which (i) a gift tax return is timely filed reporting such gift, or (ii) the surviving spouse signs a statement acknowledging such a gift. For purposes of this subdivision, any gift to the surviving spouse by the decedent of the decedent's interest in any property held by the decedent and the surviving spouse as tenants by the entirety or as joint tenants with right of

survivorship shall be valued at one-half of the entire value of that property at the time the gift is made; and

(7) The entire value of any property held in trust for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, where the trust requires a Nonadverse Trustee to utilize the principal and income of the trust for the support and maintenance of the surviving spouse.

(b) Death Taxes. -- The value of Property Passing to Surviving Spouse shall be reduced by any death taxes that are a charge against or apportioned against the surviving spouse on property interests included in Property Passing to Surviving Spouse.

(c) No Duplication. -- In case of overlapping application of the same property under more than one provision, the property shall be included only once, under the provision yielding the greatest value.

"§ 30-3.4. Procedure for determining the elective share.

(a) Exercisable Only During Lifetime. -- The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, the surviving spouse's agent under a power of attorney, or the guardian of the surviving spouse's estate. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

(b) Time Limitations. -- A claim for an elective share must be made within six months after the issuance of letters testamentary or letters of administration by (i) filing a petition with the clerk of superior court of the county in which the primary administration of the decedent's estate lies, and (ii) mailing or delivering a copy of that petition to the personal representative of the decedent's estate. A surviving spouse's incapacity shall not toll the six-month period of limitations.

(c) Time for Hearing. -- Unless waived by the personal representative and the surviving spouse, the clerk shall set the matter for hearing no earlier than two months and no later than six months after the filing of the petition. However, the clerk may extend the time of hearing as the clerk sees fit. The clerk shall give notice of the hearing to the surviving spouse, personal representative, and to any person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share.

(d) Preparation of Tax Form. -- In every case in which a petition to determine an elective share has been filed, and within two months of the filing of the petition, the personal representative shall prepare and submit to the clerk a proposed Form 706, federal estate tax return, for the estate, regardless of whether that form is required to be filed with the Internal Revenue Service. The clerk may extend the time for submission of the proposed Form 706 as the clerk sees fit.

(e) Valuation. -- The valuation of interests in property for purposes of G.S. 30-3.2 and G.S. 30-3.3 shall be determined as follows:

(1) Basic principles. -- Each interest shall be valued at its fair market value, reduced by all liens, claims, or encumbrances against the

interest. For interests passing at the decedent's death, valuation shall be as of the date of death, and for interests transferred during the decedent's lifetime, valuation shall be as of the date of transfer.

(2) Valuation of partial and contingent interests in property. -- The valuation of interests in property, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and upon the basis of six percent (6%) of the gross value of the underlying property in which those interests are limited. However, in valuing interests passing to the surviving spouse, the following special rules apply:

a. To the extent that the interest is dependent upon the exercise of discretion by a fiduciary, the interest shall have no value unless the spouse is serving as that fiduciary and the power to distribute the trust property constitutes a general power of appointment held by the spouse, as defined in section 2041 of the Code or the fiduciary is a Nonadverse Trustee required to utilize the income and principal for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime;

b. To the extent that the interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortuary and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate only upon the earlier of the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage; and

c. To the extent that the valuation of an interest is dependent upon the life expectancy of the surviving spouse, that life expectancy shall be conclusively presumed to be no less than 10 years, regardless of the actual attained age of the surviving spouse at the decedent's death.

(3) Determination of fair market value. -- The fair market value of each asset comprising Total Net Assets shall be determined as follows:

a. Probate assets and assets passing to spouse. -- The value of each probate asset and Property Passing to Surviving Spouse, other than assets held in trust, shall be established

by the good faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative, or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse.

b. Trust assets. -- The value of each trust asset shall be established by good faith agreement of the surviving spouse and the trustee, unless either (i) the surviving spouse is the trustee, or (ii) the clerk determines that the trustee may not be able to represent the trust adversely to the surviving spouse.

c. Other assets. -- The value of any other asset shall be established by the good faith agreement of the surviving spouse and each person described in G.S. 30-3.5 who may be required to contribute toward the satisfaction of the elective share because of that person's interest in the asset, unless the clerk determines that valuation under sub-subdivision d. of this subdivision is more appropriate.

d. Use of disinterested persons. -- If the value of any asset is not established by agreement, the clerk shall appoint one or more qualified and disinterested persons to determine a value of each asset. That determination of the value of an asset shall be final for the exclusive purposes of this Article.

(f) Findings and Conclusions. -- After notice and hearing, the clerk shall determine whether or not the surviving spouse is entitled to an elective share, and if so, the clerk shall then determine the elective share and shall order the personal representative to transfer that amount to the surviving spouse. The clerk's order shall recite specific findings of fact and conclusions of law in arriving at the decedent's Total Net Assets, Property Passing to Surviving Spouse, and the elective share.

(g) Appeals. -- Any party in interest may appeal from the decision of the clerk to the superior court, and in such event the procedure shall be the same as in other special proceedings as now provided by law. If an appeal is taken from the decision of the clerk, that appeal shall have the effect of staying the judgment and order of the clerk until the cause is heard and determined by the superior court upon the appeal taken. Upon an appeal taken from the clerk to the superior court, the judge may review the findings of fact by the clerk and may find the facts or take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the Appellate Division.

"§ 30-3.5. Recovery of assets by personal representative.

(a) Recovery of Assets. -- The personal representative is entitled to recover proportionately from all persons, other than the surviving spouse, receiving or in possession of any of the decedent's Total Net Assets a sufficient amount to enable the personal representative to pay the elective share. The apportionment shall be made in the proportion that the value of the interest of each person receiving or in

possession of any of Total Net Assets bears to Total Net Assets, excluding any Property Passing to Surviving Spouse. The only persons subject to contribution to make up the elective share are (i) original recipients of property comprising the decedent's Total Net Assets, and subsequent gratuitous inter vivos donees or persons claiming by testate or intestate succession to the extent those persons have the property or its proceeds on or after the date of decedent's death, and (ii) a fiduciary, as to the property under the fiduciary's control at or after the time a fiduciary receives notice that a surviving spouse has claimed an elective share. A fiduciary shall not be considered to have notice until it receives notice at its address as shown in the decedent's estate papers in the clerk's office or, if there are no such papers or no such address is shown in those papers, at the fiduciary's residence or the office of its registered agent.

The personal representative may withhold from any property of the decedent in his possession, distributable to any person subject to apportionment, the amount of the elective share apportioned to such person. If the property in possession of the personal representative and distributable to any person subject to apportionment is insufficient to satisfy the proportionate amount of the elective share determined to be due from that person, the personal representative may recover the deficiency from that person. If the property is not in possession of the personal representative, the personal representative may recover from the person the amount of the elective share apportioned to that person in accordance with this Article. If the personal representative cannot reasonably collect from any person subject to apportionment the amount of the elective share apportioned to that person, the amount not reasonably recoverable shall, with the approval of the clerk, be apportioned among the other persons who are subject to apportionment. The apportionment shall be made in the proportion that the value of the interest of each remaining person bears to the total value of the interests of all remaining persons.

(b) Standstill Order. -- After the filing of the petition demanding an elective share, either the personal representative or surviving spouse may request the clerk to issue an order that any recipients not dispose of any of the decedent's Total Net Assets pending the hearing. The decision to issue such an order shall be in the discretion of the clerk.

(c) Satisfaction of Liability. -- A person receiving or in possession of any of the decedent's Total Net Assets may pay his proportionate elective share liability with respect to that property by any of the following methods:

(1) Conveyance of the property included in the decedent's Total Net Assets;

(2) Payment of the value of his liability in cash or, upon agreement of the surviving spouse, other property; or

(3) Partial conveyance and partial payment under subdivisions (1) and (2) of this subsection, provided the value conveyed and paid is equal to his liability.

(d) Expenses. -- The expenses reasonably incurred by the personal representative in connection with the appraisal or recovery of assets shall be apportioned as

provided for the elective share under this Article. If the personal representative finds that it is inequitable to apportion the expenses because those expenses were incurred because of the fault of one or more persons subject to apportionment, the personal representative may direct other more equitable apportionment, with the approval of the clerk.

(e) Bond. -- If property held by the personal representative is distributed prior to final apportionment of the elective share, the personal representative may require the distributee to provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative, with the approval of the clerk.

"**§ 30-3.6. Waiver of rights.**

(a) The right of a surviving spouse to claim an elective share may be waived, wholly or partially, before or after marriage, with or without consideration, by a written waiver signed by the surviving spouse.

(b) A waiver is not enforceable if the surviving spouse proves that:

(1) The waiver was not executed voluntarily; or

(2) The surviving spouse was not provided a fair and reasonable disclosure of the property and financial obligations of the decedent, unless the surviving spouse waived, in writing, the right to that disclosure."

Section 3. G.S. 29-30 reads as rewritten:

"**§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share provided.**

(a) In lieu of the intestate share provided in G.S. 29-14 or ~~29-21,~~ G.S. 29-21, or of the elective share provided in G.S. 30-3.1, the surviving spouse of an intestate or the surviving spouse who ~~dissents from the will of a testator~~ has petitioned for an elective share shall be entitled to take as his or her intestate share or elective share a life estate in one third in value of all the real estate of which the deceased spouse was seised and possessed of an estate of inheritance at any time during coverture, except that real estate as to which the surviving spouse:

(1) Has waived his or her rights by joining with the other spouse in a conveyance thereof, or

(2) Has release or quitclaimed his or her interest therein in accordance with G.S. 52-10, or

(3) Was not required by law to join in conveyance thereof in order to bar the elective life estate, or

(4) Is otherwise not legally entitled to the election provided in this section.

(b) Regardless of the value thereof and despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a), the life estate provided for in subsection (a) shall at the election of the surviving spouse include a life estate in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse if such dwelling house were owned by the deceased spouse at the time of his or her death, together with the outbuildings, improvements

and easements thereunto belonging or appertaining, and lands upon which situated and reasonably necessary to the use and enjoyment thereof, as well as a fee simple ownership in the household furnishings therein.

(c) The election provided for in subsection (a) shall be made by the filing of a notice thereof with the clerk of the superior court of the county in which the administration of the estate is pending, or, if no administration is pending, then with the clerk of the superior court of any county in which the administration of the estate could be commenced. Such election shall be made:

(1) At any time within one month after the expiration of the time fixed for the filing of ~~a dissent,~~ the petition for elective share under Article 1A of Chapter 30, or

(2) In case of intestacy, then within 12 months after the death of the deceased spouse if letters of administration are not issued within that period, or

(3) If letters of administration are issued within 12 months after the date of the death of the deceased spouse, then within one month after the expiration of the time limited for filing claims against the estate, or

(4) If litigation that affects the share of the surviving spouse in the estate is pending, then within such reasonable time as may be allowed by written order of the clerk of the superior court.

The notice of election shall:

(1) Be directed to the clerk with whom filed;

(2) State that the surviving spouse making the same elects to take under this section rather than under the provisions of ~~G.S. 29-14 or 29-21,~~ G.S. 29-14, 29-21, or 30-3.1, as applicable;

(3) Set forth the names of all heirs, devisees, legatees, personal representatives and all other persons in possession of or claiming an estate or an interest in the property described in subsection (a); and

(4) Request the allotment of the life estate provided for in subsection (a).

The notice of election may be in person, or by attorney authorized in a writing executed and duly acknowledged by the surviving spouse and attested by at least one witness. If the surviving spouse is a minor or an incompetent, the notice of election may be executed and filed by a general guardian or by the guardian of the person or estate of the minor or incompetent spouse. If the minor or incompetent spouse has no guardian, the notice of election may be executed and filed by a next friend appointed by the clerk. The notice of election, whether in person or by attorney, shall be filed as a record of the court, and a summons together with a copy of the notice shall be served upon each of the interested persons named in the notice of election.

(d) In case of election to take a life estate in lieu of an intestate ~~share,~~ share or elective share, as provided in either G.S. 29-14, 29-21, or ~~30-3(a),~~ 30-3.3(a), the clerk of superior court, with whom the notice of election has been filed, shall summon and

appoint a jury of three disinterested persons who being first duly sworn shall promptly allot and set apart to the surviving spouse the life estate provided for in subsection (a) and make a final report of such action to the clerk.

(e) The final report shall be filed by the jury not more than 60 days after the summoning and appointment thereof, shall be signed by all jurors, and shall describe by metes and bounds the real estate in which the surviving spouse shall have been allotted and set aside a life estate. It shall be filed as a record of court and a certified copy thereof shall be filed and recorded in the office of the register of deeds of each county in which any part of the real property of the deceased spouse, affected by the allotment, is located.

(f) In the election and procedure to have the life estate allotted and set apart provided for in this section, the rules of procedure relating to partition proceedings shall apply except insofar as the same would be inconsistent with the provisions of this section.

(g) Neither the household furnishings in the dwelling house nor the life estates taken by election under this section shall be subject to the payment of debts due from the estate of the deceased spouse, except those debts secured by such property as follows:

(1) By a mortgage or deed of trust in which the surviving spouse has waived his or her rights by joining with the other spouse in the making thereof; or

(2) By a purchase money mortgage or deed of trust, or by a conditional sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage; or

(3) By a mortgage or deed of trust made prior to the marriage; or

(4) By a mortgage or deed of trust constituting a lien on the property at the time of its acquisition by the deceased spouse either before or during the marriage.

(h) If no election is made in the manner and within the time provided for in subsection (c) the surviving spouse shall be conclusively deemed to have waived his or her right to elect to take under the provisions of this section, and any interest which the surviving spouse may have had in the real estate of the deceased spouse by virtue of this section shall terminate."

Section 4. G.S. 30-15 reads as rewritten:

"**§ 30-15. When spouse entitled to allowance.**

Every surviving spouse of an intestate or of a testator, whether or not he has petitioned for an elective share, ~~dissented from the will,~~ shall, unless he has forfeited his right thereto, as provided by law, be entitled, out of the personal property of the deceased spouse, to an allowance of the value of ten thousand dollars ($10,000) for his support for one year after the death of the deceased spouse. Such allowance shall be exempt from any lien, by judgment or execution, acquired against the property of the deceased spouse, and shall, in cases of testacy, be charged against the share of the surviving spouse."

Section 5. G.S. 31-5.3 reads as rewritten:

"§ 31-5.3. Will not revoked by marriage; dissent from will made prior to marriage.

A will is not revoked by a subsequent marriage of the maker; and the surviving spouse may ~~dissent from such~~ petition for an elective share when there is a will made prior to the marriage in the same manner, upon the same conditions, and to the same extent, as a surviving spouse may ~~dissent from~~ petition for an elective share when there is a will made subsequent to marriage."

Section 6. G.S. 31A-1(b) reads as rewritten:

"(b) The rights lost as specified in subsection (a) of this section shall be as follows:

(1) All rights of intestate succession in the estate of the other spouse;

(2) All right to claim or succeed to a homestead in the real property of the other spouse;

(3) All right to ~~dissent from the will~~ petition for an elective share of the estate of the other spouse and take either the elective intestate share provided or the life interest in lieu thereof;

(4) All right to any year's allowance in the personal property of the other spouse;

(5) All right to administer the estate of the other spouse; and

(6) Any rights or interests in the property of the other spouse which by a settlement before or after marriage were settled upon the offending spouse solely in consideration of the marriage."

Section 7. G.S. 31C-3 reads as rewritten:

"§ 31C-3. Disposition of community property upon death.

Upon death of a married person, one half of the property to which this Chapter applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws or succession of this State. One half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this State. With respect to property to which this Chapter applies, the one half of the property of the decedent is not subject to the surviving spouse's right to ~~dissent from the will~~ petition for an elective share under the provisions of Article ~~1~~ 1A of Chapter 30, and is not subject to the right to elect a life estate under the provisions of Article 8 of Chapter 29."

Section 8. G.S. 84-5(2) reads as rewritten:

"(2) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, said acts shall be performed for the corporation by a duly licensed attorney, not a salaried employee of the corporation, retained to perform legal services required in connection with the particular estate, trust or other fiduciary matter:

a. Offering wills for probate.

b. Preparing and publishing notice of administration to creditors.

c. Handling formal court proceedings.

d. Drafting legal papers or giving legal advice to spouses concerning ~~dissent from their spouses' will.~~ rights to an elective share under Article 1A of Chapter 30 of the General Statutes.
e. Resolving questions of domicile and residence of a decedent.
f. Handling proceedings involving year's allowances of widows and children.
g. Drafting deeds, notes, deeds of trust, leases, options and other contracts.
h. Drafting instruments releasing deeds of trust.
i. Drafting assignments of rent.
j. Drafting any formal legal document to be used in the discharge of the corporate fiduciary's duty.
k. In matters involving estate and inheritance taxes, gift taxes, and federal and State income taxes:
1. Preparing and filing protests or claims for refund, except requests for a refund based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
2. Conferring with tax authorities regarding protests or claims for refund, except those based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
3. Handling petitions to the tax court.
l. Performing legal services in insolvency proceedings or before a referee in bankruptcy or in court.
m. In connection with the administration of an estate or trust:
1. Making application for letters testamentary or letters or administration.
2. Abstracting or passing upon title to property.
3. Handling litigation relating to claims by or against the estate or trust.
4. Handling foreclosure proceedings of deeds of trust or other security instruments which are in default."

Section 9. This act is effective October 1, 1997, and applies to estates of decedents dying on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1028

Short Title: Towing Procedures. (Public)

Sponsors: Representatives Owens; and Wainwright.

Referred to: Judiciary II, if favorable, Finance.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CERTAIN REQUIREMENTS ON TOWING OPERATORS TO PROVIDE PROTECTION FOR MEMBERS OF THE PUBLIC.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-219.4. Towing procedures.**

(a) Any towing company operating in this State shall:

(1) Provide for reclaiming of towed vehicles within one hour during all hours of operations.

(2) Provide on each tow vehicle a schedule of fees for services which shall be uniformly applied to all operations involving that tow vehicle.

(3) Not charge storage fees in excess of fifteen dollars ($15.00) for each day or any part thereof.

(4) Before towing a vehicle, insure that the location from which the vehicle is being towed has signs at the entrance or entrances, if there is more than one, at least 24 inches by 24 inches in size, indicating:

a. That vehicles illegally parked will be towed at the owner's or operator's expense;

b. Providing the name, location, and telephone number of the towing company removing the vehicles; and

c. If parking is by permit only, the hours during which permits are required to be displayed.

If the signs are not present, do not contain the required information, or are damaged or unreadable, the towing company shall not remove the vehicle.

(5) The towing company shall maintain a written record of all towing operations for at least one year. Except for those operations authorized by law enforcement authorities pursuant to Article 7A of this Chapter, the written record shall show the time, date, place, fees charged, and the name and telephone number of the person authorizing the tow. Blanket authority for towing shall not be authorized except for spaces properly marked in accordance with G.S. 20-219.2(a).

(b) Any person violating any of the provisions of this section shall be guilty of a Class 3 misdemeanor and upon conviction shall be only fined not more than five hundred dollars ($500.00) in the discretion of the court."

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

North Carolina General Assembly
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April 22, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 1028—Towing Procedures (Owens)

House Bill 1028 creates a new section in Chapter 20 of the General Statutes to provide automobile towing procedures.

The bill requires towing companies operating in the State to operate within certain guidelines including:

(1) Provide for reclaiming towed vehicles within one hour during all hours of operations;

(2) Provide on each tow vehicle a schedule of fees for services to be uniformly applied;

(3) Charge maximum storage fees of fifteen dollars per day;

(4) Refuse to tow from locations which fail to have signs at the entrances indicating that illegally parked vehicles will be towed, providing the name and number of the towing company, and the hours during which parking permits must be displayed; and

(5) Maintain a written record of all towing operations for at least one year including the date, time and place of the tow and the person authorizing the tow. The bill prohibits the use of a blanket authoirty for towing except for individually marked parking spaces.

A violation of the new section is a Class 3 misdemeanor which is punishable by a fine of not more than $500.

House Bill 1028 is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **April 24, 1997 10:00 A.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	Pc.
[illegible] Scoggin	NCBA
Boyd Gaubale	City of Charlotte
Randy Jones	City of Charlotte
Joyce Graham	City of Charlotte
Jerry Gambill	City of Charlotte
John Nedrow	Dept. of Justice
Joe Dugdale	Dept Crime Cntrl & Public Safety
Dwayne Rouse	Lenoir Co. Register of Deeds
Judy Gibson	Mecklenburg Co. Register of Deeds
Dan Howe	NCAPA
Ann Shaw	Randolph Co. Register of Deeds
Charly Moore	Sec of State
[illegible] Regan	N.C. Assoc. of Co Comm's
Eddie Caldwell	HMcCMcLC, P.A.
Joseph Merida	Towing & Recovery Assn of NC
Michael McMahon	UNC Hospitals
Belinda Harris	Towing & Recovery Professionals of NC
Steve Bowman	" " "
Tom Andrews	AOC
Mary Lowry	Conf. of DA's
Reg Lester	Independent Garages Owners of NC
Megan Carroll	BSW Intern - NASW/NC
Robert Hamm	Dennis Weather Service
Christopher M Hamm	Dennis Weather Service
Linda A Price	Private Weather Service
Bob Benson	NCSBA

Richard Moore	C.C.P.S
Joe Busdale	C.C.P.S

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 24, 1997

The North Carolina House of Representatives Judiciary II Committee met on April 24, 1997, at 1:00 P.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Berry, Bowie, Cansler, Creech, Culpepper, Decker, Gardner, Goodwin, Hackney, Hensley, McMahan, Nesbitt, Redwine, Russell, Saunders, Shubert, Sutton, Weatherly and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-402 EXPUNGE INFRACTIONS
HB-415 GRANDPARENT'S CHILD SUPPORT
HB-564 SUPERVISING DENTAL HYGIENISTS
HB-1023 PRETRIAL RELEASE & BOND FORFEITURE
HB-1028 TOWING PROCEDURES
HB-1045 RED LIGHT PHOTO CITATIONS
HB-1100 REGISTER OF DEEDS' MATTERS

Representative Russell was recognized to present a proposed committee substitute for HB-1100 and answer questions of committee members. Representative Goodwin moved the committee substitute be adopted for purpose of discussion; motion passed. A copy of the bill, bill explanation prepared by Mr. Tim Hovis, Committee Counsel, and proposed committee substitute are attached.

Representative Russell provided members with a handout from the North Carolina Registers of Deeds. A copy of the handout is attached.

Mr. Dan Howe, North Carolina Planning Association, Ms. Gwen Rouse, Register of Deeds, Lenoir County, and Ms. Ann Shaw, Register of Deeds, Randolph County, spoke in support of the bill and answered questions of committee members.

Representative Weatherly moved a favorable report as to committee substitute bill, unfavorable as to original bill and the bill be re-referred to the Committee on Finance; motion passed.

Representative Owens was recognized to present a proposed committee substitute for HB-1028. A copy of the proposed committee substitute is attached.

Representative Sutton was recognized to send forth an amendment. A copy of the amendment is attached.

No action was taken on HB-1028.

Representative Shubert was recognized to present a proposed committee substitute for HB-1045. Representative Redwine moved the proposed committee substitute be adopted for purpose of discussion; motion passed.

Mr. Jane Gray, Attorney General's Office, answered questions of committee members.

Representative McMahan moved for a favorable report as to committee substitute bill, unfavorable as to original bill; motion failed.

Representative Berry was recognized to review HB-415 and answer questions of committee members.

Mr. Mike Adams, Child Support Enforcement Program, Division of Social Services, Department of Human Resources, answered questions of committee members.

Representative Culpepper was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Culpepper moved the amendment be incorporated in a committee substitute bill with a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

Representative Baddour was recognized to present a proposed committee substitute for HB-1023 and moved it be adopted for purpose of discussion; motion passed. A copy of the bill, bill explanation prepared by Mr. Tim Hovis, Committee Counsel, and the proposed committee substitute are attached.

Mr. Richard Moore, Secretary, Department of Crime Control and Public Safety, Mr. Tom Andrews, Administrative Office of the Courts, and Mr. Tom Keith, Chair, Conference of District Attorneys, spoke in support of the bill and answered questions of committee members.

Representative Hackney moved for a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

Representative Goodwin was recognized to present a proposed committee substitute for HB-402. A copy of the proposed committee substitute and explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Representative Hensley moved for a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

Representative McMahan was recognized to present a proposed committee substitute for HB-564 and answer questions of committee members. A copy of the proposed committee substitute is attached.

Ms. Janis Ramquist, representing the dental hygienists, answered questions of committee members.

No action was taken on HB-564.

The meeting was adjourned at 2:45 P.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1100

Short Title: Register of Deeds' Matters. (Public)

Sponsors: Representative Russell.

Referred to: Judiciary II, if favorable, Finance.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE STATUTE OF LIMITATIONS FOR ACTIONS UPON OFFICIAL BONDS FROM SIX YEARS TO THREE YEARS, TO AUTHORIZE THE REMOVAL AND DESTRUCTION OF CERTAIN DEATH AND BIRTH CERTIFICATES, TO IMPROVE THE PROCEDURES FOR RECORDING MAPS AND PLATS, AND TO AUTHORIZE THE STUDY OF LAND TITLE REGISTRATION PROCEDURES.

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).

(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).

(19) Upon the official bond of a public officer."

Section 3. 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 certificates for persons born in counties other than the county in which the office of the register of deeds is located. The register of deeds may remove from the records and destroy copies of death certificates for persons who died in counties other than the county in which the office of the register of deeds is located."

Section 4. G.S. 132-3(a) reads as rewritten:

"**§ 132-3. Destruction of records regulated.**

(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 5. G.S. 121-5(b) reads as rewritten:

"**§ 121-5. Public records and archives.**

(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 6. 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 7. 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 who presented it for recording.

(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 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 inaccessible areas when such 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 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 monument is within 2,000 feet of the subject property. Where the North Carolina Grid System coordinates of said monument are on file in the North

Carolina Department of Environment, Health, and Natural Resources, 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 portion of a county or municipality that is unregulated as to an ordinance that regulates parcels of land;

c. That the survey is of an existing parcel or parcels of land;

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 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 the following requirements of this section:

(1) ~~The provisions of subsection~~ Subsection (b), as to archival;

~~(2) The provisions of subsection (d), except for the notary certificate;~~

(3) ~~The provisions of subsection~~ Subsection (e); or

(4) ~~The provisions of subdivisions~~ Subdivisions (2) through (9) of subsection (f).

A plat, when ~~proven and probated as provided herein for deeds and other conveyances, when~~ certified pursuant to G.S. 47-30.2 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,~~ signature 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 8. 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 a person experienced in mapping or land records management as Review Officer to review each map and plat before it is presented to the register of deeds for recording. The person designated Review Officer shall, if possible, be certified as a property mapper pursuant to G.S. 147-54.4. The resolution designating the 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 each map or plat before it is presented to the register of deeds for recording and certify that it complies with all statutory requirements for recording. The 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) The register of deeds shall not accept for recording any map or plat that does not have affixed a certification as provided in subsection (b) of this section."

Section 9. 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 delineated either public or private. The certificate of approval shall not be deemed an acceptance of the dedication of such streets on the subdivision plat or map. Final acceptance by the Division of Highways of such 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 10. 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) 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.

(b) 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 streets, highways, and drainage systems;

(2) The county health director as to proposed water or sewerage systems;

(3) Any other agency or official designated by the board of commissioners.

(c) 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.

(d) From the time that a subdivision ordinance is 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 the chairman or head of the board or agency. The ~~register of deeds may not file or record~~ Review Officer, pursuant to G.S. 47-30.2, shall not certify 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 11. 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 time that a subdivision ordinance is 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 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. The ~~register of deeds shall not file or record~~ Review Officer, pursuant to G.S. 47-30.2, shall not certify 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 12. 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 13. G.S. 89C-26 is repealed.

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 for revision and improvement. The Commission shall submit its report to the 1998 Regular Session of the 1997 General Assembly.

Section 15. Sections 3 through 6 of this act become effective January 1, 1997. The removal and destruction by a register of deeds of any out-of-county birth or death certificates prior to January 1, 1997, is declared valid and not in violation of G.S. 121-5 or G.S. 132-3. Sections 7 through 13 of this act become effective October 1, 1997. The remaining sections of this act are effective when they became law. Section 2 of this act applies to claims that accrue on or after that date.

North Carolina General Assembly
Legislative Services Office

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April 22, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 1100—Register of Deeds' Matters (Russell)

House Bill 1100 makes several changes as requested by the Registers of Deeds.

Section 1 of the bill repeals G.S. 1-50(a)(1). This section provides for a six year statute of limitations for actions upon the official bonds of a public officer. Section 2 of the bill creates a three year statute of limitations for these actions.

Section 3 of the bill allows registers of deeds to remove and destroy birth and death certificates for persons who were born or who died in counties other than the county in which the register of deeds is located. Sections 4 and 5 of the bill make a conforming changes allowing the clerk to remove these records.

Sections 6 through 13 of the bill address the procedures for recording maps and plats with the register of deeds. Under current law, a map or plat must be accompanied by a certificate by the surveyor which states the name of the surveyor and the origin of information contained on the plat. This certificate must be acknowledged or notarized by an officer authorized to take acknowledgments by the surveyor. The bill removes the requirement of acknowledgment of the certificate. Section 8 of the bill creates a "review officer" to be designated by the county board of commissioners to review each map and plat before it is presented to the register of deeds for recording. The review officer certifies to the register of deeds that the map or plat is suitable for recording.

Section 9 of the bill requires that each map or plat delineate clearly any changes in existing streets and the creation of new streets before it is certified by the review officer.

Section 12 of the bill increases the fee charged for recordation of the map or plat from nineteen dollars to twenty-one dollars per sheet or page.

Section 13 of the bill repeals G.S.89C-26 which requires a notarized certificate of the surveyor before a plat may be recorded.

Section 14 of the bill authorizes the Legislative Research Commission to study procedures for land title registration and report to the 1998 Session of the 1997 General Assembly.

Norton v. McDevitt, 122 N.C. 755, 30 S.E. 24 (1898).

Action Barred by Laches. — Where, in an action instituted 14 years after testator's death, plaintiff claimed the proceeds of an insurance policy payable to testator's estate, and contended that the policy was taken out by him to secure him for funds advanced to the testator, it was held that the rights of creditors having intervened, the record disclosed conduct on the part of the plaintiff barring the action for laches. Strayhorn v. Aycock, 215 N.C. 43, 200 S.E. 912 (1939).

As to prior law, see Godley v. Taylor, 14 N.C. 178 (1831); Cooper v. Cherry, 53 N.C. 323 (1861); McKeithan v. McGill, 83 N.C. 517 (1880); Morris v. Syme, 88 N.C. 453 (1883); Syme v. Badger, 96 N.C. 197, 2 S.E. 61 (1887), overruled on other grounds, Lee v. McKoy, 118 N.C. 518, 24 S.E. 210 (1896).

Cited in Reid v. Bristol, 241 N.C. 699, 86 S.E.2d 417 (1955).

§ 1-50. Six years.

(a) Within six years an action —

(1) Upon the official bond of a public officer.

(2) Against an executor, administrator, collector, or guardian on his official bond, within six years after the auditing of his final account by the proper officer, and the filing of the audited account as required by law.

(3) For injury to any incorporeal hereditament.

(4) Against a corporation, or the holder of a certificate or duplicate certificate of stock in the corporation, on account of any dividend, either a cash or stock dividend, paid or allotted by the corporation to the holder of the certificate or duplicate certificate of stock in the corporation.

(5)a. No action to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property shall be brought more than six years from the later of the specific last act or omission of the defendant giving rise to the cause of action or substantial completion of the improvement.

b. For purposes of this subdivision, an action based upon or arising out of the defective or unsafe condition of an improvement to real property includes:

1. Actions to recover damages for breach of a contract to construct or repair an improvement to real property;
2. Actions to recover damages for the negligent construction or repair of an improvement to real property;
3. Actions to recover damages for personal injury, death or damage to property;
4. Actions to recover damages for economic or monetary loss;
5. Actions in contract or in tort or otherwise;
6. Actions for contribution indemnification for damages sustained on account of an action described in this subdivision;
7. Actions against a surety or guarantor of a defendant described in this subdivision;
8. Actions brought against any current or prior owner of the real property or improvement, or against any other person having a current or prior interest therein;
9. Actions against any person furnishing materials, or against any person who develops real property or

for laches. Strayhorn v.
43, 200 S.E. 912 (1939).
aw, see Godley v. Taylor,
31); Cooper v. Cherry, 53
McKeithan v. McGill, 83
Morris v. Syme, 88 N.C.
e v. Badger, 96 N.C. 197,
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McKoy, 118 N.C. 518, 24

v. Bristol, 241 N.C. 699,
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who performs or furnishes the design, plans, specifications, surveying, supervision, testing or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property.

c. For purposes of this subdivision, "substantial completion" means that degree of completion of a project, improvement or specified area or portion thereof (in accordance with the contract, as modified by any change orders agreed to by the parties) upon attainment of which the owner can use the same for the purpose for which it was intended. The date of substantial completion may be established by written agreement.

d. The limitation prescribed by this subdivision shall not be asserted as a defense by any person in actual possession or control, as owner, tenant or otherwise, of the improvement at the time the defective or unsafe condition constitutes the proximate cause of the injury or death for which it is proposed to bring an action, in the event such person in actual possession or control either knew, or ought reasonably to have known, of the defective or unsafe condition.

e. The limitation prescribed by this subdivision shall not be asserted as a defense by any person who shall have been guilty of fraud, or willful or wanton negligence in furnishing materials, in developing real property, in performing or furnishing the design, plans, specifications, surveying, supervision, testing or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property, or to a surety or guarantor of any of the foregoing persons, or to any person who shall wrongfully conceal any such fraud, or willful or wanton negligence.

f. This subdivision prescribes an outside limitation of six years from the later of the specific last act or omission or substantial completion, within which the limitations prescribed by G.S. 1-52 and 1-53 continue to run. For purposes of the three-year limitation prescribed by G.S. 1-52, a cause of action based upon or arising out of the defective or unsafe condition of an improvement to real property shall not accrue until the injury, loss, defect or damage becomes apparent or ought reasonably to have become apparent to the claimant. However, as provided in this subdivision, no action may be brought more than six years from the later of the specific last act or omission or substantial completion.

g. The limitation prescribed by this subdivision shall apply to the exclusion of G.S. 1-15(c), G.S. 1-52(16) and G.S. 1-47(2).

(6) No action for the recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than six years after the date of initial purchase for use or consumption.

(7) Recodified as G.S. 1-47(6) by Session Laws 1995 (Regular Session, 1996), c. 742, s. 1, effective June 21, 1996.

(b) This section applies to actions brought by a private party to actions brought by the State or a political subdivision of the S (C.C.P., s. 33; Code, s. 154; Rev., s. 393; C.S., s. 439; 1931, c. 1963, c. 1030; 1979, c. 654, s. 2; 1981, c. 644, s. 1; 1991, c. 268, 1995, c. 291, s. 1; 1995 (Reg. Sess., 1996), c. 742, s. 1(a).)

Cross References. — For three-year limitation applicable to actions against sureties of executors, etc., on their principal's official bond, see § 1-52(6). As to bond of personal representative, see § 28A-8-1 et seq. As to limitations period for unknown and certain other claims against a dissolved corporation, see § 55-14-07. As to product liability actions, see § 99B-1 et seq.

Editor's Note. — Session Laws 1979, c. 654, which added subdivision (6), provided in s. 6: "The provisions of this act shall not be construed to amend or repeal the provisions of G.S. 1-17."

Session Laws 1995, c. 291, s. 2, provides for the repeal of the common law doctrine of nullum tempus occurit regi for civil actions subject to this section brought by the State or political subdivisions of the State, and to actions brought by private parties.

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, and applicable to civil actions commenced on or after that date, added the subsection (a) designation, and added subsection (b).

The 1995 (Regular Session, 1996) amendment, effective June 21, 1996, recodified subsection (a)(7) as § 1-47(5).

Legal Periodicals. — For survey of 1979 commercial law, see 58 N.C.L. Rev. 1290 (1980).

For article entitled, "North Carolina's New Products Liability Act: A Critical Analysis," see 16 Wake Forest L. 171 (1980).

For article discussing product lia as affected by statutes of repose, s N.C.L. Rev. 33 (1982).

For survey of 1982 law on Civil P dure, see 61 N.C.L. Rev. 991 (1983).

For comment on the effect of La Wedgewood S. Corp., 308 N.C. 419, S.E.2d 868 (1983), on future cases d mining the constitutionality of sub sion (6) of this section, see 19 W Forest L. Rev. 1049 (1983).

For note, "Wilder v. Amatex Cor First Step Toward Ameliorating the fect of Statutes of Repose on Plain with Delayed Manifestation Diseas see 64 N.C.L. Rev. 416 (1986).

For note on six year statutory ba products liability actions, in ligh Tetterton v. Long Manufacturing C 314 N.C. 44, 332 S.E.2d 67 (1985), see N.C.L. Rev. 1157 (1986).

For survey of North Carolina constr tion law, with particular reference statutes of limitation and repose, see Wake Forest L. Rev. 633 (1986).

For survey, "Contract Warranties a Remedies: A Comprehensive Survey the Creation, Modification and Exclusi of Contract Warranties and Remedies f Attorneys and Contracting Professio als," see 14 Campbell L. Rev. 323 (199

For note, "Do You Need Will Insu ance?' Let the Testator Beware - Hargett v. Holland," see 21 N.C. Cen L.J. 353 (1995).

CASE NOTES

I. In General.
II. Bonds of Public Officers.
III. Bonds of Executors, Administrators, Collectors or Guardians.
IV. Incorporeal Hereditaments.
V. Defective Condition of Improvements to Real Property.
VI. Defective Products.

I. IN GENERAL.

This section and § 1-15(c) are not unconstitutional as being violative of the open courts provision of the State Constitution and the equal protection clauses of the state and federal Constitutions. Tetterton v. Long Mfg. Co., 314 N.C. 44, 332 S.E.2d 67 (1985); Square D Co. v. C.J. Kern Contractors, 314 N.C. 423, 334 S.E.2d 63 (1985).

Subdivision (6) does not grant "exclusive or separate emoluments or privileges" to the persons it protects in violation of N.C. Const., Art. I, § 32. Tetterton v. Long Mfg. Co., 314 N.C. 44, 332 S.E.2d 67 (1985).

This section does not distinguish be-

CASE NOTES

Applied in North Carolina State Bd. of Registration v. IBM Corp., 31 N.C. App. 599, 230 S.E.2d 552 (1976).

OPINIONS OF ATTORNEY GENERAL

Preparation of Construction Drawings. — A town may not, under its land use ordinance, require that all construction drawings submitted for approval be prepared and sealed by a licensed professional engineer, to the exclusion of licensed professional architects. Such a restriction would be in excess of the powers granted the town. See opinion of Attorney General to Mr. Michael B. Brough, Carrboro Town Attorney, 59 N.C.A.G. 58 (1989).

§ 89C-25.1. Supervision of unregistered individuals by registered person.

In all circumstances in which unregistered individuals are permitted under this Chapter to perform engineering or land surveying work, or both, under the supervision of a registered engineer, land surveyor, or both, the Board may by regulation establish a reasonable limit on the number of unregistered individuals which a registrant of the Board may directly or personally supervise at one time. (1979, c. 819, s. 5.)

§ 89C-25.2. Program of licensure by discipline.

The Board shall submit to the legislative committees of reference by July 1, 1981, a program of licensure by discipline and an analysis of the costs and merits thereof in order to permit the General Assembly to make a decision on the establishment of such a program. The "committees of reference" shall be the Senate and House Committees on State Government respectively or such other committees as the respective presiding officers may determine. (1979, c. 819, s. 5.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 89C-26. Duties of register of deeds.

The register of deeds or any other county or proper public authority may not file or record any map, plat, survey, or other documents, within the definition of land surveying, which do not contain an original personal signature and original seal of a registered land surveyor by whom, or under whose responsible charge, the map, plat, survey, or other documents were prepared, except as provided in G.S. 47-30(m) and (n). (1975, c. 681, s. 1; 1993, c. 119, s. 3.)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 1030, s. 51.16 provides: "The General Statutes Commission will study the requirements of G.S. 47-30(m) and G.S. 89C-26 to determine whether it is possible to provide for a photographic copy of a map to be attached to a deed or other instrument without requiring an original personal signature and original seal as approved

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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H1100-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 1100
THIS IS A DRAFT 24-APR-97 09:35:49
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Register of Deeds' Matters. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE STATUTE OF LIMITATIONS FOR ACTIONS UPON OFFICIAL BONDS FROM SIX YEARS TO THREE YEARS, TO AUTHORIZE THE REMOVAL AND DESTRUCTION OF CERTAIN DEATH AND BIRTH CERTIFICATES, TO IMPROVE THE PROCEDURES FOR RECORDING MAPS AND PLATS, AND TO AUTHORIZE THE STUDY OF LAND TITLE REGISTRATION PROCEDURES.

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).

(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).
(19) Upon the official bond of a public officer."

Section 3. 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 certificates for persons born in counties other than the county in which the office of the register of deeds is located. The register of deeds may remove from the records and destroy copies of death certificates for persons who died in counties other than the county in which the office of the register of deeds is located."

Section 4. G.S. 132-3(a) reads as rewritten:

"**§ 132-3. Destruction of records regulated.**

(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 5. G.S. 121-5(b) reads as rewritten:

"**§ 121-5. Public records and archives.**

(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 6. 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 7. 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 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~~ 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 monument are on file in the North Carolina Department of Environment, Health, and Natural Resources, 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. That the survey is of an existing parcel or parcels of land;

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 the following requirements of this section:

(1) ~~The provisions of subsection (b),~~ Subsection (b) of this section, as to archival;

~~(2) The provisions of subsection (d), except for the notary certificate;~~

~~(3)~~ (2) ~~The provisions of subsection (e);~~ Subsection (e) of this section; or

~~(4)~~ (3) ~~The provisions of subdivisions (2) through (9)~~ Subdivisions (1) through (10) of subsection (f).

A plat, when ~~proven and probated as provided herein for deeds and other conveyances, when~~ certified pursuant to G.S. 47-30.2 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 8. 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 a person experienced in mapping or land records management as Review Officer to review each map and plat before it is presented to the register of deeds for

recording. The person designated Review Officer shall, if possible, be certified as a property mapper pursuant to G.S. 147-54.4. The resolution designating the 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 each map or plat before it is presented to the register of deeds for recording and certify that it complies with all statutory requirements for recording. The 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) The register of deeds shall not accept for recording any map or plat that does not have affixed a certification as provided in subsection (b) of this section."

Section 9. 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 delineated either public or private. The certificate of approval

shall not be deemed an acceptance of the dedication of such streets on the subdivision plat or map. Final acceptance by the Division of Highways of such 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 10. 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 (not less 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 11. 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) 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.

(b) 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 streets, highways, and drainage systems;

(2) The county health director as to proposed water or sewerage systems;

(3) Any other agency or official designated by the board of commissioners.

(c) 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.

(d) From the ~~time that~~ effective date of a subdivision ordinance that is ~~filed with the register of deeds of the~~ adopted by 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 ~~the chairman or head of the board or agency.~~ an authorized representative of the county. The ~~register of deeds may not file or record~~ Review Officer, pursuant to G.S. 47-30.2, shall not certify 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 12. 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 13. 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 ~~time that~~ effective date of a subdivision ordinance that is ~~filed with the register of deeds of the county,~~ adopted by the city, 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 ~~register of deeds shall not file or record~~ Review Officer, pursuant to G.S. 47-30.2, shall not certify 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 14. 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 15. G.S. 89C-26 is repealed.

Section 16. The Legislative Research Commission may study the procedures for land title registration pursuant to Chapter 43 of the General Statutes and make recommendations for revision and improvement. The Commission shall submit its report to the 1998 Regular Session of the 1997 General Assembly.

Section 17. Sections 3 through 5 of this act become effective January 1, 1997. The removal and destruction by a register of deeds of any out-of-county birth or death certificates prior to January 1, 1997, is declared valid and not in violation of G.S. 121-5 or G.S. 132-3. Sections 6 through 15 of this act become effective October 1, 1997. The remaining sections of this act are effective when they became law. Section 2 of this act applies to claims that accrue on or after that date.

NORTH CAROLINA ASSOCIATION REGISTERS OF DEEDS

House Bill 1100 addresses four issues:

- **A proposal to improve the review process for recorded plats.** An enclosed cover sheet explains the reasons and effects our proposal would have on county offices. We have consulted with the N. C. Planners Assn., the Association of Property Mappers, and the Surveyor's Assn. in trying to come up with a document that would benefit all parties. Jim Blackburn with the County Commissioners Assn. has indicated his support for the proposed changes. We feel that the idea of a Review Officer will work hand in hand with the commissioner's goal of establishing land use planning in each county.

- **A curative statute authorizing registers of deeds to dispose of certain birth and death certificates.** From 1949 to around 1985, many registers received from Vital Records and various health departments photostatic copies of birth and death certificates for persons who lived in their respective counties but were born or died outside the county. While these certificates proved to be a source of information for researchers, they have presented problems for registers of deeds. We have never been allowed to issue certified copies from these photostats from other counties because they do not contain any amended information that might appear on the original which is filed in the county of birth or death. On January 6, 1992, a memorandum from Torrey McLean, State Registrar, requested registers of deeds statewide to remove these out of county records from their files and forward them to Vital Records in Raleigh. Many registers complied, and in order to insure that the State Registrar had the authority to ask for this removal, we are asking for this curative statute that would relieve registers of deeds from any liability for their actions.

- **Ask for a Legislative Study Commission to study procedures for land title registration.** G.S. 43 addresses the cumbersome and inequitable process for acquiring property through torrens. This is a statute that has not been reviewed in many years. The process of administering torrens has posed problems for registers of deeds in the eastern part of the state particularly, but could possibly affect every county in the state.

- **A proposal to change the statute of limitations for actions on official bonds.** This proposal addresses reducing from six to three the number of years of liability registers of deeds and other officials carry on their official bonds after leaving office. We feel that six years places unfair restrictions on, not only the officials, but also on their insurers.

Proposal to Improve Procedures for Recording Maps and Plats

This proposal grew out of a concern by registers of deeds over increasing difficulty in determining that all of the legal requirements for recording plats under G.S. 47-30 and compliance with local subdivision ordinances are being met. Registers are not trained or qualified to review some of the technical aspects that are part of a valid survey.

Changes to current process:

- Original plat may be returned to the person who recorded it if the register of deeds can provide legible copies from a security copy of the plat.

- Requires that the board of commissioners in each county appoint a sufficient number of Review Officers to promptly review each plat for compliance with G.S. 47-30, any applicable subdivision ordinance, and Department of Transportation requirements before it is presented to the register of deeds for recording. The number of people authorized to act as the Review Officer will vary based on the volume of plats recorded in a given county. If the property is within a municipality's jurisdiction, the Review Officer will certify that the proper authority within that municipality has approved the plat for compliance with that municipality's subdivision ordinance.

Advantages of the changes:

- Each county will have the opportunity to appoint qualified Review Officers from the appropriate department who are familiar with the technicalities of property surveys and who can insure compliance with that county's subdivision ordinance thereby giving the county more control over the approval process.

- The appointment of Review Officers will allow the person recording the plat a single point of approval. Because of discrepancies between G.S. 47-30 and local ordinances, it is currently possible to have a plat approved by a planning department and refused for recording in the register of deeds office.

- Registers of deeds will have the option of eliminating the cost and space required in the storage of the original plats.

- The appointment of the Review Officers should encourage counties that currently have no form of land records or planning department to establish one.

Check List for Plats
Randolph Co., N. C.

- Size: 18" x 24"
- Material: Original ink on mylar or archival reproduction. Must be legible.
- Title Block: Name of project
  Owner's name
  Township, county, and state
  Date of survey
  Scale ratio
  Surveyor's name and address
- Surveyor's certificate and seal.
- Notary's certificate and seal.
- North arrow: True, magnetic, N. C. grid, or old deed bearing
- Vicinity map
- Surveyor's statement: One of these five must be on plat:
  1. This survey creates a subdivision of land within the area of a county or municipality that has an ordinance that regulates parcels of land.
  2. This survey is located in such a portion of a county or municipality that is unregulated as to an ordinance that regulates parcels of land.
  3. This survey is of an existing parcel or parcels of land.
  4. This survey is of another category, such as the recombination of existing parcels, a court-ordered survey, or other exception to the definition of subdivision.
  5. The information available to the surveyor is such that the surveyor is unable to make a determination to the best of his or her professional ability as to provisions contained above.

  If the statement is anything other than #3, the plat requires approval of Planning and Zoning.
- Unless the plat is labeled as an existing parcel (#3 above) or marked as exempt by Planning & Zoning, control corners must be shown.
- If that property is in a municipality other than Seagrove or Staley, the plat must be approved by that municipality's planning department. The county planning department administers property in Seagrove and Staley.
- If the plat contains a new road or right of way labeled "public", it must have an approval stamp from DOT. If the road or right of way is labeled "private", no approval is required. If the road or right of way is not labeled, there are no guidelines so we will not require DOT approval.
- If the surveyor has indicated that the plat is in a watershed zone, the plat must have an extra approval from Planning and Zoning, unless the watershed is within the city limits of Asheboro, Archdale, or Randleman. These 3 municipalities approve their own watershed restrictions so there should be an extra approval from them.
- The following are exempt from the recording requirements for plats: Annexation maps for municipalities, boundary maps for municipalities, highway right-of-way maps, and highway corridor maps.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1100 DATE _____

S. B. No. _____ Amendment No. _____

Proposed Comm. Sub. (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 12, line 15

( ) WHICH CHANGES THE TITLE

by deleting ~~"(3)~~ "(2)" and substituting "(3)";

and on page 12, line 17

by deleting ~~"(4)~~ "(3)" and substituting "(4)".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 1100 A BILL TO BE ENTITLED AN ACT TO CHANGE THE STATUTE OF LIMITATIONS FOR ACTIONS UPON OFFICIAL BONDS FROM SIX YEARS TO THREE YEARS, TO AUTHORIZE THE REMOVAL AND DESTRUCTION OF CERTAIN DEATH AND BIRTH CERTIFICATES, TO IMPROVE THE PROCEDURES FOR RECORDING MAPS AND PLATS, AND TO AUTHORIZE THE STUDY OF LAND TITLE REGISTRATION PROCEDURES.

☐ 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 D

HOUSE BILL 1100
Proposed Committee Substitute H1100-PCS1348

Short Title: Register of Deeds' Matters. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE STATUTE OF LIMITATIONS FOR ACTIONS UPON OFFICIAL BONDS FROM SIX YEARS TO THREE YEARS, TO AUTHORIZE THE REMOVAL AND DESTRUCTION OF CERTAIN DEATH AND BIRTH CERTIFICATES, TO IMPROVE THE PROCEDURES FOR RECORDING MAPS AND PLATS, AND TO AUTHORIZE THE STUDY OF LAND TITLE REGISTRATION PROCEDURES.

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).

(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).

(19) Upon the official bond of a public officer."

Section 3. 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 certificates for persons born in counties other than the county in which the office of the register of deeds is located. The register of deeds may remove from the records and destroy copies of death certificates for persons who died in counties other than the county in which the office of the register of deeds is located."

Section 4. 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 5. 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 6. 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 7. 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 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~~ 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 monument are on file in the North Carolina Department of Environment, Health, and Natural Resources, 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. That the survey is of an existing parcel or parcels of land;

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 the following requirements of this section:

(1) ~~The provisions of subsection (b),~~ Subsection (b) of this section, as to archival;

~~(2) The provisions of subsection (d), except for the notary certificate;~~

(3) ~~The provisions of subsection (e);~~ Subsection (e) of this section; or

(4) ~~The provisions of subdivisions (2) through (9)~~ Subdivisions (1) through (10) of subsection (f).

A plat, when ~~proven and probated as provided herein for deeds and other conveyances, when~~ certified pursuant to G.S. 47-30.2 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 8. 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 a person experienced in mapping or land records management as Review Officer to review each map and plat before it is presented to the register of deeds for recording. The person designated Review Officer shall, if possible, be certified as a property mapper pursuant to G.S. 147-54.4. The resolution designating the 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 each map or plat before it is presented to the register of deeds for recording and certify that it complies with all statutory requirements for recording. The 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) The register of deeds shall not accept for recording any map or plat that does not have affixed a certification as provided in subsection (b) of this section."

Section 9. 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 delineated either public or private. The certificate of approval shall not be deemed an acceptance of the dedication of such streets on the subdivision plat or map. Final acceptance by the Division of Highways of such 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 10. 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 (not less 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 11. 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 streets, highways, and drainage systems;
(2) The county health director 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 ~~time that~~ effective date of a subdivision ordinance that is ~~filed with the register of deeds of the~~ adopted by 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 ~~the chairman or head of the board or agency.~~ an authorized representative of the county. The ~~register of deeds may not file or record~~ Review officer, pursuant to G.S. 47-30.2, shall not certify 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 12. 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 13. 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 ~~time that~~ effective date of a subdivision ordinance that is ~~filed with the register of deeds of the county,~~ adopted by the city, 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 ~~register of deeds shall not file or record~~ Review Officer, pursuant to G.S. 47-30.2, shall not certify 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 14. 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 15. G.S. 89C-26 is repealed.

Section 16. The Legislative Research Commission may study the procedures for land title registration pursuant to Chapter 43 of the General Statutes and make recommendations for revision and improvement. The Commission shall submit its report to the 1998 Regular Session of the 1997 General Assembly.

Section 17. Sections 3 through 5 of this act become effective January 1, 1997. The removal and destruction by a register of deeds of any out-of-county birth

or death certificates prior to January 1, 1997, is declared valid and not in violation of G.S. 121-5 or G.S. 132-3. Sections 6 through 15 of this act become effective October 1, 1997. The remaining sections of this act are effective when they became law. Section 2 of this act applies to claims that accrue on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H1028-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 1028
THIS IS A DRAFT 24-APR-97 12:39:01
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Towing Procedures. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CERTAIN REQUIREMENTS ON MOTOR VEHICLE TOWING OPERATORS TO PROVIDE PROTECTION FOR MEMBERS OF THE PUBLIC.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-219.4. Towing procedures.**

(a) A towing company operating in this State shall:

(1) Provide for reclaiming of towed motor vehicles within one hour during all hours of operations of the towing company.

(2) Post in a conspicuous place at the place of recovery of the towed motor vehicle a schedule of fees for services which fees shall be uniformly applied to all operations of the towing company.

(3) Tow a motor vehicle from private property only upon the request of the owner of the property or the

owner's agent, or upon the request of the owner or operator of the vehicle.

(4) Maintain a written record until the motor vehicle is reclaimed of the name and telephone number of the person requesting the tow.

(b) Blanket authority for towing shall not be authorized except for spaces properly marked in accordance G.S. 20-219.2(a).

(c) This section applies only to motor vehicles towed from private property.

(d) A violation of this section is an infraction."

Section 2. This act shall apply only to cities with a population of 100,000 or more.

Section 3. This act is effective December 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

Rep.)
) _____
Sen.)

moves to amend the bill on page 2, line 1,

by rewriting the line to read:

" owner's agent other than the towing company, that a specific vehicle be towed, or upon the request of the owner or" ;

and on page 2, line 10
by deleting the word "infraction." and substituting "infraction punishable by a fine of not more than five hundred dollars ($500.00)".

and on page 1, line 10
by inserting before the word "operations" the word "towing".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1045
Proposed Committee Substitute H1045-PCSSA-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Red Light Photo Citations. (Public)

Sponsors:

Referred to: Judiciary II.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE LOCAL GOVERNMENTS TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-300.1. Use of traffic control photographic systems.**

(a) Traffic control photographic systems.

(1) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(2) Any traffic control photographic system, as described in subdivision (1) of this subsection or any device which is a part of that system deployed on a street or highway which is a part of the State highway system shall meet requirements established by the North Carolina Department of Transportation.

Any traffic control system deployed on a municipal street shall meet standards established by the municipality and shall be consistent with any standards set by the Department of Transportation.

(b) Municipalities and counties may adopt ordinances for the enforcement of G.S. 20-141, 20-141.1, or 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation under this section unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within twenty-one (21) days after notification of the violation, furnishes the officials or agents of the municipality which issued the citation:

a. the name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or

b. an affidavit stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) The violation of this section detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle.

(3) The owner of the vehicle shall be issued a citation which shall clearly state the manner in which the violation may be challenged, and the owner shall comply with the directions on the citation. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right

to contest responsibility for the violation, and may be subject to an additional penalty, not to exceed an additional fifty dollars ($50.00). The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(4) The municipality shall institute a non-judicial administrative hearing to review objections to citations or penalties issued or assessed under this section."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 415 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Culpepper
)
Sen.)

moves to amend the bill on page 1, line 2, through page 2, line 11 (O) ~~WHICH CHANGES THE TITLE~~ by rewriting the lines to read:

"AN ACT TO REPEAL THE LAW REQUIRING THE PARENTS OF A DEPENDENT CHILD, WHO IS THE PARENT OF A DEPENDENT CHILD, TO PAY SUPPORT FOR THEIR GRANDCHILD."

The General Assembly of North Carolina enacts:

Section 1. Chapter 518 of the 1995 Session Laws is repealed.

Section 2. This act becomes effective October 1, 1995. ~~and applies to child support assessed for children born on or after that date. July 29, 1995~~

SIGNED Bill Culpepper

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 415 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE LAW REGARDING GRANDPARENTS' LIABILITY FOR CERTAIN CHILD SUPPORT.

☐ 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, 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)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 415
Proposed Committee Substitute H415-PCS6242

Short Title: Grandparents' Child Support. (Public)

Sponsors:

Referred to:

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE LAW REQUIRING THE PARENTS OF A DEPENDENT CHILD WHO IS THE PARENT OF A DEPENDENT CHILD TO PAY SUPPORT FOR THEIR GRANDCHILD.

The General Assembly of North Carolina enacts:

Section 1. Chapter 518 of the 1995 Session laws is repealed.

Section 2. This act becomes effective October 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1023

Short Title: Pretrial Release & Bond Forfeiture. (Public)

Sponsors: Representative Baddour.

Referred to: Judiciary II.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE PRETRIAL RELEASE AND BOND FORFEITURE PROCEDURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-533 reads as rewritten:

"**§ 15A-533. Right to pretrial release in capital and noncapital cases.**

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Human Resources, and whose commitment is determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) A defendant charged with a noncapital offense other than an offense that constitutes 'trafficking' in a controlled substance, as that term is defined by the Controlled Substances Act, must have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(c) Subject to rebuttal by the person, it shall be presumed that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds that there is probable cause to believe that the person committed ~~A judge may determine in his discretion whether a defendant~~

~~charged with~~ a capital offense or an offense involving trafficking in a controlled substance. Such persons may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community. ~~may be released before trial.~~ If he determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534."

Section 2. G.S. 15A-534 reads as rewritten:

"**§ 15A-534. Procedure for determining conditions of pretrial release.**

(a) In determining conditions of pretrial release a judicial official must impose one of the following conditions:

(1) Release the defendant on his written promise to appear.

(2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.

(3) Place the defendant in the custody of a designated person or organization agreeing to supervise him.

(4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.

If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.

(b) The judicial official in granting pretrial release must impose condition (1), (2), or (3) in subsection (a) above unless he determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any ~~person;~~ person or to the community; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Upon making the determination, the judicial official must then impose condition (4) in subsection (a) above instead of condition (1), (2), or (3), and must record the reasons for so doing in writing ~~to the extent provided in the policies or requirements issued~~ in such form as may be required by the senior resident superior court judge pursuant to G.S. 15A-535(a).

(c) In determining which conditions of release to impose, the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; his record of convictions; his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

(c1) If a secured appearance bond is required by a magistrate or clerk of court as a condition of pretrial release, the defendant, unless sooner released, shall be entitled

to have his conditions of release reviewed by a district court judge within 96 hours after the defendant is taken into custody.

(d) The judicial official authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of his release; and advise him that his arrest will be ordered immediately upon any violation. The order of release must be filed with the clerk and a copy given the defendant.

(e) A magistrate or a clerk may modify his pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him at any time prior to:

(1) In a misdemeanor case tried in the district court, the noting of an appeal; and

(2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable-cause hearing.

After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by him, at any time prior to the time set out in G.S. 15A-536(a).

(f) For good cause shown any judge may at any time revoke an order of pretrial release. Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release in accordance with this Article.

(g) In imposing conditions of pretrial release and in modifying and revoking orders of release under this section, the judicial official must take into account all evidence available to him which he considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials.

(h) A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is terminated at an earlier time if:

(1) A judge authorized to do so releases the obligor from his bond; or

(2) The principal is surrendered by a surety in accordance with G.S. 15A-540; or

(3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G.S. 15A-544(b); or

(4) Prayer for judgment has been continued indefinitely in the district court."

Section 3. G.S. 15A-535(a) reads as rewritten:

"(a) Subject to the provisions of this Article, the senior resident superior court judge for each district or set of districts as defined in G.S. 7A-41.1(a) in consultation with the chief district court judge or judges of all the district court districts in which are located any of the counties in the senior resident superior court judge's district or set of districts, must devise and issue recommended policies to be followed within each of those counties in determining whether, and upon what conditions, a defendant may be released before trial, and ~~may~~ shall include in such policies, or issue separately, a requirement that each judicial official who imposes condition (4) in G.S. 15A-534(a) must record the reasons for doing so in writing."

Section 4. G.S. 15A-544 reads as rewritten:

"**§ 15A-544. Forfeiture.**

(a) By entering into a bail bond the obligor submits to the jurisdiction of the court and irrevocably appoints the clerk as the obligor's agent for any proceedings with reference to the bond. The obligor's liability may be enforced on motion without the necessity of an independent action. Each obligor, including the principal, bail agent, and the surety represented by the bail agent, shall enter on the bond the obligor's mailing address, street address, and telephone number for the service of any process required by this section or other provision of law. If the address or telephone number of the obligor changes during the pendency of any proceeding with reference to the bond, it shall be the duty of the obligor to notify the clerk of the obligor's new address and telephone number.

(b) If the principal does not comply with the conditions of the bail bond, the court having jurisdiction must enter an order declaring the bail to be forfeited. If forfeiture is ordered by the court, a copy of the order of forfeiture and notice that judgment will be entered upon the order after 60 days must be served on each obligor. Service is to be made by the clerk mailing by certified mail, return receipt requested, a copy of the order of forfeiture and notice to each obligor at each obligor's address as noted on the bond and note on the original the date of mailing. Service is complete three days after the mailing.

(c) Except as provided in subsection (c1) of this section, at any time within 60 days following the date of service, or on the first presentment of the forfeiture calendar more than 60 days after the date of service, the principal or surety may move the court having jurisdiction of the matter, orally or in writing, to strike the order of forfeiture and recall the notice of forfeiture. If the principal or surety appears and moves within the time allowed following the date of service and satisfies the court that the principal's failure to appear on the date set was impossible or that the principal's failure to appear was without the principal's fault, the order of forfeiture must be set aside. If the principal or surety does not satisfy the court that the principal's appearance on the date set was impossible or that the principal's failure to appear was without the principal's fault, the court must then enter judgment for the State against the principal and surety for the amount of the bail and the cost of the proceeding.

(c1) If the principal does not appear before the court having jurisdiction because the principal is incarcerated in North Carolina and unable to appear before the court,

but the surety appears within the time allowed following the date of service and satisfies the court that the principal's appearance on the date set was impossible because the principal was incarcerated in North Carolina, the order of forfeiture must be set aside.

(d) To facilitate the procedure under this section, the clerk in each county shall prepare for both the district and superior court a forfeiture calendar once each month when court is in session. The forfeiture calendar shall list the names of all principals and sureties to whom forfeiture has been ordered more than 60 days previously in the county and as to which judgments of forfeiture against the principal and surety have not been entered or, if entered, not yet satisfied by execution. The forfeiture calendar shall show the amount of the bond ordered forfeited in each case. In addition, the clerk shall place on the forfeiture calendar for hearing all written motions to strike an order of forfeiture filed since the previous forfeiture calendar. It shall be the duty of the district attorney to present the forfeiture calendar to the court, but the attorney for the county school board shall have the right to appear and be heard when the forfeiture calendar is presented. At the district attorney's discretion, the district attorney may appoint the county school board attorney as the district attorney's designee for the presentation of the forfeiture calendar.

(e) ~~At any time within 90 days after entry of the judgment against a principal or surety, the principal or surety, by verified written petition, may request that the judgment be remitted in whole or in part, upon such conditions as the court may impose, if it appears that justice requires the remission of part or all of the judgment. A copy of the petition must be served upon the attorney for the county school board at least three working days prior to the hearing. The clerk shall place on the forfeiture calendar for hearing all petitions that have been filed during the previous month or since the last forfeiture calendar. The petitioner, the district attorney, and the school board attorney shall be notified of the date, time, and place of the hearing. The petitioner, the district attorney, and the county school board attorney shall be given an opportunity to appear and be heard.~~ If the principal is surrendered by the surety and incarcerated in the State within 90 days of the entry of the judgment, the forfeiture ~~shall~~ may, in the discretion of the court, be stricken upon the payment of costs. If the principal is incarcerated or served an order for arrest in North Carolina within 90 days of the entry of the judgment and the principal placed on a new bond or released by the court, then the forfeiture ~~shall~~ may, in the discretion of the court, be stricken upon the payment of costs.

(f) If a judgment has not been remitted within the period provided in subsection (e) above, the clerk must issue execution on the judgment within 30 days, and remit the clear proceeds to the county for use in maintaining free public schools. Any clerk who fails to perform his duty as required in this subsection is subject to a penalty of five hundred dollars ($500.00).

(g) If a levy of execution upon a judgment against an obligor remains unsatisfied for 10 days, the sheriff shall notify the clerks and magistrates in each county in the prosecutorial district and the obligor shall not become surety on any bail bond in the prosecutorial district so long as the judgment remains unsatisfied. Nothing in this

subsection makes lawful any act made unlawful by Article 71 of Chapter 58 of the General Statutes.

(h) For extraordinary cause shown, the court which has entered judgment upon a forfeiture of a bond may, after execution, remit the judgment in whole or in part and order the clerk to refund such amounts as the court considers ~~appropriate.~~ appropriate, but only if the principal is surrendered by the surety and incarcerated in the State of North Carolina. Any person moving for remission of judgment must do so by verified petition, and a copy of the petition must be served upon the attorney for the county school board at least three working days prior to the hearing on the motion. The moving party must notify the attorney for the school board of the time and place of the hearing, and such attorney, if he so desires, must be given an opportunity to appear and be heard. If money has been paid to the county pursuant to execution on a judgment of forfeiture, it must refund to the person entitled the amount of any remission granted under the terms of this subsection upon receipt of a certified copy of the judgment of remission from the clerk."

Section 5. 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: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 1023—Pretrial Release & Bond Forfeiture (Baddour)

House Bill 1023 makes various changes to Chapter 15A concerning the right to pretrial release and bond forfeiture.

Section 1 of the bill amends 15A-533 to provide that, for a defendant charged with a trafficking offense under the Controlled Substances Act, it is presumed that no condition of release will reasonably assure the appearance of the person and the safety of the community. This presumption may be rebutted by the defendant.

Section 2 of the bill provides that if a secured appearance bond is required by a magistrate as a condition of pretrial release, the defendant is entitled to have his conditions of release reviewed by a district court judge within 96 hours of being taken into custody.

Section 3 of the bill requires that the senior resident superior court judge of each district include in the district's policies of pretrial release a requirement that a judicial official record in writing his or her reasons for requiring a secured appearance bond.

Section 4 of the bill amends the procedure for forfeiture of an appearance bond. Under current law, if a defendant fails to appear, the court issues an order of forfeiture. If , within 60 days after service of the order, the defendant or bond surety does not convince the court that the defendant's appearance was impossible or the defendant's failure to appear was without fault, a judgment of forfeiture is entered. Within 90 days of entry of the judgment, the court may, in the interest of justice, remit all or part of the judgment to the defendant or surety. **Section 4** of the bill removes the court's ability to remit the judgment.

Under current law, the court **must** strike the forfeiture and remit the judgment if, within 90 days of the judgment, the defendant is: (1) surrendered by the surety and incarcerated; or (2) incarcerated or served an order for arrest and placed on a new bond or released by the court. Section 4 of the bill amends these provisions to allow the court to strike a forfeiture **in its discretion** in these situations. The court is not required to strike the forfeiture, however.

Current law also allows a court to remit the judgment in whole or in part **after execution of the judgment** if the person moving for remission demonstrates extraordinary cause. **Section 4** of the bill allows the court to remit the judgment after execution for extraordinary cause, but only if the defendant is surrendered by the surety and incarcerated.

House Bill 1023 becomes effective December 1, 1997 and applies to offenses committed on or after that date.

censed to administer the test by the Department of Human Resources.

The fact that a defendant refused to comply with a judicial official's request that he submit to a chemical analysis may not be admitted into evidence in any criminal action, administrative proceeding, or a civil action to review a decision reached by an administrative agency in which the defendant is a party. (1983, c. 435, s. 4.)

Editor's Note. — Session Laws 1983, c. 435, which enacted this section, provides in section 41.1: "The original inclusion and ultimate deletion in the course of passing this act of statutory liability for certain persons who sell or furnish alcoholic beverages to intoxicated persons does not reflect any legislative intent one way or the other with respect to the issue of civil liability for negligence by persons who sell or furnish those beverages to such persons."

CASE NOTES

Effect of Magistrate's Failure to Inform of Rights to Pretrial Release. — Statutory violations by magistrate, who failed to inform defendant of his rights to pretrial release under either the general provisions of § 15A-511 or the more specific provisions of § 15A-534.2, did not justify dismissal of driving while impaired charges. State v. Gilbert, 85 N.C. App. 594, 355 S.E.2d 261 (1987).

Applied in State ex rel. Edmisten v. Tucker, 312 N.C. 326, 323 S.E.2d 294 (1984).

§ 15A-535. Issuance of policies on pretrial release.

(a) Subject to the provisions of this Article, the senior resident superior court judge for each district or set of districts as defined in G.S. 7A-41.1(a) in consultation with the chief district court judge or judges of all the district court districts in which are located any of the counties in the senior resident superior court judge's district or set of districts, must devise and issue recommended policies to be followed within each of those counties in determining whether, and upon what conditions, a defendant may be released before trial and may include in such policies, or issue separately, a requirement that each judicial official who imposes condition (4) in G.S. 15A-534(a) must record the reasons for doing so in writing.

(b) In any county in which there is a pretrial release program, the senior resident superior court judge may, after consultation with the chief district court judge, order that defendants accepted by such program for supervision shall, with their consent, be released by judicial officials to supervision of such programs, and subject to its rules and regulations, in lieu of releasing the defendants on conditions (1), (2), or (3) of G.S. 15A-534(a). (1973, c. 1286, s. 1; 1975, c. 791, s. 1; 1987, c. 481, s. 2; 1987 (Reg. Sess., 1988), c. 1037, s. 55.)

OFFICIAL COMMENTARY

The section changes the provision of § 15-103.1 that the chief district court judge in each district issues policies on bail matters. The bill puts this duty upon the senior resident superior court judge of the district, after consultation with the chief district court judge.

itor's Note. — Subsection (a) was nded by Session Laws 1987, c. 1037, in the coded bill drafting format ded by § 120-20.1. It has been set the form above at the direction of Revisor of Statutes.

ffect of Amendments. — The 1987 ndment, effective October 1, 1987, ded "and may include in such policies, ssue separately, a requirement that judicial official who imposes condi- (4) in G.S. 15A-534(a) must record reasons for doing so in writing" at end of subsection (a).

15A-536. Release after convi court.

(a) A defendant whose guilt has been court and is either awaiting sentence the judgment entered may be ordered ccordance with the provisions of this

(b) If release is ordered, the judge mu out in G.S. 15A-534(a) which will reason the defendant when required and prov persons and the community. If no single nce, the judge may impose the conditi ddition to any other condition and n condition in G.S. 15A-534(a)(3), place ssociations, conduct, or place of abod

(c) In determining what conditions of must, on the basis of available informa ate factors set out in G.S. 15A-534(c).

(d) A judge authorizing release of a d must issue an appropriate order contain ditions imposed, if any; inform the defe alties applicable to violations of the co advise him that his arrest will be orde such violation. The order of release mus a copy given the defendant.

(e) An order of release may be modif rior court judge who has ordered the r this section or, if that judge is absent trict or set of districts as defined in superior court judge. If the defendant result of a revocation or modification defendant is entitled to an immediat again entitled to release and, if so, u

(f) In imposing conditions of release ing orders of release under this sectio account all evidence available to him and is not strictly bound by the rul criminal trials. (1973, c. 1286, s. 1; 19 s. 56.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H1023-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 1023
THIS IS A DRAFT 24-APR-97 13:44:17
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Pretrial Release & Bond Forfeiture. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE PRETRIAL RELEASE AND BOND FORFEITURE PROCEDURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-533 reads as rewritten:

"**§ 15A-533. Right to pretrial release in capital and noncapital cases.**

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Human Resources, and whose commitment is determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of

the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) A defendant charged with a noncapital offense other than an offense that constitutes 'trafficking' in a controlled substance, as that term is defined by the Controlled Substances Act, must have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(c) Subject to rebuttal by the person, it shall be presumed that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds that there is probable cause to believe that the person committed ~~A judge may determine in his discretion whether a defendant charged with~~ a capital offense or an offense involving trafficking in a controlled substance. Such persons may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community. ~~may be released before trial.~~ If he determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534."

Section 2. G.S. 15A-534 reads as rewritten:

"**§ 15A-534. Procedure for determining conditions of pretrial release.**

(a) In determining conditions of pretrial release a judicial official must impose one of the following conditions:

(1) Release the defendant on his written promise to appear.

(2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.

(3) Place the defendant in the custody of a designated person or organization agreeing to supervise him.

(4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.

If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). The judicial

official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.

(b) The judicial official in granting pretrial release must impose condition (1), (2), or (3) in subsection (a) above unless he determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any ~~person;~~ person or to the community; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Upon making the determination, the judicial official must then impose condition (4) in subsection (a) above instead of condition (1), (2), or (3), and must record the reasons for so doing in writing ~~to the extent provided in the policies or requirements issued~~ in such form as may be required by the senior resident superior court judge pursuant to G.S. 15A-535(a).

(c) In determining which conditions of release to impose, the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; his record of convictions; his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

(c1) If a secured appearance bond is required by a magistrate or clerk of court as a condition of pretrial release, the defendant, unless sooner released, shall be entitled to have his conditions of release reviewed at the first appearance conducted pursuant to G.S. 15A-601.

(d) The judicial official authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of his release; and advise him that his arrest will be ordered immediately upon any violation. The order of release must be filed with the clerk and a copy given the defendant.

(e) A magistrate or a clerk may modify his pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him at any time prior to:

(1) In a misdemeanor case tried in the district court, the noting of an appeal; and

(2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable-cause hearing.

After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by him, at any time prior to the time set out in G.S. 15A-536(a).

(f) For good cause shown any judge may at any time revoke an order of pretrial release. Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release in accordance with this Article.

(g) In imposing conditions of pretrial release and in modifying and revoking orders of release under this section, the judicial official must take into account all evidence available to him which he considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials.

(h) A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is terminated at an earlier time if:

(1) A judge authorized to do so releases the obligor from his bond; or

(2) The principal is surrendered by a surety in accordance with G.S. 15A-540; or

(3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G.S. 15A-544(b); or

(4) Prayer for judgment has been continued indefinitely in the district court."

Section 3. G.S. 15A-535(a) reads as rewritten:

"(a) Subject to the provisions of this Article, the senior resident superior court judge for each district or set of districts as defined in G.S. 7A-41.1(a) in consultation with the chief district court judge or judges of all the district court districts in which are located any of the counties in the senior resident superior court judge's district or set of districts, must devise and issue recommended policies to be followed within each of those counties in determining whether, and upon what conditions, a defendant may be released before trial, and ~~may~~ shall include in such policies, or issue separately, a requirement that each judicial official who imposes condition (4) in G.S. 15A-534(a) must record the reasons for doing so in writing."

Section 4. G.S. 15A-544 reads as rewritten:

"**§ 15A-544. Forfeiture.**

(a) By entering into a bail bond the obligor submits to the jurisdiction of the court and irrevocably appoints the clerk as the obligor's agent for any proceedings with reference to the bond. The obligor's liability may be enforced on motion without the necessity of an independent action. Each obligor, including the principal, bail agent, and the surety represented by the bail agent, shall enter on the bond the obligor's mailing address, street address, and telephone number for the service of any process required by this section or other provision of law. If the address or telephone number of the obligor changes during the pendency of any proceeding with reference to the bond, it shall be the duty of the obligor to notify the clerk of the obligor's new address and telephone number.

(b) If the principal does not comply with the conditions of the bail bond, the court having jurisdiction must enter an order declaring the bail to be forfeited. If forfeiture is ordered by the court, a copy of the order of forfeiture and notice that judgment will be entered upon the order after 60 days must be served on each obligor. Service is to be made by the clerk

mailing by certified mail, return receipt requested, a copy of the order of forfeiture and notice to each obligor at each obligor's address as noted on the bond and note on the original the date of mailing. Service is complete three days after the mailing.

~~(c) Except as provided in subsection (c1) of this section, at~~ At any time within 60 days following the date of service, or on the first presentment of the forfeiture calendar more than 60 days after the date of service, the principal or surety may move the court having jurisdiction of the matter, orally or in writing, to strike the order of forfeiture and recall the notice of forfeiture. If the principal or surety appears and moves within the time allowed following the date of service and satisfies the court that the principal's failure to appear on the date set was ~~impossible or~~ impossible, that the principal's failure to appear was without the principal's fault, or that the principal was surrendered by the surety, the order of forfeiture must be set aside. However, if the principal's failure to appear was the result of the principal's being incarcerated elsewhere, the order of forfeiture may be set aside only on a showing that the principal, while incarcerated, was served with an order for arrest for the failure to appear or placed under a detainer for the charge for which the order of forfeiture was issued. If the principal or surety does not satisfy the court that the principal's appearance on the date set was ~~impossible or~~ impossible, that the principal's failure to appear was without the principal's fault, or that the principal was surrendered by the surety, the court must then enter judgment for the State against the principal and surety for the amount of the bail and the cost of the proceeding.

~~(c1) If the principal does not appear before the court having jurisdiction because the principal is incarcerated in North Carolina and unable to appear before the court, but the surety appears within the time allowed following the date of service and satisfies the court that the principal's appearance on the date set was impossible because the principal was incarcerated in North Carolina, the order of forfeiture must be set aside.~~

(d) To facilitate the procedure under this section, the clerk in each county shall prepare for both the district and superior court a forfeiture calendar once each month when court is in

session. The forfeiture calendar shall list the names of all principals and sureties to whom forfeiture has been ordered more than 60 days previously in the county and as to which judgments of forfeiture against the principal and surety have not been entered or, if entered, not yet satisfied by execution. The forfeiture calendar shall show the amount of the bond ordered forfeited in each case. In addition, the clerk shall place on the forfeiture calendar for hearing all written motions to strike an order of forfeiture filed since the previous forfeiture calendar. It shall be the duty of the district attorney to present the forfeiture calendar to the court, but the attorney for the county school board shall have the right to appear and be heard when the forfeiture calendar is presented. At the district attorney's discretion, the district attorney may appoint the county school board attorney as the district attorney's designee for the presentation of the forfeiture calendar.

(e) ~~At any time within 90 days after entry of the judgment against a principal or surety, the principal or surety, by verified written petition, may request that the judgment be remitted in whole or in part, upon such conditions as the court may impose, if it appears that justice requires the remission of part or all of the judgment. A copy of the petition must be served upon the attorney for the county school board at least three working days prior to the hearing. The clerk shall place on the forfeiture calendar for hearing all petitions that have been filed during the previous month or since the last forfeiture calendar. The petitioner, the district attorney, and the school board attorney shall be notified of the date, time, and place of the hearing. The petitioner, the district attorney, and the county school board attorney shall be given an opportunity to appear and be heard.~~ If the principal is surrendered by the surety and incarcerated in the State within 90 days of the entry of the judgment, the forfeiture ~~shall~~ may, in the discretion of the court, be stricken upon the payment of costs. If the principal is incarcerated or served an order for arrest in North Carolina within 90 days of the entry of the judgment and the principal placed on a new bond or released by the court, then the forfeiture ~~shall~~ may, in the discretion of the court, be stricken upon the payment of costs. Relief under this subection may be obtained only upon written petition filed with the court. The

clerk shall place on the forfeiture calendar for hearing all petitions that have been filed during the previous month or since the last forfeiture calendar. A copy of the petition, together with a notice of hearing shall be served by the petitioner on the attorney for the school board and on the district attorney at least three days prior to the hearing. The petitioner, the attorney for the school board, and the district attorney shall be given an opportunity to be heard.

(f) If a judgment has not been remitted within the period provided in subsection (e) above, the clerk must issue execution on the judgment within 30 days, and remit the clear proceeds to the county for use in maintaining free public schools. Any clerk who fails to perform his duty as required in this subsection is subject to a penalty of five hundred dollars ($500.00).

(g) If a levy of execution upon a judgment against an obligor remains unsatisfied for 10 days, the sheriff shall notify the clerks and magistrates in each county in the prosecutorial district and the obligor shall not become surety on any bail bond in the prosecutorial district so long as the judgment remains unsatisfied. Nothing in this subsection makes lawful any act made unlawful by Article 71 of Chapter 58 of the General Statutes.

(h) For extraordinary cause shown, the court which has entered judgment upon a forfeiture of a bond may, after execution, remit the judgment in whole or in part and order the clerk to refund such amounts as the court considers appropriate. Any person moving for remission of judgment must do so by verified petition, and a copy of the petition must be served upon the attorney for the county school board at least three working days prior to the hearing on the motion. The moving party must notify the attorney for the school board of the time and place of the hearing, and such attorney, if he so desires, must be given an opportunity to appear and be heard. If money has been paid to the county pursuant to execution on a judgment of forfeiture, it must refund to the person entitled the amount of any remission granted under the terms of this subsection upon receipt of a certified copy of the judgment of remission from the clerk."

Section 5. This act becomes effective December 1, 1997. Sections 1, 2, and 3 apply to offenses committed on or after that date. Section 4 applies to forfeitures ordered on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 1023 A BILL TO BE ENTITLED AN ACT TO MODERNIZE THE PRETRIAL RELEASE AND BOND FORFEITURE PROCEDURE.

☐ 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. (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

H D

HOUSE BILL 1023
Proposed Committee Substitute H1023-PCS7289

Short Title: Pretrial Release & Bond Forfeiture. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE PRETRIAL RELEASE AND BOND FORFEITURE PROCEDURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-533 reads as rewritten:

"**§ 15A-533. Right to pretrial release in capital and noncapital cases.**

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Human Resources, and whose commitment is determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) A defendant charged with a noncapital offense other than an offense that constitutes 'trafficking' in a controlled substance, as that term is defined by the Controlled Substances Act, must have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(c) Subject to rebuttal by the person, it shall be presumed that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds that there is probable cause to believe that

the person committed ~~A judge may determine in his discretion whether a defendant charged with~~ a capital offense or an offense involving trafficking in a controlled substance. Such persons may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community. ~~may be released before trial.~~ If he determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534."

Section 2. G.S. 15A-534 reads as rewritten:

"**§ 15A-534. Procedure for determining conditions of pretrial release.**

(a) In determining conditions of pretrial release a judicial official must impose one of the following conditions:

(1) Release the defendant on his written promise to appear.

(2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.

(3) Place the defendant in the custody of a designated person or organization agreeing to supervise him.

(4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.

If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.

(b) The judicial official in granting pretrial release must impose condition (1), (2), or (3) in subsection (a) above unless he determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any ~~person;~~ person or to the community; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Upon making the determination, the judicial official must then impose condition (4) in subsection (a) above instead of condition (1), (2), or (3), and must record the reasons for so doing in writing ~~to the extent provided in the policies or requirements issued~~ in such form as may be required by the senior resident superior court judge pursuant to G.S. 15A-535(a).

(c) In determining which conditions of release to impose, the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; his record of convictions; his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

(c1) If a secured appearance bond is required by a magistrate or clerk of court as a condition of pretrial release, the defendant, unless sooner released, shall be entitled to have his conditions of release reviewed at the first appearance conducted pursuant to G.S. 15A-601.

(d) The judicial official authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of his release; and advise him that his arrest will be ordered immediately upon any violation. The order of release must be filed with the clerk and a copy given the defendant.

(e) A magistrate or a clerk may modify his pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him at any time prior to:

(1) In a misdemeanor case tried in the district court, the noting of an appeal; and

(2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable-cause hearing.

After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by him, at any time prior to the time set out in G.S. 15A-536(a).

(f) For good cause shown any judge may at any time revoke an order of pretrial release. Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release in accordance with this Article.

(g) In imposing conditions of pretrial release and in modifying and revoking orders of release under this section, the judicial official must take into account all evidence available to him which he considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials.

(h) A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is terminated at an earlier time if:

(1) A judge authorized to do so releases the obligor from his bond; or

(2) The principal is surrendered by a surety in accordance with G.S. 15A-540; or

(3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G.S. 15A-544(b); or

(4) Prayer for judgment has been continued indefinitely in the district court."

Section 3. G.S. 15A-535(a) reads as rewritten:

"(a) Subject to the provisions of this Article, the senior resident superior court judge for each district or set of districts as defined in G.S. 7A-41.1(a) in consultation with the chief district court judge or judges of all the district court districts in which are located any of the counties in the senior resident superior court judge's district or set of districts, must devise and issue recommended policies to be followed within each of those counties in determining whether, and upon what conditions, a defendant may be released before trial, and ~~may~~ shall include in such policies, or issue separately, a requirement that each judicial official who imposes condition (4) in G.S. 15A-534(a) must record the reasons for doing so in writing."

Section 4. G.S. 15A-544 reads as rewritten:

"**§ 15A-544. Forfeiture.**

(a) By entering into a bail bond the obligor submits to the jurisdiction of the court and irrevocably appoints the clerk as the obligor's agent for any proceedings with reference to the bond. The obligor's liability may be enforced on motion without the necessity of an independent action. Each obligor, including the principal, bail agent, and the surety represented by the bail agent, shall enter on the bond the obligor's mailing address, street address, and telephone number for the service of any process required by this section or other provision of law. If the address or telephone number of the obligor changes during the pendency of any proceeding with reference to the bond, it shall be the duty of the obligor to notify the clerk of the obligor's new address and telephone number.

(b) If the principal does not comply with the conditions of the bail bond, the court having jurisdiction must enter an order declaring the bail to be forfeited. If forfeiture is ordered by the court, a copy of the order of forfeiture and notice that judgment will be entered upon the order after 60 days must be served on each obligor. Service is to be made by the clerk mailing by certified mail, return receipt requested, a copy of the order of forfeiture and notice to each obligor at each obligor's address as noted on the bond and note on the original the date of mailing. Service is complete three days after the mailing.

~~(c) Except as provided in subsection (c1) of this section, at~~ At any time within 60 days following the date of service, or on the first presentment of the forfeiture calendar more than 60 days after the date of service, the principal or surety may move the court having jurisdiction of the matter, orally or in writing, to strike the order of forfeiture and recall the notice of forfeiture. If the principal or surety appears and moves within the time allowed following the date of service and satisfies the court that the principal's failure to appear on the date set was ~~impossible or~~ impossible, that the principal's failure to appear was without the principal's fault, or that the principal was surrendered by the surety, the order of forfeiture must be set aside. However, if the principal's failure to appear was the result of the principal's being incarcerated elsewhere, the order of forfeiture may be set aside only on a showing that the principal, while incarcerated, was served with an order for arrest for the failure to appear or placed under a detainer for the charge for which the order of forfeiture was issued. If the principal or surety does not satisfy the court that the

principal's appearance on the date set was ~~impossible or~~ impossible, that the principal's failure to appear was without the principal's fault, or that the principal was surrendered by the surety, the court must then enter judgment for the State against the principal and surety for the amount of the bail and the cost of the proceeding.

~~(e1) If the principal does not appear before the court having jurisdiction because the principal is incarcerated in North Carolina and unable to appear before the court, but the surety appears within the time allowed following the date of service and satisfies the court that the principal's appearance on the date set was impossible because the principal was incarcerated in North Carolina, the order of forfeiture must be set aside.~~

(d) To facilitate the procedure under this section, the clerk in each county shall prepare for both the district and superior court a forfeiture calendar once each month when court is in session. The forfeiture calendar shall list the names of all principals and sureties to whom forfeiture has been ordered more than 60 days previously in the county and as to which judgments of forfeiture against the principal and surety have not been entered or, if entered, not yet satisfied by execution. The forfeiture calendar shall show the amount of the bond ordered forfeited in each case. In addition, the clerk shall place on the forfeiture calendar for hearing all written motions to strike an order of forfeiture filed since the previous forfeiture calendar. It shall be the duty of the district attorney to present the forfeiture calendar to the court, but the attorney for the county school board shall have the right to appear and be heard when the forfeiture calendar is presented. At the district attorney's discretion, the district attorney may appoint the county school board attorney as the district attorney's designee for the presentation of the forfeiture calendar.

(e) ~~At any time within 90 days after entry of the judgment against a principal or surety, the principal or surety, by verified written petition, may request that the judgment be remitted in whole or in part, upon such conditions as the court may impose, if it appears that justice requires the remission of part or all of the judgment. A copy of the petition must be served upon the attorney for the county school board at least three working days prior to the hearing. The clerk shall place on the forfeiture calendar for hearing all petitions that have been filed during the previous month or since the last forfeiture calendar. The petitioner, the district attorney, and the school board attorney shall be notified of the date, time, and place of the hearing. The petitioner, the district attorney, and the county school board attorney shall be given an opportunity to appear and be heard.~~ If the principal is surrendered by the surety and incarcerated in the State within 90 days of the entry of the judgment, the forfeiture ~~shall~~ may, in the discretion of the court, be stricken upon the payment of costs. If the principal is incarcerated or served an order for arrest in North Carolina within 90 days of the entry of the judgment and the principal placed on a new bond or released by the court, then the forfeiture ~~shall~~ may, in the discretion of the court, be stricken upon the payment of costs. Relief under this subsection may be obtained only upon written petition filed with the court. The clerk shall place on the forfeiture calendar for hearing all petitions that have been filed during the previous month or

since the last forfeiture calendar. A copy of the petition, together with a notice of hearing shall be served by the petitioner on the attorney for the school board and on the district attorney at least three days prior to the hearing. The petitioner, the attorney for the school board, and the district attorney shall be given an opportunity to be heard.

(f) If a judgment has not been remitted within the period provided in subsection (e) above, the clerk must issue execution on the judgment within 30 days, and remit the clear proceeds to the county for use in maintaining free public schools. Any clerk who fails to perform his duty as required in this subsection is subject to a penalty of five hundred dollars ($500.00).

(g) If a levy of execution upon a judgment against an obligor remains unsatisfied for 10 days, the sheriff shall notify the clerks and magistrates in each county in the prosecutorial district and the obligor shall not become surety on any bail bond in the prosecutorial district so long as the judgment remains unsatisfied. Nothing in this subsection makes lawful any act made unlawful by Article 71 of Chapter 58 of the General Statutes.

(h) For extraordinary cause shown, the court which has entered judgment upon a forfeiture of a bond may, after execution, remit the judgment in whole or in part and order the clerk to refund such amounts as the court considers appropriate. Any person moving for remission of judgment must do so by verified petition, and a copy of the petition must be served upon the attorney for the county school board at least three working days prior to the hearing on the motion. The moving party must notify the attorney for the school board of the time and place of the hearing, and such attorney, if he so desires, must be given an opportunity to appear and be heard. If money has been paid to the county pursuant to execution on a judgment of forfeiture, it must refund to the person entitled the amount of any remission granted under the terms of this subsection upon receipt of a certified copy of the judgment of remission from the clerk."

Section 5. This act becomes effective December 1, 1997. Sections 1, 2, and 3 apply to offenses committed on or after that date. Section 4 applies to forfeitures ordered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 402

Short Title: Expunge Infractions. (Public)

Sponsors: Representatives Smith; Goodwin.

Referred to: Judiciary II.

March 5, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN INFRACTION MAY BE EXPUNGED FROM A PERSON'S RECORD.

The General Assembly of North Carolina enacts:

Section 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of infraction.**

Whenever any person who has not yet attained the age of 18 years and has not previously been convicted of any felony, misdemeanor, or infraction other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads responsible to or is found responsible of an infraction other than a traffic violation the person may file a petition in the court where the person was found responsible for expunction of the infraction from the person's record. The procedure for expunging an infraction for which a person was found responsible shall be the same as under G.S. 15A-145."

Section 2. G.S. 15A-146(a) reads as rewritten:

"(a) If any person is charged with a crime, either a misdemeanor or a felony, or is charged with an infraction, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement and that the person had not previously been convicted of any felony

under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 402
Proposed Committee Substitute H402-PCSSA-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Expunge Infractions. (Public)

Sponsors:

Referred to: Judiciary II.

March 5, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN INFRACTION FOR CERTAIN ALCOHOL-RELATED OFFENSES MAY BE EXPUNGED FROM A PERSON'S RECORD AFTER A DISMISSAL OR UPON A FINDING OF NOT RESPONSIBLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-146(a) reads as rewritten:

"(a) If any person is charged with a crime, either a misdemeanor or a felony, or is charged with an infraction under G.S. 18B-302(i), and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by

reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

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

North Carolina General Assembly
Legislative Services Office

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March 27, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: House Bill 402 - Expunge Infraction

Section 1 adds a new G.S. 15A-145.1 to provide that a first time offender under the age of 18 at the time they are found responsible for an infraction may file a petition for expunction of the infraction from the offender's records. The procedure for expunction is the same as 15A-145, the procedure for expunging misdemeanors.

Section 2 amends G.S. 15A-146(a) to allow expunction of a the record regarding the charge of an infraction if the charge is dismissed or a finding of not responsible is entered.

Section 3 makes this act effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 402 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT AN INFRACTION MAY BE EXPUNGED FROM A PERSON'S RECORD.

☐ 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, 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)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 402
Proposed Committee Substitute H402-PCS4106

Short Title: Expunge Infractions. (Public)

Sponsors:

Referred to:

March 5, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN INFRACTION FOR CERTAIN ALCOHOL-RELATED OFFENSES MAY BE EXPUNGED FROM A PERSON'S RECORD AFTER A DISMISSAL OR UPON A FINDING OF NOT RESPONSIBLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-146(a) reads as rewritten:

"(a) If any person is charged with a crime, either a misdemeanor or a felony, or is charged with an infraction under G.S. 18B-302(i), and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

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

DRAFT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 564
Committee Substitute Favorable 4/15/97
Proposed Committee Substitute H564-CSSA-002
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Supervising Dental Hygienists. (Public)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW DENTAL HYGIENISTS TO PERFORM ACTS WITHOUT THE DIRECT SUPERVISION OF A LICENSED DENTIST AND TO ALLOW DENTISTS TO EMPLOY MORE THAN TWO DENTAL HYGIENISTS AT ONE TIME.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-221 reads as rewritten:

"**§ 90-221. Definitions.**

~~(a) "Dental hygiene" as used in this Article shall mean the~~ The following definitions apply in this Article:

(1) Dental hygiene. -- The performance of the following functions:

a. Complete oral ~~prophylaxis,~~ prophylaxis.

b. ~~application~~ Application of preventive agents to oral ~~structures, exposure~~ structures.

c. Exposure and processing of ~~radiographs, administration~~ radiographs.

d. Administration of medicaments prescribed by a licensed ~~dentist, preparation~~ dentist.

e. Preparation of diagnostic ~~aids,~~ aids and written records of oral conditions for

interpretation by the ~~dentist, together with such other and further functions as may be permitted by rules and regulations of the Board not inconsistent herewith.~~ dentist.

f. Any other functions permitted by rules of the Board consistent with this Article.

~~(b) "Dental hygienist" as used in this Article, shall mean any~~

(2) Dental hygienist. -- A person who is a graduate of a Board-accredited school of dental hygiene, who has been licensed by the Board, and who practices dental hygiene as prescribed by the Board.

~~(c) "License" shall mean a~~

(3) License. -- A certificate issued to any applicant upon completion of requirements for admission to practice dental hygiene.

~~(d) "Renewal certificate" shall mean the~~

(4) Renewal certificate. -- The annual certificate of renewal of license to continue practice of dental hygiene in the State of North Carolina.

~~(e) "Board" shall mean "The~~

(5) Board. -- The North Carolina State Board of Dental ~~Examiners"~~ Examiners created by Chapter 139, Public Laws of 1879, and Chapter 178, Public Laws of 1915 as continued in existence by G.S. 90-22.

~~(f) "Supervision" as used in this Article shall mean that acts are deemed to be under the~~

(6) Supervision. -- ~~supervision of a licensed dentist when~~

a. Direct supervision of a dental hygienist by a licensed dentist is when the acts performed by the dental hygienist are performed in a locale where a licensed dentist is physically present during the performance of ~~such~~ the acts and ~~such~~ the acts are ~~being~~ performed pursuant to the dentist's order, ~~control~~ control, and ~~approval.~~ approval; and

b. General supervision of a dental hygienist by a licensed dentist is when a licensed dentist, using professional discretion, chooses not to be physically present at the locale where the acts are being performed, but the acts are performed pursuant to the dentist's order, control, and approval."

Section 2. G.S. 90-233 reads as rewritten:

"§ 90-233. Practice of dental hygiene.

(a) ~~A dental hygienist may practice only under the supervision of one or more licensed dentists. Provided, however, that this subsection (a) shall be deemed to be complied with in the case of dental hygienists employed by the Department of Environment, Health, and Natural Resources and especially trained by said Department as public health hygienists while performing their duties in the public schools under the direction of a duly licensed dentist.~~ A dental hygienist may practice only under the direct or general supervision of one or more licensed dentists.

(b) ~~A dentist in private practice may not employ more than two dental hygienists at one and the same time who are employed in clinical dental hygiene positions.~~ A dentist in private practice may not supervise more than three dental hygienists at one time. However, the Board may adopt rules authorizing the supervision of more than three dental hygienists in specific circumstances which the Board deems appropriate.

(b1) A dental hygienist may practice under the general supervision of one or more licensed dentists only under the following circumstances:

(1) A dental hygienist employed by the Department of Environment, Health and Natural Resources and especially trained by that Department as a public health hygienist may practice under the general supervision of a licensed dentist while performing the hygienist's duties in the public schools; and

(2) A dental hygienist may practice in the office of a licensed dentist under that dentist's general supervision for no more than two cumulative hours in one day; and

(3) A dental hygienist, who has completed three years of direct supervised clinical experience, may practice under general supervision in a nursing home, as defined in G.S. 131E-101(6), or an adult care home, as defined in G.S. 131E-101(1), under the following conditions:

a. The supervising dentist must preexamine each patient no more than forty-five days prior to the initiation of treatment, prepare a written treatment plan for the patient, and examine the patient at least one time per year thereafter, so long as treatment continues; and

b. The supervising dentist must require the nursing home or adult care home to provide a health care professional, trained in emergency medical treatment, to be present on the premises during any dental hygiene treatment.

(c) Dental hygiene may be practiced only by the holder of a license or provisional license currently in effect and duly issued by the Board. The following acts, practices, functions or operations, however, shall not constitute the practice of dental hygiene within the meaning of this Article:

(1) The teaching of dental hygiene in a school or college approved by the Board in a board-approved program by an individual licensed as a dental hygienist in any state in the United States.

(2) Activity which would otherwise be considered the practice of dental hygiene performed by students enrolled in a school or college approved by the Board in a board-approved dental hygiene program under the direct supervision of a dental hygienist or a dentist duly licensed in North Carolina or qualified for the teaching of dentistry pursuant to the provisions of G.S. 90-29(c)(3), acting as an instructor.

(3) Any act or acts performed by an assistant to a dentist licensed to practice in this State when said act or acts are authorized and permitted by and performed in accordance with rules and regulations promulgated by the Board.

(4) Dental assisting and related functions as a part of their instructions by students enrolled in a course in dental assisting conducted in this State and approved by the Board, when such functions are performed under the supervision of a dentist acting as a teacher or instructor who is either duly licensed in North Carolina or qualified for the teaching of dentistry pursuant to the provisions of G.S. 90-29(c)(3)."

Section 3. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

April 24, 1997 1:00 P.M. — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Belinda Harris	Towing & Recovery Prof. of N.C.
Steve Bowman	" " " "
John Aldridge	Attorney Generals Office
David Ferrell	Hefer, McNamara, Caldwell, McElroy, Hollis, PA
[illegible]	NCSSAA
Kris Hayter	DSS
Don Howe	NCAPA
[illegible]	Randolph Co. Register of Deeds
[illegible]	Sec of State
Dwayne Rouse	Person Co Register of Deeds
Judy Gibson	Mecklenburg Co. Register of Deeds
Curt Williams	Governors Office
Mary Lowry	Conference of District Attorneys
[illegible]	NCAOH
Patricia Yancey	APPCNC/SCSL
Rhonda Little	DHR
Jerald K. Robbins	Dept of Justice
[illegible]	DHR
[illegible]	UCSTSA
Jane B Gray	DOJ
R Moore	CCPS

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 29, 1997 7:30 A.M.

The North Carolina House of Representatives Judiciary II Committee met on April 29, 1997, at 7:30 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Bowie, Cansler, Culpepper, Goodwin, Hackney, Hensley McMahan, Redwine, Russell, Saunders, and Shubert. A list of visitors is attached.

The following bills were discussed:

HB-27 INCREASE PENALTY/PYRAMID SCHEMES
HB-354 ELIMINATE CERTIFIED NOTICE
HB-995 AMEND TRESPASS/SURVEYORS
HB-1087 MOTORIZED VEHICLE TRESPASS

Representative Ives was recognized to present a proposed committee substitute for HB-995. Representative Cansler moved the proposed committee substitute be adopted for purpose of discussion. A copy of the bill and proposed committee substitute are attached.

Representative Hackney was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Russell moved the amendment be incorporated in a committee substitute bill, with a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

Representative Hensley was recognized to explain HB-354 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Mr. John Kennedy, Clerk of Court, Wake County, spoke in support of the bill and answered questions of committee members.

Representative Goodwin moved for a favorable report; motion passed.

Representative Thompson was recognized to explain HB-27 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Kristine Lanning, Assistant Attorney General, answered questions of committee members.

Representative Hackney was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Hensley moved the amendment be incorporated in a committee substitute bill, with a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

Representative Baker was recognized to explain HB-1087 and answer questions of committee members. A copy of the bill and bill explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

No action was taken on HB-1087.

The meeting was adjourned at 8:20 A.M.

Respectfully submitted;

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 995

Short Title: Amend Trespass/Surveyors. (Public)

Sponsors: Representative Ives.

Referred to: Judiciary II.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT ENTRY ON A PERSON'S LAND BY A SURVEYOR IN THE COURSE OF BUSINESS IS NOT TRESPASS.

The General Assembly of North Carolina enacts:

Section 1. Article 22B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-159.15. Entry by registered land surveyor is not trespass.**

Registered land surveyors, their employees, and agents shall have the right to enter upon the lands of others and carry with them their customary equipment and vehicles and perform the customary and necessary acts to perform the surveys of land. The reasonable removal of undergrowth, brush, and limbs from naturally occurring plants for sight lines and the marking of boundary trees and witness trees shall be considered normal and necessary activities under this section. Landowners shall be held harmless to the registered land surveyor and the surveyor's employees and agents for injury to persons and equipment so long as that injury does not involve an otherwise unlawful or malicious activity."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H995-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 995
THIS IS A DRAFT 22-APR-97 17:02:23
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Amend Trespass/Surveyors. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF LAND SURVEYORS TO ENTER ON LAND.

The General Assembly of North Carolina enacts:

Section 1. Chapter 89C of the General Statutes is amended by adding a new section to read:

"§ 89C-29. Entry on land by registered land surveyors; minimum access.

Registered land surveyors, the employees, and agents may enter onto the lands of others and carry with them their customary equipment for the geographical area concerned, to obtain the monumentation required and perform the minimum customary and necessary acts to perform the surveys of land. The reasonable removal of undergrowth, brush, limbs from naturally occurring plants for sight lines and the marking of boundary trees and witness trees shall be considered normal and necessary actions under this section. Landowners shall be held harmless to the registered land surveyor, his employees and agents, for injury to

persons and equipment so long as that injury does not involve an otherwise unlawful or malicious activity."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 995 DATE _____

S. B. No. _____ Amendment No. _____

Proposed Comm. Sub. (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 1, line 9

( ) WHICH CHANGES THE TITLE

by deleting "the" and substituting "their";

and on page 1, line 10, by inserting between the word "carry" and the word "with" the word "by hand";

and on page 1, line 13-17 by rewriting the lines to read: "necessary acts to perform the surveys of land. Landowners shall be held harmless;"

and on page 1, line 18 ~~by inserting after the word "his" the word~~ by deleting the word "surveyor" and substituting the word "surveyors" and on page 1 line 18 by deleting "his" and substituting "their"

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. 995 DATE _____

S. B. No. _____ Amendment No. _____

Proposed Comm. Sub. (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page _____, line _____

( ) WHICH CHANGES THE TITLE

by In line 9, by inserting between the words "may" and the word "enter" the words "after reasonable notice";

and on page 1, line 13 by deleting the words "to perform the surveys of" and substituting "to survey the".

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. 995 DATE _____

S. B. No. _____ Amendment No. _____

Proposed Comm. Sub. (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 1, line 17

( ) WHICH CHANGES THE TITLE

by rewriting such Sections to read as follows:

"The duty owed by a landowner to a registered land surveyors, their employees and agents, to ~~injury~~ to protect against injury, shall be that owed to a trespasser."

& renumber Sec 2 as follows:

"This act shall become effective December 1, 1997."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 995 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT ENTRY ON A PERSON'S LAND BY A SURVEYOR IN THE COURSE OF BUSINESS IS NOT TRESPASS.

☐ 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, 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. (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

H D

HOUSE BILL 995
Proposed Committee Substitute H995-PCS6247

Short Title: Amend Trespass/Surveyors. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF LAND SURVEYORS TO ENTER ON LAND.

The General Assembly of North Carolina enacts:

Section 1. Chapter 89C of the General Statutes is amended by adding a new section to read:

"**§ 89C-29. Entry on land by registered land surveyors; minimum access.**

Registered land surveyors, their employees, and agents may enter, after reasonable notice, onto the lands of others and carry by hand with them their customary equipment for the geographical area concerned, to obtain the monumentation required and perform the minimum customary and necessary acts to survey the land. The duty owed by a landowner to registered surveyors, their employees and agents, to protect against injury, shall be that owed to a trespasser."

Section 2. This act becomes effective December 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 354

Short Title: Eliminate Certified Notice. (Public)

Sponsors: Representatives Hensley; Culpepper, R. Hunter, McCrary, and Neely.

Referred to: Judiciary II.

February 27, 1997

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT OF CERTIFIED MAIL NOTICE IN BOND FORFEITURE CASES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-544(b) reads as rewritten:

"(b) If the principal does not comply with the conditions of the bail bond, the court having jurisdiction must enter an order declaring the bail to be forfeited. If forfeiture is ordered by the court, a copy of the order of forfeiture and notice that judgment will be entered upon the order after 60 days must be served on each obligor. Service is to be made by the clerk mailing by ~~certified mail, return receipt requested,~~ first-class mail a copy of the order of forfeiture and notice to each obligor at each obligor's address as noted on the bond and note on the original the date of mailing. Service is complete three days after the mailing."

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

Leslie W. Robinson, Director
Administrative Division
Room 5, Legislative Building
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Terrence D. Sullivan, Director
Research Division
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Raleigh, NC 27603-5925
(919) 733-2578

April 28, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 354—Eliminate Certified Notice (Hensley)

House Bill 354 amends G.S. 15A-544 to delete the requirement that an order of forfeiture of bail bond be served by certified mail, return receipt requested. The bill authorizes service by first class mail.

House Bill 354 is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

would be applicable but for this act remain applicable to those prosecutions."

§ 15A-543. Penalties for failure to appear.

(a) In addition to forfeiture imposed under G.S. 15A-544, any person released pursuant to this Article who willfully fails to appear before any court or judicial official as required is subject to the criminal penalties set out in this section.

(b) A violation of this section is a Class I felony if:

(1) The violator was released in connection with a felony charge against him; or

(2) The violator was released under the provisions of G.S. 15A-536.

(c) If, except as provided in subsection (b) above, a violator was released in connection with a misdemeanor charge against him, a violation of this section is a Class 2 misdemeanor. (1973, c. 1286, s. 1; 1983, c. 294, s. 4; 1993, c. 539, s. 301; 1994, Ex. Sess., c. 14, s. 16; c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 1248 read: "G.S. 15A-343 (b) reads as rewritten." However, the text set out was that of G.S. 15A-543(b), as amended. The amendment was not effectuated at the direction of the Revisor of Statutes. Section 16(a) of Chapter 14 of the 1994 Extra Session repealed Session Laws 1993, c. 539, s. 1248, effective on the same date that Chapter 539 of the 1993 Session Laws becomes effective (October 1, 1994).

Session Laws 1994, Extra Session, c. 14, s. 73 provides: "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."

Session Laws 1993, c. 539, s. 301, which amended this section, was effective October 1, 1994, and applicable to offenses occurring on or after that date.

Session Laws 1994, Extra Session, c. 14, s. 16(b), which amended this section, was effective on the same date that Chapter 539 of the 1993 Session Laws became effective (October 1, 1994), and applicable to offenses occurring on or after that date.

§ 15A-544. Forfeiture.

(a) By entering into a bail bond the obligor submits to the jurisdiction of the court and irrevocably appoints the clerk as the obligor's agent for any proceedings with reference to the bond. The obligor's liability may be enforced on motion without the necessity of an independent action. Each obligor, including the principal, bail agent, and the surety represented by the bail agent, shall enter on the bond the obligor's mailing address, street address, and telephone number for the service of any process required by this section or other provision of law. If the address or telephone number of the obligor changes during the pendency of any proceeding with reference to the bond, it shall be the duty of the obligor to notify the clerk of the obligor's new address and telephone number.

(b) If the principal does not comply with the conditions of the bail bond, the court having jurisdiction must enter an order declaring the bail to be forfeited. If forfeiture is ordered by the court, a copy of the order of forfeiture and notice that judgment will be entered upon the order after 60 days must be served on each obligor. Service is to be made by the clerk mailing by certified mail, return receipt requested, a copy of the order of forfeiture and notice to each obligor at each obligor's address as noted on the bond and note on the

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the hearing. The petit
school board attorney s
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Supplement

original the date of mailing. Service is complete three days after the mailing.

(c) Except as provided in subsection (c1) of this section, at any time within 60 days following the date of service, or on the first presentment of the forfeiture calendar more than 60 days after the date of service, the principal or surety may move the court having jurisdiction of the matter, orally or in writing, to strike the order of forfeiture and recall the notice of forfeiture. If the principal or surety appears and moves within the time allowed following the date of service and satisfies the court that the principal's failure to appear on the date set was impossible or that the principal's failure to appear was without the principal's fault, the order of forfeiture must be set aside. If the principal or surety does not satisfy the court that the principal's appearance on the date set was impossible or that the principal's failure to appear was without the principal's fault, the court must then enter judgment for the State against the principal and surety for the amount of the bail and the cost of the proceeding.

(c1) If the principal does not appear before the court having jurisdiction because the principal is incarcerated in North Carolina and unable to appear before the court, but the surety appears within the time allowed following the date of service and satisfies the court that the principal's appearance on the date set was impossible because the principal was incarcerated in North Carolina, the order of forfeiture must be set aside.

(d) To facilitate the procedure under this section, the clerk in each county shall prepare for both the district and superior court a forfeiture calendar once each month when court is in session. The forfeiture calendar shall list the names of all principals and sureties to whom forfeiture has been ordered more than 60 days previously in the county and as to which judgments of forfeiture against the principal and surety have not been entered or, if entered, not yet satisfied by execution. The forfeiture calendar shall show the amount of the bond ordered forfeited in each case. In addition, the clerk shall place on the forfeiture calendar for hearing all written motions to strike an order of forfeiture filed since the previous forfeiture calendar. It shall be the duty of the district attorney to present the forfeiture calendar to the court, but the attorney for the county school board shall have the right to appear and be heard when the forfeiture calendar is presented. At the district attorney's discretion, the district attorney may appoint the county school board attorney as the district attorney's designee for the presentation of the forfeiture calendar.

(e) At any time within 90 days after entry of the judgment against a principal or surety, the principal or surety, by verified written petition, may request that the judgment be remitted in whole or in part, upon such conditions as the court may impose, if it appears that justice requires the remission of part or all of the judgment. A copy of the petition must be served upon the attorney for the county school board at least three working days prior to the hearing. The clerk shall place on the forfeiture calendar for hearing all petitions that have been filed during the previous month or since the last forfeiture calendar. The petitioner, the district attorney, and the school board attorney shall be notified of the date, time, and place of the hearing. The petitioner, the district attorney, and the county school board attorney shall be given an opportunity to appear and be heard. If the principal is surrendered by the surety and incarcerated in the State within 90 days of the entry of the judgment, the forfeiture shall be stricken upon the payment of costs. If the

principal is incarcerated or served an order for arrest in North Carolina within 90 days of the entry of the judgment and the principal placed on a new bond or released by the court, then the forfeiture shall be stricken upon the payment of costs.

(f) If a judgment has not been remitted within the period provided in subsection (e) above, the clerk must issue execution on the judgment within 30 days, and remit the clear proceeds to the county for use in maintaining free public schools. Any clerk who fails to perform his duty as required in this subsection is subject to a penalty of five hundred dollars ($500.00).

(g) If a levy of execution upon a judgment against an obligor remains unsatisfied for 10 days, the sheriff shall notify the clerks and magistrates in each county in the prosecutorial district and the obligor shall not become surety on any bail bond in the prosecutorial district so long as the judgment remains unsatisfied. Nothing in this subsection makes lawful any act made unlawful by Article 71 of Chapter 58 of the General Statutes.

(h) For extraordinary cause shown, the court which has entered judgment upon a forfeiture of a bond may, after execution, remit the judgment in whole or in part and order the clerk to refund such amounts as the court considers appropriate. Any person moving for remission of judgment must do so by verified petition, and a copy of the petition must be served upon the attorney for the county school board at least three working days prior to the hearing on the motion. The moving party must notify the attorney for the school board of the time and place of the hearing, and such attorney, if he so desires, must be given an opportunity to appear and be heard. If money has been paid to the county pursuant to execution on a judgment of forfeiture, it must refund to the person entitled the amount of any remission granted under the terms of this subsection upon receipt of a certified copy of the judgment of remission from the clerk. (1868-9, c. 178, subch. 2, s. 10; Code, s. 1225; Rev., s. 3214; C.S., s. 4582; 1973, c. 1286, s. 1; 1987, c. 321; 1987 (Reg. Sess., 1988), c. 1037, s. 57; 1995, c. 290, s. 3; c. 448, s. 1; c. 503, ss. 2, 3.)

Effect of Amendments. — Session Laws 1995, c. 290, s. 3, effective June 19, 1995, substituted "Except as provided in subsection (c1) of this section, if" for "If" in the first sentence of subsection (c); added subsection (c1); and added the second and third sentences of subsection (e).

Session Laws 1995, c. 448, s. 1, effective July 18, 1995, rewrote subsection (d), and deleted the last sentence of subsection (e), regarding remission of the bond if the principal is incarcerated or served an order for arrest, and is placed on a new bond or released by the court.

Session Laws 1995, c. 503, s. 2, effective July 28, 1995, twice inserted "in North Carolina" following "incarcerated" in subsection (c1).

Session Laws 1995, c. 503, s. 3, effective December 1, 1995, rewrote subsections (a), (b), (c), and (e); and in subsection (g) substituted "levy" for "return" and substituted "sheriff shall notify the clerks and magistrates in each county in the prosecutorial district and the obligor shall" for "obliger may".

CASE NOTES

I. General Consideration.
II. Relief from Forfeiture.

I. GENERAL CONSIDERATION.

The purpose of subsection (b) is to regulate the forfeiture of bonds in criminal proceedings and to establish an orderly procedure for forfeiture. State v.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 354 A BILL TO BE ENTITLED AN ACT TO ELIMINATE THE REQUIREMENT OF CERTIFIED MAIL NOTICE IN BOND FORFEITURE CASES.

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. (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

H 1

HOUSE BILL 27*

Short Title: Increase Penalty/Pyramid Schemes. (Public)

Sponsors: Representatives Thompson, Beall, Cunningham, Preston, Rayfield; Hill, Hardy, and Weatherly.

Referred to: Commerce Subcommittee on Business and Labor, if favorable, Judiciary II.

February 4, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR THE ESTABLISHMENT OF PYRAMID DISTRIBUTION PLANS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-291.2 reads as rewritten:

"**§ 14-291.2. Pyramid and chain schemes prohibited.**

(a) ~~Any~~ No person ~~who~~ shall establish, ~~promote, operate or participate in~~ operate, participate in, or otherwise promote any pyramid distribution plan, program, device or scheme whereby a participant pays a valuable consideration for the opportunity or chance to receive a fee or compensation upon the introduction of other participants into the program, whether or not such opportunity or chance is received in conjunction with the purchase of ~~merchandise, shall be deemed to have participated~~ merchandise. A person who establishes or operates a pyramid distribution plan is guilty of a Class H felony. A person who participates in or otherwise promotes a pyramid distribution plan is deemed to participate in a lottery and ~~shall be~~ is guilty of a Class 2 misdemeanor.

(b) 'Pyramid distribution plan' means any program utilizing a pyramid or chain process by which a participant gives a valuable consideration for the opportunity to receive compensation or things of value in return for inducing other persons to become participants in the program; and

'Compensation' does not mean payment based on sales of goods or services to persons who are not participants in the scheme, and who are not purchasing in order to participate in the ~~scheme; and~~ scheme.

~~'Promotes' shall mean inducing one or more other persons to become a participant.~~

(c) Any judge of the superior court shall have jurisdiction, upon petition by the Attorney General of North Carolina or district attorney of the superior court, to enjoin, as an unfair or deceptive trade practice, the continuation of the scheme described in subsection (a); in such proceeding the court may assess civil penalties and attorneys' fees to the Attorney General or the District Attorney pursuant to G.S. 75-15.2 and 75-16.1; and the court may appoint a receiver to secure and distribute assets obtained by any defendant through participation in any such scheme.

(d) Any contract hereafter created for which a part of the consideration consisted of the opportunity or chance to participate in a program described in subsection (a) is hereby declared to be contrary to public policy and therefore void and unenforceable."

Section 2. This act is effective when it becomes law and applies to offenses committed on and after that date.

North Carolina General Assembly
Legislative Services Office

George R. Hall, Legislative Services Officer
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April 28, 1997

MEMORANDUM

TO: Representative Charles B. Neely, Jr., Chairman, House Judiciary II Committee

FROM: Tim Hovis , Committee Counsel

RE: **House Bill 27 - INCREASE PENALTY/PYRAMID SCHEMES**

House Bill 27 is a recommendation of the LRC Consumer Protection Issues Committee. It would increase the penalty for establishing or operating a pyramid distribution plan. A pyramid distribution plan is defined as a pyramid or chain process by which a participant gives consideration for the opportunity to receive compensation for inducing others to become participants in the program, but compensation, in this case, does not include payments for the sale of goods or services to third parties who are not participants in the program and are not purchasing in order to participate in it.

Under current law, it is a Class 2 misdemeanor to establish, promote, operate or participate in any pyramid distribution plan. The bill would create two classes of offenses. The first makes it a Class H felony to establish or operate a pyramid distribution plan. Under the second class, the penalty for participating in or otherwise promoting such a plan remains a Class 2 misdemeanor.

The bill also deletes the definition of "promotes". The study committee found that the definition is not needed because it does nothing to clarify the offense. Promotion is an activity that is inherent in the establishment and operation of pyramid schemes, as well as in the participation of the scheme as an investor.

The bill would become effective when it becomes law and apply to offenses occurring on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 27 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Hackney
Sen.)

moves to amend the bill on page 2, line 17

( ) WHICH CHANGES THE TITLE

by deleting "when it becomes law" and substituting "December 1, 1997"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 27 A BILL TO BE ENTITLED AN ACT TO INCREASE THE PENALTY FOR THE ESTABLISHMENT OF PYRAMID DISTRIBUTION PLANS.

☐ 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. (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

H D

HOUSE BILL 27*
Proposed Committee Substitute H27-PCS6246

Short Title: Increase Penalty/Pyramid Schemes. (Public)

Sponsors:

Referred to:

February 4, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR THE ESTABLISHMENT OF PYRAMID DISTRIBUTION PLANS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-291.2 reads as rewritten:

"**§ 14-291.2. Pyramid and chain schemes prohibited.**

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(b) 'Pyramid distribution plan' means any program utilizing a pyramid or chain process by which a participant gives a valuable consideration for the opportunity to receive compensation or things of value in return for inducing other persons to become participants in the program; and

'Compensation' does not mean payment based on sales of goods or services to persons who are not participants in the scheme, and who are not purchasing in order to participate in the ~~scheme; and~~ scheme.

~~'Promotes' shall mean inducing one or more other persons to become a participant.~~

(c) Any judge of the superior court shall have jurisdiction, upon petition by the Attorney General of North Carolina or district attorney of the superior court, to enjoin, as an unfair or deceptive trade practice, the continuation of the scheme described in subsection (a); in such proceeding the court may assess civil penalties and attorneys' fees to the Attorney General or the District Attorney pursuant to G.S. 75-15.2 and 75-16.1; and the court may appoint a receiver to secure and distribute assets obtained by any defendant through participation in any such scheme.

(d) Any contract hereafter created for which a part of the consideration consisted of the opportunity or chance to participate in a program described in subsection (a) is hereby declared to be contrary to public policy and therefore void and unenforceable."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1087

Short Title: Motorized Vehicle Trespass. (Public)

Sponsors: Representative Baker.

Referred to: Judiciary II.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TRESPASSING WITH A MOTORIZED WHEELED OR TRACKED VEHICLE A MISDEMEANOR.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-159.3 Trespass to land on motorized wheeled or tracked vehicle.**

(a) No person shall operate any motorized wheeled or tracked vehicle for recreational purposes:

(1) On any private property, without the express written consent of the owner of that property;

(2) Within the banks of any stream or waterway; or

(3) Within 25 feet of the banks of any stream or waterway.

(b) Nothing in this section shall be construed to limit the use of these vehicles for farming or other work related purposes or to limit the use of these vehicles by the owner of private property on his own land.

(c) A violation of this section shall be a Class 1 misdemeanor and shall subject the violator to a fine of not more than five hundred dollars ($500.00)."

Section 2. This act becomes effective December 1, 1997.

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April 29, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: House Bill 1087 - Motorized Vehicle Trespass

House Bill 1087 creates a Class 1 misdemeanor, subject to a fine of not more than $500, for operating a motorized wheeled or tracked vehicle for recreational purposes either 1) on private property without the express written consent of the owner; 2) within the banks of a stream or waterway; or 3) within 25 feet of the banks of a stream or waterway. Operation of these vehicles for farming or other work related purposes or operation by the owner of private property on the owner's own land is not prohibited.

A Class 1 misdemeanor is punishable by a maximum of 120 days active (at the highest prior record level). Current First Degree Trespassing is a Class 2 misdemeanor, punishable by a maximum of 60 days active, and Second Degree Trespassing is a Class 3 misdemeanor, punishable by a maximum of 20 days active.

This act is effective December 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§ 14-159.12. First degree trespass.

(a) Offense. - A person commits the offense of first degree trespass if, without authorization, he enters or remains:

(1) On premises of another so enclosed or secured as to demonstrate clearly an intent to keep out intruders; or

(2) In a building of another.

(b) Classification. - First degree trespass is a Class 2 misdemeanor.

(1987, c. 700, s. 1; 1993, c. 539, s. 101; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 14-159.13. Second degree trespass.

(a) Offense. - A person commits the offense of second degree trespass if, without authorization, he enters or remains on premises of another:

(1) After he has been notified not to enter or remain there by the owner, by a person in charge of the premises, by a lawful occupant, or by another authorized person; or

(2) That are posted, in a manner reasonably likely to come to the attention of intruders, with notice not to enter the premises.

(b) Classification. - Second degree trespass is a Class 3 misdemeanor.

(1987, c. 700, s. 1; 1993, c. 539, s. 102; 1994, Ex. Sess., c. 24, s. 14(c).)

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **April 29, 1997 7:30 A.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Aldridge	Attorney Generals Office
Kristine Fanning	Consumer Protection
Ken Lucas	The Tar-Heel Cos of N.C INC
Barbara Pate	The Tar-Heel Cos of N.C. Inc.
Joe Stewart	CCPS
Penny Walker	Laurenburg Housing Authority.
[illegible]	Wilmington Housing Authority
Bill Scoggin	NCBA
Tom Andrews	ADC
[illegible]	Wake Clerk of Superior Court
Jack Carlisle	ACC Towing
Andy Munday	ACC Towing
Toni Woodman	Allie Towing
Belinda Harris	Towing & Recovery Professionals of NC.
Steve Bowman	" "
Bobby Parker	" "
[illegible]	CNC SSA
Eddie Caldwell	H Mc C Mc C P.A.
Rob Schofield	NCJCDC
William H. Potter Jr	NCDS & NCDTA
Lucia C. Bell	NC Med Society
Robyn Sawyer	Lobbyist
Deborah Ross	ACLU
[illegible]	NCBA
Mari A. Santos	NCSA
Bernard Allen	Secy of State

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 29, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on April 29, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Bowie, Cansler, Culpepper, Decker, Gardner, Goodwin, Hackney, Hensley, McMahan, Nesbitt, Redwine, Saunders, Sutton, Weatherly and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-594 FETUS DEATH FROM CRIMINAL ACT
HB-1064 HOUSING AUTHORITY AMENDMENTS-2
HB-1087 MOTORIZED VEHICLE TRESPASS

Representative Fox was recognized to present a proposed committee substitute for HB-1064. Representative Decker moved the proposed committee substitute be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute and explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Representative Redwine was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Mr. Joseph P. Dugdale, General Counsel, Crime Control and Public Safety, answered questions of committee members.

Representative Redwine moved the amendment be incorporated in a committee substitute bill, with a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

Representative Baker was recognized to present a proposed committee substitute for HB-1087. Representative Wilkins moved the proposed committee substitute be adopted for purpose of discussion; motion passed.

Representative Hensley was recognized to send forth an amendment and moved it be adopted for purpose of discussion; motion passed.

No action was taken on HB-1087.

Representative Starnes was recognized to present a proposed committee substitute for HB-594. Representative Bowie moved the proposed committee substitute be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute is attached.

Ms. Deborah Ross, ACLU, answered questions of committee members.

Ms. Brenda Greer, spoke of a personal experience.

Representative Starnes moved for a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 594
Proposed Committee Substitute H594-PCS8207

Short Title: Injury to Preg. Woman. (Public)

Sponsors:

Referred to:

March 24, 1997

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE PUNISHMENT IMPOSED FOR INJURING A PREGNANT WOMAN IN THE COMMISSION OF A FELONY, ACT OF DOMESTIC VIOLENCE, OR UNLAWFUL OPERATION OF A VEHICLE CAUSING A MISCARRIAGE OR STILLBIRTH.

The General Assembly of North Carolina enacts:

Section 1. Article 6 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-18.2. Injury to pregnant woman.**

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

(1) Miscarriage. -- The interruption of the normal development of the fetus, other than by a live birth, and which is not an induced abortion permitted under G.S. 14-45.1, resulting in the complete expulsion or extraction from a pregnant woman of the fetus.

(2) Stillbirth. -- The death of a fetus prior to the complete expulsion or extraction from a woman irrespective of the duration of pregnancy and which is not an induced abortion permitted under G.S. 14-45.1.

(b) A person who in the commission of a felony causes injury to a woman, knowing the woman to be pregnant, which injury results in a miscarriage or stillbirth by the woman is guilty of a felony that is one class higher than the felony committed.

(c) A person who in the commission of a misdemeanor that is an act of domestic violence as defined in Chapter 50B of the General Statutes causes injury to a woman,

knowing the woman to be pregnant, which results in miscarriage or stillbirth by the woman is guilty of a misdemeanor that is one class higher than the misdemeanor committed. If the offense was a Class A1 misdemeanor, the defendant is guilty of a Class I felony.

(d) This section shall not apply to acts committed by a pregnant woman which result in a miscarriage or stillbirth by the woman."

Section 2. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-141.5. Injury to pregnant woman by vehicle.**

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

(1) Miscarriage. -- The interruption of the normal development of the fetus, other than by a live birth, and which is not an induced abortion permitted under G.S. 14-45.1, resulting in the complete expulsion or extraction from a pregnant woman of the fetus.

(2) Stillbirth. -- The death of a fetus prior to the complete expulsion or extraction from a woman irrespective of the duration of pregnancy and which is not an induced abortion permitted under G.S. 14-45.1.

(b) Any person who in the unlawful operation of a motor vehicle commits a felony which causes a pregnant woman to suffer a miscarriage or stillbirth is guilty of a felony that is one class higher than the felony committed."

Section 3. 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 from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 594 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT IT IS A CRIMINAL OFFENSE IF A PERSON COMMITS OR ATTEMPTS TO COMMIT A CRIMINAL ACT AND THE CRIMINAL ACT PROXIMATELY RESULTS IN THE DEATH OF A VIABLE FETUS OR A STILLBORN BIRTH.

☐ 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, 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. (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.

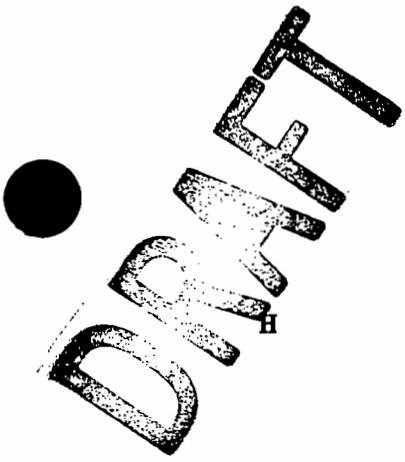
☐ Without prejudice.

☐ 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

D

HOUSE BILL 1064
Proposed Committee Substitute H1064-CSSA-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Housing Authority Amendments. (Public)

Sponsors:

Referred to: Judiciary II.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW A HOUSING AUTHORITY TO TERMINATE OR FAIL TO RENEW A LEASE IF A TENANT ENGAGES IN CRIMINAL ACTIVITY ON OR NEAR THE PREMISES AND TO ALLOW CERTAIN SUMMARY EJECTMENT ACTIONS INITIATED BY A HOUSING AUTHORITY TO BE HELD IN DISTRICT COURT INSTEAD OF IN MAGISTRATE'S COURT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 157-29 reads as rewritten:

"§ 157-29. ~~Rentals and tenant selections.~~ Rentals; tenant selections; and summary ejectments.

(a) It is hereby declared to be the policy of this State that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the cost of dwelling accommodations for persons of low income at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling accommodations. No housing authority may construct or operate its housing projects so as to provide revenues for other activities of the city.

(b) In the operation or management of housing projects, or portions of projects, for persons of low income, an authority

shall at all times observe the following duties with respect to rentals and tenant selection:

(1) It may rent or lease dwelling accommodations set aside for persons of low income only to persons who lack the amount of income ~~which~~ that is necessary (as determined by the housing authority undertaking the project) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding; and

(2) It may rent or lease dwelling accommodations to persons of low income only at rentals within the financial reach of such persons.

(c) An authority may terminate or refuse to renew a rental agreement for a serious or repeated violation of a material term of the rental agreement such as (i) failure to make payments due under the rental agreement, if such payments were properly and promptly calculated according to applicable HUD regulation, whether or not such failure was the fault of the tenant, (ii) failure to fulfill the tenant obligations set forth in 24 C.F.R. Section 966.4(f) or other applicable provisions of federal law as they may be amended from time to time, ~~or (iii) other good cause.~~ (iii) engaging in criminal activity that threatens the health and safety of housing authority tenants or threatens the tenants' right to peaceful enjoyment of the housing authority premises, or (iv) engaging in illegal drug activity on or near the housing authority premises. ~~Except in the case of failure to make payments due under a rental agreement, fault on the part of a tenant may be considered in determining whether good cause exists to terminate a rental agreement.~~

(d) The receipt or acceptance of rent by an authority, with or without knowledge of a prior default or failure by the tenant under a rental agreement, shall not constitute a waiver of that default or failure unless (i) the authority expressly agrees to such waiver in writing, or (ii) within 120 days after obtaining knowledge of the default or failure, the authority fails either to notify the tenant that a violation of the rental agreement has occurred or to exercise one of the authority's remedies for such violation.

(e) In any summary ejectment action wherein a housing authority alleges that a tenant's lease has been terminated because the tenant, a household member or a guest has engaged in criminal activity or activity involving illegal drugs as provided in subsection (c) of this section, the housing authority may

utilize the expedited hearing procedure as set out in Article 7, Chapter 42 of the General Statutes."

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

North Carolina General Assembly
Legislative Services Office

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April 29, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: House Bill 1064 - Housing Authority Amendments - Proposed Committee Substitute

House Bill 1064 amends G.S. 157-29 to allow a housing authority to terminate or fail to renew a lease if a tenant engages in criminal activity that threatens the health and safety of housing authority tenants or threatens the tenants' right to peaceful enjoyment of the housing authority premises, or engages in illegal drug activity on or near the housing authority premises. This bill also provides that if the housing authority brings summary ejectment proceedings, based on an allegation of criminal activity or illegal drug activity, the authority may, use the procedure for expedited eviction of drug traffickers and other criminals provided in Article 7 of Chapter 42.

Current federal law already requires a public housing agency lease to include an obligation on the tenant's part to "assure that the tenant, any member of the household, a guest, or another person under the tenant's control" shall not engage in any criminal activity or illegal drug activity (the language in this bill tracks the federal language). Additionally, State summary ejectment statutes already provide for the ejectment of a tenant when the "tenant, lessee, or other person under him" has violated any provision of the lease.

This act is effective October 1, 1997 and applies to acts committed on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1064 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) Redwine
)
Sen.)

moves to amend the bill on page 2, lines 25-26

( ) WHICH CHANGES THE TITLE

by deleting "activity on or near the housing authority premises." and inserting "activity."

on page 1, lines 3-4

by deleting "ON OR NEAR THE PREMISES"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 1064 A BILL TO BE ENTITLED AN ACT TO ALLOW A HOUSING AUTHORITY TO TERMINATE OR FAIL TO RENEW A LEASE IF A TENANT ENGAGES IN CRIMINAL ACTIVITY ON OR NEAR THE PREMISES AND TO ALLOW CERTAIN SUMMARY EJECTMENT ACTIONS INITIATED BY A HOUSING AUTHORITY TO BE HELD IN DISTRICT COURT INSTEAD OF IN MAGISTRATE'S COURT.

☐ 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, 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. (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

H D

HOUSE BILL 1064
Proposed Committee Substitute H1064-PCS8205

Short Title: Housing Authority Amendments. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW A HOUSING AUTHORITY TO TERMINATE OR FAIL TO RENEW A LEASE IF A TENANT ENGAGES IN CRIMINAL ACTIVITY AND TO ALLOW CERTAIN SUMMARY EJECTMENT ACTIONS INITIATED BY A HOUSING AUTHORITY TO BE HELD IN DISTRICT COURT INSTEAD OF IN MAGISTRATE'S COURT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 157-29 reads as rewritten:

"**§ 157-29.** ~~**Rentals and tenant selections.**~~ **Rentals; tenant selections; and summary ejectments.**

(a) It is hereby declared to be the policy of this State that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the cost of dwelling accommodations for persons of low income at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling accommodations. No housing authority may construct or operate its housing projects so as to provide revenues for other activities of the city.

(b) In the operation or management of housing projects, or portions of projects, for persons of low income, an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(1) It may rent or lease dwelling accommodations set aside for persons of low income only to persons who lack the amount of income ~~which~~ that is necessary (as determined by the housing authority undertaking the project) to enable them, without financial

assistance, to live in decent, safe, and sanitary dwellings, without overcrowding; and

(2) It may rent or lease dwelling accommodations to persons of low income only at rentals within the financial reach of such persons.

(c) An authority may terminate or refuse to renew a rental agreement for a serious or repeated violation of a material term of the rental agreement such as (i) failure to make payments due under the rental agreement, if such payments were properly and promptly calculated according to applicable HUD regulation, whether or not such failure was the fault of the tenant, (ii) failure to fulfill the tenant obligations set forth in 24 C.F.R. Section 966.4(f) or other applicable provisions of federal law as they may be amended from time to time, ~~or (iii) other good cause.~~ (iii) engaging in criminal activity that threatens the health and safety of housing authority tenants or threatens the tenants' right to peaceful enjoyment of the housing authority premises, or (iv) engaging in illegal drug activity. ~~Except in the case of failure to make payments due under a rental agreement, fault on the part of a tenant may be considered in determining whether good cause exists to terminate a rental agreement.~~

(d) The receipt or acceptance of rent by an authority, with or without knowledge of a prior default or failure by the tenant under a rental agreement, shall not constitute a waiver of that default or failure unless (i) the authority expressly agrees to such waiver in writing, or (ii) within 120 days after obtaining knowledge of the default or failure, the authority fails either to notify the tenant that a violation of the rental agreement has occurred or to exercise one of the authority's remedies for such violation.

(e) In any summary ejectment action wherein a housing authority alleges that a tenant's lease has been terminated because the tenant, a household member, or a guest has engaged in criminal activity or activity involving illegal drugs as provided in subsection (c) of this section, the housing authority may utilize the expedited hearing procedure as set out in Article 7, Chapter 42 of the General Statutes."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1087
Proposed Committee Substitute H1087-CSSA-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Motorized Vehicle Trespass. (Public)

Sponsors:

Referred to: Judiciary II.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TRESPASSING WITH A MOTORIZED WHEELED OR TRACKED VEHICLE A MISDEMEANOR.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-159.3 Trespass to land on motorized wheeled or tracked vehicle.**

(a) No person shall operate any motorized wheeled or tracked vehicle for recreational purposes:

(1) On any private property;

(2) Within the banks of any stream or waterway; or

(3) Within 25 feet of the banks of any stream, waterway, lake or pond.

(b) Nothing in this section shall be construed to limit the use of these vehicles for farming or other work related purposes or to limit the use of these vehicles by the owner of private property, or persons with the owner's consent, on the owner's property.

(c) A violation of this section shall be a Class 1 misdemeanor and shall subject the violator to a fine of not more than five hundred dollars ($500.00)."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1087 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
) HENSLEY
Sen.)

moves to amend the bill on page 2, lines 1-3

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"(c) A violation of this section shall be a Class 1 misdemeanor."

SIGNED R. J. Hensley, Jr.

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H594-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 594
THIS IS A DRAFT 29-APR-97 09:18:43
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Injury to Preg. Woman. (Public)

Sponsors:

Referred to:

March 24, 1997

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE PUNISHMENT IMPOSED FOR INJURING A PREGNANT WOMAN IN THE COMMISSION OF A FELONY, ACT OF DOMESTIC VIOLENCE, OR UNLAWFUL OPERATION OF A VEHICLE CAUSING A MISCARRIAGE OR STILLBIRTH.

The General Assembly of North Carolina enacts:

Section 1. Article 6 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-18.2. Injury to pregnant woman.**

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

(1) Miscarriage.-- The interruption of the normal development of the fetus, other than by a live birth, and which is not an induced abortion permitted under G.S. 14-45.1, resulting in the complete expulsion or extraction from a pregnant woman of the fetus.

(2) Stillbirth.-- The death of a fetus prior to the complete expulsion or extraction from a woman irrespective of the duration of pregnancy and which is not an induced abortion permitted under G.S. 14-45.1.

(b) A person who in the commission of a felony causes injury to a woman, knowing the woman to be pregnant, which injury results in a miscarriage or stillbirth by the woman is guilty of a felony that is one class higher than the felony committed.

(c) A person who in the commission of a misdemeanor that is an act of domestic violence as defined in Chapter 50B of the General Statutes causes injury to a woman, knowing the woman to be pregnant, which results in miscarriage or stillbirth by the woman is guilty of a misdemeanor that is one class higher than the misdemeanor committed. If the offense was a Class A1 misdemeanor, the defendant is guilty of a Class I felony.

(d) This section shall not apply to acts committed by a pregnant woman which result in a miscarriage or stillbirth by the woman."

Section 2. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-141.5. Injury to pregnant woman by vehicle.**

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

(1) Miscarriage.-- The interruption of the normal development of the fetus, other than by a live birth, and which is not an induced abortion permitted under G.S. 14-45.1, resulting in the complete expulsion or extraction from a pregnant woman of the fetus.

(2) Stillbirth.-- The death of a fetus prior to the complete expulsion or extraction from a woman irrespective of the duration of pregnancy and which is not an induced abortion permitted under G.S. 14-45.1.

(b) Any person who in the unlawful operation of a motor vehicle commits a felony which causes a pregnant woman to suffer a miscarriage or stillbirth is guilty of a felony that is one class higher than the felony committed."

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

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **April 29, 1997 10:00 A.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Belinda Harris	Towing & Recovery Professionals of NC
Steve Bowman	" " "
Bobby Disher	" " "
Ben Brown	NCDS Raleigh
[illegible]	NCDOT
Polly Williams	NC Equity
[illegible]	D-C Van
[illegible]	NC Hwy
John Aldridge	Attorney Generals Office
Joe Dayhle	Crime Control & Public Safety
[illegible]	Wilmington Housing Authority
Nancy Walker	Laurinburg Housing Authority
Robyn Smith	NC-NOW
Deborah Ross	ACLU
Patricia Reuley	NCACC
Rob Schofield	NCJCDC
Steve Fel	NC
Sandra Byrd	NCBA
Ruth Walker	Burtwood Towing & Recovery
A.C. Munday	ACE Towing

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 29, 1997

The North Carolina House of Representatives Judiciary II Committee met on April 29, 1997, at 1:00 P.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Bowie, Cansler, Culpepper, Decker, Gardner, Goodwin, Hackney, Hensley, McMahan, Nesbitt, Redwine, Russell, Saunders, Shubert, Sutton, Weatherly and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-564 SUPERVISING DENTAL HYGIENISTS
HB-930 SEX OFFENDER LAWS/FEDERAL COMPLIANCE
HB-1087 MOTORIZED VEHICLE TRESPASS

Representative Baker was recognized to present a proposed committee substitute for HB-1087 and answer questions of committee members. Representative Goodwin moved the proposed committee substitute be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute is attached.

Representative Hackney was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Sutton moved the amendment be incorporated in a committee substitute bill, with a favorable report as to the committee substitute bill, unfavorable as to original bill; motion passed.

Representative Russell was recognized to present a proposed committee substitute for HB-930 and answer questions of committee members. Representative Berry moved the proposed committee substitute be adopted for purpose of discussion. A copy of the bill, proposed committee substitute, and bill explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Representative Russell provided members with a handout titled H.R.3355. A copy of this handout is attached.

Ms. Emily Johnson, Staff Attorney, Bill Drafting Division, explained the bill and answered questions of committee members.

Mr. John Aldridge, Attorney Generals Office, and Mr. Andy Willis, Fiscal Research Division, answered questions of committee members.

Representative Redwine was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Goodwin was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Shubert was recognized to send forth an amendment and moved it be adopted; motion passed.

No action was taken on HB-903.

Representative McMahan was recognized to present a proposed committee substitute for HB-564 and answer questions of committee members. Representative Gardner moved the proposed committee substitute be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute is attached.

Representative McMahan provided members with a handout titled House Bill 564. A copy of the handout is attached.

Representative McMahan was recognized to send forth an amendment and moved it be adopted; motion passed.

No action was taken on HB-564.

The meeting was adjourned at 2:45 P.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 1087
Proposed Committee Substitute H1087-CSSA-002
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Motorized Vehicle Trespass. (Public)

Sponsors:

Referred to: Judiciary II.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TRESPASSING WITH A MOTORIZED ALL TERRAIN VEHICLE A MISDEMEANOR.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-159.3 Trespass to land on motorized all terrain vehicle.**

(a) No person shall operate any motorized all terrain vehicle:

(1) On any private property not owned by the operator, without the consent of the owner;

(2) Within the banks of any stream or waterway, the riparian lands of which are not owned by the operator, without the consent of the owner or outside the restrictions imposed by the owner; or

(3) Within 25 feet of the banks of any stream, waterway, lake, or pond, the riparian lands of which are not owned by the operator, without the consent of the owner.

(b) A "motorized all terrain vehicle", as used in this section, is a two, three or four wheeled vehicle designed for recreational off-road use.

(c) A violation of this section shall be a Class 1 misdemeanor."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. 1087 DATE

S. B. No. Amendment No. (to be filled in by Principal Clerk)

Proposed Comm. Sub.

Rep.) Hackney
)
Sen.)

moves to amend the bill on page , line ,

by deleting the word "riparian" and substituting the word "adjacent".

SIGNED

ADOPTED FAILED TABLED

GA-33-A PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 1087 A BILL TO BE ENTITLED AN ACT TO MAKE TRESPASSING WITH A MOTORIZED WHEELED OR TRACKED VEHICLE A MISDEMEANOR.

☐ 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, 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. (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

H D

HOUSE BILL 1087
Proposed Committee Substitute H1087-PCSA369

Short Title: Motorized Vehicle Trespass. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TRESPASSING WITH A MOTORIZED ALL TERRAIN VEHICLE A MISDEMEANOR.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-159.3. Trespass to land on motorized all terrain vehicle.**

(a) No person shall operate any motorized all terrain vehicle:

(1) On any private property not owned by the operator, without the consent of the owner;

(2) Within the banks of any stream or waterway, the adjacent lands of which are not owned by the operator, without the consent of the owner or outside the restrictions imposed by the owner; or

(3) Within 25 feet of the banks of any stream, waterway, lake, or pond, the adjacent lands of which are not owned by the operator, without the consent of the owner of the adjacent lands.

(b) A 'motorized all terrain vehicle', as used in this section, is a two-, three-, or four-wheeled vehicle designed for recreational off-road use.

(c) A violation of this section shall be a Class 1 misdemeanor."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 930*

Short Title: Sex Offender Laws/Fed. Compliance. (Public)

Sponsors: Representatives Russell; Aldridge, Arnold, Berry, Cansler, Capps, Creech, Daughtry, Davis, Eddins, Esposito, Hardy, Hiatt, Holmes, Ives, McMahan, Moore, Morris, Nichols, Sexton, Thompson, and Watson.

Referred to: Judiciary II.

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE SEXUAL OFFENDER REGISTRATION PROGRAM TO COMPLY WITH FEDERAL LAW.

The General Assembly of North Carolina enacts:

Section 1. Article 27A of Chapter 14 of the General Statutes reads as rewritten:

"ARTICLE 27A.

"~~Sexual Offender Registration Program.~~

"Registration of Criminal Offenders and Sexually Violent Predators.

"Part 1. Registration Programs, Purpose, and Definitions Generally.

"§ 14-208.5. Purpose.

The General Assembly recognizes that sex offenders often pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is of paramount governmental interest. The General Assembly also recognizes that persons who commit certain other types of offenses against minors, such as kidnapping, pose significant and unacceptable threats to the public safety and welfare of the State's children and that the protection of those children is of great governmental interest. Further, the General Assembly recognizes that ~~local~~ law enforcement officers' efforts to protect ~~their~~ communities, conduct investigations, and quickly apprehend offenders who

commit sex offenses or certain offenses against minors are impaired by the lack of information available to law enforcement agencies about convicted ~~sex~~ offenders who live within the agency's jurisdiction. Release of information about ~~sex~~ these offenders will further the governmental interests of public safety so long as the information released is rationally related to the furtherance of those goals.

Therefore, it is the purpose of this Article to assist ~~local~~ law enforcement agencies' efforts to protect ~~their~~ communities by requiring ~~sex offenders~~ persons who are convicted of sex offenses or of certain other offenses committed against minors to register with ~~local~~ law enforcement ~~agencies and~~ agencies, to require the exchange of relevant information about ~~sex~~ those offenders among law enforcement ~~agencies~~ agencies, and to authorize the access to necessary and relevant information about ~~sex~~ those offenders to others as provided in this Article."

"**§ 14-208.6. Definitions.**

The following definitions apply in this Article:

(1) 'County registry' means the information compiled by the sheriff of a county in compliance with this Article.

~~(1)~~(1b) 'Division means the Division of Criminal Statistics of the Department of Justice.

(1c) 'Mental abnormality' means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of others.

(1d) 'Offense against a minor' means any of the following offenses if the offense is committed against a minor and the person committing the offense is not the minor's parent or legal custodian: G.S. 14-39 (kidnapping), G.S. 14-41 (abduction of children), G.S. 14-43.3(felonious restraint), and the common law offense of false imprisonment.

(2) 'Penal institution' means a detention facility operated under the jurisdiction of the Division of Prisons of the Department of Correction, or a county jail.

(2a) 'Personality disorder' means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment.

(2b) 'Predatory' means an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(3) 'Release' means discharged or paroled.

(4) 'Reportable conviction' means:

a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those

offenses. ~~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.~~ an offense against a minor or a sexually violent offense as defined by this subsection.

(5) 'Sexually violent offense' means a 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).

(6) 'Sexually violent predator' means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

~~(4)~~ (7) 'Sheriff' means the sheriff of a county in this State.

(8) 'Statewide registry' means the central registry compiled by the Division in accordance with G.S. 14-208.14."

"**§ 14-208.6A. Registration requirements for criminal offenders and for criminal offenders determined to be sexually violent predators.**

It is the objective of the General Assembly to establish a 10-year registration requirement for persons convicted of certain offenses against minors or sexually violent offenses. It is the further objective of the General Assembly to establish a more stringent set of registration requirements for a sub-class of highly dangerous sex

offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

To accomplish this objective there are established two registration programs: the Criminal Registration Program and the Sexually Violent Predator Registration Program. Any person convicted of an offense against a minor or of a sexually violent offense as defined by this Article shall register as a criminal offender in accordance with Part 2 of this Article. Any person determined to be a sexually violent predator shall register as such in accordance with Part 3 of this Article.

The information obtained under these programs shall be immediately shared with the appropriate local, State, federal and out-of-State law enforcement officials and penal institutions. In addition most information obtained under the programs is public record and shall be readily available to and accessible by the public. However, the identity of the victim is not public record and shall not be released as a public record.

"Part 2. Criminal Registration Program.

"§ 14-208.7. Registration.

(a) A person who is a resident and who has a reportable conviction shall be required to maintain registration with the sheriff of the county where the person resides. If the person moves to North Carolina from outside this State, the person shall register within 10 days of establishing residence in this State. If the person is a current resident of North Carolina, the person shall register:

(1) Within 10 days of release from a penal institution or arrival in a county to live outside a penal institution; or

(2) Immediately upon conviction for a reportable offense where an active term of imprisonment was not imposed.

Registration shall be maintained for a period of 10 years following release from a penal institution. If no active term of imprisonment was imposed, registration shall be maintained for a period of 10 years following each conviction for a reportable offense.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article. The registration form shall require:

(1) The person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, drivers license number, and home address;

(2) The type of offense for which the person was convicted, the date of conviction, and the sentence imposed;

(3) A current photograph; and

(4) The person's fingerprints.

The sheriff shall photograph the individual at the time of registration and take fingerprints from the individual at the time of registration both of which will be kept as part of the registration form. The registrant will not be required to pay any fees for the photograph or fingerprints taken at the time of registration.

(c) ~~Not later than the third day after~~ When a person registers, the sheriff with whom the person registered shall immediately send the registration information to the

Division in a manner determined by the Division. The sheriff shall retain the original registration form and other information ~~collected.~~ collected and shall compile the information that is a public record under this Part into a county registry.

"§ 14-208.8. Prerelease notification.

(a) At least 10 days, but not earlier than 30 days, before a person who will be subject to registration under this Article is due to be released from a penal institution, an official of the penal institution shall:

(1) Inform the person of the person's duty to register under this Article and require the person to sign a written statement that the person was so informed or, if the person refuses to sign the statement, certify that the person was so informed;

(2) Obtain the registration information required under G.S. 14-208.7 (b)(1) and (2), as well as the address where the person expects to reside upon the person's release; and

(3) Send the Division and the sheriff of the county in which the person expects to reside the information collected in accordance with subdivision (2) of this subsection.

(b) If a person who is subject to registration under this Article does not receive an active term of imprisonment, the court pronouncing sentence shall conduct, at the time of sentencing, the notification procedures specified in subsection (a) of this section.

"§ 14-208.9. Change of address.

If a person required to register changes address, the person shall provide written notice of the new address not later than the tenth day after the change to the sheriff of the county with whom the person had last registered. ~~Not later than the third day after~~ Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the person moves to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

"§ 14-208.9A. Verification of registration information.

The information in the county registry shall be verified annually for each registrant as follows:

(1) Every year on the anniversary of a person's initial registration date, the sheriff shall mail a nonforwardable verification form to the last reported address of the person.

(2) The person shall mail the verification form to the sheriff within 10 days after the receipt of the form.

(3) The verification form shall be signed by the person, and shall indicate whether the person still resides at the address last reported to the Sheriff. If the person has a different address, then the person shall indicate that fact and the new address.

(4) If the person fails to mail the verification form to the sheriff within 10 days after receipt of the form the person is in violation of the law, unless the person reports in person to the sheriff and proves that the person has not changed his or her residential address.

"§ 14-208.10. ~~Access~~ Registration information is public record; access to registration information.

(a) ~~To obtain information concerning an individual's registration status, a requester shall submit to the sheriff the following:~~

~~(1) The individual's name and sex;~~

~~(2) A physical description of the individual; and~~

~~(3) Any other relevant information known to the requester concerning the individual.~~

~~Upon receipt of the information, the sheriff shall verify, in writing, to the requester whether the individual has registered as a sex offender in this State, the date of conviction, and the offenses for which registration was required. The registration information and the corresponding registry is a public record and shall be available for public inspection. The sheriff shall upon request, display any photograph provided in compliance with G.S. 14-208.7(b)(3); however, the sheriff shall not provide or allow a copy to be made of the photograph.~~

The following information regarding a person required to register under this Article is public record and shall be available for public inspection: name, sex, address, physical description, picture, conviction date, offense for which registration was required, the sentence imposed as a result of the conviction, and registration status. The sheriff may release any other information that is necessary to protect the public concerning a specific person, but shall not release the identity of the victim of the offense that required registration under this Article.

(b) Any person may obtain a copy of an individual's registration ~~form, excluding the photograph, upon payment to the sheriff of a reasonable fee for the costs of duplicating the form.~~ form, a part of the county registry, or all of the county registry, by submitting a written request for the information to the sheriff and paying the fee for duplicating costs. However, the identity of the victim of an offense that requires registration under this Article shall not be released.

(c) ~~The sheriff of each county is authorized, upon written request, to provide a copy of the entire registry to any group, entity, organization, corporation, or school, that utilizes volunteers or employees in working with, caring for, supervising or protecting children or disabled or elderly persons.~~ The sheriff may charge a reasonable fee for duplicating costs and for mailing costs when appropriate.

"§ 14-208.11. Failure to ~~register.~~ register; falsification of verification notice; failure to return verification form; order for arrest.

(a) A person required by this Article to register who, knowingly and with the intent to violate the provisions of this Article, ~~fails to register shall be guilty of a Class 3 misdemeanor for a first conviction of a violation of this Article, and a Class I felony for a subsequent conviction of a violation of this Article.~~ does any of the following is guilty of a Class F felony:

(1) Fails to register.

(2) Fails to notify the Division of a change of address.

(3) Fails to return a verification notice as required under G.S. 14-208.9A.

(4) Forges or submits under false pretenses the information or verification notices required under this Article.

(a1) If a person commits a violation of subsection (a) of this section, the Division, probation officer, parole officer, or any other law enforcement office who is aware of the violation shall immediately seek an order for arrest in accordance with G.S. 15A-305.

(b) Before a person convicted of a violation of this Article is due to be released from a penal institution, an official of the penal institution shall conduct the prerelease notification procedures specified under G.S. 14-208.8(a)(2) and (3). If upon a conviction for a violation of this Article, no active term of imprisonment is imposed, the court pronouncing sentence shall, at the time of sentencing, conduct the notification procedures specified under G.S. 14-208.8(a)(2) and (3).

~~"§ 14-208.12. Exemption.~~

~~(a) A person who has a reportable conviction may petition the superior court in the county where the person resides for an exemption from this Article. The person shall serve a copy of the petition on the district attorney. If the person shows for good cause, by clear and convincing evidence, that registration will not serve any useful purpose, the court shall grant the exemption.~~

~~(b) When a registered person presents the sheriff with a certified copy of the court order showing that an exemption has been granted, the sheriff shall remove any information from his records that was obtained pursuant to this Article. The sheriff shall then notify the Division of the exemption by sending a copy of the exemption to the Division within three days and the Division shall remove any information from its files obtained pursuant to this Article. The Division shall notify the registered person of the exemption by letter telling the registrant that the exemption has been accomplished.~~

"§ 14-208.12A. Termination of registration requirement.

The requirement that a person register under this Part automatically terminates 10 years from the date of initial registration if the person has not been convicted of a subsequent offense requiring registration under this Article.

"§ 14-208.13. File with Police Information Network.

(a) The Division shall include the registration information in the Police Information Network as set forth in G.S. 114-10.1.

(b) Except as provided in G.S. 14-208.12(b), the Division shall maintain the registration information permanently even after the registrant's reporting requirement expires.

"§ 14-208.14. Statewide registry; Division of Criminal Statistics designated custodian of statewide registry.

(a) The Division of Criminal Statistics shall compile and keep current a central statewide sex offender registry. The Division is the State agency designated as the custodian of the statewide registry. As custodian the Division has the following responsibilities:

(1) To receive from the sheriff or any other law enforcement agency or penal institution all sex offender registrations, changes of

address, and prerelease notifications required under this Article or under federal law. The Division shall also receive notices of any violation of this Article, including a failure to register or a failure to report a change of address.

(2) To notify all appropriate law enforcement agencies, (local, State, federal, and those located in other states) immediately upon receipt by the Division of any of the following: registration information, a prerelease notification, a change of address, or notice of a violation of the Article.

(3) To coordinate efforts among law enforcement agencies and penal institutions to ensure that the registration information, changes of address, prerelease notifications, and notices of failure to register or to report a change of address are conveyed in an appropriate and timely manner.

(4) To provide public access to the statewide registry in accordance with this Article.

(b) The statewide registry shall include the following:

(1) Registration information obtained by a sheriff or penal institution under this Article or from any other local or State law enforcement agency.

(2) Registration information received from a state or local law enforcement agency or penal institution in another state.

(3) Registration information received from a federal law enforcement agency or penal institution.

"§ 14-208.15. Certain statewide registry information is public record: access to statewide registry.

(a) The information in the statewide registry that is public record is the same as in G.S. 14-208.10 and shall be available for public inspection. The Division may release any other information that is necessary to protect the public concerning a specific person, but shall not release the identity of the victim of the offense that required registration under this Article.

(b) Any person may obtain from the Division a copy of an individual's registration form, a part of the statewide registry, or all of the statewide registry, by submitting a written request for the information to the Division and paying the fee for duplicating costs. However, the identity of the victim of an offense that requires registration under this Article shall not be released.

(c) The Division may charge a reasonable fee for duplicating costs and for mailing costs when appropriate.

"Part 3. Sexually Violent Predator Registration Program.

"§ 14-208.20. Sexually violent predator determination; notice of intent; presentence investigation.

(a) When a person is charged by indictment with the commission of a sexually violent offense, the district attorney shall decide whether to seek classification of the offender as a sexually violent predator if the person is convicted. If the district

attorney intends to seek the classification of a sexually violent predator, the district attorney shall within the time provided for the filing of pretrial motions under G.S. 15A-952 file a notice of the district attorney's intent. The court may for cause shown allow late filing of the notice, grant additional time to the parties to prepare for trial, or make other appropriate orders.

(b) Prior to sentencing a person as a sexually violent predator, the court shall order a presentence investigation in accordance with G.S. 15A-1332(c). However, the study of the defendant and whether the defendant is a sexually violent predator shall be conducted by a board of experts selected by the Department of Correction. The board of experts shall be composed of at least two people who are experts in the field of the behavior and treatment of sexual offenders.

(c) When the defendant is returned from the presentence commitment, the court shall hold a sentencing hearing in accordance with G.S. 15A-1334. At the sentencing hearing the court shall, after taking the presentencing report under advisement, make written findings as to whether the defendant is classified as a sexually violent predator and the basis for the court's findings.

"§ 14-208.21. Registration procedure for sexually violent predator; application of Part 2 of this Article.

The provisions of Part 2 of this Article apply to a person classified as a sexual predator unless provided otherwise by this Part. The procedure for registering as a sexually violent predator is the same as under Part 2 of this Article.

"§ 14-208.22. Additional registration information required.

(a) In addition to the information required by G.S. 14-208.7, the following information shall also be obtained from a person who is classified as a sexually violent predator:

(1) Identifying factors.
(2) Anticipated future residence.
(3) Offense history.
(4) Documentation of any treatment received by the person for the person's mental abnormality or personality disorder.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article.

(c) The Department of Correction shall also obtain the additional information set out in subsection (a) of this section and shall include this information in the prerelease notice forwarded to the sheriff or other appropriate law enforcement agency.

"§ 14-208.23. Length of registration.

The requirement that a person who is classified as a sexually violent predator maintain registration shall terminate only upon a determination, made in accordance with this Part, that the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.

"§ 14-208.24. Verification of registration information.

(a) The information in the county registry shall be verified by the sheriff for each registrant who is classified as a sexually violent predator every 90 days after the person's initial registration date.

(b) The procedure for verifying the information in the criminal offender registry is the same as under G.S. 14-208.9A, except that verification shall be every 90 days as provided by subsection (a) of this section.

"**§ 14-208.25. Termination of registration requirement.**

Ten years from the date of a person's initial registration as a sexually violent predator, a person may petition the superior court to review the person's classification as a sexually violent predator if the person has committed no subsequent reportable convictions. The decision as to whether to grant the review is in the discretion of the court. If the court grants the review, the court shall order a presentence commitment study as provided in G.S. 14-208.20(b). Upon receipt of the study results, the court shall hold a hearing to determine whether the person's classification as a sexually violent predator should be terminated. The procedure for the hearing shall be the same as under G.S 15A-1334 (b) and (c). The court shall make written findings of fact with regard to the court's decision and the basis for that decision."

Section 2. This act becomes effective December 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 930*
Proposed Committee Substitute H930-PCSSA-002
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Sex Offender Laws/Fed. Compliance. (Public)

Sponsors:

Referred to: Judiciary II.

April 14, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE SEXUAL OFFENDER REGISTRATION PROGRAM TO COMPLY WITH FEDERAL LAW.

The General Assembly of North Carolina enacts:

Section 1. Article 27A of Chapter 14 of the General Statutes reads as rewritten:

"ARTICLE 27A.

"~~Sexual Offender Registration Program.~~

Sex Offender and Public Protection Registration Program.

"Part 1. Registration Programs, Purpose, and Definitions Generally.

"**§ 14-208.5. Purpose.**

The General Assembly recognizes that sex offenders often pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is of paramount governmental interest.

The General Assembly also recognizes that persons who commit certain other types of offenses against minors, such as kidnapping, pose significant and unacceptable threats to the public safety and welfare of the State's children and that the protection of those children is of great governmental interest. Further, the General Assembly recognizes that ~~local~~ law

enforcement officers' efforts to protect ~~their~~ communities, conduct investigations, and quickly apprehend offenders who commit sex offenses or certain offenses against minors are impaired by the lack of information available to law enforcement agencies about convicted ~~sex~~ offenders who live within the agency's jurisdiction. Release of information about ~~sex~~ these offenders will further the governmental interests of public safety so long as the information released is rationally related to the furtherance of those goals.

Therefore, it is the purpose of this Article to assist ~~local~~ law enforcement agencies' efforts to protect ~~their~~ communities by requiring ~~sex offenders~~ persons who are convicted of sex offenses or of certain other offenses committed against minors to register with ~~local~~ law enforcement ~~agencies and~~ agencies, to require the exchange of relevant information about ~~sex~~ those offenders among law enforcement ~~agencies~~ agencies, and to authorize the access to necessary and relevant information about ~~sex~~ those offenders to others as provided in this Article."

"**§ 14-208.6. Definitions.**

The following definitions apply in this Article:

(1) 'County registry' means the information compiled by the sheriff of a county in compliance with this Article.

~~(1)~~(1b) 'Division' means the Division of Criminal Statistics of the Department of Justice.

(1c) 'Mental abnormality' means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of others.

(1d) 'Offense against a minor' means any of the following offenses if the offense is committed against a minor and the person committing the offense is not the minor's parent or legal custodian: G.S. 14-39 (kidnapping), G.S. 14-41 (abduction of children), G.S. 14-43.3(felonious restraint), and the common law offense of false imprisonment.

(2) 'Penal institution' means:

a. A detention facility operated under the jurisdiction of the Division of Prisons of the Department of 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.

(2a) 'Personality disorder' means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment.

(2b) 'Predatory' means an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(3) 'Release' means discharged or paroled.

(4) 'Reportable conviction' means:

a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses. ~~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.~~ an offense against a minor or a sexually violent offense as defined by 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.~~ offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this subdivision.

(5) 'Sexually violent offense' means a 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).

(6) 'Sexually violent predator' means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

~~(4)~~ (7) 'Sheriff' means the sheriff of a county in this State.

(8) 'Statewide registry' means the central registry compiled by the Division in accordance with G.S. 14-208.14."

"**§ 14-208.6A. Registration requirements for criminal offenders and for criminal offenders determined to be sexually violent predators.**

It is the objective of the General Assembly to establish a 10-year registration requirement for persons convicted of certain offenses against minors or sexually violent offenses. It is the further objective of the General Assembly to establish a more stringent set of registration requirements for a sub-class of

highly dangerous sex offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

To accomplish this objective there are established two registration programs: the Sex Offender and Public Protection Registration Program and the Sexually Violent Predator Registration Program. Any person convicted of an offense against a minor or of a sexually violent offense as defined by this Article shall register as an offender in accordance with Part 2 of this Article. Any person determined to be a sexually violent predator shall register as such in accordance with Part 3 of this Article.

The information obtained under these programs shall be immediately shared with the appropriate local, State, federal and out-of-State law enforcement officials and penal institutions. In addition the information designated under G.S. 14-208.10(a) as public record shall be readily available to and accessible by the public. However, the identity of the victim is not public record and shall not be released as a public record.

"Part 2. Sex Offender and Public Protection Registration Program.

"§ 14-208.7. Registration.

(a) A person who is a State resident and who has a reportable conviction shall be required to maintain registration with the sheriff of the county where the person resides. If the person moves to North Carolina from outside this State, the person shall register within 10 days of establishing residence in this State. If the person is a current resident of North Carolina, the person shall register:

(1) Within 10 days of release from a penal institution or arrival in a county to live outside a penal institution; or

(2) Immediately upon conviction for a reportable offense where an active term of imprisonment was not imposed.

Registration shall be maintained for a period of 10 years following release from a penal institution. If no active term of imprisonment was imposed, registration shall be maintained for a period of 10 years following each conviction for a reportable offense.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article. The registration form shall require:

(1) The person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, drivers license number, and home address;
(2) The type of offense for which the person was convicted, the date of conviction, and the sentence imposed;
(3) A current photograph; and
(4) The person's fingerprints.

The sheriff shall photograph the individual at the time of registration and take fingerprints from the individual at the time of registration both of which will be kept as part of the registration form. The registrant will not be required to pay any fees for the photograph or fingerprints taken at the time of registration.

(c) ~~Not later than the third day after~~ When a person registers, the sheriff with whom the person registered shall immediately send the registration information to the Division in a manner determined by the Division. The sheriff shall retain the original registration form and other information ~~collected.~~ collected and shall compile the information that is a public record under this Part into a county registry.

"§ 14-208.8. Prerelease notification.

(a) At least 10 days, but not earlier than 30 days, before a person who will be subject to registration under this Article is due to be released from a penal institution, an official of the penal institution shall:
(1) Inform the person of the person's duty to register under this Article and require the person to sign a written statement that the person was so informed or, if the person refuses to sign the statement, certify that the person was so informed;
(2) Obtain the registration information required under G.S. 14-208.7 (b)(1) and (2), as well as the address where the person expects to reside upon the person's release; and
(3) Send the Division and the sheriff of the county in which the person expects to reside the information collected in accordance with subdivision (2) of this subsection.

(b) If a person who is subject to registration under this Article does not receive an active term of imprisonment, the court pronouncing sentence shall conduct, at the time of sentencing, the notification procedures specified in subsection (a) of this section.

"§ 14-208.9. Change of address.

If a person required to register changes address, the person shall provide written notice of the new address not later than the tenth day after the change to the sheriff of the county with whom the person had last registered. ~~Not later than the third day after~~ Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the person moves to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

"§ 14-208.9A. Verification of registration information.

The information in the county registry shall be verified annually for each registrant as follows:

(1) Every year on the anniversary of a person's initial registration date, the Division shall mail a nonforwardable verification form to the last reported address of the person.

(2) The person shall mail the verification form to the sheriff within 10 days after the receipt of the form.

(3) The verification form shall be signed by the person, and shall indicate whether the person still resides at the address last reported to the Sheriff. If the person has a different address, then the person shall indicate that fact and the new address.

(4) If the person fails to mail the verification form to the sheriff within 10 days after receipt of the form the person is in violation of the law, unless the person reports in person to the sheriff and proves that the person has not changed his or her residential address.

"§ 14-208.10. ~~Access~~ Registration information is public record; access to registration information.

(a) ~~To obtain information concerning an individual's registration status, a requester shall submit to the sheriff the following:~~

~~(1) The individual's name and sex;~~

~~(2) A physical description of the individual; and~~

~~(3) Any other relevant information known to the requester concerning the individual.~~

~~Upon receipt of the information, the sheriff shall verify, in writing, to the requester whether the individual has registered as a sex offender in this State, the date of conviction, and the offenses for which registration was required. The registration~~

~~information and the corresponding registry is a public record and shall be available for public inspection. The sheriff shall upon request, display any photograph provided in compliance with G.S. 14-208.7(b)(3); however, the sheriff shall not provide or allow a copy to be made of the photograph.~~

The following information regarding a person required to register under this Article is public record and shall be available for public inspection: name, sex, address, physical description, picture, conviction date, offense for which registration was required, the sentence imposed as a result of the conviction, and registration status. The sheriff shall release any other relevant information that is necessary to protect the public concerning a specific person, but shall not release the identity of the victim of the offense that required registration under this Article.

(b) Any person may obtain a copy of an individual's registration ~~form, excluding the photograph, upon payment to the sheriff of a reasonable fee for the costs of duplicating the form.~~ form, a part of the county registry, or all of the county registry, by submitting a written request for the information to the sheriff. However, the identity of the victim of an offense that requires registration under this Article shall not be released. The sheriff may charge a reasonable fee for duplicating costs and for mailing costs when appropriate.

~~(c) The sheriff of each county is authorized, upon written request, to provide a copy of the entire registry to any group, entity, organization, corporation, or school, that utilizes volunteers or employees in working with, caring for, supervising or protecting children or disabled or elderly persons. The sheriff may charge a reasonable fee for duplicating costs and for mailing costs when appropriate.~~

"§ 14-208.11. Failure to ~~register.~~ register; falsification of verification notice; failure to return verification form; order for arrest.

(a) A person required by this Article to register who, knowingly and with the intent to violate the provisions of this Article, ~~fails to register shall be guilty of a Class 3 misdemeanor for a first conviction of a violation of this Article, and a Class I felony for a subsequent conviction of a violation of this Article.~~ does any of the following is guilty of a Class F felony:

(1) Fails to register.

(2) Fails to notify the last registering sheriff of a change of address.

(3) Fails to return a verification notice as required under G.S. 14-208.9A.

(4) Forges or submits under false pretenses the information or verification notices required under this Article.

(a1) If a person commits a violation of subsection (a) of this section, the probation officer, parole officer, or any other law enforcement office who is aware of the violation shall immediately arrest the person in accordance with G.S. 15A-401, or seek an order for the person's arrest in accordance with G.S. 15A-305.

(b) Before a person convicted of a violation of this Article is due to be released from a penal institution, an official of the penal institution shall conduct the prerelease notification procedures specified under G.S. 14-208.8(a)(2) and (3). If upon a conviction for a violation of this Article, no active term of imprisonment is imposed, the court pronouncing sentence shall, at the time of sentencing, conduct the notification procedures specified under G.S. 14-208.8(a)(2) and (3).

~~"§ 14-208.12. Exemption.~~

~~(a) A person who has a reportable conviction may petition the superior court in the county where the person resides for an exemption from this Article. The person shall serve a copy of the petition on the district attorney. If the person shows for good cause, by clear and convincing evidence, that registration will not serve any useful purpose, the court shall grant the exemption.~~

~~(b) When a registered person presents the sheriff with a certified copy of the court order showing that an exemption has been granted, the sheriff shall remove any information from his records that was obtained pursuant to this Article. The sheriff shall then notify the Division of the exemption by sending a copy of the exemption to the Division within three days and the Division shall remove any information from its files obtained pursuant to this Article. The Division shall notify the registered person of the exemption by letter telling the registrant that the exemption has been accomplished.~~

"§ 14-208.12A. Termination of registration requirement.

(a) The requirement that a person register under this Part automatically terminates 10 years from the date of initial county registration if the person has not been convicted of a subsequent offense requiring registration under this Article.

(b) If there is a subsequent offense, the county registration records shall be retained until the registration requirement for the subsequent offense is terminated.

"**§ 14-208.13. File with Police Information Network.**

(a) The Division shall include the registration information in the Police Information Network as set forth in G.S. 114-10.1.

(b) ~~Except as provided in G.S. 14-208.12(b), the~~ The Division shall maintain the registration information permanently even after the registrant's reporting requirement expires.

"§ 14-208.14. Statewide registry; Division of Criminal Statistics designated custodian of statewide registry.

(a) The Division of Criminal Statistics shall compile and keep current a central statewide sex offender registry. The Division is the State agency designated as the custodian of the statewide registry. As custodian the Division has the following responsibilities:

(1) To receive from the sheriff or any other law enforcement agency or penal institution all sex offender registrations, changes of address, and prerelease notifications required under this Article or under federal law. The Division shall also receive notices of any violation of this Article, including a failure to register or a failure to report a change of address.

(2) To provide all need-to-know law enforcement agencies, (local, State, federal, and those located in other states) immediately upon receipt by the Division of any of the following: registration information, a prerelease notification, a change of address, or notice of a violation of the Article.

(3) To coordinate efforts among law enforcement agencies and penal institutions to ensure that the registration information, changes of address, prerelease notifications, and notices of failure to register or to report a change of address are conveyed in an appropriate and timely manner.

(4) To provide public access to the statewide registry in accordance with this Article.

(b) The statewide registry shall include the following:

(1) Registration information obtained by a sheriff or penal institution under this Article or from any other local or State law enforcement agency.

(2) Registration information received from a state or local law enforcement agency or penal institution in another state.

(3) Registration information received from a federal law enforcement agency or penal institution.

"§ 14-208.15. Certain statewide registry information is public record: access to statewide registry.

(a) With the exception of photographs, the information in the statewide registry that is public record is the same as in G.S. 14-208.10 and shall be available for public inspection. The Division shall release any other relevant information that is necessary to protect the public concerning a specific person, but shall not release the identity of the victim of the offense that required registration under this Article.

(b) Any person may obtain from the Division a copy of an individual's electronic registration record, a part of the statewide registry, or all of the statewide registry, by submitting a written request for the information to the Division. However, the identity of the victim of an offense that requires registration under this Article shall not be released. The Division may charge a reasonable fee for duplicating costs and for mailing costs when appropriate.

"Part 3. Sexually Violent Predator Registration Program.

"§ 14-208.20. Sexually violent predator determination; notice of intent; presentence investigation.

(a) When a person is charged by indictment or information with the commission of a sexually violent offense, the district attorney shall decide whether to seek classification of the offender as a sexually violent predator if the person is convicted. If the district attorney intends to seek the classification of a sexually violent predator, the district attorney shall within the time provided for the filing of pretrial motions under G.S. 15A-952 file a notice of the district attorney's intent. The court may for good cause shown allow late filing of the notice, grant additional time to the parties to prepare for trial, or make other appropriate orders.

(b) Prior to sentencing a person as a sexually violent predator, the court shall order a presentence investigation in accordance with G.S. 15A-1332(c). However, the study of the defendant and whether the defendant is a sexually violent predator shall be conducted by a board of experts selected by the Department of Correction. The board of experts shall be composed of at least two people who are experts in the field of the behavior and treatment of sexual offenders.

(c) When the defendant is returned from the presentence commitment, the court shall hold a sentencing hearing in accordance with G.S. 15A-1334. At the sentencing hearing the court shall, after taking the presentencing report under advisement, make written findings as to whether the defendant is classified as a sexually violent predator and the basis for the court's findings.

"**§ 14-208.21. Registration procedure for sexually violent predator; application of Part 2 of this Article.**

The provisions of Part 2 of this Article apply to a person classified as a sexual predator unless provided otherwise by this Part. The procedure for registering as a sexually violent predator is the same as under Part 2 of this Article.

"**§ 14-208.22. Additional registration information required.**

(a) In addition to the information required by G.S. 14-208.7, the following information shall also be obtained in the same manner as set out in Part 2 of this Chapter from a person who is classified as a sexually violent predator:

(1) Identifying factors.

(2) Offense history.

(3) Documentation of any treatment received by the person for the person's mental abnormality or personality disorder.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article.

(c) The Department of Correction shall also obtain the additional information set out in subsection (a) of this section and shall include this information in the prerelease notice forwarded to the sheriff or other appropriate law enforcement agency.

"**§ 14-208.23. Length of registration.**

The requirement that a person who is classified as a sexually violent predator maintain registration shall terminate only upon a determination, made in accordance with this Part, that the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.

"**§ 14-208.24. Verification of registration information.**

(a) The information in the county registry shall be verified by the sheriff for each registrant who is classified as a sexually violent predator every 90 days after the person's initial registration date.

(b) The procedure for verifying the information in the criminal offender registry is the same as under G.S. 14-208.9A,

except that verification shall be every 90 days as provided by subsection (a) of this section.

"§ 14-208.25. Termination of registration requirement.

Ten years from the date of a person's initial registration as a sexually violent predator, a person may petition the superior court to review the person's classification as a sexually violent predator if the person has committed no subsequent reportable convictions. The decision as to whether to grant the review is in the discretion of the court. If the court grants the review, the court shall order a presentence commitment study as provided in G.S. 14-208.20(b). Upon receipt of the study results, the court shall hold a hearing to determine whether the person's classification as a sexually violent predator should be terminated. The procedure for the hearing shall be the same as under G.S 15A-1334 (b) and (c). The court shall make written findings of fact with regard to the court's decision and the basis for that decision."

Section 2. This act becomes effective April 1, 1997.

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April 29, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: Proposed Committee Substitute to House Bill 930 (H930-CSLH-002)
Sex Offender Laws/Fed. Compliance

The proposed committee substitute amends Article 27A of Chapter 14 of the General Statutes regarding registration of persons convicted of sex offenses.

Expansion of application

The proposed committee substitute extends the law's application to persons who commit certain types of offenses against minor's, when the offender is not the parent or legal guardian of the minor. Specifically, kidnapping, abduction of children, felonious restraint and false imprisonment are added as offenses for which registration is required. The proposed committee substitute also incorporates the newly enacted definitions of "penal institution" and "reportable conviction." (See S.L. 1997-15).

Creation of Registration Programs

Sex Offender and Public Protection Registration Program

The proposed committee substitute amends the current registration program by first creating a class of "sexually violent predator" which must register under a differing set of requirements. Persons who are not classified as a "sexually violent predator" must continue to register under the existing program (which is renamed the Sex Offender and Public Protection Registration Program) with the following changes:

1) Requires the sheriff to send the registration information to the Division "immediately" upon registration or notice of change of the offenders address;

2) Adds provisions regarding verification of the registrant's information on an annual basis;

3) Rewrites G.S. 14-208.10 to provide that the following information be public information: name, sex, address, physical description, picture, conviction date, offense for which registration was required, the sentence imposed as a result of the conviction and registration status. Also provides that any person may obtain a copy of a person's registration or any or all of the county registry. The proposed committee substitute requires the Sheriff to release additional relevant information that is necessary to protect the public, but prohibits release of the victim's identity;

4) Provides for a Class F felony for failure to register, notify the Division of a change of address, to return a verification notice or for forgery or submission of information under false pretenses. Directs law enforcement to immediately arrest anyone failing to comply. (Currently, failure to register is a Class 3 misdemeanor for a first offense and a Class I felony for a subsequent offense.);

5) Deletes the current exemptions from registration;

6) Provides for the termination of registration requirements after 10 years if the registrant has not been convicted of a subsequent offense requiring registration; and

7) Requires the Division of Criminal Statistics to compile a statewide registry of sex offenders and provides for public access and inspection of that registry. However, photographs of registrants are retained at the local level and are available to the public only at that level.

Sexually Violent Predator Registration Program

The proposed committee substitute creates a new G.S. 14-208.20 through 14-208.25 that impose stricter requirements on "sexually violent predators". A sexually violent predator is defined as a person who has been convicted of a sexually violent offense (as specified in the bill) and who suffers from a mental abnormality or personality disorder (as defined in the bill) that makes the person likely to engage in predatory (defined in the bill) sexually violent offenses.

Requires the District Attorney to file pretrial notice that the D.A. intends to seek the classification of a sexually violent predator. Prior to sentencing, the court shall order a presentence investigation to be conducted by a board of experts (at least 2 of whom are experts in the field of the behavior and treatment of sex offenders) selected by the Department of Correction. At the sentencing hearing, the court shall consider the presentence investigation report and make written findings as to whether the defendant shall be classified as a sexually violent predator.

If the person is classified as a sexually violent predator, the provisions of the Sex Offender and Public Protection Registration Program apply to the person with the following additions or changes:

1) Additional information must be obtained, including: identifying factors, anticipated future residence, offense history and documentation of any treatment received by the person for the person's mental abnormality or personality disorder.

2) The registration requirement continues beyond 10 years until the court determines that the registrant no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.

3) The registrant's information must be verified every 90 days (rather than 1 year as under regular registration).

4) Provides that the registrant may seek termination of the registration requirement, by petition to the superior court. The petition may be filed 10 years after the person's initial registration.

This act becomes effective April 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-15
HOUSE BILL 139

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.

In the General Assembly read three times and ratified this the 25th day of March, 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 3:00 p.m. this 3rd day of April, 1997

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H.R.3355

Violent Crime Control and Law Enforcement Act of 1994 (Enrolled Bill (Sent to President))

TITLE XVII--CRIMES AGAINST CHILDREN

Subtitle A--Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act

SEC. 170101. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL-

(1) STATE GUIDELINES- The Attorney General shall establish guidelines for State programs that require--

(A) a person who is convicted of a criminal offense against a victim who is a minor or who is convicted of a sexually **violent** offense to register a current address with a designated State law enforcement agency for the time period specified in subparagraph (A) of subsection (b)(6); and

(B) a person who is a sexually **violent** predator to register a current address with a designated State law enforcement agency unless such requirement is terminated under subparagraph (B) of subsection (b)(6).

(2) COURT DETERMINATION- A determination that a person is a sexually **violent** predator and a determination that a person is no longer a sexually **violent** predator shall be made by the sentencing court after receiving a report by a State board composed of experts in the field of the behavior and treatment of sexual offenders.

(3) DEFINITIONS- For purposes of this section:

(A) The term `criminal offense against a victim who is a minor' means any criminal offense that consists of--

(i) kidnapping of a minor, except by a parent;

(ii) false imprisonment of a minor, except by a parent;

(iii) criminal sexual conduct toward a minor;

(iv) solicitation of a minor to engage in sexual conduct;

(v) use of a minor in a sexual performance;

(vi) solicitation of a minor to practice prostitution;

(vii) any conduct that by its nature is a sexual offense against a minor; or

(viii) an attempt to commit an offense described in any of clauses (i) through (vii), if the State--

(I) makes such an attempt a criminal offense; and

(II) chooses to include such an offense in those which are criminal offenses against a victim who is a minor for the purposes of this section.

For purposes of this subparagraph conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger.

(B) The term `sexually **violent** offense' means any criminal offense that consists of aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18, United States Code, or as described in the State criminal code) or an offense that has as its elements engaging in physical contact with another person with intent to commit aggravated sexual abuse or sexual abuse (as described in such sections of title 18, United States Code, or as described in the State criminal code).

(C) The term `sexually **violent** predator' means a person who has been convicted of a sexually **violent** offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually **violent** offenses.

(D) The term `mental abnormality' means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

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H.R.3355

Violent Crime Control and Law Enforcement Act of 1994 (Enrolled Bill (Sent to President))

(b) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, SUPERVISED RELEASE, OR PROBATION- An approved State registration program established under this section shall contain the following elements:

(1) DUTY OF STATE PRISON OFFICIAL OR COURT-

(A) If a person who is required to register under this section is released from prison, or placed on parole, supervised release, or probation, a State prison officer, or in the case of probation, the court, shall--

(i) inform the person of the duty to register and obtain the information required for such registration;

(ii) inform the person that if the person changes residence address, the person shall give the new address to a designated State law enforcement agency in writing within 10 days;

(iii) inform the person that if the person changes residence to another State, the person shall register the new address with the law enforcement agency with whom the person last registered, and the person is also required to register with a designated law enforcement agency in the new State not later than 10 days after establishing residence in the new State, if the new State has a registration requirement;

(iv) obtain fingerprints and a photograph of the person if these have not already been obtained in connection with the offense that triggers registration; and

(v) require the person to read and sign a form stating that the duty of the person to register under this section has been explained.

(B) In addition to the requirements of subparagraph (A), for a person required to register under subparagraph (B) of subsection (a)(1), the State prison officer or the court, as the case may be, shall obtain the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person.

(2) TRANSFER OF INFORMATION TO STATE AND THE FBI- The officer, or in the case of a person placed on probation, the court, shall, within 3 days after receipt of information described in paragraph (1), forward it to a designated State law enforcement agency. The State law enforcement agency shall immediately enter the information into the appropriate State law enforcement record system and notify the appropriate law enforcement agency having jurisdiction where the person expects to reside. The State law enforcement agency shall also immediately transmit the conviction data and fingerprints to

the Federal Bureau of Investigation.

(3) VERIFICATION-

(A) For a person required to register under subparagraph (A) of subsection (a)(1), on each anniversary of the person's initial registration date during the period in which the person is required to register under this section the following applies:

(i) The designated State law enforcement agency shall mail a nonforwardable verification form to the last reported address of the person.

(ii) The person shall mail the verification form to the designated State law enforcement agency within 10 days after receipt of the form.

(iii) The verification form shall be signed by the person, and state that the person still resides at the address last reported to the designated State law enforcement agency.

(iv) If the person fails to mail the verification form to the designated State law enforcement agency within 10 days after receipt of the form, the person shall be in violation of this section unless the person proves that the person has not changed the residence address.

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H.R.3355

Violent Crime Control and Law Enforcement Act of 1994 (Enrolled Bill (Sent to President))

(B) The provisions of subparagraph (A) shall be applied to a person required to register under subparagraph (B) of subsection (a)(1), except that such person must verify the registration every 90 days after the date of the initial release or commencement of parole.

(4) NOTIFICATION OF LOCAL LAW ENFORCEMENT AGENCIES OF CHANGES IN ADDRESS- A change of address by a person required to register under this section reported to the designated State law enforcement agency shall be immediately reported to the appropriate law enforcement agency having jurisdiction where the person is residing. The designated law enforcement agency shall, if the person changes residence to another State, notify the law enforcement agency with which the person must register in the new State, if the new State has a registration requirement.

(5) REGISTRATION FOR CHANGE OF ADDRESS TO ANOTHER STATE- A person who has been convicted of an offense which requires registration under this section shall register the new address with a designated law enforcement agency in another State to which the person moves not later than 10 days after such person establishes residence in the new State, if the new State has a registration requirement.

(6) LENGTH OF REGISTRATION-

(A) A person required to register under subparagraph (A) of subsection (a)(1) shall continue to comply with this section until 10 years have elapsed since the person was released from prison, placed on parole, supervised release, or probation.

(B) The requirement of a person to register under subparagraph (B) of subsection (a)(1) shall terminate upon a determination, made in accordance with paragraph (2) of subsection (a), that the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.

(c) PENALTY- A person required to register under a State program established pursuant to this section who knowingly fails to so register and keep such registration current shall be subject to criminal penalties in any State in which the person has so failed.

(d) RELEASE OF INFORMATION- The information collected under a State registration program shall be treated as private data expect that--

(1) such information may be disclosed to law enforcement agencies for law enforcement purposes;

(2) such information may be disclosed to government agencies conducting confidential background checks; and

(3) the designated State law enforcement agency and any local law enforcement agency authorized by the State agency may release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released.

(e) IMMUNITY FOR GOOD FAITH CONDUCT- Law enforcement agencies, employees of law enforcement agencies, and State officials shall be immune from liability for good faith conduct under this section.

(f) COMPLIANCE-

(1) COMPLIANCE DATE- Each State shall have not more than 3 years from the date of enactment of this Act in which to implement this section, except that the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement this section.

(2) INELIGIBILITY FOR FUNDS-

(A) A State that fails to implement the program as described in this section shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 506 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3765).

(B) REALLOCATION OF FUNDS- Any funds that are not allocated for failure to comply with this section shall be reallocated to States that comply with this section.

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NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 930 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE V H930-PCSSA-002

Rep.)
) REDWINE
Sen.)

moves to amend the bill on page 13, line 18

( ) WHICH CHANGES THE TITLE

by deleting "1997." and inserting "1998."

SIGNED David Redwine

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

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EDITION No. _____

H. B. No. 930 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Goodwin
)
Sen.)

moves to amend the bill on page 11, line 44

( ) WHICH CHANGES THE TITLE

by rewriting the line to read

"behavior and treatment of sexual offenders, one of whom is selected from a panel of experts in those fields provided by the North Carolina Medical Society and not employed with the Department of Correction or employed on a full-time basis with any other state agency."

SIGNED Wayne Goodwin

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. 930 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓ 2nd PCS

Rep.)
) Stubert
Sen.)

moves to amend the bill on page 5, line 27

( ) WHICH CHANGES THE TITLE

by deleting "State." and inserting "State, or whenever the person has been present in the State for ~~30~~ 15 days, whichever comes first."

SIGNED Jean H Stubert

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

DRAFT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 564
Committee Substitute Favorable 4/15/97
Proposed Committee Substitute H564-CSSA-004
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Supervising Dental Hygienists. (Public)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFINITION OF DENTAL HYGIENIST, TO ALLOW DENTAL HYGIENISTS TO PERFORM CERTAIN ACTS WITHOUT THE ON-SITE SUPERVISION OF A LICENSED DENTIST AND TO ALLOW DENTISTS TO EMPLOY MORE THAN TWO DENTAL HYGIENISTS AT ONE TIME.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-221 reads as rewritten:

"**§ 90-221. Definitions.**

~~(a) "Dental hygiene" as used in this Article shall mean the~~ The following definitions apply in this Article:

(1) Dental hygiene. -- The performance of the following functions:

a. Complete oral ~~prophylaxis,~~ prophylaxis.

b. ~~application~~ Application of preventive agents to oral ~~structures, exposure~~ structures.

c. Exposure and processing of ~~radiographs, administration~~ radiographs.

d. Administration of medicaments prescribed by a licensed ~~dentist, preparation~~ dentist.

e. Preparation of diagnostic ~~aids,~~ aids and written records of oral conditions for interpretation by the ~~dentist, together with such other and further functions as may be permitted by rules and regulations of the Board not inconsistent herewith.~~ dentist.

f. Any other functions permitted by rules of the Board consistent with this Article.

~~(b) "Dental hygienist" as used in this Article, shall mean any~~

(2) Dental hygienist. -- A person who is a graduate of a Board-accredited school of dental hygiene, who has been licensed by the Board, and who practices dental hygiene as prescribed by the Board.

~~(c) "License" shall mean a~~

(3) License. -- A certificate issued to any applicant upon completion of requirements for admission to practice dental hygiene.

~~(d) "Renewal certificate" shall mean the~~

(4) Renewal certificate. -- The annual certificate of renewal of license to continue practice of dental hygiene in the State of North Carolina.

~~(e) "Board" shall mean "The~~

(5) Board. -- The North Carolina State Board of Dental ~~Examiners"~~ Examiners created by Chapter 139, Public Laws of 1879, and Chapter 178, Public Laws of 1915 as continued in existence by G.S. 90-22.

~~(f) "Supervision" as used in this Article shall mean that acts are deemed to be under the~~

(6) Supervision. -- ~~supervision of a licensed dentist when~~supervision of a dental hygienist by a licensed dentist is when the acts performed by the dental hygienist are performed in a locale where a licensed dentist is physically present during the performance of ~~such~~ the acts and ~~such~~ the acts are ~~being~~ performed pursuant to the dentist's order, ~~control~~ control, and approval."

Section 2. G.S. 90-233 reads as rewritten:

"**§ 90-233. Practice of dental ~~hygiene.~~ hygiene; exceptions to on-site supervision.**

(a) A dental hygienist may practice only under the supervision of one or more licensed dentists. Provided, however, ~~that this subsection (a) shall be deemed to be complied with in the case of dental~~ that:

(1) Dental hygienists employed by the Department of Environment, Health, and Natural Resources and especially trained by ~~said~~ that Department as public health hygienists are considered to be practicing under the supervision of a licensed dentist while performing their duties in the public schools under the direction of a duly licensed dentist.

(2) In isolated and nonroutine incidents, when it becomes necessary for the supervising dentist to be absent from the dental office for not more than two (2) hours in any day, the supervising dentist may assign to licensed and registered dental hygienists legally delegable duties to be performed in the dentist's absence if both the dental hygienist and the patient, who must be a patient of record, consent.

(3) A dental hygienist who has completed five years of dentist, on-site, supervised clinical experience may practice without a dentist on-site in a nursing home, as defined in G.S. 131E-101(6), under the following conditions:

a. The supervising dentist must preexamine each patient no more than forty-five days prior to the initiation of treatment, prepare a written treatment plan for the patient, and examine the patient at least one time per year thereafter, so long as treatment continues; and

b. A dental hygienist may not practice in a nursing home unless a health care professional, trained in emergency medical treatment, is present on the premises during any dental hygiene treatment.

(b) ~~A dentist in private practice may not employ more than two dental hygienists at one and the same time who are employed in clinical dental hygiene positions.~~ A dentist in private practice may not supervise more than three dental hygienists at one time. However, the Board may adopt rules authorizing the supervision of more than three dental hygienists in specific circumstances which the Board deems appropriate.

(c) Dental hygiene may be practiced only by the holder of a license or provisional license currently in effect and duly issued by the Board. The following acts, practices, functions or

operations, however, shall not constitute the practice of dental hygiene within the meaning of this Article:

(1) The teaching of dental hygiene in a school or college approved by the Board in a board-approved program by an individual licensed as a dental hygienist in any state in the United States.

(2) Activity which would otherwise be considered the practice of dental hygiene performed by students enrolled in a school or college approved by the Board in a board-approved dental hygiene program under the direct supervision of a dental hygienist or a dentist duly licensed in North Carolina or qualified for the teaching of dentistry pursuant to the provisions of G.S. 90-29(c)(3), acting as an instructor.

(3) Any act or acts performed by an assistant to a dentist licensed to practice in this State when said act or acts are authorized and permitted by and performed in accordance with rules and regulations promulgated by the Board.

(4) Dental assisting and related functions as a part of their instructions by students enrolled in a course in dental assisting conducted in this State and approved by the Board, when such functions are performed under the supervision of a dentist acting as a teacher or instructor who is either duly licensed in North Carolina or qualified for the teaching of dentistry pursuant to the provisions of G.S. 90-29(c)(3)."

Section 3. This act is effective when it becomes law.

HOUSE BILL 564

Subcommittee Recommendation CS002	Dental Society CS003	CS004
1. No Alternative Program For Training	Alternative Program Approved By Dental Board	No Alternative Program
2. Direct & General Supervision Provisions -Restricted To Schools, Nursing Home, Adult Care Centers And In Office for 2 Hrs.	Direct Supervision Only With Exception For Schools, Nursing Homes &.In Office For 2 Hrs.	Direct Supervision Only With Exception From Nursing Homes, Schools & In Office For 2 Hrs.
3. Number Dentist Can Supervise Raised From 2 to 3 Or More With Board Approval	Same	Same
4. 3 Yrs. Of Experience To Work In Nursing Homes, Etc.	5 Yrs. Of Experience	5 Yrs. Of Experience
5. Dentist Must Examine Patient 45 Days Before Treatment By Hygienist And Every Year Thereafter	Same	Same
6. Dentist Prepare Written Treatment Plan	Same	Same
7. Health Care Professional Trained In Emergency Care On Site	Same	Same

Amendment

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 564 DATE _____

S. B. No. _____ Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓ H564-CSSA-004

Rep.) McMahan

Sen.)

moves to amend the bill on page 4, lines 29-30

( ) WHICH CHANGES THE TITLE

by ~~deleting the following:~~

inserting between those lines:

"Section 3. The Department of Community Colleges, the University of North Carolina at Chapel Hill, and the Board of Dental Examiners are directed, under their statutory and independent powers, to jointly consider developing dental hygiene education and training programs that include night classes, remote teleconferencing, and other reasonable measures, consistent with the standards set by the Commission of Dental Accreditation, to assist dental hygiene students who desire or need to continue their employment while they attend school."

and on page 4, line 30,

by deleting "3." and inserting "4."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

April 29, 1997 1:00 P.M. — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brian McGinn	Attorney General's Office
Amy Wilkerson	Hunton & Williams
Rodney L. Bish	M.A.M.
Brigid L. Bish	Mothers Against Molesters
Sandra S Byrd	NCBA
Gary Dysterr DDS	Dentist
Jack Mosley	NCDS
Jon Woodmansee	Allied Towing
Bob Davis	NCPA.
Owen Barnwell	NCADA
Reg Lester	Independent Garage Owners of NC
Belinda Harris	Towing & Recovery Assn. of NC
Steve Brannon	" " "
Bobby Disher	" " "
Rick Walker	" " "
Barbara Rose	The Tar Heel Co - 7424 Chapel Hill Rd Ral
W H Potter Jr	NCDS RALEIGH, NC
AL DITCH	DOA/YRTD
LANA DIAL	AOC
Amy Jo Bain	Smith Anderson
Kristin Riesbeck	Mentorship
Ben Brown	NCDS - Raleigh
Lucia C. Odell	NC Medical Society
Donna Batts	ADEHN
Deborah B Newhart	MAM (Mothers Against Molesters)
Eddie Caldwell	HMCMCC P.A.
David Ferrell	"

John Aldridge	Attorney General's Office
Ann Case	DEHNR
Cam Cover	BPMHL

MINUTES
HOUSE JUDICIARY II COMMITTEE

April 29, 1997

The North Carolina House of Representatives Judiciary II Committee met on April 29, 1997, at 7:05 P.M. in the House Chamber of the Legislative Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Berry, Bowie, Cansler, Creech, Gardner, Hackney, Hensley, McMahan, Nesbitt, Redwine, Russell, Saunders, Shubert, Sutton and Weatherly.

The following bills were discussed:

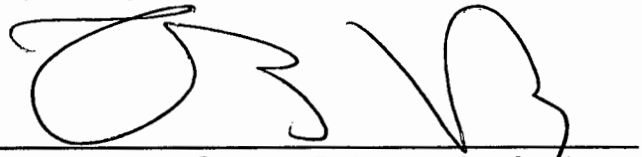
HB-564 SUPERVISING DENTAL HYGIENISTS
HB-1142 TUITION WAIVERS/EMERGENCY WORKERS

Representative McMahan was recognized to send forth a proposed committee substitute for HB-564 and moved a favorable report as to committee substitute bill #2, unfavorable as to original committee substitute bill #1; motion passed. A copy of the committee substitute bill is attached.

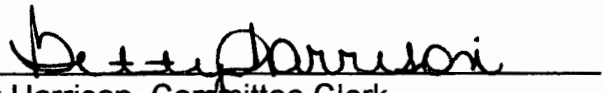
Representative Redwine moved HB-1142 be reported without prejudice; motion passed. A copy of the bill is attached.

The meeting was adjourned at 7:15 P.M.

Respectfully submitted,



Representative Charles B. Neely, Jr., Chairman



Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 564
Committee Substitute Favorable 4/15/97
Proposed Committee Substitute H564-CSSA-005
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Supervising Dental Hygienists. (Public)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFINITION OF DENTAL HYGIENIST, TO ALLOW DENTAL HYGIENISTS TO PERFORM CERTAIN ACTS WITHOUT THE ON-SITE SUPERVISION OF A LICENSED DENTIST, TO ALLOW DENTISTS TO EMPLOY MORE THAN TWO DENTAL HYGIENISTS AT ONE TIME AND TO STUDY ALTERNATIVE DENTAL HYGIENE EDUCATION AND TRAINING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-221 reads as rewritten:

"**§ 90-221. Definitions.**

~~(a) "Dental hygiene" as used in this Article shall mean the~~ The following definitions apply in this Article:

(1) Dental hygiene. -- The performance of the following functions:

a. Complete oral ~~prophylaxis,~~ prophylaxis.

b. ~~application~~ Application of preventive agents to oral ~~structures, exposure~~ structures.

c. Exposure and processing of ~~radiographs, administration~~ radiographs.

d. Administration of medicaments prescribed by a licensed ~~dentist, preparation~~ dentist.

e. Preparation of diagnostic ~~aids,~~ aids and written records of oral conditions for interpretation by the ~~dentist, together with such other and further functions as may be permitted by rules and regulations of the Board not inconsistent herewith.~~ dentist.

f. Any other functions permitted by rules of the Board consistent with this Article.

~~(b) "Dental hygienist" as used in this Article, shall mean any~~

(2) Dental hygienist. -- A person who is a graduate of a Board-accredited school of dental hygiene, who has been licensed by the Board, and who practices dental hygiene as prescribed by the Board.

~~(c) "License" shall mean a~~

(3) License. -- A certificate issued to any applicant upon completion of requirements for admission to practice dental hygiene.

~~(d) "Renewal certificate" shall mean the~~

(4) Renewal certificate. -- The annual certificate of renewal of license to continue practice of dental hygiene in the State of North Carolina.

~~(e) "Board" shall mean "The~~

(5) Board. -- The North Carolina State Board of Dental ~~Examiners"~~ Examiners created by Chapter 139, Public Laws of 1879, and Chapter 178, Public Laws of 1915 as continued in existence by G.S. 90-22.

~~(f) "Supervision" as used in this Article shall mean that acts are deemed to be under the~~

(6) Supervision. -- ~~supervision of a licensed dentist when~~supervision of a dental hygienist by a licensed dentist is when the acts performed by the dental hygienist are performed in a locale where a licensed dentist is physically present during the performance of ~~such~~ the acts and ~~such~~ the acts are ~~being~~ performed pursuant to the dentist's order, ~~control~~ control, and approval."

Section 2. G.S. 90-233 reads as rewritten:

"**§ 90-233. Practice of dental ~~hygiene.~~ hygiene; exceptions to on-site supervision.**

(a) A dental hygienist may practice only under the supervision of one or more licensed dentists. Provided, however, ~~that this subsection (a) shall be deemed to be complied with in the case of dental~~ that:

(1) Dental hygienists employed by the Department of Environment, Health, and Natural Resources and especially trained by ~~said~~ that Department as public health hygienists are considered to be practicing under the supervision of a licensed dentist while performing their duties in the public schools under the direction of a duly licensed dentist.

(2) In isolated and nonroutine incidents, when it becomes necessary for the supervising dentist to be absent from the dental office for not more than two (2) hours in any day, the supervising dentist may assign to licensed and registered dental hygienists legally delegable duties to be performed in the dentist's absence if both the dental hygienist and the patient, who must be a patient of record, consent.

(3) A dental hygienist who has completed five years of dentist, on-site, supervised clinical experience may practice without a dentist on-site in a nursing home, as defined in G.S. 131E-101(6), under the authorization of a licensed dentist and under the following conditions:

a. The dentist must preexamine each patient no more than forty-five days prior to the initiation of treatment, prepare a written treatment plan for the patient, and examine the patient at least one time per year thereafter, so long as treatment continues; and

b. A dental hygienist may not practice in a nursing home unless a health care professional, trained in emergency medical treatment, is present on the premises during any dental hygiene treatment.

(b) ~~A dentist in private practice may not employ more than two dental hygienists at one and the same time who are employed in clinical dental hygiene positions.~~ A dentist in private practice may not supervise more than three dental hygienists at one time. However, the Board may adopt rules authorizing the supervision of more than three dental hygienists in specific circumstances which the Board deems appropriate.

(c) Dental hygiene may be practiced only by the holder of a license or provisional license currently in effect and duly

issued by the Board. The following acts, practices, functions or operations, however, shall not constitute the practice of dental hygiene within the meaning of this Article:

(1) The teaching of dental hygiene in a school or college approved by the Board in a board-approved program by an individual licensed as a dental hygienist in any state in the United States.

(2) Activity which would otherwise be considered the practice of dental hygiene performed by students enrolled in a school or college approved by the Board in a board-approved dental hygiene program under the direct supervision of a dental hygienist or a dentist duly licensed in North Carolina or qualified for the teaching of dentistry pursuant to the provisions of G.S. 90-29(c)(3), acting as an instructor.

(3) Any act or acts performed by an assistant to a dentist licensed to practice in this State when said act or acts are authorized and permitted by and performed in accordance with rules and regulations promulgated by the Board.

(4) Dental assisting and related functions as a part of their instructions by students enrolled in a course in dental assisting conducted in this State and approved by the Board, when such functions are performed under the supervision of a dentist acting as a teacher or instructor who is either duly licensed in North Carolina or qualified for the teaching of dentistry pursuant to the provisions of G.S. 90-29(c)(3)."

Section 3. The Department of Community Colleges, the University of North Carolina at Chapel Hill, and the Board of Dental Examiners are directed, under their statutory and independent powers, to consider developing dental hygiene education and training programs that include night classes, remote teleconferencing, and other reasonable measures, consistent with the standards set by the Commission of Dental Accreditation, to assist dental hygiene students who desire or need to continue their employment while they attend school.

Section 4. This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

X Committee Substitute for
H.B. 564 A BILL TO BE ENTITLED AN ACT TO ALLOW DENTAL HYGIENISTS TO PERFORM ACTS WITHOUT THE DIRECT SUPERVISION OF A LICENSED DENTIST AND TO ALLOW DENTISTS TO EMPLOY MORE THAN TWO DENTAL HYGIENISTS AT ONE TIME.

☐ 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 #2, which changes the title, unfavorable as to original 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 564
Committee Substitute Favorable 4/15/97
Proposed Committee Substitute H564-PCS2318

Short Title: Supervising Dental Hygienists. (Public)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFINITION OF DENTAL HYGIENIST, TO ALLOW DENTAL HYGIENISTS TO PERFORM CERTAIN ACTS WITHOUT THE ON-SITE SUPERVISION OF A LICENSED DENTIST, TO ALLOW DENTISTS TO EMPLOY MORE THAN TWO DENTAL HYGIENISTS AT ONE TIME AND TO STUDY ALTERNATIVE DENTAL HYGIENE EDUCATION AND TRAINING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-221 reads as rewritten:

"**§ 90-221. Definitions.**

~~(a) "Dental hygiene" as used in this Article shall mean the~~ The following definitions apply in this Article:

(1) Dental hygiene. -- The performance of the following functions:

a. Complete oral ~~prophylaxis,~~ prophylaxis.

b. ~~application~~ Application of preventive agents to oral ~~structures, exposure~~ structures.

c. Exposure and processing of ~~radiographs, administration~~ radiographs.

d. Administration of medicaments prescribed by a licensed ~~dentist, preparation~~ dentist.

e. Preparation of diagnostic ~~aids,~~ aids and written records of oral conditions for interpretation by the ~~dentist, together~~

~~with such other and further functions as may be permitted by rules and regulations of the Board not inconsistent herewith.~~ dentist.

f. Any other functions permitted by rules of the Board consistent with this Article.

~~(b) "Dental hygienist" as used in this Article, shall mean any~~

(2) Dental hygienist. -- A person who is a graduate of a Board-accredited school of dental hygiene, who has been licensed by the Board, and who practices dental hygiene as prescribed by the Board.

~~(c) "License" shall mean a~~

(3) License. -- A certificate issued to any applicant upon completion of requirements for admission to practice dental hygiene.

~~(d) "Renewal certificate" shall mean the~~

(4) Renewal certificate. -- The annual certificate of renewal of license to continue practice of dental hygiene in the State of North Carolina.

~~(e) "Board" shall mean "The~~

(5) Board. -- The North Carolina State Board of Dental ~~Examiners"~~ Examiners created by Chapter 139, Public Laws of 1879, and Chapter 178, Public Laws of 1915 as continued in existence by G.S. 90-22.

~~(f) "Supervision" as used in this Article shall mean that acts are deemed to be under the~~

(6) Supervision. -- ~~supervision of a licensed dentist when~~ supervision of a dental hygienist by a licensed dentist is when the acts performed by the dental hygienist are performed in a locale where a licensed dentist is physically present during the performance of ~~such~~ the acts and ~~such~~ the acts are ~~being~~ performed pursuant to the dentist's order, ~~control~~ control, and approval."

Section 2. G.S. 90-233 reads as rewritten:

"**§ 90-233. Practice of dental ~~hygiene.~~ hygiene; exceptions to on-site supervision.**

(a) A dental hygienist may practice only under the supervision of one or more licensed dentists. Provided, however, ~~that this subsection (a) shall be deemed to be complied with in the case of dental~~ that:

(1) Dental hygienists employed by the Department of Environment, Health, and Natural Resources and especially trained by ~~said~~ that Department as public health hygienists are considered to be practicing under the supervision of a licensed dentist while performing their duties in the public schools under the direction of a duly licensed dentist.

(2) In isolated and nonroutine incidents, when it becomes necessary for the supervising dentist to be absent from the dental office for not more than two hours in any day, the supervising dentist may

assign to licensed and registered dental hygienists legally delegable duties to be performed in the dentist's absence if both the dental hygienist and the patient, who must be a patient of record, consent.

(3) A dental hygienist who has completed five years of dentist, on-site, supervised clinical experience may practice without a dentist on-site in a nursing home, as defined in G.S. 131E-101(6), under the authorization of a licensed dentist and under the following conditions:

a. The dentist must preexamine each patient no more than 45 days prior to the initiation of treatment, prepare a written treatment plan for the patient, and examine the patient at least one time per year thereafter, so long as treatment continues; and

b. A dental hygienist may not practice in a nursing home unless a health care professional, trained in emergency medical treatment, is present on the premises during any dental hygiene treatment.

(b) ~~A dentist in private practice may not employ more than two dental hygienists at one and the same time who are employed in clinical dental hygiene positions.~~ A dentist in private practice may not supervise more than three dental hygienists at one time. However, the Board may adopt rules authorizing the supervision of more than three dental hygienists in specific circumstances which the Board deems appropriate.

(c) Dental hygiene may be practiced only by the holder of a license or provisional license currently in effect and duly issued by the Board. The following acts, practices, functions or operations, however, shall not constitute the practice of dental hygiene within the meaning of this Article:

(1) The teaching of dental hygiene in a school or college approved by the Board in a board-approved program by an individual licensed as a dental hygienist in any state in the United States.

(2) Activity which would otherwise be considered the practice of dental hygiene performed by students enrolled in a school or college approved by the Board in a board-approved dental hygiene program under the direct supervision of a dental hygienist or a dentist duly licensed in North Carolina or qualified for the teaching of dentistry pursuant to the provisions of G.S. 90-29(c)(3), acting as an instructor.

(3) Any act or acts performed by an assistant to a dentist licensed to practice in this State when said act or acts are authorized and permitted by and performed in accordance with rules and regulations promulgated by the Board.

(4) Dental assisting and related functions as a part of their instructions by students enrolled in a course in dental assisting conducted in this State and approved by the Board, when such functions are performed under the supervision of a dentist acting as a teacher or

instructor who is either duly licensed in North Carolina or qualified for the teaching of dentistry pursuant to the provisions of G.S. 90-29(c)(3)."

Section 3. The Department of Community Colleges, the University of North Carolina at Chapel Hill, and the Board of Dental Examiners are directed, under their statutory and independent powers, to consider developing dental hygiene education and training programs that include night classes, remote teleconferencing, and other reasonable measures, consistent with the standards set by the Commission of Dental Accreditation, to assist dental hygiene students who desire or need to continue their employment while they attend school.

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1142

Short Title: Tuition Waivers/Emergency Workers. (Public)

Sponsors: Representatives Redwine; and Thompson.

Referred to: Education, if favorable, Judiciary II.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO WAIVE TUITION FOR CHILDREN OR SPOUSES OF CERTAIN EMERGENCY WORKERS KILLED OR DISABLED IN THE LINE OF DUTY.

The General Assembly of North Carolina enacts:

Section 1. The title of Chapter 115B reads as rewritten:

"Tuition ~~Waiver for Senior Citizens.~~ Waivers."

Section 2. G.S. 115B-1 reads as rewritten:

"**§ 115B-1. ~~Definition.~~ Definitions.**

~~As used in this Chapter, "tuition" shall mean the~~ The following definitions apply in this Chapter:

(1) Permanently and totally disabled in the line of duty. -- A person: (i) who as a law enforcement officer, firefighter, or volunteer firefighter suffered a disabling injury while in active service or training for active service, (ii) who at the time of active service or training was a North Carolina resident, and (iii) who has been rated permanently and totally disabled for compensation purposes by any of the following as appropriate: the State of North Carolina, the city or county law enforcement agency that employed the person, the administrative agency for the fire department or fire protection district recognized for funding by the State or the administrative agency having jurisdiction over any paid firefighters of all counties and cities.

(2) Survivor. -- Any person whose parent or spouse: (i) was a law enforcement officer, a firefighter, or a volunteer firefighter, (ii) was

killed while in active service or training for active service or died as a result of a service-connected disability, and (iii) at the time of active service or training was a North Carolina resident. The term does not include the widow or widower of a law enforcement officer, firefighter, or volunteer firefighter if the widow or widower has remarried.

(3) Tuition. -- The amount charged for registering for a credit hour of instruction and shall not be construed to mean any other fees or charges or costs of textbooks."

Section 3. G.S. 115B-2 reads as rewritten:

"**§ 115B-2. Tuition waiver authorized.**

State-supported institutions of higher education, community colleges, industrial education centers and technical institutes, shall permit ~~legal residents of North Carolina who have attained the age of 65~~ the following persons to attend classes for credit or noncredit purposes without the required payment of tuition; provided, however, that such persons meet admission and other standards deemed appropriate by the educational institution, and provided further that such persons shall be accepted by the constituent institutions of the University of North Carolina only on a spaces-available ~~basis.~~ basis:

(1) Legal residents of North Carolina who have attained the age of 65.

(2) Any person who is the survivor of a police officer, firefighter, or volunteer firefighter killed in the line of duty.

(3) The spouse of a police officer, firefighter, or volunteer firefighter who is permanently and totally disabled in the line of duty.

(4) Any child, if the child is at least 17 years old but not yet 23 years old, whose parent is a police officer, firefighter, or volunteer firefighter who is permanently and totally disabled in the line of duty. However, a child's eligibility for a waiver of tuition under this Chapter shall not exceed: (i) 48 months, if the child is seeking a baccalaureate degree, or (ii) if the child is not seeking a baccalaureate degree, the number of months required to complete the educational program to which the child is applying."

Section 4. G.S. 115B-5 reads as rewritten:

"**§ 115B-5. Proof of eligibility.**

(a) The officials of such institutions charged with administration of this Chapter may require such proof as they deem necessary to insure that ~~the~~ a person applying to the institution as a senior citizen is eligible for the benefits provided by this Chapter.

(b) The officials of such institutions charged with administration of this Chapter shall require the following proof to insure that a person applying to the institution and who requests a tuition waiver under G.S. 115B-2(4),(5), or (6) is eligible for the benefits provided by this Chapter.

(1) The parent-child relationship shall be verified by a birth certificate, legal adoption papers, or other documentary evidence deemed appropriate by the institution.

(2) The marital relationship shall be verified by a marriage certificate or other documentary evidence deemed appropriate by the institution.

(3) The cause of death of the law enforcement officer, firefighter, or volunteer firefighter shall be verified by certification from the records of the Department of State Treasurer, the appropriate city or county law enforcement agency that employed the deceased, the administrative agency for the fire department or fire protection district recognized for funding under the Department of State Auditor, or the administrative agency having jurisdiction over any paid firefighters of all counties and cities.

(4) The permanent and total disability shall be verified by documentation deemed necessary by the institution from any of the following as appropriate: the State of North Carolina, the city or county law enforcement agency that employed the person, the administrative agency for the fire department or fire protection district recognized for funding by the State or the administrative agency having jurisdiction over any paid firefighters of all counties and cities."

Section 5. Chapter 115B is amended by adding a new section to read:

"**§ 115B-5A. Student to be credited for scholarship value.**

If a person obtains a tuition waiver under G.S. 115B-2(4),(5), or (6) and the person also receives a cash scholarship paid or payable to the institution, from whatever source, the amount of the scholarship shall be applied to the credit of the person in the payment of incidental expenses of the person's attendance at the institution, and any balance, if the terms of the scholarship permit, shall be returned to the student."

Section 6. This act becomes effective July 1, 1997, and applies to deaths or disabilities occurring on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 1142 A BILL TO BE ENTITLED AN ACT TO WAIVE TUITION FOR CHILDREN OR SPOUSES OF CERTAIN EMERGENCY WORKERS KILLED OR DISABLED IN THE LINE OF DUTY.

☐ 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.

X **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

JUDICIARY II COMMITTEE

April 30, 1997

The North Carolina House of Representatives Judiciary II Committee met on April 30, 1997, at 7:30 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Berry, Bowie, Cansler, Creech, Culpepper, Decker, Gardner, Goodwin, Hackney, Hensley, McMahan, Russell, Saunders, Shubert, Weatherly and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-823 REMOVAL/RESIGNATION OF TRUSTEES
HB-872 AMEND CIVIL PROCEDURE RULES
HB-999 SOIL AND WATER COMMISSION/INSPECTIONS
HB-1049 INCREASE CRUELTY TO ANIMALS PENALTY
HB-1143 HANDICAPPED PLATE RECERTIFICATION

Representative Decker was recognized to explain HB-1143 and answer questions of committee members. A copy of the bill is attached.

Representative Kiser moved for a favorable report; motion passed.

Representative Culpepper was recognized to send forth a proposed committee substitute for HB-1049 and answer questions of committee members. Representative Weatherly moved the proposed committee substitute be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute is attached.

Representative Weatherly moved for a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

Representative Goodwin was recognized to explain HB-872 and answer questions of committee members. A copy of the bill is attached.

Mr. Bill Scoggin, North Carolina Bar Association, answered questions of committee members.

Representative Goodwin was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Cansler moved the amendment be incorporated in a committee substitute bill, with a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

Representative Rogers was recognized to explain HB-999 and answer questions of committee members. A copy of the bill and digest by the Institute of Government are attached.

No action was taken on HB-999.

Representative Culpepper was recognized to present a proposed committee substitute for HB-823 and moved it be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute is attached.

No action was taken on HB-823.

The meeting was adjourned at 8:20 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1143

Short Title: Handicapped Plate Recertification. (Public)

Sponsors: Representative Decker.

Referred to: Transportation, if favorable, Judiciary II.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PERMANENTLY DISABLED DRIVERS DO NOT HAVE TO BE MEDICALLY RECERTIFIED WHEN RENEWING HANDICAPPED PLACARDS OR REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-37.6(c1) reads as rewritten:

"(c1) Application and Renewal; Physician's Certification. -- The initial application for a permanent distinguishing license plate, removable windshield placard, or temporary removable windshield placard shall be accompanied by a certification of a licensed physician, ophthalmologist, or optometrist or of the Division of Services for the Blind that the applicant is handicapped. The certification shall state whether or not the disability is permanent. The application for a temporary removable windshield placard shall contain additional certification to include the period of time the certifying authority determines the applicant will have the disability. Distinguishing license plates shall be renewed annually, but subsequent applications shall not require a medical certification that the applicant is handicapped. Removable windshield placards shall be renewed every five years, and renewal shall not require a medical recertification that the person is ~~handicapped.~~ handicapped if the disability is permanent. Temporary removable windshield placards shall expire no later than six months after issuance."

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

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 1143 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT PERMANENTLY DISABLED DRIVERS DO NOT HAVE TO BE MEDICALLY RECERTIFIED WHEN RENEWING HANDICAPPED PLACARDS OF REGISTRATION PLATES.

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. (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

H D

HOUSE BILL 1049
Proposed Committee Substitute H1049-CSSA-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Increase Cruelty to Animals Penalty. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR CRUELTY TO ANIMALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-360 reads as rewritten:

"**§ 14-360. Cruelty to animals; construction of section.**

(a) If any person shall willfully overdrive, overload, wound, injure, ~~torture, torment,~~ or deprive of necessary sustenance, ~~cruelly beat, needlessly mutilate or kill~~ or cause or procure to be overdriven, overloaded, wounded, injured, ~~tortured, tormented,~~ or deprived of necessary sustenance, ~~cruelly beaten, needlessly mutilated or killed as aforesaid, any useful beast, fowl or~~ any animal, every such offender shall for every such offense be guilty of a Class 1 misdemeanor. ~~In this section, and in every law which may be enacted relating to animals, the words "animal" and "dumb animal" shall be held to include every living creature; the words "torture," "torment" or "cruelty" shall be held to include every act, omission or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted. Such terms shall not be construed to prohibit the lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission.~~

(b) If any person shall willfully torture, torment, mutilate, maim, cruelly beat, disfigure, poison or kill, or cause or procure to be tortured, tormented, mutilated, maimed, cruelly beaten, disfigured, poisoned or killed, any animal, every such offender shall for every such offense be guilty of a Class I felony. The word 'willfully', as used in this subsection, shall mean an act done intentionally, with bad motive or purpose and without justifiable excuse.

(c) In this section, the term 'animal' shall be held to include every domestic or otherwise useful animal. This section shall not apply to animals under the jurisdiction and regulation of the Wildlife Resources Commission, lawful activities conducted for purposes of biomedical research or training, lawful activities for sport or other lawful entertainment, the production of livestock or poultry, or the lawful destruction of any animal for the purpose of protecting the public, other animals, the public health, or for lawful veterinary purposes."

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

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 1049 A BILL TO BE ENTITLED AN ACT TO INCREASE THE PENALTY FOR CRUELTY TO ANIMALS.

☐ 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. (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

H D

HOUSE BILL 1049
Proposed Committee Substitute H1049-PCS2320

Short Title: Increase Cruelty to Animals Penalty. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR CRUELTY TO ANIMALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-360 reads as rewritten:

"**§ 14-360. Cruelty to animals; construction of section.**

(a) If any person shall willfully overdrive, overload, wound, injure, ~~torture,~~ ~~torment,~~ or deprive of necessary sustenance, ~~cruelly beat, needlessly mutilate or kill~~ or cause or procure to be overdriven, overloaded, wounded, injured, ~~tortured,~~ ~~tormented,~~ or deprived of necessary sustenance, ~~cruelly beaten, needlessly mutilated or killed as aforesaid, any useful beast, fowl or~~ any animal, every such offender shall for every such offense be guilty of a Class 1 misdemeanor. ~~In this section, and in every law which may be enacted relating to animals, the words "animal" and "dumb animal" shall be held to include every living creature; the words "torture," "torment" or "cruelty" shall be held to include every act, omission or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted. Such terms shall not be construed to prohibit the lawful taking of animals under the jurisdiction and regulation of the Wildlife Resources Commission.~~

(b) If any person shall willfully torture, torment, mutilate, maim, cruelly beat, disfigure, poison, or kill, or cause or procure to be tortured, tormented, mutilated, maimed, cruelly beaten, disfigured, poisoned, or killed, any animal, every such offender shall for every such offense be guilty of a Class I felony. The word 'willfully', as used in this subsection, shall mean an act done intentionally, with bad motive or purpose and without justifiable excuse.

(c) In this section, the term 'animal' shall be held to include every domestic or otherwise useful animal. This section shall not apply to animals under the jurisdiction and regulation of the Wildlife Resources Commission, lawful activities conducted for purposes of biomedical research or training, lawful activities for sport or other lawful entertainment, the production of livestock or poultry, or the lawful destruction of any animal for the purpose of protecting the public, other animals, the public health, or for lawful veterinary purposes."

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 872

Short Title: Amend Civil Procedure Rules. (Public)

Sponsors: Representatives Goodwin; Baddour, Daughtry, Fitch, Hardy, and Hensley.

Referred to: Judiciary II.

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS RULES OF CIVIL PROCEDURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 26 (b)(4) reads as rewritten:

"(4) Trial Preparation; Experts. -- Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subsection (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

a. 1. A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

1a. Subject to the provisions of subdivision (b)(4)b. and subsection (c) of this rule, a party may take the deposition of an expert under the provisions of Rule 30 when the expert has been identified as a person another party expects to call as an expert witness at trial. The expert may be compelled to produce evidence under the provisions of Rule 45, including

facts or data underlying any opinion that may be offered as evidence under Rule 705 of the North Carolina Rules of Evidence.

2. Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision ~~(b)(4)e~~ (b)(4)b. of this rule, concerning fees and expenses as the court may deem appropriate.

b. Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivision (b)(4)a2 of this rule; and (ii) with respect to discovery obtained under subdivision (b)(4)a2 of this rule the court may require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert."

Section 2. G.S. 1A-1, Rule 30(c) reads as rewritten:

"(c) Examination and cross-examination; record of examination; oath; objections.

(1) Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Rule 43(b). The person before whom the deposition is to be taken shall put the deponent on oath and shall personally, or by someone acting under his or her direction and in his or her presence, record the testimony of the deponent. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with ~~subsection~~ subdivision (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed.

(2) Any objection to evidence during a deposition shall be stated concisely and in a nonargumentative and nonsuggestive manner. A party may instruct a deponent not to answer for any one or more of the following reasons only: when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under subdivision (d)(2) of this rule. All objections made at the time of the examination to the qualifications of the person before whom the deposition is taken, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted upon the deposition by the person before whom the deposition is taken. Subject to any limitations imposed by orders entered pursuant to Rule 26(c) or 30(d), evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party who served the

notice of taking the deposition, and ~~he~~ that party shall transmit them to the person before whom the deposition is to be taken who shall open them at the deposition, propound them to the witness and record the answers verbatim."

Section 3. G.S. 1A-1, Rule 30(d) reads as rewritten:

"(d) Motion to terminate or limit examination. --

(1) By order or local rule, the court may limit the time permitted for conducting a deposition. The court shall allow additional time when needed for a fair examination of the deponent or when a deponent or other party impedes or delays the examination. If the court finds such an impediment, delay, or other conduct has frustrated the fair examination of the deponent, it may impose an appropriate sanction upon the persons responsible for that conduct, including reasonable costs and attorneys' fees incurred by a party as a result of that conduct.

(2) At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, a judge of the court in which the action is pending or any judge in the county where the deposition is being taken may order before whom the examination is being taken to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of a judge of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion."

Section 4. G.S. 1A-1, Rule 46 reads as rewritten:

"**Rule 46. Objections and exceptions.**

(a) Rulings on admissibility of evidence. --

(1) When there is objection to the admission of evidence on the ground that the witness is for a specified reason incompetent or not qualified or disqualified, it shall be deemed that a like objection has been made to any subsequent admission of evidence from the witness in question. Similarly, when there is objection to the admission of evidence involving a specified line of questioning, it shall be deemed that a like objection has been taken to any subsequent admission of evidence involving the same line of questioning.

(2) If there is proper objection to the admission of evidence and the objection is overruled, the ruling of the court shall be deemed

excepted to by the party making the objection. If an objection to the admission of evidence is sustained or if the court for any reason excludes evidence offered by a party, the ruling of the court shall be deemed excepted to by the party offering the evidence.

(3) No objections are necessary with respect to questions propounded to a witness by the court or a juror but it shall be deemed that each such question has been properly objected to and that the objection has been overruled and that an exception has been taken to the ruling of the court by all parties to the action.

(b) ~~Rulings~~ Pretrial rulings, interlocutory orders, trial rulings, and other orders not directed to the admissibility of evidence. -- With respect to ~~rulings~~ pretrial rulings, interlocutory orders, trial rulings, and other orders of the court not directed to the admissibility of evidence, formal objections and exceptions are ~~unnecessary.~~ unnecessary and are deemed to be preserved until entry of final judgment. In order to preserve an exception to any such ruling or order or to the court's failure to make any such ruling or order, it shall be sufficient if a party, at the time the ruling or order is made or sought, makes known to the court ~~his~~ the party's objection to the action of the court or makes known the action ~~which he~~ that the party desires the court to take and ~~his ground therefor;~~ the party's grounds for this action; and if a party has no opportunity to object or except to a ruling or order at the time it is made, the absence of an objection or exception does not thereafter prejudice ~~him.~~ that party. In order to preserve these rulings and orders for appellate review, a party shall present to the court a timely request, objection, or motion, stating the specific grounds for the ruling that the party desires the court to make, and shall obtain a ruling upon the party's request, objection, or motion.

(c) ~~Instruction. -- If there is error, either in the refusal of the judge to grant a prayer for instructions, or in granting a prayer, or in his instructions generally, the same is deemed excepted to without the filing of any formal objections.~~"

Section 5. G.S. 1A-1, Rule 55(b) reads as rewritten:

"(b) Judgment. -- Judgment by default may be entered as follows:

(1) By the Clerk. -- When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if ~~he~~ the defendant has been defaulted for failure to appear and if ~~he~~ the defendant is not an infant or incompetent person. A verified pleading may be used in lieu of an affidavit when the pleading contains information sufficient to determine or compute the sum certain.

In all cases wherein, pursuant to this rule, the clerk enters judgment by default upon a claim for debt which is secured by any pledge, mortgage, deed of trust or other contractual security in respect of which foreclosure may be had, or upon a claim to enforce a lien for unpaid taxes or assessments under G.S. 105-414,

the clerk may likewise make all further orders required to consummate foreclosure in accordance with the procedure provided in Article 29A of Chapter 1 of the General Statutes, entitled 'Judicial Sales.'

(2) By the Judge. --

a. In all other cases the party entitled to a judgment by default shall apply to the judge therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a guardian ad litem or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, ~~he~~ that party (or, if appearing by representative, ~~his~~ the representative) shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. If, in order to enable the judge to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to take an investigation of any other matter, the judge may conduct such hearings or order such references as ~~he~~ the judge deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by the Constitution or by any statute of North Carolina. If the plaintiff seeks to establish paternity under Article 3 of Chapter 49 of the General Statutes and the defendant fails to appear, the judge shall enter judgment by default.

b. Motions for judgment by default will be decided by the court without oral argument when the party seeking judgment by default specifically provides in a motion that judgment by default will be decided by the court without oral argument if the party against whom judgment is sought fails to respond in writing. This subdivision does not apply when (i) the party against whom judgment is sought serves a written response stating that party's grounds for opposition to the motion within 30 days of service of the motion, or (ii) the court orders oral argument."

Section 6. This act becomes effective October 1, 1997, and applies to causes of action commencing on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 872 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Goodwin
)
Sen.)

moves to amend the bill on page(s) 4-5, line(s) 29-37

( ) WHICH CHANGES THE TITLE

by deleting Section 5.;

and renumbering the remaining sections accordingly.

SIGNED Wayne Goodwin

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 872 A BILL TO BE ENTITLED AN ACT TO AMEND VARIOUS RULES OF CIVIL PROCEDURE.

☐ 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. (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

H D

HOUSE BILL 872
Proposed Committee Substitute H872-PCS8212

Short Title: Amend Civil Procedure Rules. (Public)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS RULES OF CIVIL PROCEDURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 26 (b)(4) reads as rewritten:

"(4) Trial Preparation; Experts. -- Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subsection (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

a. 1. A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

1a. Subject to the provisions of subdivision (b)(4)b. and subsection (c) of this rule, a party may take the deposition of an expert under the provisions of Rule 30 when the expert has been identified as a person another party expects to call as an expert witness at trial. The expert may be compelled to produce evidence under the provisions of Rule 45, including

facts or data underlying any opinion that may be offered as evidence under Rule 705 of the North Carolina Rules of Evidence.

2. Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision ~~(b)(4)e~~ (b)(4)b. of this rule, concerning fees and expenses as the court may deem appropriate.

b. Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivision (b)(4)a2 of this rule; and (ii) with respect to discovery obtained under subdivision (b)(4)a2 of this rule the court may require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert."

Section 2. G.S. 1A-1, Rule 30(c) reads as rewritten:

"(c) Examination and cross-examination; record of examination; oath; objections.

(1) Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Rule 43(b). The person before whom the deposition is to be taken shall put the deponent on oath and shall personally, or by someone acting under his or her direction and in his or her presence, record the testimony of the deponent. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with ~~subsection~~ subdivision (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed.

(2) Any objection to evidence during a deposition shall be stated concisely and in a nonargumentative and nonsuggestive manner. A party may instruct a deponent not to answer for any one or more of the following reasons only: when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under subdivision (d)(2) of this rule. All objections made at the time of the examination to the qualifications of the person before whom the deposition is taken, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted upon the deposition by the person before whom the deposition is taken. Subject to any limitations imposed by orders entered pursuant to Rule 26(c) or 30(d), evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party who served the

notice of taking the deposition, and ~~he~~ that party shall transmit them to the person before whom the deposition is to be taken who shall open them at the deposition, propound them to the witness and record the answers verbatim."

Section 3. G.S. 1A-1, Rule 30(d) reads as rewritten:

"(d) Motion to terminate or limit examination. --

(1) By order or local rule, the court may limit the time permitted for conducting a deposition. The court shall allow additional time when needed for a fair examination of the deponent or when a deponent or other party impedes or delays the examination. If the court finds such an impediment, delay, or other conduct has frustrated the fair examination of the deponent, it may impose an appropriate sanction upon the persons responsible for that conduct, including reasonable costs and attorneys' fees incurred by a party as a result of that conduct.

(2) At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, a judge of the court in which the action is pending or any judge in the county where the deposition is being taken may order before whom the examination is being taken to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of a judge of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion."

Section 4. G.S. 1A-1, Rule 46 reads as rewritten:

"**Rule 46. Objections and exceptions.**

(a) Rulings on admissibility of evidence. --

(1) When there is objection to the admission of evidence on the ground that the witness is for a specified reason incompetent or not qualified or disqualified, it shall be deemed that a like objection has been made to any subsequent admission of evidence from the witness in question. Similarly, when there is objection to the admission of evidence involving a specified line of questioning, it shall be deemed that a like objection has been taken to any subsequent admission of evidence involving the same line of questioning.

(2) If there is proper objection to the admission of evidence and the objection is overruled, the ruling of the court shall be deemed

excepted to by the party making the objection. If an objection to the admission of evidence is sustained or if the court for any reason excludes evidence offered by a party, the ruling of the court shall be deemed excepted to by the party offering the evidence.

(3) No objections are necessary with respect to questions propounded to a witness by the court or a juror but it shall be deemed that each such question has been properly objected to and that the objection has been overruled and that an exception has been taken to the ruling of the court by all parties to the action.

(b) ~~Rulings~~ Pretrial rulings, interlocutory orders, trial rulings, and other orders not directed to the admissibility of evidence. -- With respect to ~~rulings~~ pretrial rulings, interlocutory orders, trial rulings, and other orders of the court not directed to the admissibility of evidence, formal objections and exceptions are ~~unnecessary.~~ unnecessary and are deemed to be preserved until entry of final judgment. In order to preserve an exception to any such ruling or order or to the court's failure to make any such ruling or order, it shall be sufficient if a party, at the time the ruling or order is made or sought, makes known to the court ~~his~~ the party's objection to the action of the court or makes known the action ~~which he~~ that the party desires the court to take and ~~his ground therefor;~~ the party's grounds for this action; and if a party has no opportunity to object or except to a ruling or order at the time it is made, the absence of an objection or exception does not thereafter prejudice ~~him.~~ that party. In order to preserve these rulings and orders for appellate review, a party shall present to the court a timely request, objection, or motion, stating the specific grounds for the ruling that the party desires the court to make, and shall obtain a ruling upon the party's request, objection, or motion.

(c) ~~Instruction. -- If there is error, either in the refusal of the judge to grant a prayer for instructions, or in granting a prayer, or in his instructions generally, the same is deemed excepted to without the filing of any formal objections.~~"

Section 5. This act becomes effective October 1, 1997, and applies to causes of action commencing on or after that date.

HOUSE BILL 999
Second Edition Engrossed 4/23/97

Short Title: Soil and Water Commission/Inspections. (Public)

Sponsors: Representative Rogers.

Referred to: Agriculture, if favorable, Judiciary II.

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF THE SOIL AND WATER CONSERVATION COMMISSION TO CONDUCT INSPECTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-294 reads as rewritten:

"**§ 143B-294. Soil and Water Conservation Commission -- creation; powers and ~~duties.~~ duties; compliance inspections.**

(a) There is hereby created the Soil and Water Conservation Commission of the Department of Environment, Health, and Natural Resources with the power and duty to adopt rules to be followed in the development and implementation of a soil and water conservation program.

(1) The Soil and Water Conservation Commission has all of the following powers and duties:

a. To approve petitions for soil conservation ~~districts;~~ districts.

b. To approve application for watershed ~~plans; and~~ plans.

c. Such other duties as specified in Chapter 139.

d. To conduct any inspections consistent with subsection (b) of this section for inspections it deems reasonably necessary to carry out its duties.

(2) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this Chapter heretofore adopted by the Soil and Water Conservation Committee shall remain in full force and effect unless and until

repealed or superseded by action of the Soil and Water Conservation Commission. All rules adopted by the Commission shall be enforced by the Department of Environment, Health, and Natural Resources.

(b) Inspections authorized by subsubsection (1)d. of this section may be conducted by authorized representatives of the Commission. When conducting inspections, the Commission may enter at reasonable times upon any property, public or private, for the purpose of investigating compliance with Commission or Department programs.

(c) No person shall refuse entry or access to a person who requests entry for the purposes of an inspection under this section and who presents appropriate credentials. Any person who refuses entry or access to a person conducting an inspection or obstructs, hampers, or interferes with any such person while that person is in the process of carrying out official duties shall, notwithstanding G.S. 15A-1340.23, be guilty of a Class 1 misdemeanor punishable by imprisonment not to exceed 90 days, or by a fine not to exceed five thousand dollars ($5,000), or both."

Section 2. This act is effective when it becomes law, except G.S. 143B-294(c), as enacted by Section 1 of this act, becomes effective December 1, 1997, and applies to offenses committed on or after that date.

H 999. SOIL & WATER COMMISSION/INSPECTIONS. *TO CLARIFY THE AUTHORITY OF THE SOIL AND WATER CONSERVATION COMMISSION TO CONDUCT INSPECTIONS.* Amends GS 143B-294 to authorize Comm'n to conduct inspections it considers necessary to carry out its duties. Inspections may be conducted by authorized representatives of Comm'n, who may enter at reasonable times on any property, public or private, to investigate compliance with Comm'n or Dep't of Environment, Health, and Natural Resources programs. Any person who refuses entry or access to person conducting inspection or obstructs, hampers, or interferes with any person while conducting official duties is guilty of class 1 misdemeanor and, despite GS 15A-1340.23, is punishable by imprisonment not to exceed 90 days or fine not to exceed $5,000, or both. Act is effective when it becomes law, but new criminal offense applies to acts committed on or after Dec. 1, 1997.

Intro. by Rogers.

Ref. to Agriculture GS 143B

DAILY BULLETIN 04/24/97

H 999. SOIL AND WATER COMMISSION/INSPECTIONS. Intro. 4/17/97. House amendment adopted 4/23/97 amends 1st edition, to make a technical correction.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H823-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 823
THIS IS A DRAFT 29-APR-97 11:54:29
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Removal/Resignation of Trustees. (Public)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROVISIONS FOR THE RESIGNATION, REMOVAL, AND RENUNCIATION OF TRUSTEES AND FOR THE APPOINTMENT OF SUCCESSOR TRUSTEES.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 36A of the General Statutes reads as rewritten:

"ARTICLE 3.

~~"Resignation, Removal, and Renunciation of Trustees.~~ "Trust Administration."

~~"§ 36A-22. Applicability of this Article.~~

~~(a) Except when otherwise provided by law, the term "trustee," as used in this Article, includes "trustees," "guardians," and other fiduciaries.~~

~~(b) The resignation, removal, and renunciation of personal representatives and collectors shall be governed by the provisions of Articles 5, 9, and 10 of Chapter 28A.~~

~~(c) The substitution of trustees in mortgages and deeds of trust shall be governed by the provisions of G.S. 45-10.~~

"§ 36A-22.1. Definitions.

As used in this Article:

(1) 'Beneficiary' means a person who has any present or future interest, vested or contingent, in a trust, including (i) the owner of an interest by assignment or other transfer and (ii) any person entitled to enforce a charitable trust.

(2) 'Fiduciary' includes personal representatives, guardians of the person, guardians of the estate, attorneys-in-fact, and trustees.

(3) 'Interested person' includes creditors, beneficiaries, and any others having a property right in or a claim against a trust estate which may be affected by the proceeding. The term also includes fiduciaries representing interested persons. The meaning of the term as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in a particular proceeding.

(4) 'Person' means an individual person, a corporation, an organization, or other legal entity.

(5) 'Trust' includes any express trust, private or charitable, with additions to the trust, wherever and however created. The term also includes a trust created for or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term does not include other constructive trusts, resulting trusts, conservatorships, personal representatives, trust accounts as defined in G.S. 53-146.2, 54-109.57, and 54B-129, custodial arrangements pursuant to G.S. 33A-1 through G.S. 33A-24 and G.S. 33B-1 through G.S. 33B-22, business trust providing for certificates to be issued t

beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or any arrangement under which a person is nominee or escrowee for another.

(6) 'Trustee' includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court. The term does not include trustees in mortgages and deeds of trust. Substitution of trustees in mortgages and deeds of trust are governed by the provisions of G.S. 45-10.

~~"§ 36A-23. Clerk's power to accept resignations.~~

~~The clerks of superior courts of this State have power and jurisdiction to accept the resignation of trustees and to appoint their successors in the manner provided by this Article.~~

"§ 36A-23.1. Court; jurisdiction of trusts.

(a) The clerks of superior court of this State have original jurisdiction over proceedings initiated by interested persons concerning the internal affairs of trusts. Except as provided in subsection (b) of this section, the clerk's jurisdiction is exclusive. Proceedings that may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

(1) To appoint or remove a trustee;

(2) To review trustees' fees and review and settle interim or final accounts; and

(3) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, and to determine the existence or nonexistence of any immunity, power, privilege, duty, or right. The clerk and all interested persons may agree that a proceeding to determine an issue listed in this subdivision shall be originally heard by the superior court.

(b) Nothing in this section affects the right of a person to file an action for declaratory relief under the provisions of Article 26 of Chapter 1 of the General Statutes, and jurisdiction granted to the clerk under this section is concurrent with that of the court under that Article.

(c) To the extent that the procedures in this Article for proceedings before the clerk concerning the administration of trusts conflict with the procedures for other special proceedings heard by the clerk, the provisions of this Article control.

(d) A proceeding under this section does not result in continuing supervisory proceedings.

(e) The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustees' fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously, consistent with the terms of the trust, free of judicial intervention and without order, approval, or other action of any court, subject to the jurisdiction of the clerk as invoked by interested parties or as otherwise exercised as provided by law. Nothing in this section shall be construed (i) to confer upon the clerk any authority to regulate or supervise the actions of a trustee except to the extent that the trustee's actions are inconsistent with the provisions of the governing instrument or of State law, or (ii) to confer upon any interested person any additional right, remedy, or cause of action not otherwise conferred by law.

~~"§ 36A-24. Petition; contents and verification.~~

~~When any trustee desires to resign his trust, he shall file his petition in the office of the clerk of superior court of the county in which he qualified or in which the instrument under which he claims is registered. The petition shall set forth all the facts in connection with the appointment and qualifications as such trustee, with a copy of the instrument under which he acts; shall state the names, ages, and residences of all the beneficiaries and other parties interested in the trust estate; shall contain a full and complete statement of all debts or liabilities due by the estate, and a full and complete statement of all assets belonging to said estate, and a full and complete statement of all moneys, securities, or assets in the hands of the trustee and due the estate, together with a full statement of~~

~~the reasons the applicant should be permitted to resign his trust. The petition shall be verified by the oath of the applicant.~~

"§ 36A-24.1. Trust proceedings; venue.

(a) If the trustee is required to account to the clerk, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1 involving trusts is the place where the accountings are filed.

(b) If the trustee is not required to account to the clerk, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1 involving trusts is in any county of this State in which the trust has its principal place of administration or where any beneficiary resides. Unless otherwise designated in the governing instrument, the principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if the trustee has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the governing instrument, is:

(1) The usual place of business of the corporate trustee if there is but one corporate cotrustee;

(2) The usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate trustee; or

(3) The usual place of business or residence of any of the cotrustees as agreed upon by the cotrustees.

~~"§ 36A-25. Parties; hearing; successor appointed.~~

~~Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the trustee as plaintiff and the beneficiaries as defendants, and shall issue the summons for the defendants, and the procedure shall be the same as in other special proceedings. If any of the defendants be nonresidents, summons may be served by publication; and if any be infants, a guardian ad litem must be appointed by the court to represent their interests in the manner now provided by law. The beneficiaries, creditors, or any other person interested in the trust estate, have the right to answer the petition and to offer evidence why the prayer of the petition should not be granted.~~

~~The clerk shall then proceed to hear and determine the matter, and if it appears to the court that the best interests of the creditors and the beneficiaries demand that the resignation of the trustee be accepted, or if it appears to the court that sufficient reasons exist for allowing the resignation, and that the resignation can be allowed without prejudice to the rights of creditors or the beneficiaries, the clerk may, in the exercise of his discretion, allow the applicant to resign; and in such case the clerk shall proceed to appoint the successor of the petitioner in the manner provided in this Article.~~

"§ 36A-25.1. Trust proceedings; dismissal of matters relating to foreign trusts.

The clerk of superior court shall not, over the objection of a party, entertain proceedings under G.S. 36A-23.1 involving a trust having its principal place of administration in another state, except:

(1) When all appropriate parties could not be bound by litigation in the courts of the state where the trust has its principal place of administration; or

(2) When the interests of justice otherwise would be seriously impaired.

The clerk may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust has its principal place of administration, or the clerk may grant a continuance or enter any other appropriate order.

~~"§ 36A-26. Resignation allowed; costs; judge's approval.~~

~~In making an order allowing the trustee to resign, the clerk shall make such order concerning the costs of the proceedings and commissions to the trustee as may be just. If there is no appeal from the decision and order of the clerk within the time prescribed by law, the proceedings shall be submitted to the judge of the superior court and approved by him before the same shall become effective.~~

"§ 36A-26.1. Concurrent jurisdiction of clerk of court over litigation involving trusts and third parties.

The clerk of superior court has concurrent jurisdiction with other courts of this State over actions and proceedings to determine the existence or nonexistence of trusts created other than by will, of actions by or against creditors or debtors o

trusts, and of other actions and proceedings involving trustees and third parties. Venue is determined by the rules generally applicable to civil actions.

"§ 36A-26.2. Trust proceedings; necessary parties.

Proceedings under G.S. 36A-23.1 and proceedings under G.S. 36A-26.1, if brought before the clerk, are initiated by filing a petition in the office of the clerk of superior court. Upon the filing of the petition, the clerk shall docket the cause as a special proceeding. The clerk shall issue summons which shall notify the defendant or defendants to appear and answer the petition within 10 days after its service. The summons must contain a notice stating that if the defendant or defendants fail to answer the petition within the time specified, the plaintiff or plaintiffs will apply to the court for the relief demanded in the petition. The manner of service shall be as is prescribed by Rule 4 of the Rules of Civil Procedure. All remaining procedures shall be governed by the Rules of Civil Procedure, except as otherwise provided in special proceedings.

"§ 36A-26.3. Waiver of notice.

An interested person, or a person representing an interested person as provided in G.S. 36A-26.4, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding.

"§ 36A-26.4. When parties represented by others.

In proceedings involving trusts, the following rules apply:

(1) Interests to be affected shall be described in pleadings that give reasonable information to interested persons by name or class, by reference to the instrument creating the interests, or in some other appropriate manner.

(2) Interested persons shall be represented by others in the following cases:

a. The sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, shall represent other persons to the extent that their interests, as objects, takers in default, or otherwise, are subject to the power.

b. To the extent that there is no conflict of interest between the interested person and the person representing the interested person, or among persons represented, a guardian of the estate shall represent the person whose estate the guardian controls; a guardian of the person shall represent the ward if no guardian of the ward's estate has been appointed; a trustee shall represent beneficiaries of the trust in proceedings to probate a will establishing or adding to the trust, to review the acts or accounts of a prior fiduciary, and in other proceedings involving creditors or other third parties; and a personal representative shall represent persons interested in the undistributed assets of the decedent's estate in actions or proceedings by or against the estate. If there is n conflict of interest and no guardian of th estate or guardian of the person has been appointed, a parent shall represent a minor child.

c. At any point in a proceeding, a clerk may allow an attorney-in-fact to represent the attorney-in-fact's principal, provided that, if the principal is incapacitated, the power of attorney is durable as defined in G.S. 32A-8, and provided that the power of attorney grants to the attorney-in-fact either (i) the authority to do, execute, or perform any act that the principal might or could do or otherwise evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property; (ii) the powers described under G.S. 32A-2(2) and G.S. 32A-2(8) and, if interests in real property are affected, the powers described in G.S. 32A-2(1); or (iii) other direct or indirec

authority the clerk deems sufficient in the clerk's discretion.

(3) At any point in the proceeding, the clerk may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity is unknown, if the clerk determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The clerk shall set forth the clerk's reasons for appointing a guardian ad litem as a part of the record of the proceedings.

(4) An order binding a person who represents an interested person binds the interested person.

"**§ 36A-27. Appeal; stay effected by appeal.**

Any party in interest may appeal from the decision of the clerk to the ~~judge at chambers,~~ superior court. ~~and in such event the procedure shall be the same as in other special proceedings as now provided by law.~~ If ~~the clerk allows the resignation, and~~ an appeal is taken from ~~his decision,~~ the decision of the clerk, such appeal shall ~~have the effect to~~ stay the judgment and order of the clerk until the cause is heard and determined by the ~~judge~~ superior court upon the appeal taken. To the extent that the procedure for an appeal from an order of the clerk concerning administration of a trust provided under this Article conflicts with the procedure for appeal from orders of the clerk in other matters, the provisions of this Article control.

"**§ 36A-28. On appeal judge determines facts.**

Upon an appeal taken from the clerk to the ~~judge,~~ superior court, the judge shall have the power to review the findings of fact made by the clerk and to find the facts or to take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the appellate division.

"**§ 36A-29. Final accounting before resignation.**

~~No~~ If the trustee is required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, no trustee shall be ~~allowed or~~ permitted to resign ~~his trust~~ as trustee until ~~he shall first file with the~~

~~court his~~ a final account of the trust ~~estate,~~ estate is filed with the clerk, and until the court shall be satisfied that the ~~said~~ account is true and correct.

~~"§ 36A-30. Resignation effective on settlement with successor.~~

~~In case the resignation of the trustee is accepted by the court, the resignation shall not release or discharge the trustee from liability, until he shall have filed an account acceptable to his successor in full for all moneys, securities, property, or other assets or things of value in his possession or under his control or which should be in his possession or under his control belonging to the trust estate, and such account has been approved by the court.~~

"§ 36A-30.1. Limitations on proceedings by beneficiaries against trustees.

Unless previously barred by adjudication, consent, or limitation, any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the claim is commenced within one year after receipt of the final account or statement. In any event, and notwithstanding the trustee's failure to make full disclosure, a beneficiary's claim for breach of trust is barred three years from the date upon which the beneficiary received a final account or statement issued by the trustee and the trustee informed the beneficiary of the location and availability of records for the beneficiary's examination. A beneficiary is deemed to have received a final account or statement if an adult beneficiary receives the account or statement personally and if the representative of a minor or disabled beneficiary as described in G.S. 36A-26.4 receives the account or statement.

"§ 36A-31. ~~Court to appoint successor; when~~ When bond required.

~~If the court shall allow any trustee to resign his trust upon compliance with the provisions of this Article, it shall be the duty of the court to proceed to appoint some fit and suitable person as the successor of such trustee; and the court shall require the person so appointed to give bond with sufficient surety, approved by the court,~~ A trustee need not provide bond to secure performance of the trustee's duties unless required by th

terms of the governing instrument, or found by the clerk to be necessary to protect the interests of beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. However, in no event shall bond be required if the governing instrument directs otherwise. On petition of the trustee or other interested person, the clerk may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If bond is required, it shall be in a sum double the value of the personal property to come into ~~his~~ the trustee's hands when bond is executed by a personal ~~surety~~ surety, and in an amount not less than one and one-fourth times the value of all personal property of the ~~decedent~~ trust estate when the bond is secured by a suretyship bond executed by a corporate surety company authorized by the Commissioner of Insurance to do business in this State, provided that the clerk of superior court, when the value of the personal property exceeds one hundred thousand dollars ($100,000), may accept bond in an amount equal to the value of the personal property plus ten percent (10%) thereof, conditioned upon the faithful performance of ~~his~~ the trustee's duties ~~as such trustee~~ and for the payment to the persons entitled to receive ~~the same of~~ all moneys, assets, or other things of value which may come into ~~his hands; provided, that where by the terms of the creating instrument the trustee who has resigned was not required to give bond and did not give bond and an intent is expressed in the creating instrument that a successor trustee shall serve without bond, or where the clerk, upon due investigation finds that bond is not necessary for the protection of the estate, the clerk, with the approval of the judge, upon the petition of any party in interest, may waive the requirement of a bond for the successor trustee and permit said successor trustee to serve without bond.~~ the trustee's hands. All bonds executed under the provisions of this Article shall be filed with the clerk.

"§ 36A-32. Rights and duties devolve on successor.

~~Upon the acceptance by the court of the resignation of any trustee, and upon the appointment by the court of his successor in the manner provided by this Article, the~~ A successor trustee shall succeed to all the rights, powers, and privileges, and shall be subject to all the duties, liabilities, and

responsibilities that were imposed upon the original trustee unless a contrary intent appears from the ~~creating~~ governing instrument.

"~~§~~ 36A-33. Appointment of ~~successors to deceased or incapacitated trustees.~~ successor trustee on clerk's own motion.

~~Upon the death or incapacity of a trustee, a new trustee may be appointed on application by any beneficiary, or other interested persons, by petition to the clerk of the superior court of the county in which the instrument under which the deceased or incapacitated trustee claimed is registered, making all necessary parties defendants. The clerk shall docket the cause as a special proceeding and issue summons for the defendants, and the procedure shall be the same as in other special proceedings. If any of the defendants be nonresidents, summons may be served by publication; and if any be infants, a guardian ad litem must be appointed. The beneficiaries, creditors, or any other persons interested in the trust estate shall have the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. After hearing the matter, the clerk may appoint the person so named in the petition, or he may appoint some other fit and suitable person or corporation to act as the successor of the deceased or incapacitated trustee; and the clerk shall require the person so appointed to give bond as required in G.S. 36A-31; provided, that where by the terms of the instrument upon which the deceased or incapacitated trustee claimed, said trustee was not required to give bond and did not give bond and an intent is expressed in the creating instrument that a successor trustee shall serve without bond, or where the clerk upon due investigation, finds that bond is not necessary for the protection of the estate, the requirement of a bond for the successor trustee may be waived as provided in G.S. 36A-31. Any party in interest may appeal from the decision of the clerk as provided in G.S. 36A-27 and 36A-28.~~

~~Nothing~~ Unless the governing instrument provides otherwise, if the trustee is required to account to the clerk of court, nothing in this ~~section~~ Article shall be construed to limit the authority of the clerk ~~of superior court~~ to appoint a successor trustee to a deceased or incapacitated trustee upon ~~his~~ the clerk's own motion.

~~"§ 36A-34. Testamentary trustee may renounce.~~

~~(a) Any person or corporation named as trustee in any will admitted to probate in this State, or any substitute trustee, may at any time prior to qualifying as required by G.S. 36A-107 or taking any action as trustee if such qualification is not required, and whether or not such person or corporation is entitled to so qualify or act, renounce such trusteeship by a writing filed with the clerk of superior court of the county in which the will is admitted to probate. Upon receipt of such renunciation the clerk shall give notice thereof to all persons interested in the trust, including successor or substitute trustees named in the will, which notice shall also comply with the requirements of subsection (e) of this section.~~

~~(b) If the will names or identifies a substitute trustee in case of renunciation, the provisions of the will shall be complied with, and the clerk shall enter an appropriate order appointing the substitute trustee in accordance therewith unless the substitute trustee also renounces. A substitute trustee so named shall succeed to the office of trustee upon the date of the order of appointment by the clerk unless the will provides otherwise.~~

~~(c) If the will does not name or identify a substitute trustee in case of renunciation, and it appears that a substitute trustee should be appointed, the clerk shall appoint some fit and suitable person or corporation as substitute trustee. If the will does not name or identify a substitute trustee, but contains provisions regarding the selection of a substitute trustee, such provisions shall be complied with unless the clerk determines that such provisions would result in the selection of an unfit or unsuitable trustee. A substitute trustee so appointed shall succeed to the office of trustee upon the date of the order of appointment unless the will provides otherwise.~~

~~(d) A substitute trustee shall, upon succeeding to the office of trustee, unless the will provides otherwise, have such powers and duties and be vested with the title to the property included in the trust, as if the substitute trustee had been originally named in the will.~~

~~(e) Each notice required by this section shall be written notice, and shall identify the proceeding and apprise the person to be notified of the nature of the action to be taken. Service of such notice may be in the same manner as is provided for~~

~~service of notice in civil actions, or by mailing the notice to the person to be notified at his last known address. Service of notice must be completed not less than 10 days prior to the date the hearing is held or the action is taken. Service by mail shall be complete upon deposit of the notice enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Post Office Department.~~

~~(f) The clerk of superior court shall file, docket, and index all proceedings pursuant to this section in the same manner as special proceedings, and shall also enter with the will a notation that the trustee has renounced and a reference to the file, or other place where the record may be found.~~

~~"§ 36A-35. Removal of trustee.~~

~~Any beneficiary, cotrustee or other person interested in the trust estate may file a petition in the office of the clerk of superior court of the county having jurisdiction over the administration of the trust for the removal of a trustee or cotrustee who fails to comply with the requirements of this Chapter or a court order, or who is otherwise unsuitable to continue in office. Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the petitioner as plaintiff. All known beneficiaries, trustees, or cotrustees not joined as plaintiffs shall be joined as defendants. Upon proper notice and hearing, the clerk may, in the exercise of his discretion, order the removal of the trustee or cotrustee and proceed to appoint a successor. The procedure for notice, hearing, appeals, and the effective date of the order, shall be in accord with that provided for in the case of a resignation of a trustee and the appointment of a successor in G.S. 36A-24 through 36A-32.~~

~~Nothing in this section shall be construed to limit the authority of the clerk of superior court to remove a trustee or cotrustee for failure to comply with the requirements of this Chapter or a court order, or who is otherwise unsuitable to continue in office.~~

"§ 36A-36. Appointment of special trustee.

If it appears necessary to the protection of the trust estate, the clerk of superior court having jurisdiction ~~of~~ over the administration of the trust may appoint a special trustee until

successor trustee can be appointed or, where a trust has terminated, to distribute the assets. A special trustee may be appointed without notice and may be removed whenever the court so orders. The special trustee shall give such bond, if any, as the court may require and shall have the powers conferred by the order of appointment.

"§ 36A-37. Consolidation, merger, reorganization, reincorporation, or transfer of assets and liabilities by a corporate trustee.

Whenever any corporate trustee doing business in this State shall consolidate or merge with or shall sell to and transfer its assets and liabilities to any other corporation, or where such corporate trustee is in any manner reorganized or ~~reincorporated~~ reincorporated, all existing rights, powers, duties, and liabilities of such consolidating, merging, transferring, reorganizing or reincorporating corporation as trustee shall, upon the effective date of such consolidation, merger, reorganization or reincorporation, or sale and transfer, vest in and devolve upon the transferee corporation or the consolidated, merged, reorganized or reincorporated corporation in the manner prescribed in G.S. 53-17.

~~"§ 36A-38. Powers of successor trustee.~~

~~Unless otherwise provided in the creating instrument, all powers conferred upon the trustee by such instrument attached to the office, as provided in G.S. 36A-72, and are exercisable by the trustee from time to time holding the office.~~

"§ 36A-39. Powers of cotrustees.

Unless otherwise provided in the ~~creating~~ governing instrument, if one of several trustees dies, resigns, or is removed, the remaining trustees shall have all rights, title, and powers of all the original trustees. If the ~~creating~~ governing instrument manifests an intent that a successor trustee be appointed to fill a vacancy, the remaining trustees may exercise the powers of all the original trustees until such time as a successor is ~~appointed.~~ appointed, except those powers which the remaining trustees are prohibited from exercising under the governing instrument or by law.

"§ 36A-40. Vesting of title.

A special or successor trustee is vested with the title of the ~~original~~ predecessor trustee. A predecessor trustee ~~who resigns,~~

~~is removed, or is otherwise severed from his office~~ shall execute such documents transferring title to trust property as may be appropriate to facilitate administration of the trust and upon ~~his~~ the predecessor trustee's failure to do so, the clerk may order ~~him~~ the predecessor trustee to execute such documents, or the clerk may ~~himself~~ transfer title.

~~"§ 36A-41. Applicability.~~

~~The provisions of this Article shall not apply to proceedings begun before January 1, 1978.~~

"**§§ 36A-42 through 36A-46:** Reserved for future codification purposes."

Section 2. This act becomes effective Ocotber 1, 1997, and applies to all trustees covered by the provisions of Article 36A of the General Statutes, whether administering trusts established before or after that date.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **April 30, 1997 7:30 A.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BILL SCOGGIN	NCBA
K Eudy	Capitol Strategies
Teri Saylor	NC Press Association
Tom Keith	NC Conference of District Attorneys
Brian McGinn	Attorney General's Office
Rodney Bush	M.A.M.
Ginger Bush	M.A.M.
John Macmillan	Manning, Fulton & Skinner PA
PETER GILCHRIST	D.S. Conference of DA's

JUDICIARY II COMMITTEE

April 30, 1997

The North Carolina House of Representatives Judiciary II Committee met on April 30, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Bowie, Cansler, Creech, Culpepper, Gardner, Goodwin, Hackney, Howard, McMahan, Nesbitt, Redwine, Shubert, Weatherly and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-823 REMOVAL/RESIGNATION OF TRUSTEES
HB-949 IMPROVE CHILD PROTECTION/RECORDS
HB-999 SOIL AND WATER COMMISSION/INSPECTIONS
HB-1059 CAMA/URBAN WATERFRONT REDEVELOPMENT

Representative Culpepper reviewed HB-823 and answered questions of committee members. Representative Baddour moved for a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

Representative Rogers was recognized to present a proposed committee substitute for HB-999 and answer questions of committee members. Representative Bowie moved the proposed committee substitute be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute is attached.

Mr. Tim Hovis, Committee Counsel, explained the proposed committee substitute and answered questions of committee members.

Representative Kiser moved for a favorable report as to committee substitute bill, unfavorable as to original bill; motion passed.

Representative Wright was recognized to explain HB-1059 and answer questions of committee members. A copy of the bill is attached.

Representative Redwine moved for a favorable report; motion passed.

Representative Gardner was recognized to present a proposed committee substitute for HB-949 and answer questions of committee members. Representative Culpepper moved the proposed committee substitute be adopted for purpose of discussion; motion passed.

Representative Gardner provided members with a handout. A copy of the handout is attached.

Mr. Thomas V. Bennett, North Carolina Child Fatality Task Force, and Mr. Hugh Stevens, General Counsel, North Carolina Press Association, answered questions of committee members.

Representative Nesbitt recommended an amendment appropriating funds of $100,000, and the bill be re-referred to a subcommittee.

No action was taken on HB-949.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 823 A BILL TO BE ENTITLED AN ACT TO AMEND THE PROVISIONS FOR THE RESIGNATION, REMOVAL, AND RENUNCIATION OF TRUSTEES AND FOR THE APPOINTMENT OF SUCESSOR TRUSTEES.

☐ 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. (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

H D

HOUSE BILL 823
Proposed Committee Substitute H823-PCS8213

Short Title: Removal/Resignation of Trustees. (Public)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROVISIONS FOR THE RESIGNATION, REMOVAL, AND RENUNCIATION OF TRUSTEES AND FOR THE APPOINTMENT OF SUCCESSOR TRUSTEES.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 36A of the General Statutes reads as rewritten:

"ARTICLE 3.

~~"Resignation, Removal, and Renunciation of Trustees.~~ "Trust Administration.

~~"§ 36A-22. Applicability of this Article.~~

~~(a) Except when otherwise provided by law, the term "trustee," as used in this Article, includes "trustees," "guardians," and other fiduciaries.~~

~~(b) The resignation, removal, and renunciation of personal representatives and collectors shall be governed by the provisions of Articles 5, 9, and 10 of Chapter 28A.~~

~~(c) The substitution of trustees in mortgages and deeds of trust shall be governed by the provisions of G.S. 45-10.~~

"§ 36A-22.1. Definitions.

As used in this Article:

(1) 'Beneficiary' means a person who has any present or future interest, vested or contingent, in a trust, including (i) the owner of an interest by assignment or other transfer and (ii) any person entitled to enforce a charitable trust.

(2) 'Fiduciary' includes personal representatives, guardians of the person, guardians of the estate, attorneys-in-fact, and trustees.

(3) 'Interested person' includes creditors, beneficiaries, and any others having a property right in or a claim against a trust estate which may be affected by the proceeding. The term also includes fiduciaries representing interested persons. The meaning of the term as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in a particular proceeding.

(4) 'Person' means an individual person, a corporation, an organization, or other legal entity.

(5) 'Trust' includes any express trust, private or charitable, with additions to the trust, wherever and however created. The term also includes a trust created for or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term does not include other constructive trusts, resulting trusts, conservatorships, personal representatives, trust accounts as defined in G.S. 53-146.2, 54-109.57, and 54B-129, custodial arrangements pursuant to G.S. 33A-1 through G.S. 33A-24 and G.S. 33B-1 through G.S. 33B-22, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, or any arrangement under which a person is nominee or escrowee for another.

(6) 'Trustee' includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court. The term does not include trustees in mortgages and deeds of trust. Substitution of trustees in mortgages and deeds of trust are governed by the provisions of G.S. 45-10.

~~"§ 36A-23. Clerk's power to accept resignations.~~

~~The clerks of superior courts of this State have power and jurisdiction to accept the resignation of trustees and to appoint their successors in the manner provided by this Article.~~

"§ 36A-23.1. Court; jurisdiction of trusts.

(a) The clerks of superior court of this State have original jurisdiction over proceedings initiated by interested persons concerning the internal affairs of trusts. Except as provided in subsection (b) of this section, the clerk's jurisdiction is exclusive. Proceedings that may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

(1) To appoint or remove a trustee;
(2) To review trustees' fees and review and settle interim or final accounts; and
(3) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, and to determine the existence or nonexistence of any immunity, power, privilege, duty, or right. The clerk and all interested persons may agree that a proceeding to determine an issue listed in this subdivision shall be originally heard by the superior court.

(b) Nothing in this section affects the right of a person to file an action for declaratory relief under the provisions of Article 26 of Chapter 1 of the General Statutes, and jurisdiction granted to the clerk under this section is concurrent with that of the court under that Article.

(c) To the extent that the procedures in this Article for proceedings before the clerk concerning the administration of trusts conflict with the procedures for other special proceedings heard by the clerk, the provisions of this Article control.

(d) A proceeding under this section does not result in continuing supervisory proceedings.

(e) The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustees' fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously, consistent with the terms of the trust, free of judicial intervention and without order, approval, or other action of any court, subject to the jurisdiction of the clerk as invoked by interested parties or as otherwise exercised as provided by law. Nothing in this section shall be construed (i) to confer upon the clerk any authority to regulate or supervise the actions of a trustee except to the extent that the trustee's actions are inconsistent with the provisions of the governing instrument or of State law, or (ii) to confer upon any interested person any additional right, remedy, or cause of action not otherwise conferred by law.

~~"§ 36A-24. Petition; contents and verification.~~

~~When any trustee desires to resign his trust, he shall file his petition in the office of the clerk of superior court of the county in which he qualified or in which the instrument under which he claims is registered. The petition shall set forth all the facts in connection with the appointment and qualifications as such trustee, with a copy of the instrument under which he acts; shall state the names, ages, and residences of all the beneficiaries and other parties interested in the trust estate; shall contain a full and complete statement of all debts or liabilities due by the estate, and a full and complete statement of all assets belonging to said estate, and a full and complete statement of all moneys, securities, or assets in the hands of the trustee and due the estate, together with a full statement of the reasons the applicant should be permitted to resign his trust. The petition shall be verified by the oath of the applicant.~~

"§ 36A-24.1. Trust proceedings; venue.

(a) If the trustee is required to account to the clerk, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1 involving trusts is the place where the accountings are filed.

(b) If the trustee is not required to account to the clerk, then unless the terms of the governing instrument provide otherwise, venue for proceedings under G.S. 36A-23.1 involving trusts is in any county of this State in which the trust has its principal place of administration or where any beneficiary resides. Unless otherwise designated in the governing instrument, the principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if the trustee has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the governing instrument, is:

(1) The usual place of business of the corporate trustee if there is but one corporate cotrustee;

(2) The usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate trustee; or

(3) The usual place of business or residence of any of the cotrustees as agreed upon by the cotrustees.

~~"§ 36A-25. Parties; hearing; successor appointed.~~

~~Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the trustee as plaintiff and the beneficiaries as defendants, and shall issue the summons for the defendants, and the procedure shall be the same as in other special proceedings. If any of the defendants be nonresidents, summons may be served by publication; and if any be infants, a guardian ad litem must be appointed by the court to represent their interests in the manner now provided by law. The beneficiaries, creditors, or any other person interested in the trust estate, have the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. The clerk shall then proceed to hear and determine the matter, and if it appears to the court that the best interests of the creditors and the beneficiaries demand that the resignation of the trustee be accepted, or if it appears to the court that sufficient reasons exist for allowing the resignation, and that the resignation can be allowed without prejudice to the rights of creditors or the beneficiaries, the clerk may, in the exercise of his discretion, allow the applicant to resign; and in such case the clerk shall proceed to appoint the successor of the petitioner in the manner provided in this Article.~~

"§ 36A-25.1. Trust proceedings; dismissal of matters relating to foreign trusts.

The clerk of superior court shall not, over the objection of a party, entertain proceedings under G.S. 36A-23.1 involving a trust having its principal place of administration in another state, except:

(1) When all appropriate parties could not be bound by litigation in the courts of the state where the trust has its principal place of administration; or

(2) When the interests of justice otherwise would be seriously impaired.

The clerk may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust has its principal place of administration, or the clerk may grant a continuance or enter any other appropriate order.

~~"§ 36A-26. Resignation allowed; costs; judge's approval.~~

~~In making an order allowing the trustee to resign, the clerk shall make such order concerning the costs of the proceedings and commissions to the trustee as may be just. If there is no appeal from the decision and order of the clerk within the time prescribed by law, the proceedings shall be submitted to the judge of the superior court and approved by him before the same shall become effective.~~

"§ 36A-26.1. Concurrent jurisdiction of clerk of court over litigation involving trusts and third parties.

The clerk of superior court has concurrent jurisdiction with other courts of this State over actions and proceedings to determine the existence or nonexistence of trusts created other than by will, of actions by or against creditors or debtors of trusts, and of other actions and proceedings involving trustees and third parties. Venue is determined by the rules generally applicable to civil actions.

"§ 36A-26.2. Trust proceedings; necessary parties.

Proceedings under G.S. 36A-23.1 and proceedings under G.S. 36A-26.1, if brought before the clerk, are initiated by filing a petition in the office of the clerk of superior court. Upon the filing of the petition, the clerk shall docket the cause as a special proceeding. The clerk shall issue summons which shall notify the defendant or defendants to appear and answer the petition within 10 days after its service. The summons must contain a notice stating that if the defendant or defendants fail to answer the petition within the time specified, the plaintiff or plaintiffs will apply to the court for the relief demanded in the petition. The manner of service shall be as is prescribed by Rule 4 of the Rules of Civil Procedure. All remaining procedures shall be governed by the Rules of Civil Procedure, except as otherwise provided in special proceedings.

"§ 36A-26.3. Waiver of notice.

An interested person, or a person representing an interested person as provided in G.S. 36A-26.4, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding.

"§ 36A-26.4. When parties represented by others.

In proceedings involving trusts, the following rules apply:

(1) Interests to be affected shall be described in pleadings that give reasonable information to interested persons by name or class, by reference to the instrument creating the interests, or in some other appropriate manner.

(2) Interested persons shall be represented by others in the following cases:

a. The sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, shall represent other persons to the extent that their interests, as objects, takers in default, or otherwise, are subject to the power.

b. To the extent that there is no conflict of interest between the interested person and the person representing the interested person, or among persons represented, a guardian of the estate shall represent the person whose estate the guardian controls; a guardian of the person shall represent the ward if no guardian of the ward's estate has been appointed; a trustee shall represent beneficiaries of the trust in proceedings to probate a will establishing or adding to the trust, to review the acts or accounts of a prior fiduciary, and in other proceedings involving creditors or other third parties; and a personal representative shall represent persons interested in the undistributed assets of the decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no guardian of the estate or guardian of the person has been appointed, a parent shall represent a minor child.

c. At any point in a proceeding, a clerk may allow an attorney-in-fact to represent the attorney-in-fact's principal, provided that, if the principal is incapacitated, the power of attorney is durable as defined in G.S. 32A-8, and provided that the power of attorney grants to the attorney-in-fact either (i) the authority to do, execute, or perform any act that the principal might or could do or otherwise evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property; (ii) the powers described under G.S. 32A-2(2) and G.S. 32A-2(8) and, if interests in real property are affected, the powers described in G.S. 32A-2(1); or (iii) other direct or indirect authority the clerk deems sufficient in the clerk's discretion.

(3) At any point in the proceeding, the clerk may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity is unknown, if the clerk determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The clerk shall set forth the clerk's reasons

for appointing a guardian ad litem as a part of the record of the proceedings.

(4) An order binding a person who represents an interested person binds the interested person.

"§ 36A-27. Appeal; stay effected by appeal.

Any party in interest may appeal from the decision of the clerk to the ~~judge at chambers,~~ superior court. ~~and in such event the procedure shall be the same as in other special proceedings as now provided by law.~~ If ~~the clerk allows the resignation, and~~ an appeal is taken from ~~his decision,~~ the decision of the clerk, such appeal shall ~~have the effect to~~ stay the judgment and order of the clerk until the cause is heard and determined by the ~~judge~~ superior court upon the appeal taken. To the extent that the procedure for an appeal from an order of the clerk concerning administration of a trust provided under this Article conflicts with the procedure for appeal from orders of the clerk in other matters, the provisions of this Article control.

"§ 36A-28. On appeal judge determines facts.

Upon an appeal taken from the clerk to the ~~judge,~~ superior court, the judge shall have the power to review the findings of fact made by the clerk and to find the facts or to take other evidence, but the facts found by the judge shall be final and conclusive upon any appeal to the appellate division.

"§ 36A-29. Final accounting before resignation.

~~No~~ If the trustee is required to account to the clerk of superior court, then unless the terms of the governing instrument provide otherwise, no trustee shall be ~~allowed or~~ permitted to resign ~~his trust~~ as trustee until ~~he shall first file with the court his~~ a final account of the trust ~~estate,~~ estate is filed with the clerk, and until the court shall be satisfied that the ~~said~~ account is true and correct.

~~**"§ 36A-30. Resignation effective on settlement with successor.**~~

~~In case the resignation of the trustee is accepted by the court, the resignation shall not release or discharge the trustee from liability, until he shall have filed an account acceptable to his successor in full for all moneys, securities, property, or other assets or things of value in his possession or under his control or which should be in his possession or under his control belonging to the trust estate, and such account has been approved by the court.~~

"§ 36A-30.1. Limitations on proceedings by beneficiaries against trustees.

Unless previously barred by adjudication, consent, or limitation, any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the claim is commenced within one year after receipt of the final account or statement. In any event, and notwithstanding the trustee's failure to make full disclosure, a beneficiary's claim for breach of trust is barred three years from the date upon which the beneficiary received a final account or statement issued by the trustee, and the trustee informed the beneficiary of the location and availability of records for the beneficiary's examination. A beneficiary is deemed to have received a final account or statement if an adult beneficiary receives the account or statement

personally and if the representative of a minor or disabled beneficiary as described in G.S. 36A-26.4 receives the account or statement.

"**§ 36A-31. ~~Court to appoint successor; when~~ When bond required.**

~~If the court shall allow any trustee to resign his trust upon compliance with the provisions of this Article, it shall be the duty of the court to proceed to appoint some fit and suitable person as the successor of such trustee; and the court shall require the person so appointed to give bond with sufficient surety, approved by the court,~~ A trustee need not provide bond to secure performance of the trustee's duties unless required by the terms of the governing instrument, or found by the clerk to be necessary to protect the interests of beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. However, in no event shall bond be required if the governing instrument directs otherwise. On petition of the trustee or other interested person, the clerk may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If bond is required, it shall be in a sum double the value of the personal property to come into ~~his~~ the trustee's hands when bond is executed by a personal ~~surety~~ surety, and in an amount not less than one and one-fourth times the value of all personal property of the ~~decedent~~ trust estate when the bond is secured by a suretyship bond executed by a corporate surety company authorized by the Commissioner of Insurance to do business in this State, provided that the clerk of superior court, when the value of the personal property exceeds one hundred thousand dollars ($100,000), may accept bond in an amount equal to the value of the personal property plus ten percent (10%) thereof, conditioned upon the faithful performance of ~~his~~ the trustee's duties ~~as such trustee~~ and for the payment to the persons entitled to receive ~~the same of~~ all moneys, assets, or other things of value which may come into ~~his hands; provided, that where by the terms of the creating instrument the trustee who has resigned was not required to give bond and did not give bond and an intent is expressed in the creating instrument that a successor trustee shall serve without bond, or where the clerk, upon due investigation finds that bond is not necessary for the protection of the estate, the clerk, with the approval of the judge, upon the petition of any party in interest, may waive the requirement of a bond for the successor trustee and permit said successor trustee to serve without bond.~~ the trustee's hands. All bonds executed under the provisions of this Article shall be filed with the clerk.

"**§ 36A-32. Rights and duties devolve on successor.**

~~Upon the acceptance by the court of the resignation of any trustee, and upon the appointment by the court of his successor in the manner provided by this Article, the~~ A successor trustee shall succeed to all the rights, powers, and privileges, and shall be subject to all the duties, liabilities, and responsibilities that were imposed upon the original trustee unless a contrary intent appears from the ~~creating~~ governing instrument.

"**§ 36A-33. Appointment of ~~successors to deceased or incapacitated trustees.~~ successor trustee on clerk's own motion.**

~~Upon the death or incapacity of a trustee, a new trustee may be appointed on application by any beneficiary, or other interested persons, by petition to the clerk of the superior court of the county in which the instrument under which the deceased or incapacitated trustee claimed is registered, making all necessary parties defendants. The clerk shall docket the cause as a special proceeding and issue summons for the defendants, and the procedure shall be the same as in other special proceedings. If any of the defendants be nonresidents, summons may be served by publication; and if any be infants, a guardian ad litem must be appointed. The beneficiaries, creditors, or any other persons interested in the trust estate shall have the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. After hearing the matter, the clerk may appoint the person so named in the petition, or he may appoint some other fit and suitable person or corporation to act as the successor of the deceased or incapacitated trustee; and the clerk shall require the person so appointed to give bond as required in G.S. 36A-31; provided, that where by the terms of the instrument upon which the deceased or incapacitated trustee claimed, said trustee was not required to give bond and did not give bond and an intent is expressed in the creating instrument that a successor trustee shall serve without bond, or where the clerk upon due investigation, finds that bond is not necessary for the protection of the estate, the requirement of a bond for the successor trustee may be waived as provided in G.S. 36A-31. Any party in interest may appeal from the decision of the clerk as provided in G.S. 36A-27 and 36A-28.~~

~~Nothing~~ Unless the governing instrument provides otherwise, if the trustee is required to account to the clerk of court, nothing in this ~~section~~ Article shall be construed to limit the authority of the clerk ~~of superior court~~ to appoint a successor trustee to a deceased or incapacitated trustee upon ~~his~~ the clerk's own motion.

~~"§ 36A-34. Testamentary trustee may renounce.~~

~~(a) Any person or corporation named as trustee in any will admitted to probate in this State, or any substitute trustee, may at any time prior to qualifying as required by G.S. 36A-107 or taking any action as trustee if such qualification is not required, and whether or not such person or corporation is entitled to so qualify or act, renounce such trusteeship by a writing filed with the clerk of superior court of the county in which the will is admitted to probate. Upon receipt of such renunciation the clerk shall give notice thereof to all persons interested in the trust, including successor or substitute trustees named in the will, which notice shall also comply with the requirements of subsection (c) of this section.~~

~~(b) If the will names or identifies a substitute trustee in case of renunciation, the provisions of the will shall be complied with, and the clerk shall enter an appropriate order appointing the substitute trustee in accordance therewith unless the substitute trustee also renounces. A substitute trustee so named shall succeed to the office of trustee upon the date of the order of appointment by the clerk unless the will provides otherwise.~~

~~(c) If the will does not name or identify a substitute trustee in case of renunciation, and it appears that a substitute trustee should be appointed, the clerk shall appoint some fit and suitable person or corporation as substitute trustee. If the will does not~~

~~name or identify a substitute trustee, but contains provisions regarding the selection of a substitute trustee, such provisions shall be complied with unless the clerk determines that such provisions would result in the selection of an unfit or unsuitable trustee. A substitute trustee so appointed shall succeed to the office of trustee upon the date of the order of appointment unless the will provides otherwise.~~

~~(d) A substitute trustee shall, upon succeeding to the office of trustee, unless the will provides otherwise, have such powers and duties and be vested with the title to the property included in the trust, as if the substitute trustee had been originally named in the will.~~

~~(e) Each notice required by this section shall be written notice, and shall identify the proceeding and apprise the person to be notified of the nature of the action to be taken. Service of such notice may be in the same manner as is provided for service of notice in civil actions, or by mailing the notice to the person to be notified at his last known address. Service of notice must be completed not less than 10 days prior to the date the hearing is held or the action is taken. Service by mail shall be complete upon deposit of the notice enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Post Office Department.~~

~~(f) The clerk of superior court shall file, docket, and index all proceedings pursuant to this section in the same manner as special proceedings, and shall also enter with the will a notation that the trustee has renounced and a reference to the file, or other place where the record may be found.~~

~~"§ 36A-35. Removal of trustee.~~

~~Any beneficiary, cotrustee or other person interested in the trust estate may file a petition in the office of the clerk of superior court of the county having jurisdiction over the administration of the trust for the removal of a trustee or cotrustee who fails to comply with the requirements of this Chapter or a court order, or who is otherwise unsuitable to continue in office. Upon the filing of the petition, the clerk shall docket the cause as a special proceeding, with the petitioner as plaintiff. All known beneficiaries, trustees, or cotrustees not joined as plaintiffs shall be joined as defendants. Upon proper notice and hearing, the clerk may, in the exercise of his discretion, order the removal of the trustee or cotrustee and proceed to appoint a successor. The procedure for notice, hearing, appeals, and the effective date of the order, shall be in accord with that provided for in the case of a resignation of a trustee and the appointment of a successor in G.S. 36A-24 through 36A-32.~~

~~Nothing in this section shall be construed to limit the authority of the clerk of superior court to remove a trustee or cotrustee for failure to comply with the requirements of this Chapter or a court order, or who is otherwise unsuitable to continue in office.~~

"§ 36A-36. Appointment of special trustee.

If it appears necessary to the protection of the trust estate, the clerk of superior court having jurisdiction ~~of~~ over the administration of the trust may appoint a special trustee until a successor trustee can be appointed or, where a trust has terminated, to distribute the assets. A special trustee may be appointed without notice and may be

removed whenever the court so orders. The special trustee shall give such bond, if any, as the court may require and shall have the powers conferred by the order of appointment.

"§ 36A-37. Consolidation, merger, reorganization, reincorporation, or transfer of assets and liabilities by a corporate trustee.

Whenever any corporate trustee doing business in this State shall consolidate or merge with or shall sell to and transfer its assets and liabilities to any other corporation, or where such corporate trustee is in any manner reorganized or ~~reincorporated~~ reincorporated, all existing rights, powers, duties, and liabilities of such consolidating, merging, transferring, reorganizing or reincorporating corporation as trustee shall, upon the effective date of such consolidation, merger, reorganization or reincorporation, or sale and transfer, vest in and devolve upon the transferee corporation or the consolidated, merged, reorganized or reincorporated corporation in the manner prescribed in G.S. 53-17.

~~**"§ 36A-38. Powers of successor trustee.**~~

~~Unless otherwise provided in the creating instrument, all powers conferred upon the trustee by such instrument attached to the office, as provided in G.S. 36A-72, and are exercisable by the trustee from time to time holding the office.~~

"§ 36A-39. Powers of cotrustees.

Unless otherwise provided in the ~~creating~~ governing instrument, if one of several trustees dies, resigns, or is removed, the remaining trustees shall have all rights, title, and powers of all the original trustees. If the ~~creating~~ governing instrument manifests an intent that a successor trustee be appointed to fill a vacancy, the remaining trustees may exercise the powers of all the original trustees until such time as a successor is ~~appointed.~~ appointed, except those powers which the remaining trustees are prohibited from exercising under the governing instrument or by law.

"§ 36A-40. Vesting of title.

A special or successor trustee is vested with the title of the ~~original~~ predecessor trustee. A predecessor trustee ~~who resigns, is removed, or is otherwise severed from his office~~ shall execute such documents transferring title to trust property as may be appropriate to facilitate administration of the trust and upon ~~his~~ the predecessor trustee's failure to do so, the clerk may order ~~him~~ the predecessor trustee to execute such documents, or the clerk may ~~himself~~ transfer title.

~~**"§ 36A-41. Applicability.**~~

~~The provisions of this Article shall not apply to proceedings begun before January 1, 1978.~~

"§§ 36A-42 through 36A-46: Reserved for future codification purposes."

Section 2. This act becomes effective October 1, 1997, and applies to all trustees covered by the provisions of Article 36A of the General Statutes, whether administering trusts established before or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H999-PCSRG-002
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 999
THIS IS A DRAFT 30-APR-97 08:55:35
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Soil and Water Commission/Inspections. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF THE SOIL AND WATER CONSERVATION COMMISSION TO CONDUCT INSPECTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-294 reads as rewritten:

"**§ 143B-294. Soil and Water Conservation Commission -- creation; powers and ~~duties.~~ duties; compliance inspections.**

(a) There is hereby created the Soil and Water Conservation Commission of the Department of Environment, Health, and Natural Resources with the power and duty to adopt rules to be followed in the development and implementation of a soil and water conservation program.

(1) The Soil and Water Conservation Commission has all of the following powers and duties:

a. To approve petitions for soil conservation ~~districts;~~ districts.

b. To approve application for watershed ~~plans; and~~ plans.
c. Such other duties as specified in Chapter 139.
d. To conduct any inspections in accordance with subsection (b) of this section.

(2) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this Chapter heretofore adopted by the Soil and Water Conservation Committee shall remain in full force and effect unless and until repealed or superseded by action of the Soil and Water Conservation Commission. All rules adopted by the Commission shall be enforced by the Department of Environment, Health, and Natural Resources.

(b) Representatives of the Commission may with the consent of the owner enter upon and inspect property, public or private, at reasonable times for the purposes of investigating compliance with Commission or Department programs when such investigation is reasonably necessary to carry out the Commission's duties. If consent for entry is not obtained, an administrative search warrant shall be obtained pursuant to G.S. 15-27.2.

(c) Any person who willfully resists, delays, or obstructs an authorized representative of the Commission while that person is in the process of carrying out official duties shall, notwithstanding G.S. 15A-1340.23, be guilty of a Class 1 misdemeanor punishable by imprisonment not to exceed 90 days, or by a fine not to exceed five thousand dollars ($5,000), or both."

Section 2. This act is effective when it becomes law, except G.S. 143B-294(c), as enacted by Section 1 of 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 from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 999 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE AUTHORITY OF THE SOIL AND WATER CONSERVATION COMMISSION TO CONDUCT INSPECTIONS.

☐ 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. (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

H D

HOUSE BILL 999
Second Edition Engrossed 4/23/97
Proposed Committee Substitute H999-PCSA372

Short Title: Soil and Water Commission/Inspections. (Public)

Sponsors:

Referred to:

April 17, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF THE SOIL AND WATER CONSERVATION COMMISSION TO CONDUCT INSPECTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-294 reads as rewritten:

"**§ 143B-294. Soil and Water Conservation Commission -- creation; powers and ~~duties.~~ duties; compliance inspections.**

(a) There is hereby created the Soil and Water Conservation Commission of the Department of Environment, Health, and Natural Resources with the power and duty to adopt rules to be followed in the development and implementation of a soil and water conservation program.

(1) The Soil and Water Conservation Commission has all of the following powers and duties:

a. To approve petitions for soil conservation ~~districts;~~ districts.

b. To approve application for watershed ~~plans; and~~ plans.

c. Such other duties as specified in Chapter 139.

d. To conduct any inspections in accordance with subsection (b) of this section.

(2) The Commission shall adopt rules consistent with the provisions of this Chapter. All rules not inconsistent with the provisions of this Chapter heretofore adopted by the Soil and Water Conservation Committee shall remain in full force and effect unless and until

repealed or superseded by action of the Soil and Water Conservation Commission. All rules adopted by the Commission shall be enforced by the Department of Environment, Health, and Natural Resources.

(b) Representatives of the Commission may with the consent of the owner enter upon and inspect property, public or private, at reasonable times for the purposes of investigating compliance with Commission or Department programs when such investigation is reasonably necessary to carry out the Commission's duties. If consent for entry is not obtained, an administrative search warrant shall be obtained pursuant to G.S. 15-27.2.

(c) Any person who willfully resists, delays, or obstructs an authorized representative of the Commission while that person is in the process of carrying out official duties shall, notwithstanding G.S. 15A-1340.23, be guilty of a Class 1 misdemeanor punishable by imprisonment not to exceed 90 days, or by a fine not to exceed five thousand dollars ($5,000), or both."

Section 2. This act is effective when it becomes law, except G.S. 143B-294(c), as enacted by Section 1 of 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 2

HOUSE BILL 1059
Committee Substitute Favorable 4/28/97

Short Title: CAMA/Urban Waterfront Redevelop. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE COASTAL AREA MANAGEMENT ACT TO ALLOW CERTAIN TYPES OF REDEVELOPMENT WITHIN URBAN WATERFRONTS THAT HISTORICALLY HAVE A PATTERN OF URBAN-LEVEL DEVELOPMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-120.2. Permits for urban waterfront redevelopment in historically urban areas.**

(a) Notwithstanding any other provision of law, any person may apply to the Commission for a permit for major development granting permission to use the person's land for a nonwater dependent use that is otherwise prohibited by rules, standards, or limitations prescribed by the Commission, or orders issued by the Commission, pursuant to this Article. The procedure to apply for the permit shall be as provided by G.S. 113A-119.

(b) Notwithstanding G.S. 113A-120(a), the Commission may grant a permit for nonwater dependent development in public trust areas designated pursuant to G.S. 113A-113(b)(5) if the following criteria are met:

(1) The land is waterfront property located in a municipality.

(2) The land has a history of urban-level development as evidenced by any of the following:

a. The land is an historic place that is listed, or has been approved for listing by the North Carolina Historical Commission, in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966.

b. The land is an historical, archaeological, and other site owned, managed or assisted by the State of North Carolina pursuant to Chapter 121 of the General Statutes.

c. The land has a central business district zoning classification, or any other classification that may be designated as acceptable by the Commission.

(3) The proposed development is sponsored in part or in whole by the local jurisdiction in which the development would be located for the purpose of significantly increasing public access consistent with the Coastal Area Management guidelines.

(4) The municipality in which the activity would occur has determined that the development will not have a significant adverse impact on the environment.

(5) The development as requested is consistent with a local urban waterfront development plan, local development regulations, public access plans, and other applicable local authority.

(c) Except as otherwise provided by this section, all other provisions of this Article apply to a permit applied for under this section, including the provisions of G.S. 113A-120(b1) and (b2)."

Section 2. G.S. 113A-120(b1) reads as rewritten:

"(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this ~~section,~~ section or of G.S. 113A-120.2, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

(1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to any activity governed by this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article or with

other federal and State laws, regulations, and rules for the protection of the environment."

Section 3. This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

X Committee Substitute for
H.B. 1059 A BILL TO BE ENTITLED AN ACT TO AMEND THE COASTAL AREA MANAGEMENT ACT TO ALLOW CERTAIN TYPES OF REDEVELOPMENT WITHIN URBAN WATERFRONTS THAT HISTORICALLY HAVE A PATTERN OR URBAN-LEVEL DEVELOPMENT.

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. (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

H D

HOUSE BILL 949
Proposed Committee Substitute H949-CSSA-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Improve Child Protection/Records. (Public)

Sponsors:

Referred to: Human Resources, if favorable, Judiciary II.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPROVE CHILD PROTECTION BY REQUIRING BETTER INVESTIGATION OF CHILD FATALITIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 132 of the General Statutes is amended by adding the following new section to read:

"§ 132-1.5. Child fatality records.

(a) As used in this Section, 'child fatality cases' shall include cases in which a child dies as a result of suspected abuse or neglect and:

(1) An individual is criminally charged with the child's death; or

(2) The department of social services receives a report from the medical examiner, physician or other person, pursuant to G.S. 7A-543, that the child's death may have been the result of abuse or maltreatment.

(b) As used in this Section, 'records relating to child fatality cases' shall include records in the custody of any public agency that relate to the abuse or maltreatment of the child, or to the circumstances surrounding the child's death,

including but not limited to medical records, hospital records, records maintained by the State, any county or local agency, police investigations data, medical examiner investigative data, health records, mental health records, educational records and social services records.

(c) Notwithstanding any confidentiality requirement imposed by any other provision of law, records relating to child fatality cases shall be public records and may be withheld from public inspection and copying only if their confidentiality is maintained by order of a court of competent jurisdiction as provided in subsection (d). However, any information that would identify any person who has reported suspected abuse or maltreatment shall not be part of the public record.

(d) If a public agency receives a request to inspect records in its custody relating to a child fatality case, the agency shall, within 48 hours, give notice of the request to the district attorney in the district where the child died. If the district attorney determines that release of the records is reasonably likely to pose a threat to the mental health, physical health, or personal safety of a minor child residing in the deceased child's household, or to materially compromise a continuing or future criminal investigation or prosecution, the district attorney may, within five (5) days after receiving notice of the request, apply to a court of competent jurisdiction for an order maintaining the confidentiality of the information. If such application is made the district attorney shall have the burden of showing by clear and convincing evidence that disclosure of the information in question will cause mental or physical harm or danger to the family member, will jeopardize the ability of the State to prosecute a defendant or the right of a criminal defendant to a fair trial, or will undermine an ongoing or future criminal investigation. Applications pursuant to this subsection shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts. The requested records shall be withheld from public inspection and copying from the date of the request until the district attorney's time in which to file for an order to maintain confidentiality has expired or, if the district attorney has filed for such an order, until the court has issued a final ruling on the motion, whichever is later.

(e) Nothing in this section shall be construed to require a custodian of child fatality records to disclose any information that is confidential pursuant to the law of the United States."

Section 2. This act becomes effective July 1, 1997.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 949

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

H949CS-ASA-024

Date_____,1997

Comm. Sub. [yes]
Amends Title [yes]

Representative Nesbitt

moves to amend the bill on page 1, line 3,
by

rewriting the line to read:
"INVESTIGATION OF CHILD FATALITIES AND TO APPROPRIATE $100,000 FOR THIS PURPOSE.";

and on page 2, between lines 43 and 44,
by inserting a new Section to read:

"Section 2. There is appropriated from the General Fund to the Department of Human Resources the sum of one hundred thousand dollars ($100,000) for the 1997-98 fiscal year for implementing the provisions of this act.";

and on page 2, line 44,
by deleting the phrase "Section 2." and inserting the phrase "Section 3."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 949

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

H949CS-ASA-024

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **April 30, 1997 10:00 A.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chuck Harris	DHR - DSS
Martha Livengood	YAIO/DOA
Andy Ellen	NC Farm Bureau
Thomas V. Bennett	NC Child Fatality Task Force
Teri Saylor	NC Press Association
Lois Creech	NCDMV/DOT
Patricia Roeder	NCACC
Emery P. Dalesio	The Associated Press
Kay Enoch	Capital Strategies
Angie Stevens	EGMS
Rose Post	Salisbury Post
BILL SCOGGIN	NCBA
ANNA TEFFT	OSBM
Theresa Fitzgerald	NCDHR-DSS
James Barringer	Salisbury Post.
Elizabeth Cook	Salisbury Post
Joanna Hartsell	MCIC
MARSH SMITH	self
Jim LORE	LORE & MCCLEARY

DO CHILDREN HAVE TO DIE?

Since early February *The Salisbury Post* has attempted to learn why the child protection system failed two innocent little boys, both of whom died brutal deaths shortly after their apparent abuse had been reported to the proper authorities. The clippings in this volume chronicle what the *Post* has learned -- and explain how confidentiality laws prevent the public from finding out what really happened.

Opening the files on child abuse

CHICAGO (AP) — A 3-year-old Chicago boy is hanged by his emotionally disturbed mother. In New York, a 6-year-old dies after being flung against a wall by her mother, who believes the girl is possessed by the devil.

Laws designed to offer privacy to children and families have been blamed for hiding how such abuse was allowed to happen in the first place. Now, several states have passed laws that shed the veil of secrecy that has kept the media and public in the dark about the 3 million reports of abuse and neglect cases a year nationwide.

"The changes are long overdue," said Doug Besharov, an expert in family policy at the American Enterprise Institute. "It's too easy for confidentiality to be used to protect agency mistakes and incompetent casework."

In Arizona and Idaho, lawmakers have been given access to abuse and neglect records to improve oversight. Colorado and Florida now make public abuse or neglect records in cases where a child dies in state care.

A proposal to change the laws in Illinois was sparked by cases such as the 1993 hanging of 3-year-old Joseph Wallace, which prompted an outcry over why the boy was returned to his emotionally disturbed mother.

The state's child welfare department was barred by law and policy from disclosing his mother's lengthy history with the department or the actions it had taken in the case.

Now under a proposed plan, if a person is charged with abusing a child in its care, the state welfare agency can release the child's name, the services the family received or any previous claims of abuse in the family.

Even the mention of the accused abuser's name by certain public officials can trigger the release of case information.

"The system does better when exposed," said Jess McDonald, the state's child welfare director. "It says to people, if you haven't done the right thing in a case, you can't hide behind confidentiality."

Not everyone sees disclosure as a boon.

Chicago lawyer Diane Redleaf, who represents parents in abuse and neglect cases, is among those concerned about the new reforms — Illinois in particular.

"Anybody who's the subject of (an unsubstantiated) report can be subject to disclosure under that," Ms. Redleaf said.

Changes in the federal Child Abuse and Prevention Act have moved states toward greater disclosure, said Howard Davidson, director of the American Bar Association's Center on Children and the Law.

Salisbury Post 2/27/97

Child's body bore evidence of violence

The Life and Death of
Jordan Bryant Bradshaw
(Budde Lee Clark*)
1990-1997

Natural mother Pam Bradshaw with son.

November 27, 1990
Born:
Rowan Memorial Hospital to Pam Bradshaw and Warren LeGrand Gosnell
(Now known as Lee Clark)

1990-1995
Lives with mother Pam Bradshaw

Stepmother Robin Gosnell in custody.

March 1995
After custody battle, moves in with father and stepmother Robin Gosnell
(Now known as Elizabeth Craig)

January 31, 1997
Found dead—beaten and then placed in a tub of water as if he had drowned—in home of father and stepmother.
Authorities later charge Robin Gosnell with felony child abuse and murder.

**Father and stepmother had their names and the child's name legally changed.*

JENNIFER B. COBLE/SALISBURY POST

WAYNE HINSHAW/SALISBURY POST

Grandmother holds teddy bear with photo of Budde Clark that was placed near his grave after he died Jan. 31

BY ROSE POST
© SALISBURY POST

Budde Lee Clark suffered torturous and painful injuries before he died.

When the ambulance rushed into Rowan Regional Medical Center late on the afternoon of Jan. 31 with the 6-year-old boy's body, anyone could see immediately that he had been beaten severely.

Anyone could see cigarette burns on more than 50 percent of his body. Hair pulled out by handfuls.

Anyone could see that something — possibly a rope — had cut and burned his neck.

TOO LATE FOR BUDDE: Louise Manning, grandmother of Budde Clark, 6, says the family had been under investigation for two months before the child was killed.

Other injuries strongly suggested he had been sexually assaulted.

Some of the wounds — like the bizarre loss of cartilage in his nose and some of the cigarette burns — were healing. Some bruises were old.

And the Rowan County Department of Social Services could have saved him, says his grandmother, Louise Manning.

Her son, Lee Clark, whose name used to be Lee Gosnell and Budde's father, told her Social Services had been investigating his family for two months before that day. Yet, because of confidentiality laws, it's not clear what if anything Social Services did.

His death was caused by "a blunt force injury to the head," says Dr. Karen Chancellor, pathologist with the N.C. Medical Examiner's office. She hopes to complete the full autopsy within the next few weeks.

Police have accused Robin Gosnell, Budde's stepmother, of beating Budde to death, putting his body in a bathtub of water and reporting he accidentally drowned.

Robin Gosnell is in jail now, charged with murder — and Louise Manning thinks Social Services bears heavy responsibility.

"If they had done their job like they were supposed to have done," she says flatly, "my grandson would be alive today. But they always say they're backed up with paper work and short on staff and all this stuff.

"My son told me — after all this happened, he said, 'We've been under investigation for two months.' "

Rick Travis, director of the Rowan County Department of Social Services, would neither confirm nor deny an investigation, but he has reviewed records and talked to employees since Budde's death.

"I think it's the natural response to a fatality to review what had been done to see if there was anything we missed when working with families," he said.

"I would like to say more so that the public might feel there is a greater measure of accountability for the agency," he said, "but the (state) attorney general's office and the Institute of Government have said, 'Don't do it.' When we get the written report, it's possible the Social Services board will authorize us to say more."

He expects a report on the state's review of local records on Budde Clark about March 7 and a summary of the findings will be public record.

Lee Clark, the child's father, told the Post he would not comment about his mother's account or what happened before Budde died.

Budde's maternal grandparents, Jimmy and Jane Bradshaw, are so angry with Social Services

➤ See **Child**, Page 4A

CONTINUED

Child

➤ From Page 1A

they want to go to court.

They are frustrated that the law prevents Social Services — on behalf of children — from commenting or releasing records even when a child is no longer alive to be protected. And they're disturbed that Social Services neither responded nor explained what had happened when their daughter, Pam, reported months ago that the cartilage was missing from her child's nose. With no cartilage, his nose lay flat against his face and his two nostrils had become one.

But two knowledgeable sources have confirmed a description of the wounds — some old, some new — found on the 6-year-old's body.

One source said the damage to Budde's nose was unmistakable.

"You could see that cartilage had been removed from his nose some time before and had healed, but it was obviously gone," the source said.

"What was seen was that he had two black eyes, and cigarette burns definitely over 50 percent of his body — on his face, his arms, his stomach, everywhere."

Marks that appeared to be "rope cuts and rope burns were around his neck, cut into his neck," the source said, "and hands full of hair had been pulled out all over his head. He had bad bald spots, and his face was all bruised. His forehead was black with the bruises. You could tell some of the bruises all over his face and some of the cigarette burns were starting to heal."

Other injuries point to sodomy.

The source said the obvious question "will always be *why*. I said, 'Oh, Lord, so young and so innocent.' "

Pam Bradshaw says she and her sister reported the injury to Budde's nose to Social Services in June or July. A court had awarded custody of Budde to his father the year before, so the boy was living with Lee Clark and his wife, Robin Gosnell (who has also used the name of Elizabeth Craig and Robin Clark).

"He was missing the complete piece of cartilage between his nose," Pam Bradshaw says of the child, her own hand touching the bridge of her nose. Robin Gosnell drove up one day with Budde in the car. He never got out of the car, but "I saw it, and I said, 'What in the world happened to his nose?' There was nothing there but one big hole. Robin said he fell down and hit a tree stump and he picked at it until it fell off."

But Bradshaw asked an emergency medical technician about the nose, and the technician "advised me to call (Social Services). She said in order for him to lose this, something more devastating had to have happened.

"After I reported it, I called back to see what they found out."

But the person she had to speak to wasn't in. "I did leave messages on the answering machine" giving her address. She didn't have a telephone. "But they never contacted me back, to let me know what they found."

She says she also went to Rowan Regional Medical Center and the Salisbury Children's Clinic, trying to find out what had happened — but had no luck.

Social Services says its procedure on abuse reports is to send a letter indicating the report will or will not be investigated. Pam Bradshaw says that never happened in this case.

"I knew my son was being abused," she adds. "It wasn't the physical marks. His personality went from being very physical to being a little child who kept his head held down, who wouldn't speak unless she gave him permission. Nobody I talked to who could have done something about it would do anything."

Louise Manning says she has asked her son, Lee, what happened at his home in Cleveland.

"He said when he got home from work, everybody was there," she says. "He run in the door, and Jordan (Budde) was laying on the floor, and he yelled, 'What in the world happened?' He told me she said he fell in the bathtub and hit his head and he drowned. She tried to revive him and couldn't."

But Louise Manning's husband, Thomas, saw Budde Clark's body at the funeral home and knew immediately that the body didn't just slip in a bathtub.

"I had to go in there because she was wanting to go in," he says, and he had to know whether he thought his wife could stand what she'd see. He decided she couldn't.

"No way you're going in there, honey," he said. "You don't want to. You'd never forget it."

Certainly he won't.

"I saw him in the casket," he says, struggling to describe the pancake-like makeup on Budde.

"His whole face was done in it," he says. "His ears, his hands. It didn't look like, it really didn't look like a person laying there."

Budde's skin, he says, didn't look like skin. "His hair had been cut real short. You could see marks ... "

But he's not sorry he looked.

"I had to see for myself that his soul was at rest," he says, "because he had been punched enough."

Budde's grandparents, the Bradshaws and the Mannings, struggle with the big unanswered questions.

How, they want to know, could that happen?

How, they want to know, could their grandson be brutally beaten, burned and sexually assaulted without action, without an outcry from public agencies charged with his protection?

SALISBURY POST 2/27/97

2/27

Law keeps facts confidential — Travis

BY ROSE POST
SALISBURY POST

Rick Travis knows exactly what the reaction is any time a public official says, "No comment."

"People are suspicious when they perceive stonewalling," says Travis, director of the Rowan County Department of Social Services.

Faced with confidentiality laws — and advice from both the state attorney general's office and the Institute of Government — Travis generally says less than people want to hear, especially when the death of a child is involved as it is in the case of 6-year-old Budde Lee Clark.

"There is some talk about changing the laws governing confidentiality as they relate to child fatalities," he says. "And I'd be interested in seeing some discussion about what those changes would be.

"I feel there would be grounds for loosening the confidentiality restrictions because there needs to be accountability for public agencies. As a director of a county department of Social Services, certainly I'm concerned about the integrity of my department. And all too often people assume there are problems when all they see or hear is a 'No comment' or 'I cannot discuss this.'"

But he feels he did everything practical in the Clark case when he acknowledged recently that the child had been the subject of a Child Protective Services investigation in the 12 months before his death and said the state Division of Social Services was reviewing local records in relation to the fatality.

The review was conducted on Friday, Feb. 14, by Karen Hatley, who expected to submit a written report within three weeks.

"She said she would try to move it along," he said. "We'd love to get it as soon as we could." A cover letter which will summarize her findings on "critical protection issues" will be a public document, he said, which his department will release after it is reviewed by the Social Services board.

But he doesn't know what to expect.

"We've never had one of these before," he says.

Shanae Ellis enjoys 'Up With People'

'Up With People' show tonight, 1B; ACC Tournament opens, 1C

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March 6, 1997

Salisbury Post

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Sources: Hospital saw abuse, warned DSS

BY ROSE POST
© SALISBURY POST

A month before he died, sources say, 19-month-old Christopher Lee Jones was treated for extreme physical abuse at Rowan Regional Medical Center.

Outraged, hospital staff members photographed the baby and reported what they saw to the Rowan Department of Social Services, say three independent sources familiar with the case.

But as far as the sources know, Social Services didn't respond. The toddler remained with his mother, Sheila Jones, until Feb. 4, when he died at Carolinas Medical Center in Charlotte from another beating.

Neither local nor state Social Services officials are ready to comment. Rowan Social Services Director Rick Travis is in Raleigh and not available Wednesday or this morning. Jo Ann Lamm, head of the Child Protective Services Branch of the N.C. Division of Social Services now reviewing the case, would not comment on the Post story.

"If that was reported to Social Services," she said, "it would be part of our review. Our review has not come out yet."

One source told the Post: "You wonder what more you can do. You report to Social Services, and a month later the child is dead. You think, 'Where did we go wrong? Who dropped the ball?' "

"Nothing was done," another source said. "If Social Services had followed through from that call, there's no doubt in my mind that child would be living today."

Wednesday afternoon, Lamm the state Social Services official, said the state was "very close" to finishing its review of two recent Rowan County abuse deaths — Jones and 6-year-old Budde Lee Clark.

Lamm said Travis is in Raleigh, and they are trying to get the reports. "We had a commitment to try to get a report to him by Thursday afternoon or early Friday morning," she said.

Christopher Jones' mother, Sheila Jones, refused to talk

➤ See **DSS**, Page 4A

CONTINUED

DSS

➤ From Page 1A

with the Post about this article. Her mother, Marilyn Houchin, confirmed that her daughter took the baby to Rowan Regional Medical Center in early January and returned home with him after he was treated.

"We ain't got nothing to hide," Houchin said. Her daughter has "been through a lot of stuff. She's lost a son and all. I just don't know how much more she can take."

When Sheila Jones sought medical help for her baby in early February, she did not bring him back to Rowan Regional Medical Center. Instead, she and her boyfriend took him to Lake Norman Medical Center. From there, hanging on to life by a thread, he was airlifted to Charlotte, but doctors at Carolinas Medical Center were unable to save his life. He was kept on life support systems until his organs could be donated.

When he died, investigators said he had suffered a fractured skull, brain damage, multiple cuts and bruises on his neck, chin and groin while in the care of his mother's boyfriend. That boyfriend, Jeremy Butcher, 23, of 8835 Wright Road, faces charges of murder and felony child abuse.

As word of the baby's death spread, the investigation returned to Rowan Regional Medical Center, where records confirmed the visit on Jan. 2.

When Sheila Jones brought Christopher to Rowan Regional, the toddler was naked, with blood blisters on the side of his face and the top of his head and severe bruises all over his body. He had a black mark on the top of his forehead.

His nose was totally bloodied. His lips were bruised. A bite was evident on one shoulder. His scrotum was black and blue and "bitten."

"Terrible," one source said. "Sickening."

Nurses at the hospital were "unbelievably distraught," a source said.

Medical personnel "are really not very happy with the way DSS operates," a source said. "The system is failing. And it's going to happen again and again and again" unless something is done to change the way child abuse is handled.

That's what state officials are considering as they review the deaths of Christopher Jones, of China Grove, and Budde Lee Ciark, of Cleveland.

Budde's stepmother, Robin Gosnell, has been charged with murder and felony child abuse. She has been accused of beating the boy to death and putting his body in a bathtub to make it look like he drowned.

The two cases prompted the first review of the way the department handled Rowan County cases since the state started special "child fatality reviews" in 1991.

The state reviews the death of any child involved in a Protective Services investigation 12 months before his death from alleged abuse or neglect.

SALISBURY POST 3/6/97

Report absolves DSS action

Social Services officials couldn't have predicted children's deaths, says state

BY ROSE POST
SALISBURY POST

The state has found no indication that the Rowan County Department of Social Services "had information or knowledge that would have predicted any of the violent events" that culminated in the deaths of two Rowan children a month ago.

That contradicts information received by the Post from sources familiar with the beating deaths of 6-year-old Budde Lee Clark on Jan. 31 and 19-month-old Christopher Lee Jones on Feb. 4.

What state officials actually found during their review of the two deaths is not available for public inspection. The public is entitled to see only a cover letter summarizing the findings.

The letter from Chuck Harris, head of the Children's Services Section of the state Department of Human Resources, says Rowan must submit "a program improvement plan" within 30 days. The letter also says the agency's "efforts were focussed too narrowly" in the case of Budde Lee Clark.

Before Clark died, the letter says, Social Service workers should have investigated more thoroughly two incidents involving the 6-year-old Cleveland boy.

The letter also says the local Social Services agency should examine its "program areas ... in a broader context" to assure a thorough investigation.

The letter did not identify either incidents, but Rep. Charlotte Gardner, who arranged to get the letter for the Post today, talked with Harris, director of the Children's Ser-

➤ See **DSS**, Page 4A

DSS

➤ From Page 1A

vices Section. Harris told the lawmaker that one incident was the physical damage to Budde Lee Clark's nose.

The child's mother, Pam Bradshaw, told the Post she and her sister reported to Social Services last June or July that the cartilage from his nose was missing. His nose, she said, lay flat on his face and his two nostrils had become one large opening. She received no response to her report.

The child's paternal grandmother says her son told her Social Services was investigating his home, where the boy lived, two months before he died.

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Harris did not identify for Gardner the other incident investigated by the state.

Gardner said what she wants to impress on Rowan County residents: "This is not everyday stuff."

"What I have to ask myself and what Rowan County has to ask itself is what can we do to see that the series of fatalities that have occurred over the past few weeks never happens again."

She said she finds it ironic that Tri-County Mental Health has received a letter indicating the state has taken over, the first mental health agency ever taken over by the state, and on the same day a letter comes to Social Services regarding child fatalities in Rowan County.

Communication

She said she believes communication is a problem in Rowan.

"I think we need to sit down and talk to each other more often and I think whether you're a state legislator or a county commissioner or a city council person, you need to be part of that process.

"We don't have it in Rowan County. I, personally, as a state legislator, have encountered that lack of communication."

She says what has happened in Rowan today is serious.

"This is really an indictment not only of society's ills but also the problems we've got as citizens of Rowan County of not trying to be a part of the solution, of trying to come together. We've got to get past this turfism that abounds everywhere — here in Raleigh and on the local level. That's not how they're going to be improved. If we would come together, we could find where we have deficiencies."

The community has reacted with horror to the children's deaths. In a letter on today's editorial page in the Post, James M. Freeman, chief executive officer of Rowan Regional Medical Center, says cases like those two are rare, "but unfortunately, we've not only seen an increase in abuse victims showing up at our emergency department, but we've also seen a rise in the level of severity of this abuse."

Pointing to the work of nurse Lisa Coley, who has taken special training for abuse cases, Freeman calls for the community agencies to work "together to improve the process."

◆ LETTERS ◆

Everyone's concern

I read with horror the article about the abuse of Budde Clark. "Sick" is one word I can use to describe the feeling. And I still am every time I think of what was done to him.

Most feel that Social Services is responsible for all this, but I feel the blame should be placed in other areas. Where were this child's other relatives, or people who saw this child on a daily basis? But most importantly, where was the child's father? He and his wife had custody; supposedly he saw Budde on a daily basis. Are we to believe that he was not aware of what was taking place in his own home to his own child? Did he not even look at his child? Did he not see the cigarette burns, the hair missing by the handful? Did he even look at his son to see that his nose did not look like other children's?

Perhaps we should imagine ourselves as an abused individual with the feeling of being without power to do anything to help yourself. Then ask yourself what we can do to stop abuse.

Please do not believe when they say, "Oh well, what happens to others is really not our concern." Abuse is everyone's concern. No one, neither child nor adult, deserves to be abused.

If you suspect abuse in a circumstance, get involved and do not let any other child become another Budde Clark.

— LINDA GLOVER
Salisbury

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March 7, 1997

City Post

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Report absolves DSS action

Social Services officials couldn't have predicted children's deaths, says state

BY ROSE POST
SALISBURY POST

The state has found no indication that the Rowan County Department of Social Services "had information or knowledge that would have predicted any of the violent events" that culminated in the deaths of two Rowan children a month ago.

That contradicts information received by the Post from sources familiar with the beating deaths of 6-year-old Budde Lee Clark on Jan. 31 and 19-month-old Christopher Lee Jones on Feb. 4.

What state officials actually found during their review of the two deaths is not available for public inspection. The public is entitled to see only a cover letter summarizing the findings.

The letter from Chuck Harris, head of the Children's Services Section of the state Department of Human Resources, says Rowan must submit "a program improvement plan" within 30 days. The letter also says the agency's "efforts were focussed too narrowly" in the case of Budde Lee Clark.

Before Clark died, the letter says, Social Service workers should have investigated more thoroughly two incidents involving the 6-year-old Cleveland boy.

The letter also says the local Social Services agency should examine its "program areas ... in a broader context" to assure a thorough investigation.

The letter did not identify either incidents, but Rep. Charlotte Gardner, who arranged to get the letter for the Post today, talked with Harris, director of the Children's Ser-

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DSS

➤ From Page 1A

vices Section. Harris told the lawmaker that one incident was the physical damage to Budde Lee Clark's nose.

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■ Two killed, 3 injured when house explodes

ROCHESTER, N.Y. — Moments after an explosion flattened his neighbor's home, killing two people, James Kimble rushed to the scene and tried to help pull burning debris off a woman crying for help.

Kimble and six others were pushed away by thick smoke that followed a second, smaller blast.

"We hated to leave," said Kimble, 51. "We stayed there as long as we could."

Firefighters rescued the woman, who was hospitalized today with burns over 60 percent of her body. Two others were in hospitals after Thursday's explosion, which could be felt a mile away. Police said they didn't know if the victims lived at the home; their names were not released.

The explosion shattered windows and collapsed walls in nearby homes.

"I was just sitting there and I heard a large BOOM," neighbor Betty Gerken said.

Fire Chief Tom Dillon said an explosion strongly indicates a gas leak, but no cause had been determined.

Salisbury Post, *Friday, March 7, 1997*

One person can make a difference against abuse

An example is a conscientious nurse at the Rowan Emergency Room

BY JIM FREEMAN
SPECIAL TO THE POST

Recent articles in the Salisbury Post about child abuse victims certainly sadden and repulse anyone who reads them. I'd like to say these sorts of cases are rare, but unfortunately, we've not only seen an increase in abuse victims showing up at our Emergency Department, but we've also seen a rise in the level of severity of this abuse.

Abuse does not discriminate. We've seen young, old, married, single — people from all walks of life — suffer from the pain and humiliation of abuse.

A recent editorial in the Salisbury Post was right when it pointed out that one person can make a difference when it comes to abuse. I would like to tell you about one such person.

Lisa Coley, a nurse in our Emergency Department, has worked at Rowan Regional Medical Center for nearly nine years. Discouraged by the abuse victims she regularly encountered there, Lisa decided to get involved. She researched and requested special training, and just this past fall was certified as a Sexual Assault Nurse Examiner (SANE).

The SANE Program began in Memphis, Tenn., in 1976 but just arrived in North Carolina about a year ago. Only a handful of nurses in our state have earned the SANE certification, and Lisa Coley is one of them. Lisa took a special week-long course, served 40 hours of clinical time, took a written test and several practical examinations — all on her own initiative.

Lisa's SANE certification makes her qualified to work especially close with child and adult victims of physical and sexual abuse. She is qualified to assist with gathering medical evidence, taking photography, participating in legal investigations and serving as an expert witness in court.

The SANE Program has been proven to result in higher conviction rates, better evidence collection, and increased coordination of efforts between hospitals, law enforcement officials and social service agencies. Lisa has championed the banner of the SANE program to local law enforcement officials and has worked closely with the local District Attorney's Office and others involved with abuse issues. Lisa voluntarily wears a pager 24 hours a day and comes into the Emergency Department every time she can to help in suspected abuse cases.

The SANE Program and people like Lisa put the emphasis where it needs to be — on working together to improve the process ... vs. attempting to fix blame on individuals who are part of the system.

Thanks to Lisa's commitment and enthusiasm, three more of our Emergency Department nurses will begin training in the SANE Program this fall. Thanks to Lisa, we're continuing to improve the assistance available for the abused.

One person can make a difference. I am proud to have employees like Lisa at Rowan Regional Medical Center — employees who go above and beyond the basic requirements of their jobs to provide an even higher level of health, healing and protection to those who enter our doors.

■

James M. Freeman is chief executive officer at Rowan Regional Medical Center.

REPORT CHILD ABUSE TO POLICE, TOO

Don't settle for one call

It is not enough to report child abuse to the Department of Social Services. Not by a long shot.

People who have seen signs of abuse on a child need to notify law enforcement also.

That's the obvious conclusion to draw from the Feb. 4 death of Christopher Jones, a 19-month-old Rowan County boy whose mother says she was once investigated because her son had a bloody nose.

According to knowledgeable sources, just a month before his death young Christopher came to the local emergency room with sickening signs of abuse: blood blisters on his face, bruised lips, a "bitten" scrotum and — yes — a thoroughly bloodied nose.

Pictures were taken for the benefit of social services but social workers apparently never picked them up.

If only deputies had been called to the hospital on Jan. 2.

That's not to blame the health-care workers who treated Christopher. They followed the accepted procedure and contacted Social Services. But the facts of recent child homicides prove this procedure must change.

Safety net failed

The Salisbury Post has pursued information about the deaths of Christopher Jones and 6-year-old Budde Lee aggressively — not to try their accused murderers in the paper, but to determine how the safety net for abused children failed.

Public officials who work behind confidentiality guidelines prefer patience; the system will issue its own report in due time. But every day of waiting is a day of delay for other abused children in Rowan County. If the safety net has a fatal hole, let's find it now before another child plummets to his death.

Hindsight alone gleans important information from these cases:

■ Signs of violence on a child should prompt an urgent call to law enforcement as well as social services. What's happening to these children is a crime.

■ Relatives and neighbors who suspect abuse should not permit themselves to be brushed off by isolationist parent/guardians or busy social workers. They should persist and, in the case of non-custodial parents, sue to regain custody of a child who is in danger. Abused children need any advocate they can get. We cannot wait for a government agency to solve problems for us.

■ The agencies which handle child abuse should share information from Day One, not starting after a child's Death Day. The sharing of information among social services, law enforcement and other agencies is absolutely essential to prevent reports of abuse from going down a dead end. If there is wisdom in the counsel of many, there could be lifesaving in the awareness of a few more.

■ When a child dies under suspicious circumstances after being under child protective services, records from those investigations should become public to allow immediate review.

■ Something is terribly wrong with the laws governing social service agencies. Albert R. Hunt of the Wall Street Journal, in a Feb. 27 column, traced agencies' troubles to the Adoption Assistance and Child Welfare Act of 1980, which makes it very difficult to take abused and neglected children away from their biological parents.

Social Services admits getting abuse warnings

ONE VIEW: Board member Dianne Scott said, 'The only thing I saw (wrong with the investigation) was there was lack of documentation.'

JAYSON SINGE/SALISBURY PO

DEFENDS ACTION: Social Services Director Rick Travis meets Friday with board members.

Pictures wouldn't have led to toddler being taken away

BY ROSE POST
SALISBURY POST

Social Services officials acknowledged for the first time Friday that a month before a toddler died, the agency received a complaint warning that 19-month-old Christopher Jones had been abused.

But they never talked to the medical officials who made the complaint and didn't see pictures taken at Rowan Regional Medical Center until after the baby died.

Even after seeing the pictures, the officials say they would not have taken the toddler away from his mother and her boyfriend.

The first abuse report made to the Rowan Department of Social Services made no reference to photographs taken at Rowan Regional, Social Services Director Rick Travis said Friday.

"The mother and the child left the emergency room. We didn't hear about" the pictures, Travis said. "We should have asked."

Travis said medical officials could have refused to let Sheila Jones take her son home from Rowan Regional. But they didn't, and Social Services workers saw the baby within the required 72 hours. They didn't deem the injuries severe enough to remove the baby, and neither did other family members living nearby, Travis said.

Now, Sheila Jones' boyfriend, Jeremy Butcher, is charge with beating the toddler t

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SUPPORT CONCLUSIONS: DSS board chairman Irene Goodle left, and state representative Jane Malpass listen.

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Standards

From Page 1A

death a month later.

Travis and Jane Malpass, children's programs representative with the state Division of Social Services, declared repeatedly during an hour-long open meeting Friday that the local agency "met standards" set by the state.

And even in hindsight, they would do nothing differently, they said.

The meeting, attended by the Rowan County Board of Social Services, the media, a few concerned citizens and Social Services staff members, followed a 2¾-hour closed session. Travis called the executive session of the board to share the results of a state review of the way Social Services handled the deaths of three children — Jones, 6-year-old Budde Lee Clark and 16-year-old Trola Miller.

State and local officials say they cannot make the report itself public, but two members of the Social Services board — Chairman Irene Goodlett and member Jeannie Misenheimer — said they are satisfied with the work of the local agency. Goodlett called the agency "the best in the state."

Misenheimer

Board member Dianne Scott said she also is satisfied with the actions of Social Services but thought there was "a lack of documentation."

Board member Frank Tadlock attended the closed session but left immediately afterward.

The Post has reported in recent weeks that Budde Clark, the 6-year-old boy, and Christopher Jones, the toddler, were seriously abused before their deaths and people reporting that abuse to Social Services never received confirmation that Social Services responded.

Travis did not deny allegations that his agency failed to acknowledge the complaints. He has previously told the Post that Social Services acknowledges all reports and lets people who make them know whether or not they will be investigated.

In both cases, sources for the Post have described severe wounds, some of them old, that outraged people who saw them.

Sources told the Post that when Budde Clark's body was brought to the hospital on Jan. 31, he had cigarette burns on more than 50 percent of his body, hair pulled out by handfuls, injuries that strongly suggested he had been sexually assaulted and the bizarre loss of cartilage in his nose.

Investigators said the 19-month-old died on Feb. 4 after suffering a fractured skull, brain damage, multiple cuts and bruises on his neck, chin and groin.

When he was taken to Rowan Regional a month earlier on Jan. 2, sources said he had blood blisters on the side of his face and the top of his head, severe bruises all over his body, a black mark on his forehead, a bloodied nose, bruised lips, a bite on a shoulder, and his scrotum was black and blue and "bitten."

Travis said he didn't see the pictures until after the baby died.

But what he saw, he said, "didn't match" the child's injuries described in the Post.

"I don't believe someone is intentionally making something up," he said, "but the description I read in the Post came nowhere close."

Contacted this morning, a Post source said, "The bottom line is the pictures tell the story. I stand by that.

"If DSS had gone to the hospital and looked at the pictures, there's no doubt in my mind, the child would have been taken out of the home. I stick by that."

Opening Friday's meeting, Goodlett said, "Certainly we have made some mistakes," but the board is totally supportive of Social Services.

Travis echoed her words.

The state's review was "quite thorough," he said. State standards were the yardstick.

"The overall conclusions of the review are reassuring about this department's capability. I would be the first to admit that we can make mistakes like everyone else ... We did not meet every standard, but we covered the bases and ... certainly did an adequate job. We need to do all we can and more and hope the community will join us in this effort."

In a written statement, he said the overall conclusion of the report is that the agency "had no information or knowledge that would have predicted any of the violent events."

SALISBURY POST 3/8/97

State and local officials respond to questions on three cases

BY ROSE POST
SALISBURY POST

In an hour-long meeting Friday, local and state Social Services officials discussed their handling of two recent child abuse deaths and the shooting of a teen-ager. Here are some of their comments:

■ What did Social Services' do after learning that 6-year-old Budde Lee Clark had lost the cartilage (or septum) in his nose?

Rick Travis, Rowan County Social Services director, said his agency's investigation confirmed medical neglect of the injury to the boy's nose. (The boy's stepmother, Robin Gosnell, is now charged with Clark's murder.) The complaint was assigned to a medical worker and the emphasis was placed on having medical care provided.

The boy's doctor called Social Services because he also noticed a swollen bruised ankle. The intake worker who decides whether or not a case should be investigated relayed the information to the social worker who asked that the ankle be X-rayed.

The state says the information phoned in by the doctor should have been fully investigated as a new report, Travis said.

"What we did was give the information to the social worker who did not do an entirely new investigation. ... Almost all of our social work revolved around getting the nose treated."

Concern was also expressed that the child "walked around like he was on Haldol all the time." The boy's grandparents have told the Post previously that he became sullen and withdrawn after going to live with his father.

Travis said the state review "pointed out we didn't give sufficient attention" to the doctor's concern and never determined that the boy was receiving a tranquilizer.

■ Negligence: "I don't feel in any way we have been negligent," Travis said.

He was also asked directly if Social Services could have prevented Budde Clark's death.

"Absolutely not," he responded. "We reviewed each of these cases at the time of the fatality. With all we know now in hindsight, there is nothing, in all honesty, that would have prevented this child's death."

■ Confidence: Travis was asked if people in the community will have confidence in the agency, given three dead children.

"I hope they do," he said. But he added the department cannot guarantee a child will not die.

Mary Beth Smith, a Concord attorney who lives in Salisbury, attended the meeting with her mother, Elizabeth Smith of Rowan County, and read aloud the Post's description of physical abuse sustained by toddler Christopher Jones a month before his death. Doctors at Rowan Regional reported the abuse to Social Services, and Mary Beth Smith asked if Social Services has any justification for not removing a child given those injuries.

"The initial report was made when the child was being discharged," Travis said. He has reviewed the report and found nothing about pictures. "It said the doctor called and said the mom brought the child in with a bloody nose."

"From what you have now seen," he was asked, "was there enough to take the child out of the situation?"

"The most we would have done was substantiate neglect and assign the case to a worker. Knowing what we know now, we wouldn't have removed the child. I wondered if it was a different child."

"I don't buy that," Elizabeth Smith said.

"I know what was in the paper," Travis said. "But a lot did not match what we had. People have different sources. What I read did not come close to matching what I saw."

"It's the system that bothers me," Elizabeth Smith said.

"The system bothers me, too," echoed Chairman Irene Goodlett. "We promise we're going to improve. We are going to do the best we can. We may not have the money, but we are going to improve."

■ Confidentiality: The meeting concluded with questions about the frequency with which social workers saw both children after the reports of abuse and before their deaths.

Standards, Travis said, require Protective Services to see a child once a week in some cases and less often in others.

Pressed to reveal how often workers saw Budde Clark and Christopher Jones, he said, "The person who reviewed the records made the comment that the worker had been consistent and diligent in following up."

He made it clear he would like to reveal more but, after checking with the state attorney general, feels he legally cannot.

"I would love to see some mechanism established," he said, "where, in cases of child fatalities, I would not be breaking the law to give additional information."

■ Shooting: The state issued a written statement about the death of Trola Miller, the 16-year-old killed by a gunshot Feb. 4, in its fatality review. Normally, Protective Services reviews Social Services actions if the agency has been involved with the child in the year leading up to the child's death. The state waived that requirement in Miller's case because she died at the same time of the other two abuse deaths.

A Juvenile Court judge placed Miller in the legal custody of Social Services in May 1994. Arrangements were made for her to live with a sister after efforts to place her in two foster homes failed.

In May 1996, she ran away and a pick-up order directed law enforcement officers to return her to Social Services if they found her.

"Her social worker made numerous attempts over an eight-month period to locate Trola and return her to a stable living arrangement," the statement concluded. "The pick-up order was still in effect at the time of her death."

Salisbury Post 3/8/97

State official: Rowan must improve 3 areas

BY ROSE POST
SALISBURY POST

North Carolina's Social Services director says Rowan County must beef up its work in three "critical" areas to protect children:

- Supervision.
- Training.
- And community relationships.

Kevin Fitzgerald, director of the state Division of Social Services, called the Post on Friday to say he's followed correspondence and looked at the state review of the way the local Social Services agency handled the cases of two Rowan County children — 6-year-old Budde Clark and 19-month-old Christopher Jones — who were beaten to death.

He sees, he said, "three critical areas that we want to be working with in Rowan County to protect children."

And, he added, "our sense is" that Rick Travis, local director, and his staff "are very diligently working on this issue."

First, he said, is the supervisory oversight of social workers.

"We think that needs to be strengthened and beefed up. It's very important the Protective Services worker staff is properly supervised." A department has to have an effective review of staff work that is tracked and appropriately followed up on.

"We'll be working with the county to make sure that happens," Fitzgerald said.

Next, he said, is "really looking and assuring that the staff is properly trained. A lot of training goes on right now," but it, too, must be "beefed up so they're equipped to be better watch dogs for the children." Social workers must "know where to look to see potential cases, so they're answering not just the specific complaint but the whole family."

Chuck Harris, director of Children's Services in the department, who was on a conference call with Fitzgerald, added that social workers "must look at all aspects of protecting children and not just the specific incidents that might be contained in the report."

That, he pointed out, is in the cover letter that accompanied the review and is a public document.

"We referred to the focus being too narrow," he said. Social Services needs to look at all aspects of a case, at any facts that are critical to the protection of that child, and they need to verify facts.

"Training and supervision are critical," Fitzgerald emphasized again.

Social Services, Harris said, "must ask, 'Did we ask enough questions? Do we need to go verify something?' That's a supervisory function and that needs to be strengthened in that agency."

Finally, Fitzgerald said, "Rowan needs to build off a real positive thing they seem to be doing now."

Two Rowan County Sheriff's deputies have now been assigned to the Social Services department to work on potential abuse cases. That change is evidence that local agencies are building relationships.

"That's the kind of community building that needs to happen," he said. "They need to play a leadership role in bringing those folks to the table, whether it's law enforcement, schools, whatever agency needs to be mobilized to protect children."

The other piece, he says, is that the state will be available for "ongoing and intensive assistance, and we will work with them as partners to improve their assistance. We believe the management in the DSS and the board is committed to do the same."

THE ROWAN COUNTY STANDARD

Wake-up call sounds

SALISBURY POST 3/8/97

The leadership of Rowan County — citizens and elected officials alike —must face up to some embarrassing facts today.

On Monday, the state will take over Salisbury-based Tri-County Mental Health because the local officials could not straighten out its problems themselves.

And within 30 days, the Rowan County Department of Social Services must present state social services officials with an improvement plan following the murders of three children who had come to the department's attention before their deaths. In one of those cases, the state says, "the agency's efforts were focused too narrowly."

Coincidence, or consequence?

Did these state alerts just happen to occur at the same time? Or are they both the result of a long term attitude of doing the minimum when it comes to serving this community's weakest and most vulnerable members?

Unfortunately, the latter is probably the case.

Cover letter

The Rowan Social Services board met for several hours Friday to go over a state review of the three fatalities. The public has access to only the "cover letter," an aptly named document. For while it suggests the local agency has some improving to do, the letter clearly states: "Our reviews found no indication that the Rowan County DSS had information or knowledge that would have predicted any of the violent events."

But did the agency seek full information and knowledge? That's the unanswered question.

The most disturbing aspect of the review is not its conclusion but rather the overall tone. A public that looks to child protective services workers to be unswerving advocates for children's safety now has a look at how the agency approaches that job. "We met standards."

The standards need to change.

Responsibility for making that happen will fall back on taxpayers, who now probably will be asked to fund more supervisory positions for child protection services and more technology for keeping up with cases. Those budget items clearly are needed, but county commissioners should refuse to grant them unless or until they have full confidence in the department.

That will be very difficult to achieve as long as records concerning DSS's handling of the Budde Clark, Christopher Jones and Trola Miller cases remain hidden in confidential files. The laws that keep this information secret seriously hamper social services' ability to both exonerate itself publicly and make a case for improved funding. Confidentiality that was intended to protect children's privacy — children who are dead and can suffer no worse pain — now is hurting the agency and befuddling the public.

If the reports cannot be opened to the general public, they should at least be shared with an elected body like the county commissioners.

Bright side

From these tragedies, some improvements in law may someday arise. The state now sees a need for higher standards in social services. Law enforcement agencies are very interested in working with social services to investigate child abuse complaints. And confidentiality laws may come up for review in the General Assembly.

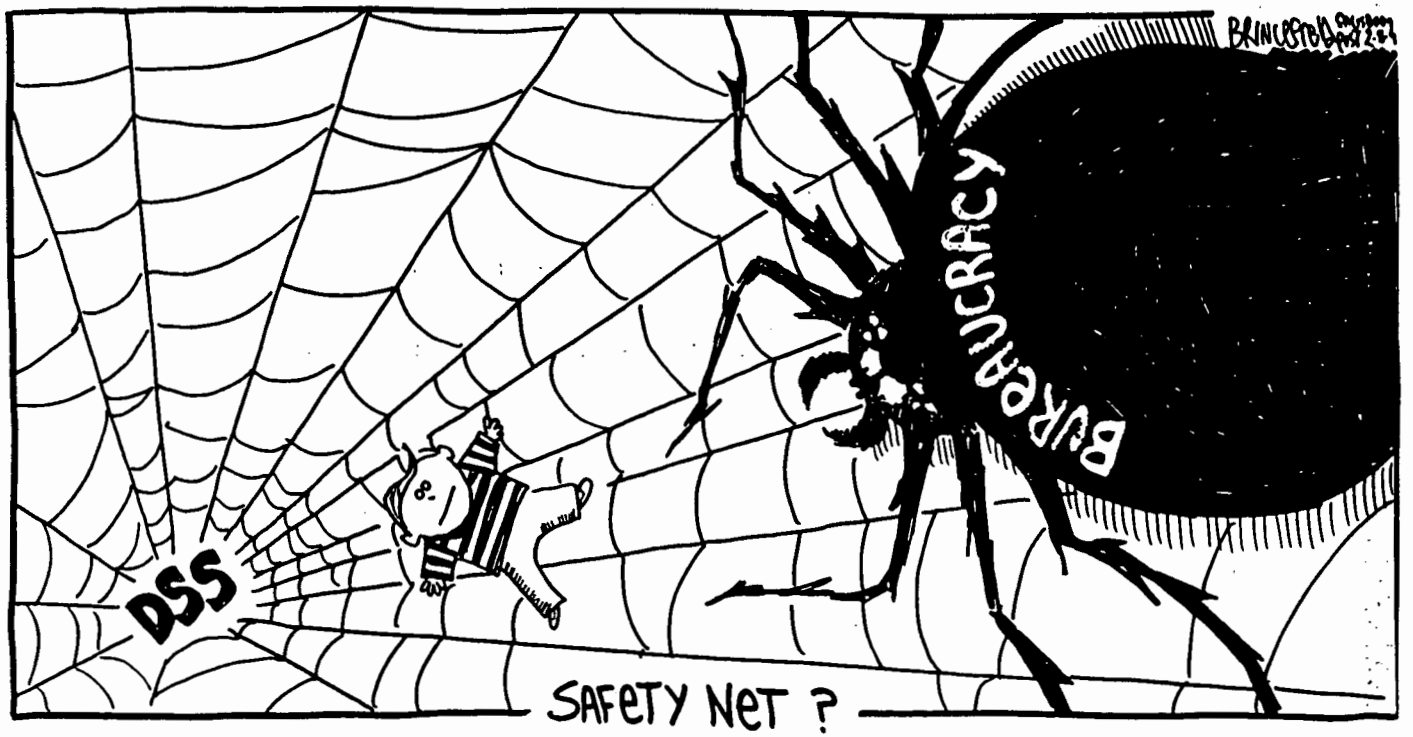
The same goes for Tri-County. After a long period of struggle, employees and clients can now see a bright side — hope for a resolution that will more effectively serve people in need.

Rowan County has a lot going for it, economically. The county industrial park is taking shape, new businesses are moving in, expensive houses are going up. But as the county moves ahead, we must remember not to leave our most vulnerable citizens behind.

The state has given us a wake-up call on two fronts — mental health and social services. Neither situation developed overnight, though both can have sudden, devastating consequences.

Salisbury Post 3/9/97

Mook's Place



SALISBURY POST 3/10/97

Board asks to review DSS report

Cites concerns over handling of child death cases

BY ROSE POST
SALISBURY POST

Rowan County commissioners want to see state reports on how the county Department of Social Services handled the cases of two children who were beaten to death.

Nineteen-month-old Christopher Lee Jones and 6-year-old Budde Lee Clark died from abuse, and a third child — 16-year-old Trola Miller — was shot to death during the same tragic Jan. 31-Feb. 4 weekend.

State officials reviewed Social Services' handling of the cases because the agency had dealt with all three children during the 12 months prior to their deaths. Local Social Services Director Rick Travis presented the reports to the Rowan County Board of Social Services during a 2¾-hour closed meeting Friday.

Only a cover letter from Chuck Harris, chief of the Children's Section of the state Division of Social Services, was made public, however.

County commissioners interrupted their scheduled agenda this morning to open their meeting today with their concerns about Social Services, voting unanimously to ask for the report if the law allows.

Frank Tadlock, the commission's representative on the Social Services board, raised the issue with a statement that he thinks each board member should see the report. Tadlock sat through the entire closed session Friday but made no public statements until this morning.

"I feel it's the responsibility of this board to be informed and know how to deal with this," he said.

Steve Blount, who has previously served as the representative on the Social Services board, said the report may be confidential but seconded Tadlock's motion to ask for the report nonetheless.

All board members said they believe they need to see the report.

Without seeing the report, Dave Rowland said, he couldn't support Social Services' request for more money.

"I'm not going to sit here and throw cash at a problem," he said, considering the size

➤ See **Report,** Page 5A

Report

➤ From Page 1A

of the Social Services budget, including federal funds.

"Can they not shift some people and get this problem taken care of?" he asked.

Chairman Jim Neely said he feels that maybe some rules need to be changed.

"I'd like to have an opportunity to review this thing totally," he said.

Newton Cohen, who also attended Friday's session at Social Services, agreed with Neely.

As a businessman, he said, he thinks Social Services should manage its employees better. With about 90 on the staff, he said, "surely they could take some employees out of other areas," at least temporarily, to deal with a critical issue.

He cited Sheriff Bob Martin's agreement to assign two deputies, paid with federal "deadbeat dad" funds, to work with Social Services.

But Blount said Social Services is restricted by federal mandates.

"Their hands are tied," he said. "They have very little discretion beyond mandated services. I'm sure they're struggling with that this morning."

Before the commission meeting this morning, Cohen said he'd like to see the report, "because undoubtedly that's where it tells them about their shortcomings and the details."

He didn't see the report Friday, though he attended the closed session. Social Services board members asked him to stay during the session but didn't show him a copy.

Neely and Tadlock concluded the brief discussion with the hope that the two boards will be able to work together.

"I think," Tadlock said, "that it's going to take a collective effort of doctors, the hospital, schools, commissioners, families to acknowledge that this is a problem we're not going to tolerate. We're going to act responsibly to deal with this problem."

Neely promised his support in dealing with the problems.

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JAYSON SINGE/SALISBURY POST

ary Beth Smith

Governor wants report on child deaths

BY ROSE POST
SALISBURY POST

Gov. Jim Hunt wants to know what happened to two Rowan County children who were beaten to death.

He has asked the secretary of the N.C. Department of Human Resources to look into how the Rowan County Department of Social Services handled the cases of 6-year-old Budde Lee Clark and 19-month-old Christopher Jones before they were killed. Budde's stepmother, Robin Gosnell, and Christopher's baby sitter, his mother's boyfriend, Jeremy Butcher, have been charged with murder.

Meanwhile, Rowan County commissioners will look at state reports on the case individually this week and — if the law allows — discuss the report at an executive session Monday night.

Elizabeth Smith, wife of former Rep. Neal Smith, and their daughter, attorney Mary Beth Smith, asked the governor to intervene. In a letter to Hunt, they said, the "citizens of Rowan County are outraged by the report that 'the state has found no indication that the Rowan County Department of Social Services had no information or knowledge that would have predicted any of the violent events' that culminated in the deaths of two Rowan children one month ago."

The Smiths wrote: "The desperate and violent circumstances of these children were well documented. ... The failure of the Department to act on behalf of these children is inexcusable. The problems with the Rowan County Department of Social Services are longstanding and should not be tolerated any further."

Hunt's administrative assistant Jan Bryant told the Post this morning that "the governor has instructed Secretary David Bruton to research the issue for him so he can be briefed on what has happened."

The governor can't keep up with events happening all over the state, she said, "but he is aware of the situation." Bryant said she explained to Elizabeth Smith this morning "that I did get her fax and appreciated it

➤ See **Governor,** Page 8A

Governor

➤ From Page 1A

very much."

The Smiths faxed the governor their letter and copies of Post stories about the case and the state report.

The governor was out of town all weekend with his family and has attended an agricultural/environmental "summit" on Monday and "most of today," she said. "He certainly will be very responsive to it once he has an opportunity to be briefed on what has happened."

County requests review

At the same time, Rowan County Manager Tim Russell and the county attorney, John Holshouser, have moved ahead with a request from county commissioners for a look at the full state review of the cases. Commissioner Frank Tadlock, who serves on the Social Services board, saw the report Friday and said he'd like all county commissioners to see the report.

Social Services Director Rick Travis indicated Monday afternoon that the board will be able to review the report, Russell said this morning. "We plan to encourage commissioners to contact Rick some time this week, at which time they'll be able to go at their own time and convenience to review it and discuss any questions they have with Rick."

In addition, he plans to find out if it is legal for commissioners to have an executive session to discuss the report collectively following their regular meeting next Monday night.

"If it's legal," he said, "a state representative on that issue and Rick Travis will present the report to the board ...

"We're dealing with very, very touchy information. I applaud the efforts of really letting the public know."

But Social Services must also "protect the family," Russell said. "I can't imagine another situation that's so sad as this is. Our hearts go out to these children. Our society as a whole has sort of let the system fail.

"... Certainly if the report indicates any weaknesses or recommendations that the county should make, the commissioners will make that public. I think our board will react very quickly to protect children. The board's not going to hide anything. We have to look at our system of tracking these cases and hopefully do what's best for everybody.

"We'll be up front as much we possibly can to prevent as many situations as we can."

Hoping for improvement

It's sad, he said, that issues like this must even be talked about, "but to talk about them hopefully will help improve them."

Russell said he thinks the executive session is necessary to protect the family.

If it's not permissible, "then we would not go into one," he said. "That's why we're offering them an opportunity to go individually. They are the governing body of the county and the Department of Social Services is an employee."

"Great!" Mary Beth Smith said this morning when she learned commissioners will see the state report. But she questions the executive session.

"I guess we're ultimately the employers," she said. "I want to know."

"I think it's very appropriate that they are that interested," her mother added, "but every citizen of this county is equally interested, and I believe we have the right to know. These children are the children of all of us.

"I think we should have an open forum. I've had I don't know how many phone calls," she said, because of her previous work on behalf of abused children and a letter to the editor of the Post about the recent deaths. "And a forum would be the place for people to ask questions and make suggestions for improvement. I applaud any actions that any county officials take, but all of us are in this together."

The Smiths attended a Friday afternoon press conference at Social Services where the director and board discussed the state report. They were upset with staff comments that Social Services had followed "protocol" or guidelines.

"They followed protocol, and they let it go," Elizabeth Smith said. "That's completely unacceptable.

"I went to the meeting," she said, to hear staff and board members say, " 'We are devastated. We are horrified that this has happened. If we met standards, they are not high enough. They need to be changed.'

"... You can't have two children beaten to death under your watch and say you met standards."

At one point, during Friday's discussion, Mary Beth Smith ask board member Jeannie Misenheimer if Misenheimer would have been satisfied with Social Services' response if her child had been killed.

"No!" Misenheimer said adamantly, but added, "This would not happen to my child."

Afterwards, Mary Beth Smith said, "We would all like that assurance, but in these troubled times of divorce and custody battles, those of us parents and grandparents who have been spared such tragedy know that there but for the grace of God go I. As a board member of the DSS, it did happen to her children. It did happen to all of our children."

Elizabeth Smith pointed out that Misenheimer asked for the public to support Social Services at the meeting Friday.

"If they want support, let them have an open forum and invite the public. Let them have an open forum and see how concerned the public is," she said.

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Trola Miller

Amid the revelations about what Budde Clark and Christopher Jones suffered before they died, the public may have forgotten about Trola Miller.

She was the 16-year-old who suffered a fatal gunshot within days of the beating deaths of 6-year-old Budde and 19-month-old Christopher. Follow-up reports by the Post on the boys' experiences with the Rowan County Department of Social Services overlooked one intriguing fact: Trola Miller had a history with Social Services as well.

A Juvenile Court judge placed Miller in the legal custody of Social Services in May 1994. Arrangements were made for her to live with a sister after efforts to place her in two foster homes failed. She ran away in May 1996. A pick-up order directed law enforcement officers to return her to Social Services if they found her. But neither officers nor her social worker could find her to get her into a stable living arrangement.

"The pick-up order was still in effect at the time of her death," a state-issued statement read.

What other pick-up orders are waiting to be fulfilled?

SALISBURY POST 3/11/97

◆ LETTERS TO THE EDITOR ◆

Don't pass the buck on protecting children

Something absolutely must be done regarding child abuse in Rowan County. *Now*. The "Pass the Buck" game cannot continue if we have any regard for the lives of little ones like Budde Clark and Christopher Jones, who could not protect themselves. Accountability — from parents, other relatives and friends who knew about abuse and looked the other way, and from agencies created for their protection — must be demanded.

Are these highly visible cases only the tip of the iceberg? If extreme cases like these make headlines, how many less significant stories are swept under the rug? How many children are being permanently warped by physical and sexual abuse? The only hope they have is if folks like you step forward, dig your heels in, and say "Enough!"

Health care professionals, teachers, ministers, coaches, anyone who cares — please report *all* cases of suspected abuse. Report it to every agency that has any responsibility. Stay on their backs and kick up enough fuss to get action if you think a child is in danger. His/her life could depend on it, and *you can make a difference*. If you reported a case in the past that wasn't remedied or investigated, rise up and say so.

The public needs to know what a life-threatening crisis is going on. Thanks so much to the Salisbury Post for bringing these stories to our attention. Hopefully we will learn from our mistakes, and have the guts to get involved. Don't wait for another tragedy before you speak up.

— EVELYN ALLISON
Clevcland

Letters Policy

The Salisbury Post welcomes letters to the editor. Each letter should be limited to 250 words and include the writer's name, address and daytime phone number. Letters may be edited for clarity and length. Limit one letter each 30 days. Write Letters to the Editor, Salisbury Post, P.O. Box 4639, Salisbury, NC 28145-4639. Or fax your letter to 639-0003. For computer users, our email address: (spost@interpath.com).

SALISBURY POST 3/12/97

◆ LETTERS TO THE EDITOR ◆

Where was citizens' concern before three children died?

As a citizen of Rowan County, I feel compelled to write this letter at this time. First of all, I, along with all the citizens of Rowan County, feel anguished because of the recent tragic deaths of three of our dear children. Needless to say, we will carry the memories of these young ones with us.

However, I must at this time ask myself and ask you, the other citizens of Rowan County, "Where were *we* before these children died?"

"Where were *we*, you and I, when the Department of Social Services accepted in one month 87 reports of abuse and neglect for investigations and 90 protective treatment cases?"

"Where were *we*, you and I, when 208 children remain in legal and/or physical custody of Rowan County Department of Social Services?"

"Where are *we* now, you and I, citizens of Rowan County, when 56 families are awaiting adoptive home studies and adoptive placements so that our children can be given a stable environment of love and care?"

"Where are *we* when DSS has *one* worker to do all the adoptive studies and adoptive placements before our children can receive some permanence and stability in their lives and before the families can fulfill their rights to be parents?"

"Where are *we* when more social workers in child protective services are needed and additional funding from county commissioners is the bottom line?"

Finally, my fellow citizens, "Where are *we* now after these tragedies have passed? Are we perched like vultures on a live wire waiting for the kill so that we can pounce on the spoils?"

"*Where are we?*"

— IRENE BEATTY GOODLETT
Salisbury

Editor's note: *Irene Beatty Goodlett is chairperson of the Rowan County Department of Social Services Board of Directors.*

Director should resign

Three deaths and "Even in hindsight, they would do nothing differently," "The local agency met standards set by the state," "There was a lack of documentation." Truthfully, as a community that is being asked to get involved, I sincerely think our first involvement is to join together and demand a resignation from Rick Travis (director of the Rowan County Department of Social Services). These deaths demand a change in the leadership of our local social services department.

Rick, you and your agency failed these three children. You had inadequate documentation, inadequate supervision.

As a mother and as a member of this community, I request your resignation and ask the entire community of Rowan County to support me in this stand.

— PATRICIA P. MOORE
Salisbury

WAYNE NIKSHAW/SALISBURY POST

IN COURT: Pam Bradshaw, right, natural mother of slain Budde Clark, looks toward father of child, Lee Clark, left, in courthouse hallway. Virginia Wright, center, is the mother of Robin Gosnell, accused of the murder of Budde Clark and involved in a custody dispute over a 13-year-old boy.

Child custody battle unresolved

BY JASON WILLIAMS
SALISBURY POST

The custody battle over Sammy Bringle hangs unresolved today because court-ordered home studies from the Department of Social Services were not completed for a court hearing scheduled Wednesday.

The teen-ager was living in the same Cleveland home where 6-year-old Budde Lee Clark died in January. Sammy's mother, Robin Gosnell, is charged with murdering the 6-year-old boy.

As she awaits her murder trial, Gosnell is representing herself as she battles her ex-husband, Gary Bringle, for custody of their son, Sammy. Gosnell wants her mother, Virginia Wright, to keep Sammy.

HEARING: Lee Clark, left, and Robin Gosnell appeared in Rowan court Wednesday.

On Wednesday, Diane Kane, a county social worker, told court officials that the home study tests for Gary Bringle and Virginia Wright need more work.

Kane has visited the Wright and Bringle residences in China Grove and the notes about Wright are ready for typing, she said.

Kane is waiting for a Cabarrus County criminal record check on Wright. However, notes on Gary Bringle were not ready for typing and she did not feel comfortable testifying from the notes.

Rowan County District Court Judge Ted Blanton continued the case until April 1. Blanton ordered the $150 home studies on Feb. 20. Wednesday afternoon, Social Services Director Rick Travis said Kane has not had adequate time to finish.

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Custody

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Kane is one of two people who screen complaints about child abuse, Travis said. Calls went from about 80 in January to about 116 in February.

"It's been crazy around here with the new phone system and child abuse complaints," Travis said. Kane does the home studies in her "spare time."

Gary Bringle, 36, received custody of his son in early February after Gosnell, 40, was charged with felony child abuse and murder. Gosnell appeared in court Wednesday in a orange jail jumpsuit.

Blanton listened to some subtle bickering between the parties involved.

Rick Locklear, the attorney defending Gosnell on the murder charge, appeared at the custody hearing to make sure Gosnell didn't say anything that prosecutors could use in the criminal case.

Gosnell made a request for her mother to have visitation rights with Sammy.

Locklear and Gary Bringle's attorney, David Bingham, worked out a deal in the judge's chambers. Bingham said that Wright could visit the child under the Social Services' supervision on Friday and on March 21 and 27.

Gosnell did not like that idea, calling the agreement "limited and constructed." She did not want Sammy put "under a microscope" and feeling uncomfortable.

She also wanted more than three days.

Gosnell asked Blanton to talk with Sammy about the issue. With the custody hearing postponed, Blanton said he did not have enough information to speak with Sammy.

The discussion prompted Bingham to compare Gosnell to the "tail wagging the dog," and he withdrew the visitation offer. Gosnell and Locklear then tried to introduce a motion for Blanton to consider a visitation request.

Blanton refused, saying he would not entertain the motion without the hearing.

■

Also listening to the argments Wednesday was Pam Bradshaw, natural mother of the dead 6-year-old. Bradshaw happened to be in court herself Wednesday, still facing a question of why she didn't make child support payments Budde's father, Lee, and stepmother, Robin Gosnell.

Since Budde is now dead, District Court Judge Anna Mills Wagoner dismissed any further question about the child support payments. Bradshaw then walked to the courtroom where Gosnell battled to keep custody of her son, Sammy.

State pledges public review

Official: System failed children

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BY ROSE POST
SALISBURY POST

The state's top Human Resources official says the system failed three Rowan County children who died within five days.

And, at the request of Gov. Jim Hunt, Dr. David Bruton says he's determined to find out why within the next two weeks.

"Working both with the state and the county department of social services," said Bruton, "we will reexamine where we have failed. We will report our findings publicly. We will make the necessary corrections."

And he will go a step further, he said in a statement faxed to the Post Tuesday afternoon.

He will "rigorously" review present state standards to protect children.

Bruton, who took a leave of absence from his 30-year pediatric practice in Southern Pines two months ago to become secretary of the N.C. Department of Human Resources, said Tuesday afternoon the review is already underway.

"I have set a two-week deadline," he said. "By the first of the month, I'm going to have everything I need."

Bruton said he doesn't fault the work of committees, "but I'm more of a get-me-some-person-I-can-hold-responsible" type. So he has asked Kevin Fitzgerald, director of the Division of Social Services of the Department of Human Resources, to reexamine Social Services' handling of the three cases.

Local Social Services Director Rick Travis also received the statement Tuesday afternoon.

"Any decision they made to do this was certainly made in Raleigh," he said, "and we had no prior knowledge or discussion with them about this. If they're going to review, then I'll wait until they give us the results of that second review to make any comment."

Travis worked with Fitzgerald on a local case almost exactly a year ago.

In March 1996, the state director intervened in a Rowan case when a grandmother wrote a letter to the Post saying that the system had failed her family.

Her daughter-in-law, Heidi Vernon, left her two children on a busy intersection in downtown Salisbury in freezing weather to get a hit of crack cocaine. Subsequently arrested, she was released from jail on bail and returned home with the children.

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CONTINUED

Review

➤ From Page 1A

Outraged, the grandparents made the story public, and Fitzgerald ordered a thorough review. The review brought a charge of neglect against the parents and recommendations for stronger Social Services action to protect the children. That included placing the children with the grandparents at that time.

In his statement Wednesday, Bruton said the N.C. Division of Social Services' review of the three deaths — the beatings of Budde Lee Clark, 6, and Christopher Jones, 19 months, and the shooting of Trola Miller, 16 — found a "serious need in Rowan County for more supervisory oversight, more training of staff and increased community involvement to prevent similar deaths in the future."

He said the governor directed him "to review our state investigation and take any additional steps necessary to correct failures in our efforts to protect children. I will go beyond such an investigation and rigorously review the standards we have in place to protect children."

He added that the governor has proposed expanding the state's outreach program to touch an additional 1,500 or more children with community health advisers who visit vulnerable families to offer support and counseling. National reviews show such efforts can reduce child abuse by more than 50 percent among participating families.

He's also asked a new task force to develop a comprehensive state plan to prevent child abuse and neglect.

"We all have to work together to protect our vulnerable children and strengthen their families," Bruton's statement concluded. "Let's devote every ounce of human energy available to bring to bear all the community's resources to help these struggling families."

In a telephone interview Tuesday, Bruton said he talked with N.C. Rep. Charlotte Gardner, R-Rowan, about her support for legislation to open Social Services records involving the death of a child.

Gardner says she'll sponsor such a bill if it can be drafted for this session.

Bruton said he can't commit to supporting the legislation now because he doesn't know what it will say.

"But I can commit to the concept of open meetings and open communication," he said. "I've been involved right smart in my life with public things," including chairing the state board of education during Hunt's first term as governor.

"And I have a strong sense," he said, "that if you do your business correctly and open and in public, in the long run it turns out to be better.

"Often people tend to hide or disguise poor performance" behind confidentiality requirements, "I've just seen it over and over.

"Obviously, there will be some private things that would not be public, having to do with the family, details that might be subject to litigation, but those things would be protected by private confidentiality. But personal, confidential things that obviously have to remain confidential and personal should not be used as a mechanism not to disclose anything."

◆ LETTERS TO THE EDITOR ◆

Children's vulnerabilities

I read and hear about children of parents who are on drugs or alcohol and who beat the children. It truly breaks my heart. The system is letting them down, but in some cases the judge is letting them down.

I know of a wonderful couple who were unable to have children and have adopted one child. They have had custody of a second child and are trying to gain permanent custody. The last time they were in court the judge granted the parents a continuance. The natural parents are on crack cocaine!

I was adopted and recently found my parents, so this is a very emotional issue for me. Most adults think that this type of hanging in the balance will not affect a child so young. I want everyone to know that it does! It teaches the child to trust no one. It's hard to understand why anyone would love you. The emotional scars are tremendous.

This child loves her foster parents; they are the only parents she's ever known. This child, like all others, didn't ask to be born, but the child is the one being punished.

We can't say it's important to keep biological families together or that all children should be adopted out. There is no one way to handle every case, because all are different, but these are children, and their lives are in our hands. Can't we use a little common sense?

— VALERIE BROWN
China Grove

Time for change at DSS

The actions taken by Social Services are reprehensible. How those officials could say they would not have taken the toddler away from his mother after seeing the pictures taken of him, is hard for anyone to comprehend.

With cigarette burns all over his body, with bruises on his iittle body as well as bite marks, only the most heartless individual could not be touched by such torture.

I believe there should certainly be some changes made in the Department of Social Services so that no circumstances such as these should ever occur again.

— MRS. LAWRENCE CREE
Salisbury

Acceptance of God

In your Saturday paper on Page 5C under Glimpses of Faith, you put, "But Jesus said, 'Let the little children come to me, and do not stop them; for it is to such as these that the kingdom of heaven belongs.' — Matthew 19:14"

My Bible, which is the King James Version which has been in this world for hundreds of years, says in Matthew 19:14 the following: "But Jesus said, Suffer little children, and forbid them not, to come unto me: for of such is the kingdom of heaven."

The way you have stated it makes me think that whenever children read this scripture according to the way you have worded it, they will tend to think that the kingdom of heaven belongs to them.

I don't interpret the King James Version that way at all. My interpretation is: The kingdom of heaven is for everyone who accepts the Lord as their savior. There are lots of children and adults in Heaven, and Heaven belongs to God. We who accept Him as our saviour are all children of God. We adults are not to try to keep little children from accepting the Lord as their savior. We are not to forbid them to do this.

— FRANCES CORL
Rockwell

■

Letters to the Post can be sent to this address: Letters to the editor, Salisbury Post, P.O. Box 4639, Salisbury, NC 28145-4639. Our fax number is (704) 639-0003; our e-mail address, spost@interpath.com.

DSS workers are committed to help

BY MICAH MELTON
SPECIAL TO THE POST

I am a social worker with the Rowan County Department of Social Services. To me, social work seems more like a responsibility than a job — an exchange for the privilege of living in this community. Although I chose to pursue employment and professional education as a social worker, I do not believe that these choices are what make me responsible to do my part building the community.

Social workers are simply agents or representatives of the larger community — we are not the end of the line in child protection, cash assistance, or any other services to citizens. Often, however, we get involved when "natural" helping systems have fallen through. And sometimes, even though we work as hard as we can and use the very best of our knowledge and skills, tragedy still strikes.

The deaths of the three children in Rowan County are nothing short of tragic. My heart aches for their suffering and for the agony in their families. I also know from my day-to-day experience that the social workers in this agency are committed, skilled, knowledgeable and caring. If we could predict the future, we could count how many lives have been saved and improved by the diligent efforts of Rowan County's social work staff. And my guess is that the numbers are astonishing.

I challenge the Salisbury Post, the board of social services, the board of commissioners, Social Services employees and community citizens to recognize the complexities of working with children and families, and to work together to make our county a safer place for our children to grow up. We do not have time to waste pointing fingers at each other — our children are counting on *all* of us.

■

Micah Melton lives in Kannapolis.

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Letters to the Editor

Children must be community's priority

I am writing this letter to voice my concern and opinion about the recent child abuse cases that resulted in murder. As far as I am concerned, the Department of Social Services should clean house and start all over again, with people who care about abused children and are concerned enough to follow up on these important cases.

I don't think there is anything more important than children; they are so innocent! It breaks my heart that these children are lying in the ground because of the failure of society to protect them. DSS workers should stop trying to *pass the buck* and take the responsibility for their neglect. If the laws are the problem, then petition to have them changed and stop using them as a scapegoat. DSS seems to have all kinds of excuses, but I have read of none that would justify their total neglect — Lord have mercy, pictures don't lie.

I am an ordinary citizen of Rowan County and a taxpayer, and I would rather my taxes be used for the protection of children than any other program. Hopefully, the deaths of these children will wake the people up enough that something will be done.

— **DOLORES BOYKIN**
Salisbury

Accused child abuser has prior conviction

Kannapolis woman served time for manslaughter in N.Y.

BY NEIL HOLTHOUSER
AND WESLEY YOUNG
SALISBURY POST

A Kannapolis woman accused of child abuse had previously been convicted of manslaughter involving the death of a child.

Denise Santos, 43, will stand trial next week on charges that she abused a 4-year-old boy in December 1995 by submersing him in scalding water. The boy suffered second- and third-degree burns on his feet, buttocks and genitalia.

In a bond hearing Wednesday, Rowan County District Attorney Bill Kenerly asked the court to increase Santos' $10,000 bond on evidence she had previously been charged with murder in New York.

She was convicted of a lesser charge of manslaughter and served time in a New York prison.

Kenerly would not give details of the conviction outside of court, saying he did not want to jeopardize the state's case against the woman.

However, Kannapolis Police Sgt. Jeff Tysinger said the manslaughter conviction in New York involved the death of a child, though it is not clear if she was related to the child.

Tysinger also said Santos' had been convicted on drug charges, once for possession of more than 10 gallons of PCP, or "angel dust."

Santos was charged with felony child abuse in December 1995 after a child she was baby sitting suffered severe burns.

According to a news report from December 1995, Santos was baby sitting a 4-year-old boy and his twin sister at her home in Kannapolis, which she shared with the children's aunt, Paula Jones. Jones had custody of the twins, whose natural mother lived out of town.

Santos allegedly forced the boy into a tub of extremely hot water after he wet his bed. She then called 911.

The boy was taken to Cabarrus Memorial Hospital, where emergency room

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Abuser

➤ From Page 1A

workers called the Rowan County Department of Social Services.

Social workers immediately removed the sister from the home and placed her in foster care in Rowan County. It was not clear this morning what became of the boy.

Santos posted her $10,000 bond shortly after her arrest. She was summoned back to court Wednesday after Kenerly learned of her prior conviction.

Santos' attorney, Robert Inge, argued in court against a bond increase, saying she had never missed any of her court appointments while she was out on bond and had faithfully complied with every requirement. Inge refused this morning to elaborate on Santos' conviction in New York.

Judge Henry E. Frye ruled that Santos' bond would remain the same but added that she will be jailed without bond if she ever fails to appear for a court date.

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SALISBURY POST 3/15/97

Woman killed child in N.Y.

Suspect in abuse case convicted of manslaughter in 1974, spent 3 years in jail

BY JASON WILLIAMS
SALISBURY POST

The Kannapolis woman scheduled to go on trial next week here for felony child abuse spent less than three years in prison for killing a child in New York.

According to court records, Denise Santos, 43, was convicted of second-degree manslaughter on Aug. 12, 1974. The Bronx County Supreme Court sentenced Santos to 6½ years in prison.

She was released on parole from New York's Department of Correctional Services in February 1977.

Details about the death and the age of the child were not available from New York officials on Friday. The child was in Santos' care at the time of its death.

Nearly 10 years after the first conviction, Santos was convicted for manufacturing, distributing and dispensing an illegal substance. She received a seven-year sentence in New Jersey in February 1986, but spent less than three years at Edna Mahan Correctional Facility. She was paroled in January 1989.

Santos is accused of putting a 4-year-old boy in scalding water back in December 1995. The child suffered third-degree burns. She was baby sitting the child, authorities said.

Santos has been freed on a $10,000 bond.

Standing up for mom

JAYSON SINGE/SALISBURY POST

CHANGED ATTITUDE: Christian Ray Pittman spends a lot of time in the Cabarrus Correctional Center chapel.

Christian Pittman says charges of abuse, murder against Robin Gosnell are untrue

BY JERRI MENGES
SALISBURY POST

MOUNT PLEASANT — Christian Ray Pittman knows no one's going to believe him.

He's a convicted con man, serving six to eight months at Cabarrus Correctional Center for swindling people out of money to support his five-year crack cocaine habit.

Besides, the whole world — at least Rowan County — *wants* to believe his mother, Robin Gosnell, is a murderer. They want to believe she beat her 6-year-old stepson, Budde Lee Clark, to death on Jan. 31, then put him in a bathtub to make it look like he drowned.

Robin Gosnell is in the Rowan County Jail, charged with felony child abuse and murder, and she writes to Pittman frequently.

"People are ready to kick dirt on her," Pittman told the Post. "People are quick to say something bad about a person. I know in my heart what my mom's like. I don't care what it says in the paper."

His innocent, somber expression doesn't change as he talks about his mother, whom he seems to worship. His short haircut — with bangs across his forehead — makes him look more like he should be shooting hoops in someone's yard, instead of cooking meals for fellow inmates.

Pittman, 21, is tired of seeing his mom's name blasted in the newspapers and on television. He doesn't trust the press. Newspapers print rumors and don't get their facts straight, he says. He agreed to talk to the Post because "someone's got to stand up for my mom."

His mother stood up for him when no one else would. She was the first one he went to when he finally admitted he needed help with his cocaine addiction. She forced him to go to Charter Pines psychiatric hospital in Charlotte to seek help.

As he defends his mother, his voice gets louder, trampling his obvious conflicts with statements made by investigators, school officials, neighbors and ex-husbands. She was protective, not controlling. She home schooled her children diligently and loved Budde as much as any of her children, he says.

"I don't know what happened in that house any more than you do," he says loudly. "But I don't believe she done it."

Then, more quietly: "I'm a mamma's boy. Mamma has always been there for me. When Daddy and everybody else gave up on me, Mamma was standing tall."

Only now he can't run to Mamma, because she's in jail, too.

"This is a growing time for me," he says. "In a lot of ways, Mamma is like

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"She's been a supermom against child abuse. And all of a sudden, it has turned around on her. If my mom was ever going to beat anyone, she was going to beat me. I was the worst one out of the whole bunch."

— Christian Ray Pittman speaking of his mom, Robin Gosnell

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God. She's been a Band-Aid for my boo boos. God allows things to happen. This could have been for me, this could have been for my family, to bring our family together."

Time for reflection

Pittman has spent a lot of time in the chapel where he's sitting today, wearing his white cook's apron, white pants and t-shirt and black shoes. He comes here for Sunday and midweek services and goes to the dining hall for Narcotics Anonymous and Alcoholics Anonymous group therapy sessions three times a week. The bright afternoon sunlight streams in through the chapel windows as he talks about his new life. A white, roped cross around his neck symbolizes his new relationship with his God.

It was God who gave him strength when he got that call from his estranged wife, Jaime, that Saturday telling him that his stepbrother was dead. Buddy, the cute little 6-year-old, blond haired kid that often visited Pittman's house to play with his two little girls, was gone.

"It was a shock to me that something had happened to Buddy," he says, shaking his head. "It was a shock to me that Buddy died. And then they called back and said that they had charged my mom with child abuse."

That blew his mind. His mother loved Buddy, Pittman says. She treated him no differently than she did Pittman and Sammy Bringle, her 13-year-old son from a previous marriage. Pittman remembered how upset she was when she told him that Budde was being abused by his birth mother, Pam Bradshaw. That's why she fought hard to help her husband, Lee Gosnell, get custody of the little boy in 1995.

Bradshaw has no criminal record, according to Rowan County court records. She was acquitted of one misdemeanor charge of communicating threats against Robin Gosnell.

The Department of Social Services received five reports against Bradshaw when Budde lived with her.

A Social Services home study only substantiated two of those and only one was mentioned in the home study report, filed in court as part of the Gosnells' fight to get Budde.

Robin Gosnell had a "direct line" to Social Services director Rick Travis, when she and her husband were trying to get custody of Budde, Pittman says.

"This is ironic," he says. "She's been a supermom against child abuse. And all of a sudden, it has turned around on her. If my mom was ever going to beat anyone, she was going to beat me. I was the worst one out of the whole bunch."

Childhood travails

Pittman's parents, Robin and Junior Pittman, separated when he was a toddler. He bounced back and forth from his mother, father and maternal grandparents, and he learned to manipulate them all to get his way.

"They all wanted me," he says. "They fought over me. So if one didn't give me what I wanted, I would go to the other one."

Pittman lived with his father until he was 8 or 9 years old, then he went to live with his mother, her new husband, Gary Monte Bringle, and their son, Sammy. That was one of the worst periods in his life, he says, because that's when he saw Bringle and his mom fighting.

At his attorney's instructions, Bringle wouldn't comment for this article.

Court records show that Bringle, Sammy's father, pleaded guilty in 1988 to an assault charge filed by Robin Gosnell. The arrest warrant accuses Bringle of assaulting his wife by "pulling her by her hair from her house and by hitting her with his fists and kicking her repeatedly about the face and body."

On the same day, Robin Bringle pleaded guilty to assaulting her husband with a deadly weapon, a vehicle. Both received a prayer for judgment continued and an order to get counseling. The couple eventually separated and then divorced.

When Pittman was 13, he decided to go live with his father.

"My mom was over-protective," he says. "She wouldn't let me go out with my friends or ride my bicycle. I could ride go-carts at my daddy's.

"My mamma wanted me to stay close to her. My daddy owned an automotive shop and she would call continuously to see where I was. So I left. Like I said, if I didn't get what I wanted at one place, I would go to the other."

By age 16, Pittman was living wherever he wanted — with his mom, dad, grandparents or an aunt in Concord — and using marijuana. By 17, he was selling the drug, mainly to support his habit, and getting into fights at school.

That's why his mom decided to pull Sammy out of the public schools and start home schooling, he says.

"Sammy went to kindergarten and first grade. He had perfect attendance. He made good grades. But my mom knew that public school was the best place to buy and sell drugs, so she took Sammy out."

Officials in three different school systems, including Rowan-Salisbury, said Robin Gosnell kept her children out of school. Gosnell always told the schools she was home schooling Sammy, but they could never find evidence that she was, despite visiting at different times of the day or week. Kannapolis school officials say their conflicts with her go all the way back to Pittman.

But Pittman says his mother never tried to keep him out of school. He quit in the 11th grade and finished at Rowan-Cabarrus Community College.

"My mom never tried to keep me out of school," he says. "I spent a lot of time in the hospital when I was growing up, because of asthma and allergies. I was in the hospital a week at the time. I went to school at Aycock, Kannapolis Middle and A.L. Brown."

And he can vouch for his mom's home schooling efforts.

"I have personally seen her teaching Sammy and Budde," he says. "She'd give Budde magazines and newspapers, and he'd circle his A's and B's. He'd circle them in different colors. He knew how to say his ABCs. And he could count to 20."

Sammy could read and write very well, Pittman says.

"And Budde was learning to write. She believed in letting them excel at their own pace."

Growing drug problem

Pittman's drug habit gradually progressed from marijuana to crack cocaine, and over a five-year period he learned to con his way into people's hearts with sad stories to get the money he needed to buy crack.

His car broke down and he didn't have the money to buy the part it needed, he'd tell them. Or, he needed money for a taxi cab. He stole a woman's purse from a store counter. He took $1,700 from his maternal grandfather for a two-day crack spree.

Finally, in September, Pittman was arrested and jailed on charges of possession of stolen goods, obtaining property by false pretenses, one count of breaking and entering and two counts of uttering a forged check. He pleaded guilty in November.

Pittman's mother was relieved when he was arrested. She had tried to have him involuntarily committed to Charter Pines Hospital in Charlotte three times. She had "ripped and roared the streets of Salisbury" looking for him during his drug sprees.

"If it weren't for her prayers, I wouldn't be here today," he says. "By her not quitting, like everybody else did, by her not giving up on me ... My mom and I are real close. We're like brothers and sisters."

But their relationship wasn't always perfect. When Pittman was questioned about their relationship during a second interview, he admitted the two of them got into fights so big that the China Grove police had to come to their house to break them up.

Pittman got married when he was 18, and he and his wife, Jaime, moved in with his mother and her new husband, Lee Gosnell. Pittman went to work with Gosnell at Freight Handlers Inc., which operates out of the Food Lion warehouse.

In January 1996, the couple moved across the street from Robin and Lee Gosnell in Cleveland. At one point, his drug problem was so severe, neighbors mentioned they might call Social Services about the couple's children. So they gave custody of the children to his mother.

Pittman says he "didn't do drugs in front of the children."

Neighbors, including one with a 6-year-old boy who lived on the same block, have said they didn't even know a 6-year-old boy lived with the Gosnells.

But Pittman says Budde came to his house frequently to play with his little girls, Kandi and Meagan, who now live with their mother and her parents in China Grove. "Budde was my little helper," he says. "... He liked to help me clean up.

"My mom would play on the trampoline with the boys, and she bought Barbie dolls and little vanity sets for my girls."

Pittman criticizes the media for making fun of his family for having "black material" over their windows. Lee and Robin hung dark green shades in their bedroom to block the sun so Lee could sleep during the day when he worked third shift, he says.

And Sammy had black blinds over his window and black sheets on his bed because he was going through a black phase.

"Teen-agers go through these black stages where they listen to rock-n-roll music and wear rock T-shirts, which are usually black," Pittman says. "He can have black in his room if he wants to. Who's going to tell me what's normal?"

"It's not 1950 anymore, so let's stop treating it like it is. The president has said it's OK for a man to marry a man in this country, and you're going to worry about garbage bags on windows?"

Unexplained death

So if his mother and stepfather loved children as much as he says, how does Pittman explain Budde's death? All he knows is what he's heard, from his half-brother Sammy and stepfather Lee. Both gave the same story:

Robin Gosnell was getting ready for work and giving Budde a bath when the telephone rang. She asked Sammy to watch Budde while she answered the phone.

"Budde could take a bath by himself, but he was mischievous," Pittman says. "He used to climb on top of the washing machine ... "

Sammy checked on Budde then went outside to get his Chihuahua, April. He was outside about 10 minutes and when he came back inside Budde was floating face down in the bathtub. There was water on the floor, water on the washing machine.

"Sammy screamed for Mom," Pittman says. "She came in, flipped Budde over, got him out of the tub and tried to give him mouth to mouth resuscitation. About that time Lee was coming home and he heard the screams ... "

Budde stayed alive until he got to the hospital, Pittman says. And that raises another question.

"If he was beat to death, how did he get water in his lungs?" he asks. "If he was not breathing, that couldn't have happened."

Pittman's account contradicts every public statement that law enforcement officials have made, and sources have told the Post medical personnel found no water in Budde's lungs.

But that doesn't change Pittman's mind.

Budde was known to turn the bath water back on, Pittman says, if his mom left him alone in the tub. That would explain how the tub got full of water while Sammy was outside. Budde probably got out of the tub and climbed up on the washing machine when Sammy was outside. That would explain the water on the machine. And maybe he banged his head on the tub when he climbed back down and got back in the tub.

But what about the old wounds hospital sources say they saw when Budde was taken to the emergency room?

"He slept in a bunk bed," Pittman says simply. "He could have injured himself on the bed ... I believe it was accidental, totally. If it was murder, what's the motive? There was no insurance.

"... He was not in the way. If she wanted him out of the way, she would have given him back to" Pam Bradshaw, Budde's birth mother.

Pittman has not asked his mom about the details of that evening. He hasn't been able to see her since she's in jail and he wouldn't ask her that kind of question in a letter.

"She's the little old lady who lives in the shoe," Pittman says. "She loves children. I'm willing to accept anything. But I just can't see my mom doing it. Nobody can believe it. It's like a shock ... But at the same time I can't see her allowing anybody else in the house to do it either."

Pittman doesn't expect anybody to believe his story. He's come a long way since he came to prison. He spends much of his time praying, passing out Christian witness tracks, and he can call scripture and inspirational poems to mind at will. But the public still sees him as a con man.

"God's helping me deal with my character defects," he says. "But I can't expect anybody to believe this right now."

All he can say is he knows his mom well enough to know she did not, could not, kill a child.

"I hear from her just about every day, through letters," he says. "She's all right. She's going to make it."

As usual, Robin Gosnell spends her time in jail worrying about her children, Pittman says.

"She's worried about me and Sammy, how Sammy's taking it, how I'm taking it," he says. "Her and Sammy have never been parted. They've got that bond. I don't believe she did it. Time will tell."

Child abuse deaths reveal weaknesses

From broken families to safety nets that have been stretched too far, society is hurting

Scotty Trexler, 21 months old.
Brandie Freeman, 2.
Budde Clark, 6.
Christopher Jones, 19 months.

There probably are more names on the list — area children who have died as a result of child abuse — but these four stick in my memory, maybe because their cases stirred so much public indignation. Their stories have a way of staying with you.

ELIZABETH COOK

The Rowan County Department of Social Services was searching for Scotty in 1987, hoping to put him in protective custody. The department knew he was suffering abuse. But his young mother and her boyfriend fled, taking the toddler with them. Scotty died in Tennessee, beaten and bruised. The boyfriend, who watched the child while the mother worked, was convicted of second-degree murder.

Brandie Freeman of Linwood died in 1993, her head repeatedly slammed into the floor for a childhood infraction. Her mother's boyfriend, who watched the child while the mother worked, now sits on Central Prison's death row.

Budde and Christopher both died this year. Budde died while living with his father and stepmother, killed by a blow to the head but also showing signs of abuse. His stepmother is charged in his death.

Christopher's story contains a frightening echo from Scotty and Brandie's cases. His mother's boyfriend, *who watched the child while the mother worked,* is accused of beating him to death.

Take note, advocates of welfare reform. Who is going to take care of children while their mothers work? We must have clean, safe, affordable care for the children of women who venture alone into the world of starting wages and second shifts.

Several disturbing similarities run through the stories of these children's deaths: teen pregnancy, out-of-wedlock births, low wages, inappropriate child care and an overburdened social services system.

The social services department here has come under tremendous scrutiny following the deaths of Budde, Christopher and 16-year-old Trola Miller in a five-day period. All three had some history with social services, and sources close to the boys' cases cite signs of previous abuse that they believe should have prompted protective action.

Just what social services did in these cases remains unknown to the public, hidden behind a policy of confidentiality that has outlived the children it was designed to protect.

That policy needs to change — for the sake of the children, and for the sake of the social workers themselves. For children's sake, we need to hold the system that protects them publicly accountable. And social services workers deserve a chance to explain what they did. These could not have been easy cases.

Changes in the federal Child Abuse and Prevention Act have allowed states to move toward greater disclosure. Colorado and Florida make abuse or neglect records public in cases where a child dies in state care. North Carolina should follow that cue and expand upon it.

Because the Post has focused so much attention on Budde and Christopher and social services' role, some people draw the conclusion that we blame the department for their deaths. That is not our intent. The Rowan County Jail now houses the people being held directly accountable for these boys' deaths; a judge and jury will determine their fate.

These boys were killed, authorities say. Their murderers should be held as accountable as the man sitting on death row for Brandie Freeman's death. If found guilty, *they* are the ones who deserve the system's worst punishment.

But that does not diminish our responsibility to hold accountable the system put in place to protect children — nor our responsibility to keep that system viable. We'll never know the names of all the children Social Services has saved. We'll never forget the names of those we all collectively failed.

■

Elizabeth G. Cook is editor of the Salisbury Post.

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Fighting abuse must involve community

BY PAM WILLIAMS
SPECIAL TO THE POST

I'm compelled to respond to the recent publicity of child fatalities, as a citizen of Rowan County and as an employee of the Rowan County Department of Social Services.

As a citizen, I am deeply concerned for abused children and their families. However, we must ask ourselves, "How much are we willing to pay for the quality services we want to provide for abused and neglected children?"

To meet state standards, the Department of Social Services needs two more supervisors plus additional social workers. To exceed state standards, even more workers are needed. More foster homes and adoptive homes are needed. Will we open our homes?

Difficult teens and children with severe emotional/behavioral problems require more than a regular foster home. Appropriate placements for these children range from $4,500 to $10,000 (or higher) per child, per month. Are we willing to dig deeper into our pockets?

The Rowan County Department of Social Services needs computers and automation for Children's Services. Rowan County is one of the few counties without automation. Are we willing to pay for automation to save social workers time?

Child abuse is a community, not an agency, problem. As citizens of this county, when did we get involved by volunteering our time, reporting child abuse, lobbying for new laws or funding child abuse prevention agencies?

The next time taxes increase, will we grumble or gladly support agencies to protect our children? Will Rowan County continue to be a county which reacts to tragedies, or will Rowan County come together as a community to provide the resources necessary to be a community of prevention?

As an employee of the Rowan County Department of Social Services, I, along with other social workers, am greatly concerned about the child fatalities.

Despite long hours, low pay, high caseloads, constantly changing standards and laws, emotional stress, neglecting our own families and personal lives, and even the threats sometimes made on our very own lives, social workers choose to remain involved because we care about the welfare of children in this community.

■

Pam Williams lives in Salisbury. This letter was also signed by 43 other employees of the Rowan County Department of Social Services.

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POLICE BLOTTER

Woman accused of child abuse

Authorities have charged Michelle Myers Allman, 29, of 1632 W. Colonial Drive, with misdemeanor child abuse. According to a report, Allman is accused of hitting her daughter, Brittany, 3, with a spatula, leaving bruises on her buttocks. Court date is March 26.

In other reports from the Salisbury Police Department:

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Open records

Charlotte Gardner says rules must change when a child dies

BY ROSE POST
SALISBURY POST

N.C. Rep. Charlotte Gardner says she will sponsor legislation to open Social Services records involving the death of a child.

"I think more and more people are saying it's not enough to 'meet standards,'" she told the Post this morning. The only obstacle might be the time needed to draft the necessary bill.

At a press conference Friday, state and local Social Services officials repeatedly said they "met standards" in the way they handled abuse complaints about 6-year-old Budde Lee Clark and 19-month-old Christopher Jones. Both children were later beaten to death.

Sources familiar with both cases have told the Post that Social Services workers were warned of the danger and earlier injuries to the children. In Jones' case, medical authorities took pictures of previous injuries and called Social Services directly.

Yet records of the case and a separate state review of Social Services' actions remain sealed from public view.

Gov. Jim Hunt is deeply saddened by the children's deaths in Rowan County, spokesman Sean Walsh said this morning.

And the Department of Human Resources is

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actively following his directive to take a closer look at the situation in Rowan County.

"These are tragic deaths that could have been avoided," Walsh said, "and the governor wants to make sure we're doing everything we can to prevent child abuse in Rowan and across the state, to help families in need and to crack down on child abusers."

Friday's press conference also prompted Irene Goodlett, chairman of the board of Social Services, to call on the public to support the agency with more workers and money.

In a letter published on the editorial page of today's Post, Goodlett cites the heavy workload handled by the Rowan Department of Social Services.

Gardner, R-Rowan, is co-chair of the appropriations subcommittee on human resources and a member of the human resources committee, which covers the Division of Social Services. Human Resources is the largest department in state government.

She is also co-chair of the legislative study commission on mental health and serves on committees on welfare reform, aging, judiciary, environment and insurance.

"I definitely think it's an idea whose time has come," Gardner said. "The events that have occurred in Rowan County over the recent couple of years especially have made it something that needs to be brought to the attention of the General Assembly and ratified into law so that in those cases that have resulted in a fatality we are able to understand what happened and why.

"At the present time you have no reason at all" to understand what happened.

Besides the two recent child abuse cases, Gardner referred to:

■ A 1996 case in which a Rowan County woman left a small boy and a baby in a carseat at the corner of Innes and Long streets so she could get a hit of crack cocaine. Heidi Vernon's case grabbed national headlines.

■ A few years earlier, a teenager was charged with murdering her newborn, and her brother was charged with raping her. Despite warnings from the teen-ager and law enforcement, the siblings' younger sister remained in the home. The children's father pleaded guilty to taking improper liberties with the younger girl, who has now been removed from the home.

On Monday in Raleigh, the State Child Fatality Task Force will discuss the idea of opening records surrounding children's deaths. The group will meet with representatives of the N.C. Press Association, which has indicated it hopes to see the General Assembly look at the issue during the current session.

Gardner said she has talked with Chuck Harris, chief of Children's Services in the Division of Social Services, about the review of the children's cases in Rowan County.

"And I feel like their basic premise was flawed," she said. "The idea that we need to keep families together is fine, but not at any cost. He said that's not really what we do, but I think that's the message. All the programs seem to be geared toward keeping a family together. I sometimes think that becomes the overriding issue in all this."

In her letter to the Post, Social Services board chairman Irene Goodlett points out the department accepted 87 reports of abuse and neglect for investigation and 90 child protective treatment cases in a month. The department has legal custody of 208 children and 56 families waiting for one social worker to handle all studies and placement requirements for adoption.

Citizens, she writes, must ask themselves where they are "when more social workers in child protective services are needed and additional funding from the county commissioners is the bottom line."

During Friday's press conference, Director Rick Travis said more supervisors are needed. The state's standard is one supervisor to five social workers. The Rowan Department of Social Services has one supervisor for eight workers and one for nine in the two units of child protective services. He has asked the county commissioners for one additional supervisor, which would drop the ratio to one supervisor for six workers.

"Only asking for one would bring it up to sub-standard," said Elizabeth Smith, a Rowan resident who has asked Gov. Jim Hunt to review the Rowan deaths.

"You've got to at least ask" for necessary resources, she said. "As director of a program, you at least have the responsibility for asking for what you need. If the county commissioners turn you down, then the taxpayers have to say we want what the children need. That's the responsibility of leadership to at least ask for the positions to bring you up to standard. None of us can know that. That's within the administration of the program."

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Rowland: Social Services work 'disastrous'

BY ROSE POST
SALISBURY POST

An outraged county commissioner charged Monday night that Social Services Director Rick Travis did not properly investigate the deaths of two Rowan County children before saying his department acted properly.

And, the commissioner said, Travis and the state official responsible for reviewing Social Services actions exonerated the department without seeing pictures of previous abuse or talking to medical officials who tried to sound an alarm before one of the children died.

In a letter to Gov. Jim Hunt, County Commissioner Dave Rowland has complained of "a disastrous breakdown with our Social Services department."

"The child fatality review conducted on these cases is the most pathetic, narrow-minded and biased report that I have ever read," Rowland wrote. "The team that conducted this review insulted our entire community when they announced that no 'critical protection issues were identified,' and commended the agency's leadership."

Six-year-old Budde Lee Clark and 19-month-old Christopher Lee Jones were beaten to death during the same Jan. 31-Feb. 4 weekend. Budde's stepmother and Christopher's baby sitter have been charged with murder.

The Post reported that medical officials saw Christopher a month before his death. Those officials took pictures of severe physical abuse and called Social Services officials about the injuries, the Post said.

But a social worker never got the pictures and never talked to hospital officials, the Post reported. The agency left the boy in the same home with his mother until his death.

At a press conference 10 days ago, Travis said the pictures of the baby's injuries weren't as bad as the Post described, that his department "met standards" and that he would have done nothing differently.

A week later, Travis told Rowland that he had seen only black-and-white Xerox copies of the pictures since the baby's death.

"And my guess would be he still has not seen the actual pictures," Rowland said Monday night, after commissioners met with Social Services officials.

Travis declined to comment on seeing the pictures.

"There's nothing right now I want to say," he told the Post this morning. "We'll let the rereview take place next week."

After complaints about the initial state review, Gov. Jim Hunt asked Dr. David Bruton, the state's top Human Services official, to investigate the local tragedy again.

The Xerox copies of the pictures made at Rowan Regional Medical Center of

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severe injuries to Christopher Jones — including bruises on his body and lips, a bloody nose and a bruised and "bitten" scrotum — are now at the Rowan County Department of Social Services and part of the confidential report which was opened to all commissioners Monday night.

But after a grim two-hour closed session, Commissioner Steve Blount said in a statement prepared earlier that he's discovered no mistakes "that would have materially affected these cases."

On the other hand, the conduct of Social Services officials enrages Rowland.

"If anybody can look at those pictures and have them not trigger an investigation, a full atomic bomb going off on the Square would not trigger an investigation," he said.

During the executive session, Rowland said, he "told everybody at the board that I basically agreed to keep my mouth shut, but when I walked out, I said all bets are off. I said I was going to discuss it and I was going to keep it as a prime issue until I saw that there were changes being made."

Rowland provided the Post a copy of his letter to the governor. The letter says: "The Child Fatality Review Team only reviewed the internal case files and based their opinion on how well the case worker did their paperwork and whether they followed state guidelines. If state guidelines were indeed followed for Budde Lee Clark and Christopher Jones, isn't it time to make major changes in our Child Protection Services?"

When a community loses a child because of abuse, he said, "we don't need a paperwork review. We demand a full unbiased investigation of all the facts before and after the tragedy and a complete review of leadership, caseworkers and training."

He said the county was outraged and expects an explanation.

"But all we received was a Social Services director in denial and calling for more tax dollars."

After Monday night's closed session, commissioners met briefly in open session and voted unanimously to form a child abuse task force "to reaffirm existing and create new lines of communications that would help prevent future abuse and deaths." The commissioners chose not to wait for the results of the second investigation now being handled personally by Kevin Fitzgerald, director of the N.C. Division of Social Services. Fitzgerald attended last night's meeting and expects to report to Bruton by the beginning of April.

Fitzgerald also saw the Xerox copies of the pictures, with the medical notes, but did not comment on them.

He said he will:

- Look at the cases.
- Review state procedures to see if they were adequate.
- Study protection standards themselves.

"We've got a team of two state folks, two external folks and a regional person and a local person being put together right now," he said. The team will convene by next week.

"And we will be contracting with ... a national non-profit organization that deals with child welfare and protection issues to come in with us and assist the team and provide the external look-see at our standards primarily," Fitzgerald said.

Any comment on possible disciplinary action against Social Services employees is "premature," Fitzgerald said. "That will depend on what this review shows."

He called last night's meeting "a very frank and open discussion" of a "tough subject."

"I feel very positive that with the assistance of the county commissioners and the Board of Social Services that we will make some very positive strides in protecting kids," he said this morning.

Jane Malpass, a state children's program representative involved in the first review of the children's deaths, attended last night's meeting with commissioners.

After the meeting, Rowland said he told Malpass investigators could not do a thorough investigation — or justice — without "viewing the pictures, talking to the doctors, talking to the nurses, looking at the events before the deaths."

From the descriptions he's heard, he said, he believes anyone who can "view those pictures and come back and say they wouldn't do anything different should be looking for a new occupation.

"Through my own personal investigation, I have found the description supplied by the Post to be correct.

"Had Social Services owned up to their problems and gone at this thing from a positive attitude — as to where they failed these children and started implementing changes in training and procedure — I would have been upset but not nearly as outraged, as outspoken as I have been," he said.

"But I can't believe they're sitting there blaming it on everything coming and going. I blame it on myself for being a commissioner and believing that the system we have implemented would work. I take some of the blame myself."

A sorrowful Jim Neely, county commission chairman, said he wants "mandates" changed.

"We're concentrating on the wrong things — whether or not people have three bedrooms. ... If I thought 10 more people would solve the problem, they would have them tomorrow."

But he doesn't believe that would solve the problem.

"I'm sick at my stomach," he said.

"I can look out there," he gestured toward flowering trees visible through his office window on an early spring night, "and I know that somewhere out there, some piece of trash is doing this to some other child. And we're allowing this to happen because we're so bent on mandates."

He said he finds many inconsistencies. He's been told social workers went to the home of the 19-month-old in 15, 48 and 72 hours, and he doesn't know what is accurate.

"And at this moment I'm very unhappy with the DSS."

Commissioner Frank Tadlock, who represents the county on the Social Services board, also put his thoughts into a written statement this morning.

"Our board is like the community, very concerned and saddened by the fatalities of the three children," he said. "We are also concerned about disabled adults and senior citizens, to make sure they have the best service possible.

"I think it will take a community effort, everyone working together to prevent this from happening again. I blame the people that killed the children. They made that decision."

He said commissioners acted responsibly in studying the confidential information and arriving at the need for the task force.

"I would encourage the community to solicit support from our state legislators to pass legislation allowing confidential information to be made public after the person dies," Tadlock wrote. "This way we can learn from our experiences."

He added that he knows there's a lot of concern in the community, and he believes people will jump on this task force.

"The sheriff has notified us that he has three deputies trained to investigate, and they're available 24 hours 7 days a week. Possibly some service by the Salisbury Police Department can do likewise."

In his statement, Blount said the community is "mad as hell" and "looking for someone to blame," adding that "some individuals and especially the media are claiming a cover-up is in progress.

"I wish at this time, with all of the information in hand, I could point my finger at a person or an organization that was to blame for these deaths and then we as a community could figuratively or even literally hang the guilty parties from the town square. But I can't."

Procedures were followed, he said, and standards met, adding that he doesn't think the system is broken and "we all" are to blame.

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SALISBURY POST

• OPINION •

Wednesday, March 19, 1997

Up to standard?

■ *Don't go overboard in criticizing actions of DSS staff*

BY STEVE BLOUNT
SPECIAL TO THE POST

(Editor: Two Rowan County commissioners, Steve Blount and Dave Rowland, have written essays commenting on how the county Department of Social Services has handled recent fatal child abuse cases. Blount wrote directly to the Post; Rowland's letter was first sent to Gov. Jim Hunt.)

Child abuse is killing our community's children and we, as individuals and as a community, are mad as hell about it. And because we're mad and because we don't have access to all of the confidential information, we're looking for someone to blame. And because being blamed for such a terrible thing makes the people being blamed defensive in their comments, some individuals and especially the media are claiming a cover-up is in progress.

I have met with Mr. Rick Travis, director of the Department of Social Services, and reviewed the cases that led to the deaths of several children over the past months. Mr. Travis answered all of my questions openly and without reservation. I read in detail the state report that reviewed how our local staff handled each case. I heard the history of the people involved in each situation.

I've talked to Sheriff Martin about his perspective on these cases. I've talked to doctors at the hospital about what they think happened. I've talked to several DSS board members to hear about their in-house investigations.

I wish at this time, with all of the information in hand, I could point my finger at a person or an organization that was to blame for these deaths, and then we as a community could figuratively or even literally hang the guilty parties from the town square, but I can't.

As stated in the previous public reports, established "procedures" were followed in each case. Standards were met. With children dead, this fact has not been much comfort to anyone.

But before you condemn the procedures, understand that they were developed for the very purpose of protecting children from abuse. They were established to take personal prejudice out of the process. They were established to remove personal whim from the system. They were established to ensure speedy response times in all alleged cases of abuse.

The rules require that every case of suspected abuse reported to DSS be investigated. In these cases they were. The rules require that they be investigated in a very short period of time. In these cases they were. The rules require that interviews with friends, family, neighbors, the accused and the alleged victim be conducted. In these cases they were. The rules require that detailed records be kept to document these efforts. In these cases they were.

Were mistakes made? I've discovered none that would have materially affected these cases. Would additional staff, either case workers or supervisors, have saved these children? I don't see how.

Were mistakes made? I've discovered none that would have materially affected these cases. Would additional staff, either case workers or supervisors, have saved these children? I don't see how. Is the system broken? It's certainly overloaded, but in my opinion, no, it's not broken.

Then who's to blame? We all are.

Obviously, those who actually killed these children are at the top of the list, and I hope our justice system makes them pay dearly for their crimes. Anyone who knew what was happening to these children and allowed it to continue is just as guilty. It would be easy to blame the system or the procedures, too easy. Let's not take the easy way out. Instead of finding a scapegoat, let's all accept part of the blame and then each of us, all of us, should get involved in finding solutions.

Recognizing that there seems to be a communication problem between various agencies, plans are under way to create a joint task force involving DSS, the Sheriff's Office, the City Police Department, the hospital, the public school system and other child-related groups to create organized lines of communication and, yes, procedures and standards to be followed as we try to prevent other children's abuse and deaths.

But this won't be enough. Those children need you and me and all of the people of this community to get involved too. Those children need us to stop expending our efforts finding someone to blame and start spending our time finding solutions to this, the worst of crimes.

Rowan mustn't ignore these children's cries

Officials need to repair the system, but DSS isn't where the ultimate blame should fall

BY RENEE HENRICKSON
SPECIAL TO THE POST

Like most Rowan County residents, I find my heart is completely broken concerning the precious children we have lost. We as a community mourn the death of Budde Lee Clark and Christopher Lee Jones.

There are so many loopholes in the system. I claim no knowledge of the system, but I know and love children. These children were not failed to the largest degree by the community or the Social Services Department. They were failed by the parents who should have loved them and nurtured them. I would like to know if any charges are being filed against the mother of Christopher Jones and the father of Budde Clark. Can you live in a home with a hurting child and not know about that child's suffering? Is it possible for wounds so serious to go unrecognized for an extended period of time?

Yes, there was a failure, a huge failure in the system. Maybe that is the problem: We're so worried about dotting our I's and crossing our T's we lose sight of the face of the child. The child gets lost in the system. Should we punish a parent who knew about the abuse of a child and did nothing to rescue the child? Until we do, are we not fighting a losing battle?

I suggest as a community, maybe it is time we considered public caning as one of the suitable punishments for parents who abuse their children. How dare we not punish the abuser and individuals proven to have knowledge of the abuse?

In the case of Christopher Jones, the Salisbury Post reported that on examination at Rowan Memorial Hospital, the staff notified DSS of gross abuse found to the child's body: blood blisters on the side of his face and the top of his little head; severe bruises on his body; a black mark on his forehead; a totally bloodied nose; a bite on his shoulder; a scrotum that was black and blue and bitten.

What this precious little baby must have suffered in his short lifetime. Enough to cry a river of tears. The blood of these precious children cries out for justice. There are many more children just like them who at this very moment are in danger. How can we not respond to their cry? If the laws say otherwise, then the laws need to be changed. May God have mercy on our souls.

■

Renee Henrickson lives in Salisbury.

◆ LETTERS TO THE EDITOR ◆

Have no doubt: Jordy was loved

(Editor: The child referred to in this letter, Jordan Bryant Bradshaw, is also known as Budde Lee Clark.)

Yes, something must be done to protect our children. In regard to the letter, "Don't pass the buck on protecting children," we tried so hard to protect our little Jordan ("Little Jordy").

Everyone needs to quit pointing fingers at family and friends, saying they wouldn't report this abuse to Social Services. Jordan's mother, Pam Bradshaw, couldn't have visitation without Robin (the child's stepmother) being there. Robin wouldn't allow it any other way. Pam's family and friends tried for two years to fight to gain visitation. We all called Social Services as soon as we saw the changes in Jordan. No one would listen because, they say, he was taken away from Pam for abuse. I was always around, and there was no abuse. He was just a little boy who loved playing rough.

We all loved Jordy very much. No one can feel the pain or know the many tears we've shed. And no one will ever know how much he was a part of all of our lives.

But the sad part is his big sister, Tristan. She could never understand why she couldn't ever see Jordan. She loved him so much. The last time she saw her little brother was the day we buried Jordan. Everyone stood together holding hands, listening to the song "Angels Among Us," telling Tristan that Jordan is our little angel now.

Tristan will never forget Jordan Bryant Bradshaw. None of us will.

— T.E. EARNHARDT
Faith

In their thoughts

This poem by Marian Wright Edelman, represents the feelings of all of us who work with children at the Rowan County Department of Social Services. We too have hearts. We care for these children every day we are at work, and they're in our thoughts every weekend, holiday and every other day of the year. We wouldn't be in the social work profession if we didn't want to help these children.

I challenge anyone in the community, especially those who feel the need to criticize, to walk a mile in the shoes of a DSS social worker. You may be enlightened.

— GRETCHEN ANTHONY
Salisbury

An excerpt from the poem:

We pray for children
who sneak popsicles before supper,
who erase holes in math workbooks,
who can never find their shoes ....
who never go to the circus,
who live in an X-rated world.
We pray for children who want to be carried
and for those who must,
for those we never give up on and for those
who don't get a second chance.
For those we smother ... and for those who will grab
the hand of anybody kind enough to offer it.

Salisbury Post 9/87
Opinions.

DSS has a lot to answer for in the Clark, Jones cases

BY DAVE ROWLAND
ROWAN COUNTY GOVERNMENT

I'm sure that you are aware of the fatal child abuse cases that have traumatized Rowan County recently, and I am sure you will agree that when you have a 6-year-old and a 19-month-old baby dead from child abuse in such a short span, there has been a disastrous breakdown with our Social Services Department. It is my understanding that you have personally called for a reopening of these cases and a full investigation into this serious matter. For this quick action on your part I would like to personally thank you. It is my personal belief that a child's welfare and protection takes priority over any other function of government.

I have been reviewing the events leading up to and after the deaths of Budde Lee Clark and Christopher Jones. I have read the complete child fatality review done by the Department of Human Resources on Feb. 14, 1997. The child fatality review conducted on these cases is the most pathetic, narrow-minded and biased report that I have ever read. The team that conducted this review insulted our entire community when it announced that no "critical protection issues were identified," and commended the agency's leadership. The Child Fatality Review Team only reviewed the internal case files and based its opinion on how well the case workers did their paperwork and whether they followed state guidelines. If state guidelines were indeed followed for Budde Lee Clark and Christopher Jones, isn't it time to make major changes in our Child Protection Services? After seeing firsthand what a miserable failure our current child protection agency is, how could we possibly go back to business as usual?

I can assure you that when Dr. Bruton reviews the facts in these deaths he will agree that Budde Lee Clark fell through the cracks and was totally missed and that Christopher Jones should still be alive today.

I personally have to pursue this with every bit of emotion that I can gather regardless of whom I offend or alienate. As a father and elected official I could not live with myself if I ignored this problem and two months from now another child lost their life to abuse. Gov. Hunt, could you live with that kind of burden? I don't think so; I know you're a loving father with great compassion for all children. That's why I have great faith in getting you personally involved in the monumental task before us.

Your decision instructing Dr. David Bruton to reopen Rowan County's child fatality investigation was met with renewed hope from our citizens. I look forward to meeting with Dr. Bruton on his arrival. I view this as the first step in correcting our failures. Now I would like to encourage you to call for a full review of the actions of the state Child Fatality Prevention Team.

When a community loses a child because of abuse, we don't need a paperwork review. We demand a full unbiased investigation of all the facts before and after the tragedy and a complete review of leadership, case workers and training. Reviewing what was done for a dead child has very little value unless we thoroughly investigate and identify the problems — then take immediate steps to ensure that we do not fail another child.

Everyone in Rowan County is outraged by the deaths of Budde Lee Clark and Christopher Jones. When we lost these children, everyone expected an explanation as to how this could have happened. But all we received was a Social Service director in denial and calling for more tax dollars and saying they had done everything they could have done and in hindsight they wouldn't have changed anything. Then we get a state review team who can only praise and commend Social Services leadership.

Mr. Hunt, I can assure you that when Dr. Bruton reviews the facts in these deaths he will agree that Budde Lee Clark fell through the cracks and was totally missed and that Christopher Jones should still be alive today. It is documented that Christopher Jones survived a major beating one month before his death. Hospital personnel took photographs and called Social Services to report this. It was the following week before a child protection worker saw this child, and this agency never even bothered to view the pictures. This child should have never left the hospital to return to the nightmare that he had to endure. This can never happen again!

SALISBURY POST 3/20/97

Pretrial publicity leads to postponed trial date

Citing pretrial publicity, a Rowan County Superior Court Judge has postponed the trial against a Kannapolis woman charged with felony child abuse.

On Monday, defense attorney Robert Inge asked for a "cooling off" period because of articles about Denise Santos written in a local newspaper just days before the trial.

The articles reported that Santos was convicted of second-degree manslaughter in New York in the death of a child 22 years ago. She served less than three years in prison after the conviction.

The article also mentioned a drug conviction in 1986.

Jurors in the child abuse case filled out a questionnaire before Judge Henry E. Frye Jr. postponed the trial. Attorneys found that about one-third of the jury pool had seen the article. Prosecutors have not set a new court date.

Santos is charged with putting a 4-year-old boy in scalding water in December 1995. The scalding caused second- and third-degree burns. Santos was baby sitting the child.

Santos remains free on a 10,000 bond.

Be fair to DSS

■ *Commissioners have failed to adequately fund agency*

SALISBURY POST 3/20/97 OPINIONS

BY KAREN C. BOWYER
SPECIAL TO THE POST

Why does the Post continue to publish unfair half-truths about Rowan County Child Protective Services? Needless to say, all caring individuals are appalled by the death of children in our community, but can all the blame be put on one source?

Consider the facts. Our county commissioners were told over two years ago that Child Protective Services was overworked and understaffed. Did our commissioners heed the warning when the state department told them that the situation was a "tragedy waiting to happen"? No. They turned a deaf ear to that warning and to the concerns of Protective Services Department heads. The county commissioners denied the necessary funding. They were more interested in ball parks and recreation facilities.

The facts speak for themselves. The average caseload for a Rowan County Child Protective Service worker in the past few months has been 21. The state of North Carolina recommends a caseload of no more than 15. Rowan workers receive on average two new cases a day. The citizens of Rowan are blessed with workers who are caring, efficient individuals, but they are not superhuman. Each case carries with it a mountain of paperwork, and by the way, the Rowan County worker's salary is smaller than those of surrounding county workers for the same level of responsibility.

Consider the caseloads

What about working conditions? Do you really believe that the workers are welcomed when they go to a home to investigate? In fact, they are often threatened, and sometimes those threats become reality. Offending parents are not usually pleasant people to work with. Are you also aware that workers are criminally and financially liable if something goes wrong? Yes, the individual worker, not just the county government, is personally liable.

When you consider all the facts, it becomes very obvious that a person must be very dedicated to stick with this job. The conditions are tough, the pay is low, the educational requirements are high, and the criticism is abundant. The only reason for being there is that you want to help people.

The governor appointed an investigator and the Post implied that the department was hiding behind confidentially guidelines as a way of covering up incompetency. Are you aware that the rules of confidentially are state-mandated not determined at the local level? These rules were voted on by our elected legislators. If the public doesn't like the rules, then they need to let their legislators know. The child protective agency workers must follow the law.

Law protects parents

As a teacher in the Rowan Salisbury School System, I have on several occasions called Social Services about children I thought might be suffering abuse or neglect. This is my responsibility by law. I have always received prompt and courteous attention.

I must also say that on more than one occasion I was told that the problem I was reporting would not be considered neglect or abuse under the law. Guidelines are very strict for the protection of parents. A prime example is an 11-year-old girl who is pregnant by a man who was over 25 years old. This child will have this baby and care for it. Where were the parents, and why can't this child receive protection and assistance from Social Services? A similar situation happened to this child's sister. Why? Because the law protects her parents. There is no way to prove neglect. In my mind and in the minds of many readers, this child was neglected. If she had received proper supervision and guidance, this would never have happened to her.

Or how about pretty little girls who are living in homeless shelters and are afraid of what might happen to them as they wait outside to be admitted at 6 or 7 p.m.? Child protective workers are the first to agree that these are potentially dangerous situations, but the hands of these workers are tied.

We read again and again about the two small children who were left at the phone booth by their mother on a cold winter night so that she could buy crack. The Post immediately took the offensive towards Social Services because the department allowed the children to return to the home. Did anyone stop to think? The father had not been charged with any crime or offense toward the children. Should the father be punished for the mother's actions? Also, without knowing the dynamics of the family relationships, should the Post have immediately given the grandmother support and backing to tell only one side of the story?

Publish all the facts

It is the Post's responsibility to report the news, but it is also your responsibility to see that the truth is reported. It is nothing more than sensationalistic journalism to blast an entire organization of people especially when the state laws make it impossible for them to defend themselves. "The pen is mightier than the sword" is very true; therefore you owe it to your readers to make very sure that you are publishing all the facts, not merely editorializing on the news page.

For once go for the real story. Dig a little deeper and bring the whole truth, or are you afraid that you might step on a few privileged toes?

Child neglect and abuse is a very serious problem, and Rowan County, as of late, seems to have more than its share. It is time to address this problem in a constructive way and lay the blame for the lack of child protective workers at the doorstep of those who are responsible. That blame belongs to the county commissioners on a primary level, but it also belongs to the entire community because we allowed it to happen.

■

Karen C. Bowyer lives in Salisbury.

DIFFICULT BUT ESSENTIAL

Examining child abuse

Is it possible to support and admire a public agency and, at the same time, believe some of its practices deserve review?

Absolutely. No public agency — and certainly no newspaper — expects blind acceptance from the people it serves.

Yet some people in the community are urging the Post and the public to accept the Rowan County Department of Social Services' official explanations of how it handled two child abuse cases — "we met standard" — and move on to something else.

Even though three children died. Even though there were signs of abuse before two of the children's final, fatal days. Even though the state suggests changes in staffing and standards may be in order.

Raise questions

Because we dare to raise questions, the Post is accused of crucifying Social Services and printing half-truths. The intent is not to impugn the reputation of every person who toils in that department. Rather, it is to review the process and say, at what point could something have been done differently to protect these children?

Abusers and the people under their influence can be incredibly adept at covering acts and isolating young charges from prying eyes. How might child protective services workers have been able to break through that shield and forestall the fatal outcome?

No one has the answers yet. But the death of 19-month-old Christopher Jones has pointed up an obvious area for study. There is something seriously wrong with procedures when a child can be examined in a hospital emergency room, found to have injuries that include signs of sexual abuse which are brought to the attention of social services and yet the hospital's evidence apparently is not included in the subsequent investigation. One month later the child dies, beaten to death.

Perhaps workers in such cases should be required to interview medical personnel who examine children and report suspected abuse. Perhaps medical personnel who suspect abuse should be required to call law enforcement as well as social services. These are possibilities that need to be discussed now, not a year from now.

Social Services obviously is asking those questions of itself and its workers, and its state higher ups are also. But this entire process would be shielded from the public and the other agencies that might have helped if the Post were not examining these issues and pushing for a more public dialog.

Painful process

This is a painful process. Child abuse laws and DSS guidelines do not spring up in a vacuum. They are prompted by the tragic, real-life experiences of families all over North Carolina. You cannot improve the process without reviewing the specific details of cases.

The state has a framework for reviewing such cases. But the Rowan County Child Fatality Task Force has not met since these children died, and when it does it will be dealing with cases that may be a year old. The Community Child Protection Team also has not met recently, and because of one person's relocation might not get together for a month or two.

Meanwhile, calls continue to flow into Social Services, reporting more suspicions of child abuse and neglect. Time is of the essence, and the stakes are very high.

Salisbury Post 3/20/97

Salisbury Post 3/20/97
Opinions

Rowan DSS has performed well despite big obstacles

BY MARGY D. FINK
SPECIAL TO THE POST

As I opened the Salisbury Post on Tuesday, March 18, 1997, the headline "Rowland: Social Services work 'disastrous' " should have read 'County commissioners' work disastrous.'

I dare say there is not a single person anywhere who is not upset about the death of two children in Rowan County. Don't blame Social Service! Place the blame on the county commissioners for not providing the funds — yes, I mean tax money — to provide adequate staff, training opportunities, office space to work in a confidential setting, and support personnel.

During the 30 years that I have lived in Salisbury I have had contact with Social Services many times on a professional basis, from securing help for hungry children to assisting DSS in providing food for the elderly and other less fortunate people through U.S. Department of Agriculture programs. I worked with Social Services departments in more than 20 counties, reviewing programs for USDA. None could measure up to Rowan County DSS, even though Rowan County was more understaffed and its workers were assigned greater caseloads per staff member compared to other counties.

So, county commissioners, do your work: Provide the needed support! Don't place blame on the director or individuals; that won't bring the children back.

Also, give the Public Health Department adequate staff, space and support before we have a disaster in that department because you, the county commissioners, do not do your job — to provide for the needs for the people of Rowan County!

No, I don't mean to waste tax dollars, but I do mean for you to clean up your act. Money is wasted in some areas, but this becomes individual opinion.

As I remember reviewing county budgets, there were very few times that DSS or the Health Department were ever given the money needed to operate, even though justifiable evidence was presented to warrant increased funding. County commissioners, do your work: Put Social Services and Public Health as the first priority for the county budget for 1997-98 and hereafter until these two departments are sufficiently funded.

How many times have I read in the paper that somebody on the county commissioners has made statements that money won't solve the problems? But money, praise and support would help!

■

Margy D. Fink lives in Salisbury.

Salisbury Post 3/21/97

It's not true that DSS has refused to criticize itself

Work together to fix problems, DSS chief says

BY RICHARD E. TRAVIS
DEPT. OF SOCIAL SERVICES

(Editor: Richard E. Travis, director of the Rowan County Department of Social Services, has sent this letter to County Commissioner Dave Rowland.)

•

I want to address some of your concerns about DSS' handling of the Christopher Jones case. You have said on several occasions that I said I would not have done anything differently, even knowing more now than I did at the time of the investigation. The truth is that I never said such a thing.

The Salisbury Post article on March 8 contains a statement by the *reporter* (ninth paragraph) that suggests I said I would not have done anything differently. But in the same article I was quoted as saying we (DSS) should have seen the hospital pictures. In another article in the same edition I am quoted as saying that, had we seen the pictures, we probably would have assigned a social worker to work with the mother to prevent further injuries to the child. I also said it is unlikely that we would have removed the child from the home.

At the March 7 press conference, when I released the public letter accompanying the confidential reports, the Social Services board and I spent 1½ hours answering questions about the review and the children involved. I went into great detail at the beginning of the press conference describing the areas where we failed to perform our job as we should have. To my knowledge, neither I, nor anyone connected with DSS, have blamed any person or organization other than those charged with murder, for the deaths of the three children. As director of the department, I have acknowledged our shortcomings and am doing all that I can to correct our problems.

I realize that child protective services laws, policies and procedures are difficult to understand. In some instances, the laws and policies may not be appropriate or effective. In an effort to address some of these issues, the department will be inviting the county commissioners to spend time during April meeting with our social workers and seeing firsthand how child protective services operates.

Please understand that I am open to suggestions and will meet with you, and any other commissioners, any time to discuss your concerns. I hope we can work together to improve our services.

SALISBURY Post 3/22/97

Off with their heads!

Political debate in Rowan could stand a dose of civility

BY THE REV. ANDY LANGFORD
SPECIAL TO THE POST

In Lewis Carroll's "Alice in Wonderland," the Queen of Hearts runs around her tiny kingdom yelling to her playing card soldiers: "Off with their heads! Off with their heads!" Everyone who displeased the Queen lost their head. Her figure is comic, but tragic.

For the citizens of Rowan County, however, it appears that the Queen of Hearts is not just an imaginary figure.

The Queen of Hearts is alive and well in Rowan County today. In private conversations, in public forums, and even in our beloved Salisbury Post, strident members of our community yell, "Off with their heads!" Everyone who has displeased our own and numerous Queens of Hearts is castigated and ridiculed.

Illustrations of her presence are everywhere. Three children tragically die, and every staff member of the Department of Social Services and, especially, its director, Rick Travis, are told to resign. When the Rowan County school board wrestles with the calendar, the elected board members and their staff are sued. When student scores fall below expectations, teachers, staff and administrators are ridiculed. Godstock, a local effort to help families with children needing critical medical care, is lambasted for hosting a baseball game in the evil Boll Weevil stadium. Rowan County commissioners debate zoning, and naysayers arise from under every rock. Salisbury and its City Council vote to annex new areas, and organized efforts impugn the integrity of the city and its officers.

Even more tragically, we witness some of these very officials denouncing publicly one another. The Queen of Hearts has changed her clothing from a playing card to suits and ties and business dresses, but her message remains the same: "Off with their heads."

Citizens of Rowan County, let us grow up and put behind us our childish ways. In the midst of shrill rhetoric, we need some civil conversation. The solution to our common problems does not lie in condemning those who serve us, but in working with them to serve the common good. As County Commissioner Frank Tadlock said, regarding the deaths of the three young children: "It will take a community effort, everyone working together to prevent this from happening again."

Our public servants — the Department of Social Services and Rick Travis, the Rowan-Salisbury school board and its staff, our school teachers and staff, Godstock, the county commissioners and our county employees, Salisbury City Council and its staff, and every other public servant among us in this county — are not the enemy.

Most of these people serve freely or at low salaries. These public people all give above and beyond any written job description. Each of them are serving us as well as they can. I personally know many of these leaders, and they are all fine people. They are all of our friends and neighbors. Yet, members of the shrill public question their motives, assume ulterior goals, ridicule their intelligence, and yell for their heads.

There is a better way. Instead of cutting off heads, maybe we could all work together. Social Services and its staff need more community support. The school board and everyone in public education need parental and community involvement to improve the quality of education. Godstock needs help in filling the stadium and reaching out to even more children. The county needs to look toward a future involving many of us, as was demonstrated last week at the meeting at Catawba. Salisbury needs every voice involved as the city inevitably grows. The question is whether we will sit back and take pot shots, or join together to solve common problems?

I feel a little naive to simply ask for civility in our public discourse. There are real differences, and not everyone is pure.

Much more is needed from all of us. But I do know that cutting off heads does not change anything. If we are not part of the solution, then each of us is part of the problem.

How can we start being civil to one another? One simple solution may at least help us begin. Every one of us knows at least one of our public servants: a state or county employee, an elected official, a school teacher, or someone else working for our common good. Today, or tomorrow, or next week, speak to these public servants and say "Thank you." Tell them that you are appreciative of their efforts, even when they fail. Ask how you may be more supportive.

Alice was able to escape the Queen of Hearts. We must live beside them. May we instead not run away but confront, and thus change, our own Queen of Hearts.

■

Andy Langford is co-pastor of First United Methodist Church in China Grove.

Salisburn Post 3/22/97

Rowan social workers demonstrate courage

It's truly dangerous to respond to many of the abuse calls

BY ARLENE P. TAYLOR
SPECIAL TO THE POST

As a secretary for the Rowan County Department of Social Services for 33 years, and for the Protective Services Unit since its inception in 1973, I would like to respond to some recent letters to the Salisbury Post regarding our department.

All of the social workers in the Protective Services Unit are dedicated, responsible workers. They go out on referrals every day, not knowing what to expect. Most parents, even I, would be angry that a neighbor, relative or school had reported that I had neglected or abused my child. And if those allegations were true and I thought someone had found out, I would definitely be angry and upset. Workers have to come face-to-face with these angry parents every day, and often the worker's life is threatened.

DSS social workers take their life in their hands every time they go out on a referral. Sometimes the referrals even warn of danger: that there are drugs in the home, that there are vicious dogs at the home, or even guns by the door. It doesn't matter: If a referral is accepted, a worker has to go out.

Social workers for DSS are also on duty from 5 p.m. to 8 a.m. and on weekends. Many times, the worker on duty has to leave a family gathering, holiday dinners, or a favorite TV show to go to the Police Department or hospital to check on *our* children. Most of the time, these calls come during the middle of a good night's sleep. If the workers were not dedicated, they would not be social workers for the Rowan County Department of Social Services.

Many times, the worker on duty has to leave a family gathering, holiday dinners, or a favorite TV show to go to the Police Department or hospital to check on our children

Many time, disgruntled fathers make referrals because the mother of his children is taking him to court for increased child support. Neighbors make reports on other neighbors because there are disagreements between them. These malicious reports take just as much time to investigate as legitimate referrals, and as much paperwork. Even on legitimate, substantiated reports of neglect and abuse, social workers cannot move in and live with the family on a 24-hour a day basis to protect these children.

If our social workers had not protected hundreds of *our* children, our foster homes would not be full.

I only set up the Protective Services cases as they come in each day. If I were qualified to be a social worker, I would never take on the responsibility of being a social worker for Rowan County Department of Social Services.

I am proud of all of our social workers, and I personally know what a *great* job they do every day!

3/22.

SALISBURY POST 3/22/97

OTHER VOICES

Don't rearm abusers

Last year Congress passed a law that prohibited anyone convicted of misdemeanor domestic-violence offenses from purchasing or owning guns. Federal law has long barred convicted felons from possessing guns. But that law left a deadly loophole for spouse and child abusers, who often are prosecuted under misdemeanor statutes. The new statute sensibly plugged that gap.

Now two bills have been introduced that would gut the new ban. Congress should reject both of them.

One bill seeks to overcome the fact that the law passed last year did not exempt police and military personnel who have been convicted of domestic violence charges from the ban. The bill, introduced by Rep. Bart Stupak of Michigan, would now insert this unjustified exemption into the law.

The National Association of Police Organizations says the law unfairly forces some officers to give up their careers. That is hardly a persuasive argument. If anything, officers should be held to higher standards of conduct than ordinary citizens. Domestic violence is also an indication of an inability to deal with anger, a sound reason to remove guns from officers with this problem.

Critics of the ban also argue that the law will create staffing problems for police agencies. But there is no evidence that a significant number of the 700,000 law-enforcement officers at the national, state and local levels would be affected. Many police agencies do not hire applicants with misdemeanor convictions for domestic assault in the first place.

The second bill would apply the ban only to those convicted of domestic-violence crimes after September 1996. This would effectively rearm the vast majority of offenders. The sponsors argue that the ban is unconstitutionally retroactive. But The same standard, applied to felons, has been upheld as constitutional.

— THE NEW YORK TIMES

Salisbury Post 3/23/97

◆ LETTERS TO THE EDITOR ◆

Reshuffle priorities, support DSS

Regarding the cases of Budde Lee Clark and Christopher Jones, it is time to get off the back of the Social Services Department. I'm sure they realized their mistakes by now. Besides, they probably don't have the money or enough skilled workers to really go deep into all the abuse cases.

We build new prisons to house the *real* guilty ones so they can be pampered while the child protective agency hasn't enough money to operate properly. So why don't we get off the Social Services Department's back, get to the guilty ones, take them to trial, and get on with their punishment? That is, if they are punished.

This county needs to rearrange its priorities.

— BOBBIE GOODNIGHT
China Grove

Chilling scenario

This comment was attributed to county commissioner Steve Blount ("Rowland: Social Services work 'disastrous,' Post, March 18, Page 1A) in his statement on the DSS review of the deaths of two local children: "I wish ... I could point my finger at a person or an organization that was to blame for these deaths and then we ... could figuratively *or even literally* (emphasis mine) hang the guilty parties from the town square."

Sounds like a justification and encouragement of mob violence and murder. It's a chilling scenario to imagine, and far more chilling to realize that this is the caliber of our political leadership.

— JOHN B. DOHERTY
Salisbury

SALISBURY POST 3/24/91

Abusers deserve real punishment

I reckon I've got a bolt loose.

Ever since I reached the age of knowing there's a difference between a boy and a girl I've become a girl lover.

HOMER LUCAS

The bolt came loose, I suspect, when I realized girls were to be loved, hugged, snuggled up to, become mothers.

It never crossed my mind that girls were to be beaten and abused. Shucks, I loved 'em all. I have never seen an ugly woman.

There is something beautiful about each woman. Did you ever look for it? The beauty ought not be too covered up.

I think of the poem that goes something like, "What are little girls made of? Sugar and spice and everything nice."

Sure, that's what little girls are made up of. The older they get the more sugar and spice they get.

I don't believe the Good Lord put all that sugar and spice together to have it torn apart by some clod. I ought to say torn apart by some man. I couldn't call him a man, as he isn't.

I shouldn't ask why God allows such creatures to live. But I do.

Certainly a wife beater has no place in society, that of today or millions of years ago. True, there have always been wife beaters and child abusers, just as there have been abusers of animals.

What to do with them after they are caught and tried by a jury of good and true men and women (and there could have been some on the jury who had been a wife beater or child abuser)?

I have my thoughts. You will agree with them. Yet you probably won't speak up and so so.

First I favor the whipping post, using a good pair of plow lines. Then I favor stigmatizing the filthy men and women who saw fit to a abuse a woman or child.

My next step would be to brand a logo on the cheek, where it would be noticed.

The state should then make money available to cover expenses for mailing a history of a convicted individual to every registered voter in the state.

Let the convicted be stigmatized.

Or do you prefer the state award them a Victory Medal if they are successful in the rape of your daughter, and put their name on a roll of honor?

If we dosed out some of this medicine, perhaps the welfare bill would be reduced. (Excuse, please: The Social Services bill would be reduced.)

You had best do something stronger than talk.

■

Homer Lucas writes columns and other articles for the Post.

ONLY AS RELIABLE AS SOURCES

Scrutinize home studies

Salisbury Post
3/24/91

The question arose soon after 6-year-old Budde Lee Clark died. How could a judge have taken the child away from his mother, poor as she was, and put him in his father's household, where earlier this year authorities say he was felled by a fatal blow to the head and then placed in a tub as if he'd drowned?

The answer becomes evident when you look at the home studies conducted by the Rowan County Department of Social Services. They paint a troubled picture of Pam Bradshaw's household, and a rosy scene at Lee Gosnell's.

But neither home study would quallfy as a thorough investigation. And for that reason this case raises a warning flag both to judges and to people involved in custody battles. Home studies are little more than surface glimpses of residential information, more detailed in architecture than they are on ability to parent. Parents who have doubts about the home study social services has done on an "ex" must get their attorneys to challenge the report and call witnesses; otherwise, the judge will have little else to go on.

Hindsight magnifies

Hindsight has magnified the importance of home studies done in the Budde Clark case. But at the time they were routine matters, another case of mom vs. dad, each wanting the child and claiming to have a better home situation.

An investigation by the Post has shown that several facts on the Gosnell report were wrong, simply because the social worker accepted the words of Lee and Robin Gosnell — standard operating procedure in home studies like this.

That sounds shocking, but no one can be sure the custody decision would have gone differently if Lee and Robin Gosnell had answered more truthfully about their church attendance, her work and school record and her brushes with the law — or if the social worker had discovered he'd been fed misinformation. It still would have been a matter of judging the Bradshaw household vs. the Gosnell household, and Lee Gosnell had the advantage of a good job and an intact marriage.

What is certain, however, is this: Social services is not well-equipped to handle home studies. Each worker at social services has a designated job, with funds coming from federal, state and local coffers specifically for that function. Because no level of government directly funds home studies, no worker is assigned to specialize in them. They are spread out among several workers who already are heavily burdened with mandated duties.

Red flag

A more thorough investigative job might have found the inconsistencies in the Gosnells' stories. Surely an attorney could have jumped on that. In turn, that might have raised enough of a red flag for the judge to have appointed a guardian ad litem, perhaps — an impartial third party to review both situations and make a recommendation on what's best for the child.

Might have, could have, should have. Hindsight is littered with terms like these. Hindsight won't bring back Budde Clark, or have much bearing on how his accused murderer is prosecuted. But it should alert judges, attorneys and parents to weaknesses in the system — potentially fatal ones.

Salisbury Post Opinions 3/25/97

Tougher penalties, clearer laws, more staff could help

BY ELIZABETH WITHERS SMITH
SPECIAL TO THE POST

The first time I saw cigarette burns on a child was 1971. As a registered nurse and consultant for the N.C. State Department of Public Instruction, I had responsibilities including helping to establish guidelines for the first seven-state summer institute for multi-handicapped children. My first recommendation was to examine every child on admission to the program and if any injuries were evident, to take pictures.

To ask a teacher or neighbor if they have seen bruises or burns on a child is not very relevant in most cases because the mean people who torture children are not necessarily stupid. They hurt children where clothes will hide the abusers' perverse actions. The bruises and cigarette burns are on the victims' buttocks, genitalia, backs and abdomens.

Examine entire system

That outrage in 1971 is the same as I feel now regarding the deaths of the children in Rowan County from child abuse. The anger is many fold. Yes, I am upset with the system at DSS that allowed bad decisions to be made, not just in the recent deaths of the Jones and Bradshaw children, but for the 12-year-old sister who endured years of rape because her older sister's call for help to DSS went unheeded.

I am upset with the people who feel that "enough has been written" about the subject. Until the system is changed — not just at DSS — there will never be "enough" written. Praise the messenger. Without the Salisbury Post, we citizens who can help to improve the plight of children in this county would never have fully heard the message and business would have continued as usual.

Having worked in health services since I was 14 years old, I know that dealing with serious problems all day is a challenge. But the writers in defense of the DSS "protesteth too much." I do not question the sincerity the staff of DSS or of the board, and I do not know anyone who does. The entire delivery of services for the protection of children must be examined, and that is what will be done because the flaws in the system, countywide, have been made public.

What next? The team of experts who are coming to Rowan County this week are not coming as a lynch mob. They are coming to help. The team includes a medical doctor who specializes in child abuse, and others who are associated with organizations across the United States whose focus is the protection of children. If we are truly concerned about our children, we will welcome their objective opinions and heed their advice.

The darkest hour, it is said, is just before dawn. I pray that we have seen the darkest hour for our children in Rowan County. I consider the involvement of all who are speaking out, regardless of how you express yourself, as a good sign. Working together, accepting responsibility, and taking an honest look at our system will help us as a community to get through these dark hours intact and even stronger.

I have many suggestions to offer. Attitudes regarding children must be changed. Children must be recognized in the law as full and valued citizens. If an adult comes into the emergency room of a hospital with a gunshot wound, the police are called. Child abuse is a crime. Call the police or sheriff as well as DSS.

Word games

Stop playing games with language. Don't say "taking indecent liberties with a minor" if you mean raping a child. When adult fists beat a 2-year-old, call it attempted murder. Adult fists are deadly weapons to a child. The death penalty is legal in North Carolina. Make it mandatory for anyone convicted of murdering a child.

If two more supervisors are needed in the DSS to bring the department up to the state standard, then the director should ask for two more positions, not just one. Then the responsibility is in the hands of the commissioners. If they do not allocate those funds, then the responsibility is on the voting public.

If we do not have enough foster homes, then motivate the same people who can build a habitat home. I would bet they would join together to build a safe haven for infants. (Until this past week, the Nazareth Children's Home, which provides safe haven for children ages 4 and up, has never been filled to capacity. Even at capacity of 50, only 14 were from Rowan County.)

How would we staff a safe haven? Prioritize how money is spent. The price of the infamous ball park would go a long way.

The Salisbury Post recently printed a list of local, well endowed foundations. I am certain that the generosity of those families is already known to such facilities as the Nazareth Children's Home and would provide funding to an infants' center if the need were made known.

Consider registered nurse

The salaries of supervisors in child protective services range from $30,989 to $49,198. Social workers' salaries range from $20,912 to $42,452. Salaries of public health nurses in Rowan County range from $28,089 to $51,676. Social workers are required to have an undergraduate degree in social work, psychology or similar major.

The diversity in the education required of registered nurses and their experience in physical examination would be a good addition to the DSS. A registered nurse specially trained in abuse recognition and intervention would be helpful to the staff as well as to the children in danger. Perhaps a registered nurse position would be as effective and more cost-efficient than another supervisor position.

There are always going to be people who hurt the innocent and the vulnerable. A civilized society is measured not as much by the social graces exchanged between healthy adults, but by how we care for "the least of these."

■

Elizabeth Withers Smith lives in Woodleaf.

Changing the system

■ *Commissioners' stinginess handicaps social workers*

BY RANDY SHERRILL
SPECIAL TO THE POST

I am writing concerning the article that Rose Post wrote on March 18, 1997, "Rowland: Social Services work 'disastrous.' " In this article, it was stated that "the conduct of Social Services officials enrages Rowland." I am enraged with Mr. Rowland's statements concerning the work of this agency. I am sorry the children died, but you are not hearing the whole story.

Employees at the Department of Social Services (DSS) cannot by law discuss their cases, but you can question the agency about the way the system works. The social worker performs his/her job by following the state standards. Parents have to provide only minimal care for their children. If you would question the officials at DSS or the social workers who perform the line work, you will get a better picture of what has happened in Rowan County concerning DSS.

I used to work in the Rowan County DSS as a Child Protective Services (CPS) treatment social worker. A treatment social worker provides treatment for families when it has been substantiated that the parents neglected or abused their children. I worked in this unit for almost two years.

I left Rowan County to go to Cabarrus County DSS because the stressful caseload was too great in Rowan County. CPS work is stressful no matter where you work, but Rowan County is known in this field as being one of the worst counties in North Carolina. Being a social worker in Rowan County is a tough job because the county commissioners will not allow DSS to have the workers needed to do the appropriate job.

The state recommends that a CPS social worker have no more than 18 cases. ... While I was in Rowan County, I had between 30 and 40 cases at a time. Do you think you could perform your job appropriately if you had this kind of caseload?

The state recommends that a CPS social worker have no more than 18 cases. The social worker is to make a weekly contact with the family and at least a monthly face-to-face contact with the family. While I was in Rowan County, I had between 30 and 40 cases at a time. Do you think you could perform your job appropriately if you had this kind of caseload?

As a Rowan County social worker, I could not make appropriate contact with my families. I was not able to provide the appropriate treatment for any of my families because of the heavy caseload. Instead of providing treatment, I was just providing services for the families that had the most crucial need at that moment.

If the county commissioners are so concerned about the deaths of these children, they should have prevented this situation by acting years ago to provide more money to social workers and enough workers to provide a workable caseload. Rowan County pays its social workers less than do most surrounding counties. The heavy caseload and the lower salaries are two reasons the agency cannot keep social workers. I have heard this said, "Social workers are trained in Rowan County, but then they move to another county to work."

DSS officials have requested new social worker positions many times, but the county commissioners will not agree to this. The county commissioners are living in the clouds. They expect social workers to perform such a stressful job with too big of a caseload and never make a mistake. Rowan County was a disaster waiting to happen.

I am not saying that there were not any mistakes made by a social worker, because I do not know about these cases. But I feel that the county commissioners have made the biggest mistake and should be held accountable for their neglect. They have neglected the children of Rowan County and they have neglected the county's most valuable instruments for providing protection for their children. This downgrading of the social workers' performance will not achieve much, except making it hard for the county to find good social workers who will come to work in Rowan County.

I have a couple requests:

■ Please speak with DSS officials and get the true story about the working conditions of Rowan County DSS social workers. Question them about the state-recommended caseload and Rowan County's caseload.

■ Please question the county commissioners about their neglect. Ask them how a social worker can do the appropriate job when the commissioners require them to work under such heavy caseloads. Please hold the commissioners accountable also!

Social workers are the people who provide the children of your county the protection from neglect and abuse. The deaths of these children will cause every social worker to become overly concerned about making any mistakes. No social worker wants any child to die, but this sometimes happens.

Rowan County's social workers need someone stand up for them, because they cannot speak for themselves about these cases. Please examine these issues.

■

Randy Sherrill lives in Kannapolis.

Salisbury Post 3/26/

Child death probe begins; shakeup at DSS

Team sent by Gov. Hunt starts to work

BY ROSE POST
SALISBURY POST

A state team — responding to Gov. Jim Hunt's charge to find out what happened to two Rowan County children who were beaten to death and a third who was shot — began its investigation here this morning.

And Kevin FitzGerald, director of the N.C. Division of Social Services, personally came to Rowan County to open the two-day meeting with a clear statement of the goal: to assess the actions of the staff of the Rowan County Department of Social Services in all three cases, evaluate an earlier state review and make recommendations to improve the process, and evaluate state standards and the child fatality review process.

Abuse of the two children, 6-year-old Budde Lee Clark and 19-month-old Christopher Lee Jones, had been investigated by the Protective Services Unit of the Rowan County Department of Social Services before they died on Jan. 31 and Feb. 4. And 16-year-old Trola Miller, who was killed on Feb. 4 by a random gunshot in an argument in the yard of a housing project, was an open Social

➤ See **Probe**, Page 4A

Resignations, demotion not related to deaths — Travis

BY ROSE POST
SALISBURY POST

Two social workers have resigned and a supervisor has been demoted in the Child Protective Services Unit of the Rowan County Department of Social Services in less than two weeks.

Director Rick Travis says the personnel actions "are not at all related" to the recent beating deaths of two children.

But Social Services had investigated both families before the children died, and sources say investigators Brooks Gibson and John Thomas and supervisor Shirley Gray had a part in one or both of the children's cases.

Robin Gosnell of Cleveland has been charged with murdering her stepson, 6-year-old Budde Lee Clark, on Jan. 31.

Jeremy Butcher has been charged with murdering 19-month-old Christopher Lee Jones, son of his girlfriend, Sheila Jones. Authorities say Butcher was baby sitting for Jones on Feb. 4, the day the toddler was beaten.

On their personnel records, both social workers indicate they resigned for "personal

➤ See **Shakeup**, Page 4A

Shakeup

➤ From Page 1A

reasons," according to Ken Deal, Rowan County Human Resources administrator. None of the three would comment.

"None of the recent personnel actions are related to the child fatality cases," Travis said. "Obviously a supervisor is going to have some connection with the cases through the line workers.

"I don't feel it's appropriate to comment on the manner in which these cases were handled while the cases are being reviewed by the state." (See accompanying story.)

Nor have any of the positions been filled, he said. "We're in the process of recruiting."

Shirley Gray, a member of the Social Services staff since 1975, was demoted to a social worker effective March 16. Liz Manning, a social worker, is temporarily filling the supervisory position.

Social worker Brooks Gibson, who has been on the staff since June 15, 1996, resigned effective March 14. Thomas has been a social worker with the department since April 22, 1974. His resignation will be effective April 15.

SALISBURY POST 3/27/97

Rowan volunteers have seen crisis building

Foster care parents and others have long urged the strengthening of how society protects vulnerable children

BY DARLENE MURPHY
SPECIAL TO THE POST

I find it more than a little sad that it took the deaths of three children in this county to get everyone including the county commissioners outraged enough to start talking about the problem of child abuse and neglect. Where have you all been over the past 20 years as the rate of child abuse has consistently risen and the injuries to these children have become more violent and deadly?

Why haven't you been lobbying our legislators to change the antiquated "Child Protection Laws" to keep up with the changing face of abuse and neglect? Where have you been as our county has had to fight the growing population of dysfunctional families and their children with little or no extra help or equipment?

Why were you not outraged, Mr. Rowland, every time you read about a child who was beaten, left alone, or abused in any of the other numerous incidents that have happened to the children of this county over the past 20 years? Why did it take children dying?

Politically speaking, it's probably a good move for you to be outraged right now. Sincerely speaking, though, it is sickeningly late.

On the other hand, there are those of us who have not only been outraged about this problem for years but have been working hard to make a difference in the lives of the children in this county. Currently there are 64 licensed foster homes in our county; one of those is my own home. Through the years these homes have opened their doors to hundreds of children who have needed a safe environment in which to live and grow.

These are the children and families that no one will hear about. There will be no headlines or special commission meetings about the children and families for which our system works for every year. Countless volunteers give their time to help foster families gather clothes, arrange parties at holidays or just offer to babysit so foster families can have a night out. We have extended family members, neighbors and friends who babysit and provide support to help out birth families before they become statistics.

And yes, there are social service workers who have dedicated their lives to helping children. They work on many cases yearly that involve not only mountains of paperwork, but also dealing with children, their birth families, the foster families and the court system, which does not always work with the workers to protect the children. The social workers must deal and become outraged on a daily basis and not just when it is a headline in the local news. They must do this while maintaining a professional yet caring demeanor in dealing with all parties involved. Not an easy job for anyone.

I am proud to have worked alongside these people who have dedicated their lives to being part of the solution even when the problems of protecting the children grow increasingly tough.

A system as I understand it is many factors working together to accomplish a certain goal. The parts of a child protection system should include:

- Laws which are specific about protecting children.
- Professionals including doctors, nurses, teachers, and law enforcement officers who work together to inform each other and follow up on suspected abuse and neglect.
- Lawmakers and county officials who offer their help and support to our children and the agencies that protect children.
- A community including churches, neighbors and extended families who watch out for the children that they come in contact with every day and are willing to reach out to families who are in possible trouble before calling in an agency. This community includes foster parents and social workers working hand in hand to provide children with a safe home while their families work to straighten out their problems.

If this in fact constitutes a child protection system, then every one of us in Rowan County failed the three children who died. This is a hard pill to swallow.

Now we can either allow the deaths of these three precious children to tear us apart and become no more than a self-righteous finger-pointing fight until the next child dies, or we can all search to find where we fit into this system and get to work to ensure that our children in this county are truly protected.

■

Darlene Murphy lives in Salisbury.

Caseloads overwhelming DSS workers

Children's deaths bring focus to problem that has festered at Social Services for years

BY ROSE POST
SALISBURY POST

The warning is as clear as the shriek of a fire siren.

But the letter that contains it is more than 2 years old, written long before two children — already reported to the Rowan County Department of Social Services because of suspected abuse — were beaten to death.

Dated Oct. 18, 1994, on official Social Services stationery and signed by seven members of the Protective Services Unit, it says unmistakably:

"Working conditions make it impossible for the individual workers to anticipate and possibly avert potentially *disastrous* situations."

The italics weren't there when the letter was written.

But now, in 20-20 hindsight, in a copy of the letter anonymously mailed to the Post in a plain white envelope, the word leaps off the page, highlighted because of the deaths of 6-year-old Budde Lee Clark on Jan. 31 and 19-month-old Christopher Lee Jones on Feb. 4.

Budde's stepmother, Robin Gosnell, and the toddler's baby sitter, Jeremy Butcher, have been charged with murder.

Six of the seven signatures are legible — Elizabeth L. Manning, John C. Thomas, Wendy A. Gilmore, Mary McKenzie, Paul Lucas and Randy Sherrill.

Sherrill left the Rowan County DSS for the Cabarrus County Department of Social Services shortly after the letter was written — and for the same reason.

"Too much to do and not enough workers to do it," he says.

But things change:

- When Sherrill was in Rowan County, he averaged 30 to 40 cases a month.
- The state standard is 12 cases a month for investigative workers, 18 for treatment workers, and 15 for workers who handle both. In Rowan, Sherrill handled both. In Cabarrus, he's a treatment social services worker and well within the standard.
- And in Rowan, where Director Rick Travis has made a strong effort to get the workload in line with state standards, caseloads dropped to 16 or 17 per investigator a year ago, but jumped back up in February to a frightening 34 with 240 cases open.

"The working conditions in Rowan were terrible. The work load was very heavy. I felt like it was humanly impossible to do the job that needed to be done."

— Hilda Miller

Sherrill remembers that 1994 letter well.

In it, Protective Services workers recommended that job vacancies be filled immediately, that four new positions be added, that college interns be used on a year-round basis, that case work documentation be computerized and that a local doctor be recruited to perform child abuse medical examinations because of the lost time driving children to Baptist Hospital and other counties.

And he remembers how upset the workers were.

The stress level in the unit was so high that workers wrote the letter so then-director Ed Koontz could let county commissioners and the Social Services board know what was going on.

"If something happened, we wanted to have some kind of proof to cover ourselves, to say, 'We told you this was going to happen.' That's the reason everybody who signed that letter made a copy of it and put it in their files. They wanted to keep a copy."

And now, he adds, it has happened.

John Thomas, whose signature is on that 2-year-old letter, has resigned. So has social worker Brooks Gibson. And a supervisor, Shirley Gray, has been demoted.

Travis denies any personnel actions are related to the recent deaths. But sources say all three had a part in one or both of the children's cases.

Because it did happen — and has outraged the community — Sherrill himself wrote a letter to the Post last week, primarily to direct the newspaper's search for truth, he said.

Published on the editorial

➤ See **DSS**, Page 4A

Salisbury Post 3/30/97 page 1 of 2

Caseload Comparisons in Child Welfare Services

Child Protective Services-Investigations

	Cabarrus		Davidson		Iredell		Rowan	
Population	107,485		133,273		100,603		117,155	
	3/96	2/97	3/96	2/97	3/96	2/97	3/96	2/97
# Intake Workers	1.75	1.87	1	1.5	1	1	2	2
# Investigators	10	12	11	11 plus 1 Temporary	10	8	7	7
# Supervisors	2	2.6	2	2	2	N/A	1	1
# Reports Received Per Month	95	83	199	172	Unknown	55 Average investigated	95	116
# Open Cases	145	242	145	303	101	102	118	240
# Cases Per Worker	14-15	22	13	25	10	13	16-17	34

* The State Standard for Child Protective Services Investigations is one social worker for every 12 open cases and one supervisor for every five social workers.

Child Protective Services-Treatment

	Cabarrus		Davidson		Iredell		Rowan	
Population	107,485		133,273		100,603		117,155	
	3/96	2/97	3/96	2/97	3/96	2/97	3/96	2/97
# Treatment Workers	5	6	6	6	7	8	4	5
# Supervisors	1	1	1	1	1.5	N/A	1	1
# Families Served	Unknown	90	136	123	122	92	106	104
# Cases Per Worker	20	15	28	20.5	17-18	12	26-27	21

* The State Standard for Treatment Workers is one social worker for every eighteen families and one supervisor for every five social workers

JENNIFER B. COBLE/SALISBURY POST

CONTINUED

DSS

➤ From Page 1A

page last Tuesday, his letter echoed the words written in 1994.

"Rowan County was a disaster waiting to happen," he wrote, adding that the "true story" is in the "working conditions of DSS social workers."

That charge reflects the words of a longtime investigator who doesn't want to be named.

"You're scared you're not touching all the bases because you've got so much to do. It's physically impossible to get everywhere you're supposed to be ... and the calls just pour in. And on top of all that is the paperwork responsibility and the standards that have to be met, and it just turns into a meat grinder. You feel like you're being eaten alive."

Growing workload

The department's seven investigators were given 116 new calls of child abuse to investigate in February, according to Travis.

One investigator says that by the middle of the month each of the seven in the unit had been assigned one new case a day for 27 consecutive days.

"One day," he said, "it was two cases. I did my initial contacts and came back to find a third on my desk at 4:30."

Travis believes the number jumped because of publicity about the two dead children although the case-a-day run started before the deaths.

Figures for Davidson County show it got 172 calls in February, even more than Rowan, and its 11 investigators and one temporary worker had 303 open cases, or an average of 25 per social worker.

Cabarrus County also experienced higher than usual numbers in February, with 22 cases for each of its 12 investigators compared with 14 or 15 a year ago.

Rod Duncan, program administrator for child welfare services, says the caseloads have been going up during the past few months.

"We've had some people working hard trying to keep up with paperwork, some out sick, some turnover, and it takes a while to get somebody trained and up and running."

Especially, he says, with the complex kinds of cases workers deal with these days.

"It's more difficult to work the kinds of cases we have," Duncan says. Substance abuse, violence, parents working several jobs to make ends meet, people trying to do everything families try to do without a lot of support — all put a lot of stress on families, "and it shows in child neglect and abuse."

Travis also believes another factor probably contributed to the increase in Rowan. Social Services got a new telephone system that includes voice mail. Before that, he believes some callers didn't call back when they got busy signals.

For Travis, who came to Rowan in January of 1995 at about the time Sherrill was leaving for Cabarrus, the numbers are loaded with irony because he directed attention to lowering caseloads.

When he came, he thought part of the problem was "trying to be all things to all people ... We were trying to serve families at whatever point they came to our attention. Not always through Protective Services." Sometimes they came from civil or juvenile court judges. Sometimes from somebody in the community who said, "Can't you do something for this family?"

The desire to serve was admirable, he says, but the department didn't have enough manpower to do government mandated services, much less optional services.

So the department worked on mandated cases and closed or transferred others to other agencies "because we were drowning."

"It was just a classic triage situation," he says. Serve the biggest needs according to standards instead of twice as many "and not being able to do much of anything for any of them."

No preventive medicine

Within a few months, caseloads averaged less than 20 families per worker, he says.

But that had a downside.

"An ounce of prevention is truly worth more than a pound of cure," he says, "but our mandate is to investigate abuse and neglect and try to help them. I would love to have a unit that works with families before a child is abused or neglected, but no one is giving us money to do preventive services."

And then, despite the drop a year ago, the number of cases were up in February, and signs still surface that workers feel enormous pressure.

A big caseload and time constraints, Sherrill says, equal stress — and social workers always have time constraints.

An investigator must finish his investigation in 30 days or explain why not. A treatment worker must make weekly contacts with the family.

But pressure mounts if you have twice or three times as many cases as you should have.

Sherrill joined the Rowan County DSS as a treatment social worker in August of 1993.

"And I loved my job," he says.

He worked with families, helping them solve problems with school work, discipline, shopping, money, did his paperwork — and drove.

"When I was in Rowan, I went to Gold Hill and got back to the office and went to Cleveland."

How long does a case stay open?

"Until we feel like the family has learned what they need to learn," he says.

"We try everything we can to keep families together — send them to counseling, provide financial services. The state mandate is to keep families together. We don't just go in and take kids out of the home. That's what treatment services are all about. But if it doesn't work, we go to court to take the child away. They can get them back if they show some improvement."

He would have stayed in Rowan, he says, if he'd had a caseload of 15 or 20, but he's glad he left.

"If you have 20 cases, you can see every client every week and do all the dictation unless you have a crisis. But that's the reason you have caseloads that are lower, so if something does happen you have time to do something.

"You can have cases you have to spend five hours with, maybe an irate parent fussing the report is not true. Sometimes you have to transport the client to a doctor or a group home in Winston-Salem. I've been there for both."

Because he sees many clients at night, he still averages about 45 hours a week in Cabarrus. But in Rowan it was always 45 to 50 hours. The only overtime pay was straight comp time, and the annual salary was $2,000 less than he got in Cabarrus. This year, Rowan's beginning pay for a level III social worker — which is where most investigators start — is slightly less than Cabarrus, Davidson or Iredell pay.

"When I left, every person who worked in foster care, investigation, or treatment would have left," he says, if they got a chance to go to a job like his.

Churning out workers

Some in other departments also feel pressure.

Six caseworkers who handled applications and the "maintenance" of clients on Medicaid and Work First, which is the new name for Aid for Dependent Children, left Rowan for the Cabarrus Department of Social Services between Dec. 1 and mid-February — and got raises.

But they insist they didn't go for money. They still live here, and the extra cash goes for gas and wear and tear on their cars. They have less time with their children.

They went for the same reasons Randy Sherrill went — less pressure and peace of mind.

"It's like we've died and gone to heaven," says Gussie Dennis of Salisbury, because "the work load is different."

"The working conditions in Rowan were terrible," says Hilda Miller. "The work load was very heavy. I felt like it was humanly impossible to do the job that needed to be done.

"I felt like no one in super-

2 of 2

vision was listening to us. We tried and tried to tell them of our concerns, and they were not addressed.

"I felt like things were snowballing on me and I felt like I was drowning, It was just a matter of time until something happened. Mistakes are going to be made, but eventually it's going to be costly."

Errors bring major repercussions, Miller says. The department gets report cards from the state every month, and a score of less than 90 is failing.

"When that happens, there are penalties and fines that have to be paid and some of that comes out of local money," Miller says. "Penalties and fines can be $600 to several thousand dollars.

"When Ed Koontz was director," Miller says, "we failed the report card one time. He called a staff meeting and said, 'This just can't happen again,' and it didn't happen again."

And she says Social Services' record has been bad in recent months.

Travis says the time limits were set by a federal district court order in the 1970s.

"If counties don't process applications as quickly as the court order requires," he says, "they can be fined assessments, which are then paid to the clients.

"If someone's application goes a week over when it should have been completed, and it's the agency's fault, then that client might get a check for $25 every week the application is overdue."

"We have failed several months," he says. "I think out of the eight months of this fiscal year, there have been five months we haven't passed in at least one category."

He says administrators are clear that workers should not work more than 40 hours a week unless they're authorized because no money is budgeted for overtime.

But they know, he says, that "as long as you do the best you can in a 40-hour week, you're not going to be held responsible if work piles up."

Randy Sherrill believes county commissioners must also be held accountable for their lack of support.

Rowan provides about what other surrounding counties of similar size provide. Commissioners approved funding that is about 10 percent of the total DSS budget, which compares with 9.4 percent in Cabarrus, 8 percent in Davidson, and 10.2 percent in Iredell.

Anxieties and concerns are not exclusive to Rowan, Travis adds.

"I've had a number of directors call me in the last month or so," he says, because of the deaths of the children here. "To a person they say, 'There but for the grace of God go I. It could happen here any day.'

"It's the nature of the business. There's a lot of ambiguity and a lot of anxiety. A lot of heavy demands are placed on the social work staff. It is a high stress job."

Sherrill says he has felt really burdened by what has happened here — and disturbed that fingers seem to point to social workers. He doesn't believe they are to blame.

"A death could happen in any county of the state," he says. "I've lived my entire career with three horrors hanging over me every hour of every day: that I would have a wreck with a child or a child and a parent in my car; that a child would commit suicide and I would miss the signs; or that a death would occur that I could have done something to prevent because all of those things are possible and you're not clairvoyant."

But he has hope.

What usually happens when something like this occurs, he says, "is that the county becomes one of the best in the state. It finally gets people upset with what's going on, and they make some changes."

Elizabeth Smith, a child advocate whose plea with Gov. Jim Hunt has brought the current state investigation, says she also believes "a lot of good will come out of it in a lot of directions. Rowan County could become a model for DSS if we go at it with the right attitude."

APPROVE MORE STAFF FOR DSS

Nighmare come true

Imagine a surgeon, busily performing a delicate heart operation on a desperately ill patient. Suddenly the doors to the operating room burst open and a new patient is wheeled in. Finish up as best you can on the first patient, the surgeon is told, and start on the second one.

Then a third patient is wheeled in. Then a fourth. All need surgery immediately. And no additional staff is available to help perform the operations.

It sounds insane. Yet that nightmarish scenario is not that far removed from what's expected of the social workers at the Rowan County Department of Social Services (DSS). As Rose Post reported Sunday, in February investigators with the DSS Child Protective Services were weighed down by no fewer than 34 cases per worker. The state standard is 12 cases per person. (That standard is a recommendation for efficient levels of services, but not a mandate.)

The numbers for other area Social Services agencies in February were 13 in Iredell, 22 in Cabarrus and 25 in Davidson.

"You're scared because you're not touching all the bases because you've got so much to do," one Rowan DSS investigator told Post. "It's physically impossible to get everywhere you're supposed to be ... and the calls just pour in. And on top of all that is the paperwork responsibility and the standards that have to be met, and it just turns into a meat grinder. You feel like you're being eaten alive."

Commissioners' responsibilities

What a shame that such grossly unfair working conditions would burden Rowan County's social workers, the very people who devote their lives so selflessly to try to fight child abuse and calm the anger that boils so fiercely within so many unhappy Rowan families.

(At the Rowan DSS, concerns over excessive workloads and modest pay scales are not confined to Child Protective Services alone. Recently six employees working with the Medicaid and Work First programs left the Rowan DSS and joined the social services agency in Cabarrus County.)

At the same time, being shorthanded is no excuse for poor judgment or ineffective management. Consider the case of little Christopher Lee Jones. An emergency room staff member at Rowan Regional Medical Center photographed the horrendous marks of abuse on Jones' body, but the pictures weren't picked up by DSS. Jones, only 19 months old, wound up murdered; his mother's boyfriend is charged with the crime. Citizens rightly want to know why the system broke down so that the pictures didn't spur DSS to take stronger action while Jones was still alive.

It's true that the Rowan County commissioners have no easy job in deciding whether to hire new workers for county departments. The demands for new employees come at the commissioners from every direction. And a huge portion of the county budget consists of employees' salaries, benefits and retirement; with every new hire, that expense grows.

SALISBURY POST 3/31/97

Averting disaster

Yet if any county agency could make a strong case for adding new employees under present conditions, it's DSS and its Child Protective Services component. Without question, the overworked conditions afflicting Child Protective Services have eroded the office's ability to provide the help these children need. The terrible child abuse deaths this year of Jones and 6-year-old Budde Lee Clark serve as a warning sign that the commissioners must relieve the pressure on DSS staff.

A letter from six DSS employees tried to make that point clear more than two years ago: "Working conditions make it impossible for the individual workers to anticipate and possibly avert potentially disastrous situations."

It would be crazy for Rowan Regional Medical Center to overload its operating room staff with too many patients at once. It's just as insane for county government to provide too few workers to perform one of the most important tasks of local government: protecting children from abuse.

Salisbury Post 4/1/97

Custody hearing for Gosnell's son delayed

BY JASON WILLIAMS
SALISBURY POST

The custody battle between accused murderer Robin Gosnell and her ex-husband, Gary Bringle, was continued for the third time in court today.

At the last minute, Salisbury attorney Dumont Stockton filed a motion to intervene on behalf of Virginia Wright, who is Gosnell's mother.

Bringle seeks custody of his son, 13-year-old Sammy Bringle. Gosnell wants custody to go to her mother. Gosnell has been in jail without bond since the Jan. 31 beating death of her stepson, Budde Lee Clark, 6.

Judge Ted Blanton agreed to hear Wright's motion to intervene on Friday, April 11. The custody case is scheduled to be heard during the week of April 21.

Stockton apparently filed the motion because Wright would have had difficulty getting custody since she is not an original party to the suit. Wright seeks to be a third-party intervener and seeks permanent custody of the child.

The trial was held up the first time because Blanton ordered the Department of Social Services to conduct home studies. The trial was continued for the second time because DSS did not have the home studies completed. The home studies for both Bringle and Wright have now been completed.

Bringle's attorney, David Bingham, and Judge Blanton got into a heated exchange about whether the continuance was prejudicial against his client. Bringle's witnesses cannot continue to come to court an indefinite number of times, Bingham said.

Blanton argued that the continuances aren't prejudicial because Bringle already has the child in a custody order.

VICTIMS RIGHTS AMENDMENT

Salisbury Post
4/1/97

The price of justice

The North Carolina Constitution has a new amendment guaranteeing victims rights. Implementing that worthy goal will mean a hefty price tag for state and county budgets — a cost that state lawmakers and county commissioners must not shrink from meeting.

It's already clear that social workers at the Rowan County Department of Social Services (DSS) have been laboring under excessive caseloads that are nearly impossible to handle adequately. Now our district attorney's office, sheriff's office and municipal police departments will wind up in a similar position, unless the state and county governments rise to the occasion and provide adequate staff and equipment to meet the new victims rights duties.

These responsibilities range from various notification requirements to informing victims about the legal system and medical services to gathering input from victims regarding possible plea bargains.

The state intends to charge a $30 fee on people convicted of serious crimes, but that revenue will not be enough to cover the increased administrative costs.

Two other points also stand out about the new amendment, approved overwhelmingly by North Carolina voters last fall:

■ Prosecutors will now be obligated to receive input from victims or their families about possible plea bargains, dismissals or restitution agreements. It should be made clear to victims from the beginning, however, that district attorneys must retain sole, unquestioned authority to make the final decisions on prosecutorial strategy. It will only compound the tragedy of serious crimes if victims are left with the illusion that they have a power over court strategy that they don't actually possess.

■ The new amendment contains one great oddity. When an offender is about to be released, government will be required to notify victims of serious crimes; no such notification is mandated, however, for victims of domestic violence. Yet aren't such victims precisely the people who are most at risk of being victimized again once an offender is back on the street? The General Assembly should rectify this flaw as soon as possible.

With the new victims rights requirements, citizens will have one more reason to fume at criminals: For North Carolina taxpayers, the cost of crime has just gotten higher.

SALISBURY POST 4/2/97

Walk to raise awareness of child abuse

BY ROSE POST
SALISBURY POST

Social workers at Rowan County Department of Social Services will sponsor a 6-mile walk for Child Abuse Awareness Saturday, according to social worker Kim Mork, who is organizing the event.

The walk aims to focus attention on Child Abuse Awareness Month.

No funds will be raised. No time limit has been set.

Some walkers will carry signs and all are asked to wear navy blue pants and white shirts. The colors are to designate the observance throughout the state.

Registration will begin at 9 a.m. at the department's Children's Services building, 105 W. Corriher Ave., and walkers will get navy blue ribbons, signs and maps. The walk will begin at 9:30. It will start and end at the building, just off West Innes Street, two blocks from Catawba College.

Walkers will have a water stop at the 3-mile point at the Salisbury Housing Authority, 200 S. Boundary St.

Starting at West Corriher, walkers will follow Mahaley and Confederate avenues past Rowan Regional Medical Center and City Park to Club House Drive, 11th Street and Main Street, turn left on East Council Street to Boundary and continue south to the Housing Authority.

From Boundary, walkers will turn right on Old Concord Road, Long Street, then left on East Innes and back to Corriher.

Everyone interested is invited, Mork says, and "help Social Services make the community aware by joining us in a walk around Salisbury."

Salisbury Mayor Margaret Kluttz has proclaimed April as Child Abuse Awareness Month in Salisbury.

Salisbury Post 4/2/97

Focus communities on child protection

BY SAMMY R. HAITHCOCK
SPECIAL TO THE POST

Recent child deaths in Rowan County have focused attention on how communities protect children in general and, specifically, on the role of public agencies like Departments of Social Services in providing protection. The tragedy of a child death breaks the hearts of the family, friends and the community as well. A natural questions is, "Why did this happen? Could it have been avoided?"

These questions need answers, if indeed there are answers. Child fatality reviews can help pinpoint changes needed to better protect children. Reviews are done to measure the actions of a department against existing legal responsibilities and practice standards. It is impossible to measure the performance of any agency against specific standards or expectations held by one individual, one group or a community at a specific point in time.

Like most public endeavors, child protection is at its best when the community is proactively involved in working for improvements. Local child protection and child fatality review teams offer an opportunity to develop community consensus on how much a community is willing and able to do in protecting children.

In the aftermath of tragedy emotions run high. This is normal, expected and needed to allow the grief process to take its course. To make improvements, indignation is not enough. Clear, considerate and compassionate thinking and actions are needed. The real test of concern for children — by elected officials, by public employees and concerned citizens — is best measured in concrete actions to provide positive help to improve the system.

A place to start improving it is simply to do the good we know to do. Based on information from the past two years, an additional 246 social workers and supervisors were needed to meet minimum state standards for child protection. Studies done over the years in North Carolina clearly demonstrate that well trained and sufficient staff members are essential to providing child protection. In many counties, staffing is not adequate to do the job effectively. Until there is, no one can feel secure that we are doing what we need to do.

More than staff is needed. Local leaders and concerned citizens can become involved by taking the time to talk with professionals who work in various agencies serving abused and neglected children, to get a firsthand view of what these professionals face. Visit agencies and become familiar with what professionals do. Volunteer opportunities are available in many public agencies, within appropriate parameters, to help families whose children have been abused and/or neglected. Most people, when faced with the day-to-day realities of working to protect children, soon become advocates for greater resources, more public involvement and better coordination among involved agencies.

Out of tragedy can come hope. With citizen involvement and interest in this significant problem, communities can work alongside professionals to ensure that public efforts reflect the true commitment of communities to protect their children.

■

Sammy R. Haithcock is director of the Caldwell County Department of Social Services.

Salisbury Post
4/6/87

ASK US
630-0304

Spencer: population center

If you have any questions about local issues, sports trivia or the weather, call the Ask Us line at 630-0304. You must leave your name and a daytime phone number. You must have a Touch Tone phone to leave a message.

Question: How many children have died due to abuse and neglect in Rowan County in the past five years, including the one in Tennessee that was from Rowan County?

— DONNA SCOTT,
Salisbury

Answer: The Rowan County Department of Social Services keeps no statistics on children who died because of abuse or neglect. However, it happens so infrequently, says Director Rick Travis, that people who have worked at the agency for a number of years recall only one involving criminal neglect or abuse charges. Of course, two children — Budde Lee Clark, 6, and Christopher Lee Jones, 19 months — recently died from abuse. Charges are pending in both those cases.

The earlier case involved 21-month-old Scotty Avery Trexler, son of Tammy Trexler of Rowan County. He died on May 30, 1987, in Tennessee, where the family had moved, as a result of one of the worst cases of child abuse the investigating officer said he'd ever seen. Trexler and her boyfriend, Kerry Bowers, were convicted of charges related to the baby's death.

Forty children, most of them younger than 3 years old, died of child abuse in North Carolina last year, according to the annual survey by the National Committee to Prevent Child Abuse.

Question: Why does the Rowan County Department of Social Services have to call the people before they go out to do an investigation? Why don't they just show up at their door?

— AUDREY KEPLEY,

Answer: Social Services does *not* have to call people. In fact, says Director Rick Travis, calling them so they got advance notice would defeat the purpose of doing a thorough assessment. Workers try to make their initial visit without setting up an appointment. Occasionally, a worker will call and say he's 20 minutes away and wants to stop by, and in some cases workers run into trouble finding working parents and have to call.

Salisbury Post 4/4/97

Social workers have hardest job

DSS employees face enormous challenges, school guidance counselor says

BY KAREN C. YOUNG
SPECIAL TO THE POST

I am outraged at Commissioner Dave Rowland's outrage concerning Rowan County Department of Social Services. It would appear that he is exploiting the recent tragic deaths of three children to grab headlines.

Last month, without having first read the report, Mr. Rowland shot from the hip without any understanding of the workings of the agency. In the Salisbury Post he stated that DSS should have taken workers from other jobs to conduct protective service investigation with no understanding that this is an incredibly difficult job requiring the highest professionalism and training.

Responsive, caring

He also, right away, stated that he didn't "want to throw money at the problem," a pat political cliche which reflects little understanding of the complexity of social services delivery. Mr. Rowland doesn't even seem to understand that failure by the Department of Social Services to comply with legally mandated services would result in serious consequences to this county. Any person who knows so little about the workings of public business should not run for or serve as an elected official.

As a social worker and guidance counselor for Rowan County Schools, I have been making referral to DSS for 25 years. Sometimes I have been satisfied with outcomes of investigations and sometimes I have not. In those cases where I was dissatisfied, I could and did make my concerns known to supervisors. However, I have always found the protective service workers responsive, caring, calm and professional.

I represented the school system in the early '90s on the Community Child Protection Team, which monitors repeated reports of child abuse. The agency workers were never defensive, always open to suggestions and concerned that the system of child protection perform at the highest level of effectiveness.

I know none of the particulars in the current tragic deaths beyond what I read in the paper. However I do know a few things:

1) I know that their families failed these children! DSS did not kill those three children.

2) I know that there have been only seven child abuse investigators to handle the reports from the workers in 28 schools and from doctors, day care centers, neighbors, the hospital, and relatives of abused and neglected children. Thousands of us report hundreds of cases to only seven of them.

Always on call

3) I know working for Child Protective Services is the most difficult job that exists, bar none. If parents are not guilty they are outraged at being reported. If they are guilty, they are outraged at being caught. People lie. People hide. People threaten workers. No one likes to see a social worker coming!

If parents are not guilty, they are outraged at being reported. If they are guilty, they are outraged at being caught.

4) I know that there is a DSS worker on call 24 hours a day. I have called and said that I am not letting this child go home from school without a social worker. The hospital could have and should have done the same.

5) I know that families are breaking down at an increasing and alarming rate. People are getting crazier and crazier. Children are becoming more and more difficult. No public agency can prevent all the results of social dysfunction.

6) I know, Mr. Rowland, any businessman will tell you that you cannot do the job with inadequate resources.

Finally, my hat is off to Sheriff Martin for his helping actions in this crisis. We should all follow his lead in working together rather than pointing fingers and playing "gotcha." And my gratitude and support to the Department of Social Services and workers like John Thomas who have stayed on the front lines, year after year, picking up the pieces when society breaks down.

SALISBURY POST 4/6/97 page 1 of 2.

Why can't DSS shuffle people to handle crisis?

Funding mandates the main drawback, director says

BY ROSE POST
SALISBURY POST

When his father died, Rowan County Commissioner Newton Cohen left N.C. State to come home and take over the family's heating and air conditioning business.

That was nearly half a century ago.

So the former commission chairman has had plenty of experience with emergencies.

"You have to put out fires sometimes," he says, "and you move people around to do it."

In the wake of the deaths of two children from abuse, Cohen is not the only county commissioner who's wondered aloud why the Rowan County Department of Social Services can't do the same thing when an emergency screams for another pair of hands.

If Social Services is at times so overwhelmed, commissioners ask, why can't they just move workers from one department to another to get through a time of crisis?

The Rowan County Department of Social Services employs 146 people, but only seven child abuse investigators and one supervisor.

"In business, when you have a crisis," says commissioner Dave Rowland, "you shift personnel. I understand a great majority of their budget is mandated, but there's a tremendous amount of stuff that's not mandated."

Rick Travis, director of the county's Department of Social Services, says otherwise. Virtually all the money in his budget is earmarked for certain services by the state or federal government. Therefore, the rules prevent him from shifting people from one area to another, he says.

Monday he'll talk to his Social Services board about asking commissioners to add three investigators and two supervisors in Child Protective Services. He had planned to ask for one additional investigator and one supervisor.

But now, "because there has been an increase in reports

➤ See **Crisis**, Page 6A

Reorganization helps in Iredell

BY ROSE POST
SALISBURY POST

Social Services workers in Iredell County believe they're doing a better and faster job with children in their care this year.

The reason: They are one of eight N.C. counties receiving a Kellogg Foundation grant to reorganize their children's services program.

But they had enough social workers to handle their caseload before they were selected, and that's vital, says Lisa York, program administrator.

And the reorganization doesn't depend on grant money.

"We didn't reorganize because we got the money," she says quickly. "We reorganized to provide more continuity of service to families. If one person is not available, then somebody else who is familiar with the case is.

"The money that came with the grant funds two positions — a performance coordinator and an assessment coordinator. Their primary responsibility is looking at how we can prevent children from coming into care

➤ See **Iredell**, Page 6A

Crisis

➤ From Page 1A

following the fatalities," he says, "we plan to ask for five additional people in Child Protective Services."

He'll also ask for one additional worker in both foster care and adoption areas.

Travis says he talked with state and regional people Friday and feels sure the special state review team will recommend state standards.

"It will take this many additional workers to come up to state standards."

The team is now reviewing the way Social Services handled investigations before the children's deaths, and on Friday, Kevin FitzGerald, head of the state Division of Social Services, will release the team's report.

Like Rowland, Cohen says he understands the limitations of mandated programs at government agencies. But life is different in private enterprise.

"If it were my personal business, I know I could move my people around with no strings attached," he says. "If I need 15 on Child Support and 15 on Protective Services, I can move them around."

At Cohen Heating and Air Conditioning, he says, "we have a service man on call, and if he gets busy, he calls in a backup."

Why, ask Cohen and other commissioners, can't Social Services do the same?

Unanswered call

On Thursday, Jan. 2, medical officials at Rowan Regional Medical Center called the on-call Social Services worker twice — once at 7:30 p.m. and again at 9 — to report a battered and bruised baby.

They reached the worker, already busy with an emergency, at the Rowan County Sheriff's Department.

But nobody went to the hospital that night to see the baby. In fact, a Protective Services worker didn't see him until Tuesday, Jan. 7, five days later.

And no one picked up the pictures made at the hospital, pictures that showed the bruises and bites, until after 19-month-old Christopher Lee Jones died of another beating and a fractured skull on Feb. 4. A month had passed since hospital workers called to report abuse. His mother's boyfriend, Jeremy Butcher, who was baby sitting, is charged with murder.

With as many people as they've got at Social Services, Cohen asks, why couldn't the social worker on call have called a supervisor?

"Or Rick Travis or Sandy Reitz," he says, referring to the agency director and the administrator of the Income Maintenance Program. "Most anybody that's available should be able to answer those calls," he adds, just as he still goes out on emergency calls in his business.

"Not too often nowadays," he adds, since suffering a heart problem several years ago, "but I have a lot of times." His son, Tommy, backs up his on-call employee now.

"If we have two calls or something like that, I can call him on a minute's notice and get him out. That's not a problem with us."

Having someone answer a call is not a problem in Iredell County either.

For years the Iredell Department of Social Services has had an on-call social worker, hired just to meet the need for a Child Protective Services worker between 5 p.m. and 8 a.m. when the office is closed, says Lisa York, program administrator for the county's Families for Kids grant. And that social worker is not alone.

"She has supervisors on call to back her up," York says. They're around to help her decisions about investigating or not investigating reports and to support her if she has multiple demands. The supervisor and on-call workers all carry pagers and have cell phones.

In Rowan County, neither supervisors nor on-call workers have pagers or cell phones — and Travis doesn't plan to ask commissioners to provide them.

"We are going to ask for additional (funding) in automation and programs," he says, "the bare bones to meet state standards and put us in a position to be effective and successful."

But, he adds, "We have to first have adequate staff trained to do the job. I don't want to misdirect people's attention away from that by asking for the bells and whistles that would make us even better.

"First, let's get the staff, take care of the basics, make sure we're doing what the standards require, and there will be time in the future if we want to move into automation. If you're going to prioritize, you've got to have the bodies before you start adding icing to the cake."

Hampered by law

The department does move people around "to the extent we can," he says, "but in Protective Services we're limited to borrowing from our treatment unit to help with investigations because it requires a great deal of training and knowledge about what Protective Services law and standards require. There is what the state refers to as core training all workers are required to receive in the first year of employment. So we take workers from treatment who have had the training to fill in and help out, to take out some of the overflow."

The source of the department's money is another reason the department can't move people from one type of position to another, he says.

"There is nothing we do that is not mandated. Categorized. We can't take money from one category and put it in another. We don't do optional service. About the only thing we do that is not a federal or state mandate is Christmas Happiness. Adult Services social workers do it. Traditionally that's where it's been handled in the agency. They just grin and bear it. That's the only thing I can identify that is not identified by Washington or Raleigh."

A categorical fund or mandate means that the money must be used for the specific purpose for which it's allocated.

"If you don't use it for that purpose," he says, "the government will tell you to repay the money.

"If we take someone from Food Stamps — even if a Food Stamp worker knew what to do, which, of course, they don't — the county would end up paying all the salary and expenses to that person because the Food Stamp worker is reimbursed out of the Food Stamp program, which will only pay for Food Stamp work. It's a money issue."

Funding sources for almost every unit, he says, whether they deal with Food Stamps, Medicaid, employment services or child support, say "You get this money only if you do" the program it's intended for, he says.

"So if I take a Food Stamp worker and say, 'You're going to have to do Protective Services investigations. We're just swamped,' that worker isn't trained and the county would have to pay. I'm not saying the county wouldn't be willing, but with a budget adopted every spring, I can't use something that was budgeted for something else."

But Commissioner Rowland believes the word "mandated" is open to broad interpretation.

"The statute will say you have to provide adequate service," he says, "but everybody's interpretation of adequate is different. It's like saying you've got to have a car. One might think that means a Ford Escort. Me? I'd want a Lexus."

Surely, he says, the department can find a way to add enough Protective Services social workers. "You're only talking $150,000 to a couple hundred thousand dollars to add four more people in Protective Services. Surely you can figure out a way to add that."

He says he thinks county commissioners have been beaten "pretty heavy" about not funding the department's needs. "I'm more than willing to fund more help, but I don't want them to come and say that's the cure all. That is not the cure all."

Rowland went to Raleigh last week to talk to FitzGerald about the state investigation now under way.

"And I feel very good that they're doing this investigation the way they should," he says. "I'm waiting to see how that comes out. If they make the changes they're talking about, if he comes back and says a major problem is a shortage of investigative workers and (adds) more guidelines to assure me it won't fall through the cracks like it did, I have no problem voting more money.

"There's probably nothing I would embrace as much as something for children."

How the 146 DSS staff employees are organized

A total of 146 people work for the Rowan County Department of Social Services, including:

Administrative staff: 7

- 1-Director, Rick Travis
- 1-Secretary
- 1-Attorney
- 1-Paralegal
- 3-Accounting employees

Income maintenance division: 98

The income maintenance division determines if people are eligible for public assistance programs — Food Stamps, Medicaid and Work First Family Assistance, which replaced Aid to Families with Dependent Children.

- 1-Income maintenance administrator, Sandy Reitz
- 4-Income maintenance supervisors
- 45-Income maintenance caseworkers
- 3-Income maintenance technicians
- 11-Social workers, including 4 in child care; 1, emergency financial assistance; 6, employment program
- 1-Social work supervisor in the employment program
- 1-Attorney supervisor
- 16-Child support agents who track down absent parents, establish child support obligations and enforce payment orders.
- 14-Office assistants
- 1-Clerical supervisor
- 1-Fraud investigator

Social work division: 41

The social work division provides mandated social work services, which include Children's Protective Services, foster care and adoption, and adult services. Adult services includes in-home aid, supervision and licensing of adult care homes, adult protective services and guardianship services.

- 1-Manager Tom Brewer
- 4-Social work supervisors
- 30-Social workers, including 9 in protective services (7 investigators and 2 intake workers), 8 in treatment services, 5 in adult services, and 8 foster care
- 6-Office assistants

Iredell

➤ From Page 1A

and looking at how children can leave the foster care system once they come into it."

Since getting the Kellogg grant, Iredell has reorganized its children's division into family support teams. Four supervisors each have six positions on a team — two investigators, two treatment workers and two foster care workers.

"When a case comes in to us," says Bill Crummett, a child welfare supervisor, "the case remains within that team so we have a familiarity from the beginning of the process to whatever happens with that case. Decision making is carried on within the team."

Workers are specialized. Some of them are cross-trained. And supervisors are being trained to supervise the variety of services offered, says York. The program aims to serve each family with one team and one supervisor.

They can already see they're meeting the goals set by the grant to:

- Provide one assessment for each child. "When they first come into our care," York says, "we look at their broad range of needs, assess their strengths and weaknesses and make a plan to establish permanence for that child as quickly as possible."
- Provide one social work team per family and child. "And we have done that through our organization," York says.
- Have one placement for each child in foster care so there aren't a series of moves, which are disruptive and create a lot of problems. "Of the 26 children we've removed from the home, I only know of two we placed outside our county."
- Try to achieve a permanent home for a child within a year. "We're trying to approach that by dual planning," she says. When children enter the system, workers make two plans — one that will support them if they go back to their families and a second, if the first plan fails, to terminate parental rights and seek adoption.

"We have cases — and every county has cases — that are well into the second year," says Crummett. "Children's time is different from adult time, so that is very long."

So far, the new program has found a permanent home for 41 children of the 108 children who had been in foster care for more than a year.

"That means they were reunified with parents, placed with relatives or adopted," York says.

These goals, Crummett says, "are goals social workers across the state can buy into. It's nothing you can argue against. It's pretty strenuous, but it's for a very worthwhile cause in reducing the time children are 'in drift.' We have worked through a large number of simpler cases. Now we're working through that core of hardest cases, and the numbers are going to come harder now."

JAYSON SINGE/SALISBURY POST

STOP CHILD ABUSE: Yolanda, left, a young supporter, and Darlene Murphy in the walk for awareness Saturday afternoon.

Think of abused children — walkers

BY EMILY FORD
SALISBURY POST

About 50 pedestrians put six miles on their sneakers Saturday morning as they marched along Salisbury streets to make people think about abused children.

Some walkers said they hoped the event would improve relations between the Department of Social Services and the community after two deaths led to a public debate over if the agency adequately protects children.

But organizer Kim Mork said the purpose of the walk was simple.

"This walk is strictly for awareness," said Mork, a treatment social worker with the Child Protective Services unit. "It's a way for us to come together and work on child abuse issues."

Mork said she coordinated the walk because April is Child Abuse Awareness Month across the state. Participants wore navy and white and pinned blue ribbons to their shirts to remember abused and neglected kids.

Others acknowledged the tension caused by the recent deaths of 6-year-old Budde Lee Clark and 19-month-old Christopher Lee Jones.

Social services had investigated the boys' living conditions before they died, when their bodies revealed signs of long-term abuse. Their caretakers are charged with murder.

The walk should prove to Rowan County that social workers care about the children they're assigned to protect, some said.

"I'm hoping it will ease some of the pressure on our Child Protective Services unit between the workers and the community," walker Melody Chambless said.

A receptionist at social services, Chambless said she was thrilled that half the walkers were regular citizens, not DSS employees.

WALKING TALL: Walkers carry signs along Innes Street.

Jennie Karriker doesn't work at social services. She lives in Concord and came to support her friends at the agency.

"They're really working hard here, but they can't baby sit these parents 24

➤ See Walkers, Page 2B

Walkers

➤ From Page 1B

hours a day," she said. "It's too bad they got the bad publicity. Hopefully people will see that they are doing some good."

Employees came up with the idea for a walk on their own, DSS director Rick Travis said.

"They wanted to do this and I said if you can pull it off, go for it," said Travis, who strolled alongside his employees. "They were certainly frustrated with all the negative publicity and wanted to demonstrate their concern for children."

Foster parents and their children made up a big part of the crowd. Mike Mitchell pulled two of his kids in a wagon while his wife kept track of three more.

"About all the foster kids we come in contact with have been abused in one way or another, sexually, mentally or physically," said Mitchell, president of the Foster and Adoptive Parents Association.

"People don't realize that this goes on," he said. "It could be next door."

Social services teaches foster parents how to help get abused children back on the right track, he said.

"You used to learn to deal with it on your own, as best you could," said Mitchell, who's been a foster parent for seven years. "Now we get proper training."

JAMES BARRINGER/SALISBURY POST

CEMETERY VIGIL: Jim and Jane Bradshaw, at left, stand at the grave of their 6-year-old grandson. At right, Pam Bradshaw hugs her daughter, Tristan.

Grandparents: Money led to custody case

BY ROSE POST
SALISBURY POST

Budde Lee Clark's grandparents say it over and over again.

Budde's father, Lee, was in the delivery room when he was born.

His name is on his son's birth certificate.

But he saw him briefly only three times during the first six months of his life.

He never married Budde's mother, Pam Bradshaw.

For four years, he never contributed a penny to his son's support.

He never bought him a diaper or a birthday present or a Christmas gift.

He never tucked him in at night or read him a story or took him to the doctor or called him on the telephone.

He never showed any interest in him at all, say his mother and his grandparents — Lee's own mother and stepfather and Budde's maternal grandparents.

Certainly he never showed any interest in having custody of his son — until the Rowan County Department of Social Services stepped up its push to get "deadbeat dads" to pay back child support.

Budde's grandparents believe Lee Gosnell and his wife, Robin, didn't want to pay back child support — which could have run more than $6,000. So they fought for and won custody of Budde.

Now, Budde is dead, and Robin Gosnell is charged with beating him to death.

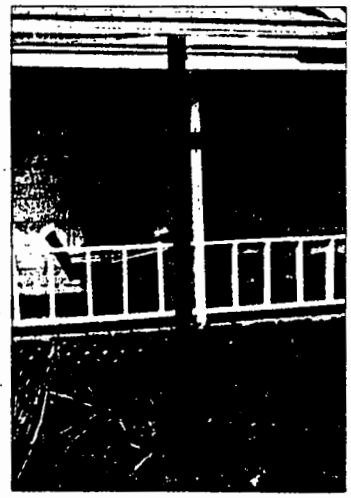
"Money!" grandfather Jim Bradshaw says.

The word shoots out like a bullet.

"The police told me the whole house was full of crosses and pictures of Jesus. I think he saw enough of them before he died."

— Jane Bradshaw, maternal grandmother of Jordan Bradshaw (Budde Lee Clark)

He leans forward in his chair, his face intense. Grief and anger battle in his voice as he talks about the savage beating his grandson endured, made more brutal because partially healed burns and bruises told a story of many beatings before his little body finally gave up. Robin Gosnell's family says he drowned. Police say she put him in a bathtub full of water to give the appearance of a drowning.



DARKENED WINDOWS: A large cross marks the Gosnells' house.

"It was nothing but money," Jim Bradshaw says. Getting custody of Budde would keep Lee Clark from having to repay all those checks the government had sent Pam Bradshaw. Plus, he and Robin would be entitled to get regular child support payments from Pam.

The grandparents want to speak out. Over and over, they hear the question, "Where were the grandparents?" They've read letters to the editors in the Salisbury Post. They've faced their friends. They've faced themselves.

On Friday, Lee Clark said he had nothing to say about this article. When a Post reporter offered to describe the article so he could comment, he said he didn't want to know what the article is about.

"I'm trying to get my peace of mind," he said. "I don't think I can handle it."

The story started, of course, when Pam Bradshaw, was living with Lee. His last name was Gosnell then but he has since changed it

➤ See **Money,** Page 6A

PROTECTING OUR CHILDREN

Money

➤ From Page 1A

to Clark.

She got pregnant.

Get an abortion, he said.

No, she said.

Later, she told a Department of Social Services worker, that if she didn't abort the child, Lee said "he'd leave me in a ditch somewhere."

That scared her. So she left, went home to her parents who had always been there for her though she knew she'd disappointed them. She'd already given birth to a daughter out of wedlock.

But they were proud she'd said no to an abortion — and she acted responsibly. She got a job at the Security Bank office at Rowan Memorial Hospital, rented a mobile home in Faith and worked regularly until a week before Jordan Lee Bryant Bradshaw (his name would be changed to Budde Lee Clark before he died — and back again on his grave) was born on Nov. 27, 1990.

Lee Gosnell came to the delivery room to watch.

"My son even signed Jordan's birth certificate in the hospital," says Lee's mother, Louise Manning.

"He came over one time after Jordan was born — probably the week I brought her home — because I've got a picture of him on the couch with Jordan," says Pam's mother, Jane Bradshaw. "The Christmas after Jordan was born, Louise came over with a whole armful of presents for Jordan from her and from Lee's sisters. But there wasn't any from Lee."

As the years went on, she says, Lee's mother was always there with money or gifts for her grandson. "She bought him a bicycle. She bought him a coat. She took him shopping. She was just a real good grandmother."

Lee Gosnell visited him twice when asthma put him in the hospital during his first few months of life — and that was that. No more visits. No money.

When the baby was a month old, Pam Bradshaw applied for Aid for Families with Dependent Children, one of the federal welfare programs.

Lee Gosnell wasn't part of his life.

"Social Services always knew he was the father," says Pam's mother, Jane, "but Pam never would have drug him into this if Social Services hadn't pushed him."

Social Services wrote Lee Gosnell a letter after his son turned 3.

The child-support process took that long, says Social Services supervisor Sandy Reitz, because of the high volume of work and lack of staff in the department.

The letter said, "We have an important matter to discuss with you," gave him an appointment time and told him the agent's name. He didn't go. So he was ordered to court March 30, 1994. He asked for the case to be continued so he could get a lawyer and a blood test.

On June 9, 1994, he went back to court on the support issue and acknowledged paternity because of the blood test. But he already knew what it was going to show. Two weeks earlier — on May 27, 1994 — he had asked the court to give him permanent custody of Jordan.

Lee was already paying support for a daughter, Mandy, from his first marriage. Mandy, Lee Gosnell's child, was born in 1983 when Lee and his first wife were both 16.

Louise Manning has kept close contact with Mandy, who still visits her grandmother here but no longer sees her father.

But he supports Mandy, Lee's mother says, with money deducted "out of his paycheck."

He never paid anything for Jordan.

"And that's it," his mother says. "Money."

Social Services stance

A custody action takes precedence over child support, Sandy Reitz says, and the Social Services attempt to get back payment and support for Jordan never came up again after custody became the issue.

Had Lee not asked for custody, Social Services would have asked for back payments based on support Pam Bradshaw received through federal, state and local programs.

"We make an effort to collect all of that," Reitz says. "If not all, we make an effort to negotiate what part we will get." The negotiation doesn't include food stamps or doctors' bills.

If he had been ordered to pay have totaled $6,568 but negotiation could have reduced that amount considerably. Nobody will ever know how much he would have paid because by then the stage was set for a custody fight not negotiation.

Eventually, Pam Bradshaw lost custody of her son. She had never believed that was possible.

And even then, people have asked the grandparents, why didn't you keep up with your grandson? Their answer: Robin and Lee Gosnell wouldn't let them.

And the few times they did get to talk to him, Budde was a different boy, the grandparents say.

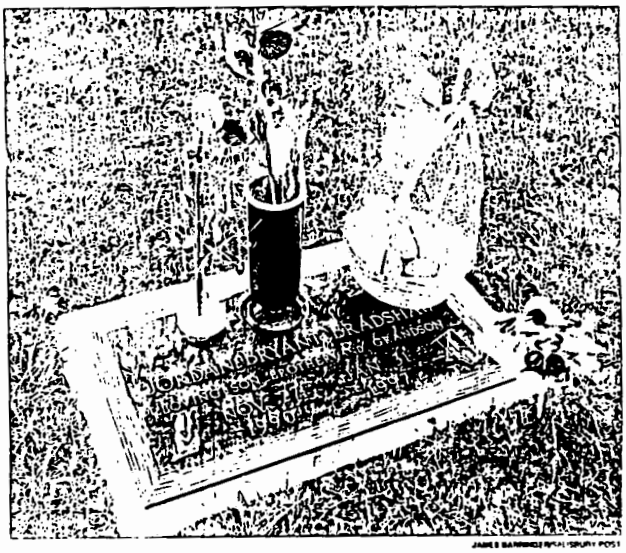
Louise Manning, Lee's mother, says she wasn't surprised to see her grandson change because she'd watched similar changes in her son, after he married Robin.

"When Lee first met her," she remembers, "he said he'd met an older woman." Robin is nine years older than Lee. "He said, 'Mama, she's really turned my world around.'

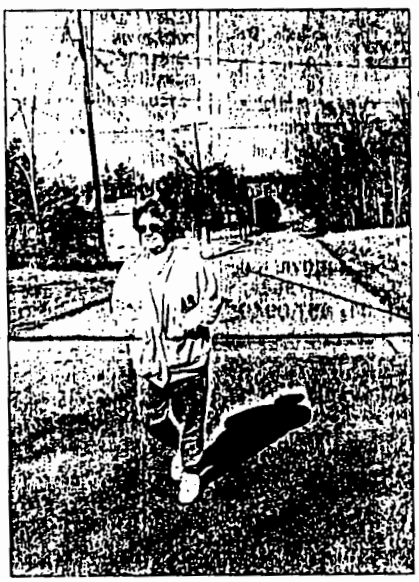
"She moved in with him about a block and a half from me in a little green and white trailer. I had to pass right by his house going to work. Sometimes I would stop by, but that didn't work. One day, I stopped by there, and the next time I talked to him, he asked me, 'Mother, don't stop by any more because it causes problems.' I said, 'All right, I won't.'

"I don't know what it was. Well, I think I do know. That whole year they lived together before they were married, we didn't get on. When you get married, it says in the Bible, your husband or wife comes first, but you're not supposed to throw your Mom and Dad over. She wanted his full attention. All him and not me.

"The only time I would see them was when we'd run into each other. And he'd call me, 'Mom, I love you,' he'd say. 'I haven't forgotten you.' He was trying to keep peace at home. If your son acts like he's happy .... I've wished more times than one, that I hadn't backed up as much as I had."



LASTING IMAGE: Budde Clark's grandparents made sure his grave marker carried the name he was given at birth: Jordan Bryant Bradshaw.



CHILD WASN'T SEEN OR HEARD: Wanda Sheeks walks through the Cleveland neighborhood where Budde Clark was killed.

Isolated grandparents

Jane and Jim Bradshaw, Jordan's maternal grandparents, describe the same kind of isolation from their grandson.

Robin Gosnell brought the boy to the Bradshaws' home once. Then they arranged a 30-minute visit with a social worker present.

"The last time we saw him was Christmas of 1995," Jane says. "Robin came to the door and Jordan came in and we let him open some presents. He started to the back to play with" his half-sister, Tristan, Pam's other child.

Then the grandmother asked if Pam and her brother Jeff could take Jordan to visit his great-grandfather at Rowan Mills. Now she loses control and has to wait for tears to stop.

Then, Robin Gosnell "went into a rage. ... She pushed by me and went down the hall and drug him out of the house. Pam and my daughter, Chris, grabbed up his coat and presents and took them to him in the car."

Lee Gosnell's mother, Louise Manning, encountered the same problem.

"The only time I would see him, maybe a couple of times, was riding down the road. I would catch a glimpse of a little kid in a car, and I would say, 'Oh, my God, that was Jordan,' and that was it. A lot of times I would see Robin and Sammy in the green truck, but Jordan wasn't there."

So she'd drive around, "just hoping I could get a glimpse of him."

Did the grandparents ever ask whether they were legally entitled to visitation? The Bradshaws say they asked several people. One worked for Social Services. And the answer was always the same.

"They said grandparents have no rights," Jim Bradshaw says. But he didn't ask a lawyer. He says they didn't have the money to go to a lawyer and check it out.

Louise Manning never asked a lawyer either. Jim Bradshaw

"People told me grandparents had no rights," she says, and when Robin Gosnell told her not to come on her property, "I couldn't go back. But I did ride up and down the road."

But Louise Manning says Lee Gosnell continued to call her, at first about once a week, later every couple of weeks.

She always asked about her grandson, and his answer would always be the same. "He's fine. We're all doing fine."

When could she see him, she'd ask her son, pressing to see her grandson.

"I'm working on it," he'd say.

In July of '95, she found out Lee and Robin had a new Jeep. He owed her money, and she decided if they could buy a new car, they could pay her the money — and she'd have an excuse to go see Jordan.

But it wasn't a happy visit.

It was hot, but he was wearing a long sleeved shirt and long pants — and he didn't come running to MaMaw the way he always had.

"He was a totally different boy," she says. "Usually he'd come give me a hug. That day, he came to the door and stood in the doorway, and he wouldn't look at me. I said, 'Come on over here and give MaMaw a hug,' but he wouldn't move until she told him to. And then he came and sat beside me, but he wouldn't look at me."

She didn't see any marks on him that day.

"I didn't see anything on him then. Just his mental state. He wasn't a little boy. He was a puppet."

He looked to Robin for permission to sit beside her on the sofa, and Robin answered for him when Louise asked if he wanted to go shopping with her some day. He couldn't do that, Robin said, because she'd take him to see Pam.

"I don't know where Pam is," Louise answered. "And she said, 'You're lying.' I said, 'I don't lie.' She said, 'You're a lying b—.' I jumped up, and I said, 'Robin, I've not bothered y'all. I came to see Jordan.'"

They argued a moment more, and Louise left. Robin followed her to the porch.

"And she said, 'You're not allowed in my house any more. Don't you come back on my property.' So I didn't go back."

And she didn't see her grandson.

"But my son called me once in a while going home from work. Not very often."

Louise Manning continued to look for the Jeep and Robin, hoping she would glimpse her grandson. She drove by the library frequently, hoping to see them. She never did.

Neighbors didn't know

The neighbors in Cleveland didn't see much either.

"I didn't know there was a 6-year-old boy up there," says next door neighbor Wanda Sheeks.

Cyndi Allison Wittum, who lives less than a block away, echoes her words.

"I didn't even know a child lived there," she says. Her own son, Caleb, is a friendly 6-year-old. "He would have talked to him."

But he did live there for nearly two years.

And he died there.

His grandparents have installed the permanent marker for his grave at Rowan Memorial Park. On the plaque his name is Jordan Lee Bryant Bradshaw again — and for eternity. It has no cross on it because they believe he was forced to live — and die — surrounded by crosses that had no meaning.

Louise Manning saw the big cross in the front yard of her son's house on her one visit to her grandson in Cleveland. And she saw all the crosses and pictures of Jesus in the living room.

"And the police told me the whole house was full of crosses and pictures of Jesus," Jane Bradshaw says. "I think he saw enough of them before he died."

And Louise Manning worries about her son and what he saw and didn't see in that house in Cleveland.

"I guess we're all guilty," she says, "but he was the one who was there."

Life and death of Jordan Bryant Bradshaw (Budde Lee Clark*)

Nov. 27, 1990: Jordan Bryant Bradshaw born to Pam Bradshaw and Warren LeGrand Gosnell (now known as Lee Clark).

1990-95: Lives with mother Pam Bradshaw.

March 1995: After custody battle, moves in with father and stepmother Robin Gosnell, (known as Elizabeth Craig).

Jan. 31, 1997: Found dead.

**Jordan Bryant Bradshaw's name was changed to Budde Lee Clark by father and stepmother.*

Some ask the grandparents, 'Why didn't you keep up with your grandson?' Their answer: the Gosnells.

GOODBYE: Tristan Bradshaw fixes an Easter egg tree at the grave.

Home study facts came up short

Murder suspect Robin Gosnell didn't tell truth in report for custody case

BY ROSE POST
SALISBURY POST

The home studies that helped put Budde Clark in Lee and Robin Gosnell's house were riddled with errors and unsubstantiated inferences.

The home study credits Robin Gosnell with earning an adult high school diploma and two years of college, active work in a local church, several years of substitute teaching and no criminal record.

But according to court records and officials at several agencies, Robin Gosnell did not get her diploma, took one three-hour course at Rowan-Cabarrus Community College, was not even a member of the church, served as a substitute teacher for a matter of days and has had several brushes with the law.

And because the home studies prepared by Rowan County Social Services workers were unchallenged, county District Judge Anna Mills Wagoner used them to decide to take the 4-year-old boy from his mother, Pam Bradshaw, and turn him over to his father, Lee Gosnell.

Two years later Budde Clark died of blows to his head. Old bruises and cigarette burns on his tiny body offered tragic evidence that he had suffered torture before he died.

Robin Gosnell, his stepmother, has been charged with murder.

Her husband, Lee, said he had nothing to say about errors in the home study. When the Post offered to describe the article so he could comment, he said he didn't want to know what the article is about.

"I'm trying to get my peace of mind," he said. "I don't think I can handle it."

The murder case has focused attention on how and why Budde Clark came to live with Robin and Lee Gosnell. Inevitably, eyes turn toward those home studies, which were handled like all home studies are handled by the Rowan County Department of Social Services in custody cases.

Judge Wagoner says it's improper for her to comment on a specific case when an investigation is still ongoing, but she says the same pattern is followed in all custody cases. This was not an abuse case. Social Services was involved because Gosnell's attorney requested home studies, and Social Services do them.

Both parents had attorneys who got copies of the study in advance and could have objected, cross examined witnesses and called witnesses of their own.

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3/23 Salisbury Post

Facts

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"All you can do," Judge Wagoner says, "is make a decision based on law and witnesses" — and home studies when they're ordered.

J. Clayton Jones, a foster care supervisor who also works with adoptions, prepared the report on the Gosnell home; Tenly A. Travis, a social worker no longer with the local department, wrote the Bradshaw report.

Jones interviewed Gosnell in his office, visited his home in Cleveland, made a criminal record check and contacted two co-workers Gosnell provided as references.

"We ask a series of questions, and we take down their answers and we report them to the court," Jones says. That takes 10 to 12 hours.

But that check only involved Lee and Robin Gosnell, not Robin Gosnell when she was married to her previous husbands.

"In this particular case — this is not a private investigation — it's a home study," Jones says. "... It's their report. It's information. ...

"Sometimes we get garbage in, garbage out."

He estimates the county's entire Department of Social Services does two to three dozen court-ordered home studies for custody cases a year.

"Right now I probably haven't done one in six months, but then again, we might — in a period of time — do one a month. You can't ever tell."

Dated Dec. 6, 1994, errors in the study include:

■ **Study:** Robin Gosnell said she "has two years of college and has spent several years substitute teaching in public schools, both in regular and behaviorally and emotionally handicapped classes."

Records show: She dropped out of school in the eighth grade and years later completed a three-hour college credit course — Effective Teacher Training — at Rowan-Cabarrus Community College in the fall quarter of 1990. The course is a prerequisite for being a substitute teacher. Rowan-Salisbury Schools have no record that Robin Gosnell — under that name or any other she used — ever did any substitute teaching.

Kannapolis Schools officials say Robin Magdline Bringle worked as a part-time substitute teacher for a few days and a substitute bus driver and regular driver for a short time between January and October 1990. Cabarrus County Schools records show she was a substitute bus driver on June 1, 1990, for 2.8 hours.

Community College records also show that as Robin Pittman, she enrolled in the Adult High School Program but did not graduate.

The N.C. Division of Non-Public Education, which monitors parents who are home schooling, has a letter on file indicating that Robin Bringle received an Adult High School Diploma on Nov. 23, 1989.

A parent running a home school must have at least a high school diploma. About the same time, attendance officers in the Rowan-Salisbury Schools were threatening Gosnell with a truancy charge for not enrolling another son, Sammy Bringle.

In November 1993, Rowan County authorities charged Robin Gosnell with violating the compulsory school attendance law. Initially convicted in District Court, she appealed and the charge was dismissed when she showed her home school registration.

The letter that qualified her for the home school registration is signed by the late Lora W. Withers, director of the community college's Adult High School Program. But Eddie Myers, vice president for student services, says Rowan-Cabarrus does not write letters certifying a student's credit. Instead, the college sends other institutions a transcript stamped with a raised seal.

Myers questions the letter because it is addressed improperly to "Whom It May Concern" and has a handwritten note from Robin Bringle on the bottom, indicating Withers gave the letter to Bringle to mail to state officials.

"It could be authentic," Myers said, but ".... it sure is unusual."

■ **Study:** "Mr. and Mrs. Gosnell are currently active-

➤ See **Facts**, Page 7A

Facts

➤ From Page 6A

members at Morning Star Baptist Church on Woodleaf Road. They are active as youth advisors. Mr. Gosnell operates the sound system for the church and records the morning worship service for elderly and sick who cannot attend. Ms. Gosnell participates in Bible School each year and essentially does whatever she's asked to do. Both are in the Christmas play this year."

The Rev. Ralph Hoffman says: The Gosnells never joined the 120-member church, though Lee Gosnell has been attending recently.

"They had visited a few times, roughly a couple of years ago," the pastor said. "They dropped out. Then she came back just occasionally. Really I didn't know them that well. They had not joined our church. We visited their home a couple of times."

Lee Gosnell doesn't operate the sound system, the pastor said, though the man who does "has had him back there doing some things. He kind of showed some interest in it. We don't make tapes for the elderly and the sick." They were not active as youth advisors and the pastor does not remember them at Bible School or in the Christmas play.

■ **Study:** A check of Rowan County court records indicated no convictions for Mr. and Mrs. Gosnell.

Court records show: One Rowan incident took place in 1988 when she was accused of assault with a deadly weapon after an incident with then-husband Monte Bringle and a vehicle. The judge entered a prayer for judgment continued with the condition that she get counseling. (At the same time her husband also received a prayer for judgment continued on a charge of assault on a female — his wife.)

In 1991, she was charged with violating the state's compulsory attendance law. The court dropped the charge after she moved. In 1993, she successfully appealed a school attendance conviction, after getting her home schooling certificate.

In 1994, she appealed a misdemeanor conviction on a larceny charge in Rowan County, and in a jury trial, she served as her own attorney and won an acquittal.

Also, in Cabarrus County in 1981, Robin Gosnell pleaded guilty to forgery. In 1983, records show, she was charged in Cabarrus County with violating probation on a felony conviction and changed her place of residence to a place unknown to the probation officer. Records are not clear about how that charge was resolved.

■ **Study:** Lee Gosnell's concern for his son "stemmed from information he gained from men he knew who also knew Ms. Bradshaw," including a report from one friend that Pam Bradshaw neglected the child. He also said there were a lot of men "in and out" of her apartment and one, Kenneth Poteat II, was convicted in August 1994 "of taking indecent liberties with Ms. Bradshaw's daughter and Jordan while Ms. Bradshaw slept in an adjoining room."

Social Services finding: Social Services worker Clay Jones said he did not ask Gosnell to identify the men or investigate further. He also did not check court files on the indecent liberties charge.

In court records, Jordan is not listed as a victim. The Bradshaw family themselves reported Poteat to law enforcement.

■ **Study::** Lee Gosnell is his wife's third husband.

Records show: Lee Gosnell is her fourth husband. Clay Jones says social workers do not investigate previous marriages or civil court files as a part of a home study. "If someone didn't tell us there was a long civil court history, we would not know to make those investigations."

Bradshaw's study

The Gosnell home study is considerably longer than the Bradshaw study though it, too, covers the basics of family background, health, education and employment.

Pam Bradshaw told the case worker she thought Bradshaw Gosnell wanted custody of their son "because he didn't want to pay child support."

The report also says Pam Bradshaw had no criminal record. The report does not say that Robin Gosnell took out a warrant charging Bradshaw with communicating threats; Bradshaw was acquitted.

The case worker notes that the Department of Social Services had received five Child Protective Services complaints about Bradshaw during the

previous 18 months. The report says two complaints were substantiated and elaborates on one instance:

"Protective Services Worker Paul Lucas received pictures showing slap marks on Jordan's arm, back and buttocks. Mr. Lucas interviewed Jordan and states that Jordan immediately stated that his mother had hit him. Mr. Lucas also stated that during this interview, Jordan called to his mother, held up the picture and stated, 'You did this mom.' Ms. Bradshaw became upset and Jordan then changed his story. Mr. Lucas reports that when Ms. Bradshaw was out of the room, Jordan would state that his mother hit him."

Lucas transferred the case to Social Services' treatment unit.

"When (Lucas) questioned Ms. Bradshaw about the pictures, she denied having caused the marks on Jordan. She stated that Jordan tends to hug himself when getting out of the bath tub and that is how he received the marks. When confronted about the validity of this, she changed her story stating that she 'did not know where the marks came from and that they weren't there when he left my house.' "

Finally, the study makes an assessment.

"This worker," it says, "has serious reservations about the safety of Jordan and Tristan Bradshaw in the home of their mother. The number of complaints received over the past 18 months (which, in my opinion, have not been filed in retaliation as Ms. Bradshaw claims) compiled with the lack of cooperation on the mother's behalf and the physical evidence of inappropriate discipline toward Jordan, leads this worker to believe that it would not be in the best interests of this child to remain in the home."

At the end of a March 8, 1995, custody hearing, Judge Wagoner listed her "findings of facts," including:

- Lee Gosnell worked for Freight Handlers (making $34,000 a year) and Robin Gosnell did not work.
- Bradshaw was unemployed, on food stamps and Medicaid and received public assistance.
- Pictures showed injuries to Jordan.
- Pam Bradshaw had used "inappropriate discipline" in the past, and the judge was concerned for the child's safety in her home.

Then, based on the testimony of Social Services worker Paul Lucas, the home studies and medical reports, Wagoner awarded custody of Jordan Bradshaw to his father, Lee Gosnell.

On Sept. 5, 1995, six months after the custody hearing and after Pam Bradshaw and Lee Gosnell had trouble agreeing on visitation, both parents signed a mediated parenting agreement leaving sole custody with Lee Gosnell.

Besides saying the parents should work out visitation, the agreement gives Lee Gosnell responsibility for "medical and health needs, schooling and child care and religious upbringing."

Wagoner had ordered the Gosnells to enroll Jordan in regular public school —rather than home school him — when the boy was old enough.

But Jordan Bradshaw — his name changed to Budde Clark — died before he ever went to school.

– Michael [illegible], [illegible] pediatric neurologist at [illegible]

DSS asks for seven more employees

BY WESLEY YOUNG
SALISBURY POST

Rowan County Commissioner Frank Tadlock heard impassioned pleas for more child protection workers during Monday's meeting of the county Social Services board.

Social Services is asking for five new child protection staffers in a year that has seen two children die amid allegations of abuse.

The department is asking for seven additional employees in all: the five child protection staffers, plus an additional adoptions worker and an extra worker in foster care services.

Tadlock, the county's representative on the Social Services board, couldn't promise the department will get new employees.

"I can certainly see and understand the request, but as a county commission, we have called for a no-tax-increase budget," Tadlock said. "I can't assure you what money will be available."

That wasn't good enough for Social Services chairman Irene Goodlett.

"We are tired of hearing that," Goodlett said, noting that every year county officials say they'd like to relieve overloaded workers but can't afford it. "I'm sick of it! That's hard for me to say, but I'm sick of it!"

The department's budget request includes a lot more than just the new employees.

Director Rick Travis said it will take an extra $600,000 from the county to pay for public assistance programs: Medicaid alone will see a $450,000 increase, while foster care will see a $235,800 increase.

The seven new positions would cost almost $300,000 to fund, but the department has equipment requests as well: $100,000 to pay for software and equipment to automate the county's child protection and foster care record-keeping.

Goodlett said Tadlock should be an advocate of the department on the county board "and let them know that this request is conservative and well-documented."

The state is currently reviewing the county's child protection services, and its report could be released this week. The department has been under intense scrutiny from the press, county commissioners and state investigators ever since the deaths of the two children.

Social Services board member Lee Piper called the request for seven new positions "very conservative" and urged

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that the department push for even more workers while public attention is focused on child protection.

"When you go around to every department, every department is understaffed and needing help," Piper said. "But since this is something that people are up in arms about ... if you are concerned, give us more money, help us out.

"Ask for 10 extra people and maybe we'll get three or four."

Travis told the Post that with three new child protection workers and two new child protection supervisors, the county would finally be able to get caseloads down to levels recommended by the state. That's assuming a caseload of 120 to 130 new cases to investigate every month.

The county has seven invesrtigators now, and with three new investigators, would have 10 to share the caseload.

But the current adoption backlog is tremendous, Travis said. The county has one worker to do home studies required for couples who want to adopt. The county has 50 couples waiting for home studies.

The new adoption worker would cut down the backlog, then "aggressively pursue adoptive placements for children stranded in foster care," Travis said.

Each foster care worker now handles an average of 30 children, but the state standard is 20 children per worker.

"These children are sitting in foster care and are needing parents," Goodlett said.

Travis said the $100,000 for computer equipment and programs will help the county track child protection cases. Currently, that's done on index cards, even though computer technology is available that can ease the job.

This morning, Travis said it's possible the county could get most of the money for the seven new employees from increased state appropriations, plus money freed up if the state gives counties more authority on how to spend a $177,000 special assistance fund.

The Social Services board members told Tadlock they weren't trying to gang up on him but want him to plead for their department before the entire board.

"Eventually, somebody has to be brave enough to raise taxes," Social Services board member Jeannie Misenheimer said. "I don't understand how year after year people can say 'no taxes' and then complain. How do you provide the services if you don't have the money?"

In other child protection developments:

- Social Services workers are apparently backing Travis, their director, during this period of child protection scrutiny. At last week's staff meeting, Travis was surprised to hear employee Julie Kovalsky ask employees to stand if they were behind Travis — and all stood. Kovalsky brought this news to the Social Services board on Monday.

"It's been hard on everybody here," Travis said this morning. "It was a chance to bond a little bit."

- Rowan County commissioners on Monday declared April as Child Abuse Protection Month. Travis gave commissioners blue ribbons to wear.

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INVESTIGATORS NEEDED

Filling DSS slots

It's natural for the people who control the county's purse strings to look for ways to save money and compare public jobs to business situations. Voters elect them to do that. But Rowan County does not need further scrimping in Child Protective Services.

The recent deaths of two children who had been investigated by the unit has prompted an outcry, not only against the people responsible for those children, but also against the county for historically understaffing the social services department that's charged with protecting abused and neglected children. Commissioners should heed this outcry.

Some county commissioners have questioned why other social services employees can't fill in when Child Protective Services investigators get more calls than they can handle. The commissioners underestimate investigators' responsibilities and skills. Would they expect a jailer to fill in for a detective in the sheriff's office if there were a sudden outbreak of crime? And who would mind the jail while he or she did? Just like law enforcement, social work is not a one-size-fits-all job.

How can we pull our Department of Social Services above being merely "adequate" by state standards?

If the suggestion to shuffle workers around was a trial balloon, the public should promptly shoot it down. The notion steals attention from the two issues that should be paramount on local officials' minds:

- First, for commissioners: How can we pull our Department of Social Services above being merely "adequate" by state standards?
- Second, for social services departments across the state: How can Child Protective Services investigators pool resources and skills with medical personnel and law enforcement to conduct more thorough investigations?

The state review team that's looking into recent child fatalities in Rowan County may have suggestions on both fronts. Already, Social Services Director Rick Travis is preparing a request for three more investigators and two more supervisors. Here's hoping commissioners — rather than relying on anecdotes from a business environment — will wait to hear the review team's report before making up their minds.

Too aware

Gov. Jim Hunt's proclamation of April as Child Abuse Prevention Month strikes a sad cord here this year. As noted above, Rowan County is all too aware of just how devastating child abuse can be. But do we really know all that we need to know about prevention?

Over 96,000 children were reported as abused and neglected last year in the state, according to Prevent Child Abuse, the N.C. chapter of the National Committee to Prevent Child Abuse. Forty children died from such treatment in 1995, most of them younger than 3.

So, what kind of sicko beats and abuses children? Prevent Child Abuse would tell you the question itself reveals a wrong assumption. "Most people who abuse or neglect their children are not mentally ill," the advocacy group says. "They are ordinary people whose stressors overwhelm their coping skills. Substance abuse, lack of knowledge of child development, single parenting, isolation, poverty, a history of domestic violence and many other factors may contribute to the likelihood that a child will be abused."

Children in distress are a symptom of a deep problem in the community: lack of will or knowledge when it comes to nurturing and raising children. Nothing less than a communitywide effort to support and educate parents is called for.

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Plenty of help along the walk for abused children

It was tough, but this determined grandmother received encouragement at every point

BY JOYCE WEANT
SPECIAL TO THE POST

In the beginning her name was Kimber; she organized the walk. She encouraged me throughout the day. She is a fine lady. She had many names during the course of the walk on Saturday for Child Abuse Awareness Month.

She became Sonya when I needed a little more encouragement along the way. I stopped three times during the course of the walk. First was at City Park, when my old feet began to burn from the abuse I gave them. Then I told myself that this was a worthy cause. Don't quit, my inner voice said. So I kept up the pace as well as I could.

She became Micah along the way somewhere, I guess when she stumbled and fell along the way. This was another reason to keep up the walk. She fell and kept at it. She soon became Brenda, Elizabeth and Pam. We weren't at the halfway point at this time; however, I made it up those hills and was looking forward to the halfway point. I knew there I would have a way to *ride* the rest of the way back to Corriher Avenue.

Then when I got to the halfway point at the Salisbury Housing Authority, she became Gretchen and Amy. She turned into a he for a little way when I looked at Tom and told myself, "for the children" you can make it a little farther. His name turned to Roscoe when my help and encouragement really needed a boost. (I think Roscoe thought that I might not make it.)

I said to myself, I'll quit when I get to the Mane Zone, where my daughter works. My encouragement turned again to Micah when I got there because she carried my real hope on her shoulders when we both, my granddaughter and I, thought we might not make it. I really was happy for this little reprieve of help at this point because I couldn't have carried her. I was really walking slowly along the way at this point. I was too close to quitting, and all my stopping points had passed.

In the end her name turned to Katye. It had been Katye all the way. Little did I think that a 5½-year-old would be my real encouragement for this walk, which I almost did not start, much less complete. Yes, her name is Katye. She is the reason that I went on this walk in the beginning. Just ask her what the red and blue ribbons are for on my car antenna.

She knows the red is for "don't use or drink drugs" and the blue is for "don't hurt our children!"

Along the walk I answered two questions. One dad looked at my sign and said, "I'm not a deadbeat dad." I said to him that this was not about deadbeat dads; it was to let people know that we at Children's Protective Services really do care about all children. Another person, originally from another country, stopped me as we crossed the street to ask what this was all about. I told him that it was to let the public know that we didn't want anyone to hurt our children and that "we can make a difference."

In the end her name is Katye. She was there along the way to really encourage me when I looked into her eyes and knew that my hurting feet, my aching knees, and my old back would all be worth any effort that it took on my part to complete this walk. When I feel the abuse I put myself through for the children, I just think of all the hurt that they go through. Sometimes they don't even complain.

Yes, her name is Katye. She is the real reason I made the walk, and I am very thankful that I did! I'll probably do it again next year. I wish in the meantime that all those abusers of children — and abusers of adults, for that matter — would please come on the walk with us next year. There will be another walk. Mark your calendars for April 1998.

■

Joyce Weant, a Salisbury resident, is a data entry employee with the Child Protective Services division of the Rowan County Department of Social Services.

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◆ Letters to The Editor ◆

Put blame where it belongs

I am writing in regard to those children who were murdered. Don't blame Social Services personnel for not doing their job. I know they failed for not getting Jordan Bradshaw and the Jones baby out the homes where they were being abused.

Just where were the mother and the father of these children? Did they not know this was going on?

As far as the grandparents, Jordan's grandmother was forbidden to see him. I know that if they could, they would have been seeing him and would have reported any abuse. Pam reported it to Social Services. Since Social Services workers had been investigating it for two months, weren't they bound to know it? It looks like they could have gotten both of these children out of the homes.

Let's not blame it all on them. Put the blame where the blame belongs, on the mother and the father of these children.

— LUCILLE HAMBY
Salisbury

Letters Policy

The Salisbury Post welcomes letters to the editor. Each letter should be limited to 250 words and include the writer's name, address and daytime phone number. Letters may be edited for clarity and length. Limit one letter each 30 days. Write Letters to the Editor, Salisbury Post, P.O. Box 4639, Salisbury, NC 28145-4639. Or fax your letter to 639-0003. For computer users, our email address: (spost@interpath.com).

Salisbury Post 4/9/97

DSS report due Thursday morning

BY ROSE POST
SALISBURY POST

The report on how the Rowan County Department of Social Services handled the cases of three children in its care before they died two months ago will be presented here Thursday by North Carolina's top Social Services officials.

The report will be presented at an open press conference Thursday at 10 a.m. at the DSS office at 1236 W. Innes St.

Kevin FitzGerald, head of the N.C. Division of Social Services, will make the report of a special six-member investigating team assembled at the request of Gov. Jim Hunt. He will be accompanied by Chuck Harris, chief of children's services in the Social Services Division, and possibly other members of the team.

Fitzgerald asked the team to:

- Assess the actions of the Child Protective Services unit of the Social Services staff which investigated the alleged abuse of 6-year-old Budde Lee Clark and 19-month-old Christopher Lee Jones before they died on Jan. 31 and Feb. 4, and dealt with 16-year-old Trola Miller, who died Feb. 4 of a random gunshot wound.
- Evaluate an earlier review done by the state and make recommendations to improve the process.
- Evaluate state standards and the child fatality review process.

The probe is the result of community outrage which followed the children's deaths.

SALISBURY POST 4/9/97

Support efforts pay off

16 DSS child-support officers exceeding state goals for collection

BY WESLEY YOUNG
SALISBURY POST

Rowan County's child-support officers have earned state recognition for their work in making sure children get adequate financial support.

Rick Travis, director of the Rowan County Department of Social Services, invited the 16 child-support enforcement workers to the department's monthly board meeting Monday to receive congratulations.

"They are not exceeding their goals by just a little bit," Travis said. "They are just kind of slam-dunking all the state goals."

According to state statistics, Rowan County child-support collections totaled 143 percent of the state's goal for the county.

That was one of the *lower* percentages. The county established more than *three times* the modified child-support orders the state goal called for.

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"That's when you change an existing court order," Travis said, explaining what a modified support order is. He noted that the commendation means the county is "staying in touch" with cases of child support once they are established.

"There is an expectation that every case will be reviewed at least once every three years," Travis added.

The county reached 276 percent of the goal for cases enforced by court orders or by wage withholding.

The local unit located half again as many absent parents as its goal called for and established paternity for 144 percent of the goal. The unit enforced the collection of 116 percent of the goal for welfare collections.

"Our child-support unit exceeded the goals by quite a margin," Travis told the Social Services board.

The award from the state covers the period 1995-96. Rosalee Hart-Morrison is the child support supervisor and attorney.

One of the most publicized efforts of the child-support enforcement team has been a series of "wanted" posters for those behind on their child support.

The money brought in by the effort was only a small part of the whole, but the message the posters sent was important, Travis said.

"It communicates that if you are not paying child support, sooner or later we are going to come looking for you," Travis said. "We have located most of the people on those posters."

Travis' management report for the month of February, released in the April meeting, showed that child-support enforcement collections continue on an upward swing.

Collections totaled $364,322.70 for the month, compared to $338,000 for the same month in 1996.

Meanwhile, Travis said recent figures show that while child support collections are up, fewer people in Rowan County are receiving welfare.

The number of recipients in the county dropped in February from 3,740 in 1996 to 3,556 in 1997. The number of welfare applications under the state's Work First program dropped from 178 last year to 139 in February.

"There's speculation that the Work First requirements may be influencing people's decisions to ask for cash assistance," Travis said. "Some people say they just want food stamps or Medicaid and say they don't want the check."

Work First imposes requirements that recipients get a job or job training. Medicaid and food-stamp programs do not have such requirements.

Some who get Work First help are finding that they face sanctions — financial penalties — when they don't abide by the new requirements.

In Rowan County, one out of six welfare recipients faced a sanction for either failing to make sure that their children were in school or had been immunized, or for failing to comply with work requirements.

Rowan County's sanction rate was one of the highest in the state.

Social Services board members also learned Monday that the number of child-abuse reports accepted for investigation — 116 for February — was about "35 more than we had been averaging," according to Travis. Travis estimated that figures for March will show about 130 cases accepted for investigation.

Travis has said that the publicity over two children's deaths attributed to alleged abuse is partially driving the increase, but has noted that a new telephone system also makes it easier for people to make reports.

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State: DSS didn't ask right questions

Investigators missed 'certain critical findings'

BY MARK WINEKA
SALISBURY POST

In examining the abuse deaths of two Rowan children, a special state review team found extensive evidence of limited investigative work, miscommunication, failed documentation, poor after-hours coverage and inadequate supervision by the Rowan County Department of Social Services.

The review team also provided numbers showing that Social Services workers who investigate child abuse and neglect are terribly overloaded, far exceeding the state's recommended standards of cases per month.

In response, a report delivered by the team this morning recommends changing procedures as well as adding staff, resources and training

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for local Social Services employees and the community at large.

The report also takes the state to task for its initial review of the deaths of Budde Lee Clark, Christopher Jones and Trola Miller.

The report delivered this morning said the first review of those deaths "missed certain critical findings."

Complaints about the findings of the state's first investigation of the deaths led N.C. Human Resources Secretary David Bruton, at the direction of Gov. Jim Hunt, to appoint of a second special review team.

Overall, the team found the state has "some unsuspected holes in our safety net for protecting children," said Kevin FitzGerald, state director of Social Services.

Fitzgerald called it "the greatest lesson we have learned" from this second investigation into the deaths of the Rowan County children.

Conducted during the same time period, a separate review by the American Humane Association into North Carolina's fatality review procedure found the state process too narrow, failing to identify all the important issues.

The American Humane Association calls on the state to design a more comprehensive child fatality review process — something which FitzGerald promised to do.

The review team's report was prepared by Chuck Harris and JoAnn Lamm of the N.C. Division of Social Services, Marcia Herman-Giddens of the N.C. Medical Examiner's Office, Rowan County Health Director John Shaw and Jennifer Tolle of Prevent Child Abuse North Carolina.

The state report found major deviations between the caseload Rowan social workers carry and the state standard of 12.

The number of abuse and neglect investigations being conducted by Rowan investigators ranged from 16 to 27 cases. In March, child protective services investigators received 22 new cases each.

Likewise, Rowan exceeded the state standard for the ratio of supervisors to front-line social workers. The recommended ratio is 1 to 5; Rowan's was 1 to 8 and 1 to 9.

Today's report recommends that Rowan officials give Social Services the resources to meet state-recommended ratios.

In its 10-page report, the review team devoted more than six pages to findings related to the Rowan County child fatalities — deaths that occurred in a five-day period from Jan. 31 to Feb. 4. In all three cases, the local Social Services department had investigated earlier allegations of abuse or neglect.

Problems and recommendations identified included:

■ The report cited both a lack of communication and miscommunication between hospital and other medical providers and the Social Service staff. Pertinent information was lost in some cases.

The team suggests that Social Services and local medical providers develop a protocol "to ensure accurate sharing of information and appropriate response times by DSS workers."

The report also calls on Social Services investigators to consistently request and review all pertinent medical records. The report encourages all medical professionals in Rowan County to pursue training in identifying and reporting child abuse and neglect.

■ The review team found evidence that "a number of community members" had reason to suspect abuse and neglect in the children's cases but failed to make a report to Social Services.

The report does not identify those people, but the review team encourages better community training for professionals who consistently work with children and families. It calls on the Community Child Protection Team to develop a plan to enhance public awareness of the N.C. law requiring anyone who suspects child abuse or neglect to report to Social Services.

■ Social Services should develop a better system for on-call, after-hours coverage.

"Back-up relief and supervision must be readily available and able to assist in overload situations," the report says.

It may require a special position or compensatory time for Social Services workers who must work daytime hours as well, the report adds.

A written procedure for after-hours reporting should be shared with the individuals and agencies who often make child abuse reports outside of normal agency operating hours, according to the report.

■ Some areas of the intake process in Child Protective Services must be improved.

Rowan Social Services intake forms must be expanded "to ensure the collection of all pertinent information."

■ The focus of the Social Services investigations and assessments were too narrow.

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The team says the staff should focus on all aspects of investigations and assessments, "and not just on the reported incident."

■ Social Services' investigations and assessments were too narrow.

The team says the staff should focus on all aspects of a case, "and not just on the reported incident."

It calls on the Social Services investigators to "frequently utilize the expertise of medical, psychological and law enforcement resources in conducting investigations."

■ Social Services investigations failed to interview several key people in the abuse deaths of Budde Lee Clark and Christopher Jones.

■ There's a need for additional resources to support Social Services investigators.

The report recommends that Child Protective Services be given additional clerical support, better computer resources and access to cellular telephones.

■ Social Services staff needed additional training. The report says staff members need to be retrained in the use of risk assessment, child development and discipline techniques.

■ The review found numerous examples of inadequate documentation by Social Services staff. The case record did not clearly document services and activities provided by workers.

In this regard, supervisors need to be held accountable for the thoroughness of records, the report says.

■ Supervision needs to be improved.

The report recommends that supervisors meet regularly with caseworkers and should require frequent status reports. It calls on close daily supervision of case workers with little work experience or record of questionable performance.

On the state review level, the report says that for each of the three cases, one or more standards had not been met and were not identified in the initial review.

The report recommends broadening state reviews beyond the last 12 months of agency involvement, including someone with medical expertise and at least one person outside the Social Services division.

The report also suggests exploring ways to loosen confidentiality restrictions to satisfy the public need for accountability.

Report also faults state review of local investigation

BY WESLEY YOUNG
SALISBURY POST

Rowan County Social Services missed critical information showing that Budde Clark and Christopher Jones were at risk of further abuse before their deaths, a state review panel said today.

Although an earlier review found that the department had no information that could have predicted the children's deaths, this morning's report said Social Services failed to investigate the cases as thoroughly as it should have.

"There is information that was available that should have been obtained," said Chuck Harris, with the N.C. Division of Social Services. "Had it been obtained, it would have led to indications of abuse or neglect."

Although the focus of this

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morning's announcement was on finding ways to prevent tragic deaths in the future, Rowan County officials were asking immediately whether the leadership of the Social Services department was at fault for "dropping the ball," as Commissioner Newton Cohen put it.

State Social Services director Kevin Fitzgerald said he has confidence that the staff of the department is committed to improving services through better training and supervision.

The review panel focus on two factors: Whether the department had met the standards for investigating abuse in the cases of the two children, and whether the state's review process — the one that exonerated the department — was adequate.

On both counts, the state panel said, mistakes and omissions were made, and improvements should be brought about.

■ In the case of Christopher Jones, 19 months, the department failed to interview "all persons with pertinent information," the review said, resulting in a "high-risk situation not being recognized and the resultant lack of appropriate actions to protect the child." And, the panel said, the initial review of the department failed to pick up this omission.

■ In the case of Budde Clark, 6, the review said, "two critical protection standards and a number of other standards were not met.

"The report indicates that the scope of the agency involvement was far too narrow given the amount of evidence from the record indicating that the child might be jeopardized in aspects of his life other than the nose injury," the report stated. "However, the initial review did not identify the need for a comprehensive medical evaluation to address the broader issues of Budde's general health and safety."

Budde Clark died Jan. 31 in Cleveland, in the house where he lived with his father and stepmother. His family called rescue workers to the home to report that the child had drowned in a bathtub. But when rescuers could not revive him and investigators saw injuries on the boy's body, authorities charged stepmother Robin Gosnell with felony child abuse and murder.

Christopher Jones died in early February from injuries authorities say were inflicted by Jeremy Butcher, his mother's boyfriend. Christopher had been treated at Rowan Regional Medical Center just one month earlier for injuries medical professionals believed indicated abuse. Butcher has been charged with murder.

Social services board members, county commissioners and Social Services staff and administrators joined reporters and television crews in this morning's meeting.

The panel said the critical issues for the county to look at were better training, tighter supervision and a lighter work load for overburdened employees.

During the question and answer period, Social Services board member Jeannie Misenheimer fired a broadside at county commissioners who have failed over the years to grant extra staff to the department.

"It is very difficult to sit here and hear criticism from the county commissioners when in fact we do not have adequate staffing," Misenheimer said, after Rowland asked if the problem was department leadership. "We are continually told that we can't raise taxes and can't add services."

But Elizabeth Smith, a child protection advocate who advocated this latest review, came to Rowland's defense, saying his outspoken remarks had done much good.

Social Services director Rick Travis said after the conference that he does not have any disagreement with what today's report said, and added that training is "always inadequate."

"We are always pushed to find time to train social workers," Travis said. The department has 30 days to respond to the state's review.

"I agree that we did not do everything we should have," Travis said. "We did not conduct the investigation by the book. Had we done so, we would have done a better job."

The state reviewers called child abuse deaths 'all tragic and all preventable."

But Travis isn't sure about that better work by his department would have kept the children alive.

"I can't say that would have necessarily prevented the deaths of these children," Travis said.

SALISBURY POST 4/10/97

Rowan, use common sense

BY DICK KEHLMEIER
SPECIAL TO THE POST

Not to beat a dead horse, but would Budde Clark and Christopher Jones be alive today if someone in the Department of Social Services had exercised a little common sense instead of just "meeting the standards"? However, let's look at this from another view also. We do have to realize that it is pretty hard to exercise common sense when you're overburdened.

Where was common sense when the county commissioners underfunded and overburdened the DSS and the Department of Health? These two departments operate in overcrowded spaces while the commissioners enjoy spacious new quarters in the old federal building. Where was common sense when they gave themselves a raise, however small, when we have these budget problems?

Where was common sense when the commissioners decided to finance a ball park in Kannapolis? By the same token, where was common sense when they knuckled under to the Raleigh lawyers who pressured them into building a new monument to crime called a jail?

Mixed messages

Of course, where is common sense when we send mixed messages to our elected officials? We demand lower taxes, but when things go wrong, like they just did, we look for scapegoats other than ourselves. We want lower taxes. We want services. But we don't want new businesses to keep our taxes low and level of service high. Just what do we want?

We are certainly going to have to exercise common sense if we are to report our neighbors for suspected child abuse. Some instances no doubt will clearly be abuse but others may not be. We must exercise care to keep from further overloading our police and other investigative departments. We certainly don't want to place the stigma of "abusive parent" on someone unless they really are.

Where is the common sense when our automobile insurance goes up each year because of irresponsible drivers who cross the double yellow dividing line and who speed on our winding, hilly secondary roads causing accidents? Do we not need more county police to catch these irresponsible people plus drunk drivers? Of course this will cost more and raise taxes. But which is better, more taxes or high insurance rates along with death, disability and suffering? Of course part of the high cost of insurance may be due to high insurance company profits. Maybe this should be looked at by the state legislature.

Too lenient, too strict

Where is the common sense when a parent allows an underage and unlicensed minor to operate an unlicensed four-wheeler on public streets and roads?

Where was the common sense when the Lexington school board came down on a 6-year-old boy who kissed a classmate? Now the board says that in the future, age will be a consideration. Does that mean if a senior kisses a girl who asked him to, he will be charged with harassment? I am glad I am not young anymore.

Speaking of school boards, where is the common sense when they tear down or abandon existing sound buildings to build new ones, telling us it is less expensive to build new than to renovate, bringing mechanical systems, etc. up to date? They forget that renovation saves the cost of a new site and may be better located.

We seem to be a nation of tear down and build new. Whether you liked the architecture of Towne Mall or not, it was an example of that period's architecture. Before it was allowed to deteriorate it did serve a purpose. Where was the historical society? I hope the new Towne Creek Commons will not be allowed to deteriorate like Towne Mall was.

Where is the common sense when the state allows cities to annex areas whose residents do not want to be annexed? What kind of citizens will they be? Loyal to a city they do not want to be in? It sounds pretty dictatorial to me.

I guess the moral of this story is, we all need to exercise that thing on top of our shoulders and use some common sense like our grandparents or great-grandparents did, didn't they?

■

Dick Kehlmeier lives in Salisbury.

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What now?

Officials grapple with solutions, blame after review

BY WESLEY YOUNG
SALISBURY POST

Some county officials are calling for a community-wide effort to prevent future tragedies like the ones that claimed the lives of two Rowan County youngsters this winter.

But others say that's not enough: They say Social Services director Rick Travis must answer for the faults a state review panel noted Thursday in the way the local department investigated the cases.

Thursday's announcement of the review team's findings left no unity among those keeping track of the issue.

"We all need to heal," said Jeannie Misenheimer, a member of the Social Services board who left the meeting convinced that the entire community must work together to improve child protection. "I feel defensive, the commissioners feel defensive, and the workers themselves feel defensive because the public thinks they are not doing their job.

"We have got to get beyond that and work together."

The review team found that the department should have more thoroughly investigated allegations that the two children were being abused. If it had, the report maintains, it would have found the children at risk of further abuse and neglect. The report does not say whether such a finding would have saved the children's' lives.

Louise Manning, a grandmother of Budde Lee Clark, one of the children who died from abuse, said Thursday evening that Travis and those involved in the investigations prior to Budde's death should not even be allowed to pack their bags.

Giving the Department of Social Services 100 or 1,000 new employees won't do any good if the employees are not going to do their jobs, she said.

The special panel that issued its report Thursday was a mix of local and state officials, social services people and non-agency professionals. The panel made dozens of recommendations for ways to make child protection better.

The panel also recommended changes in the way the state reviews how local departments are doing their jobs. From now

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WHAT DO YOU THINK?

A special state report says the child protection unit in the Rowan County Department of Social Services needs more employees and equipment to fight child abuse. Do you support spending more tax money for the local unit? Would you support the money even if it might mean increasing taxes? Call our ASK US line at 630-0304 and record your opinion. Please leave your first and last name (spelling both) and a daytime phone number. (You must have a touch-tone phone to leave a message.)

Review

➤ From Page 1A

on, non-agency professionals will be involved in reviewing cases in which a child has died.

Misenheimer said she hopes the review will cause the county to give Social Services more money — money for the extra staff and other changes the state says the department should make.

The state's new report shows not so much that Social Services "didn't do their job," Misenheimer said, but that "they did the best job with the staff and resources available."

"I don't disagree with what they wrote," she said. "The strong thing is that we need more staff and help."

Travis seems secure in his post, having received a glowing job performance review from his Social Services board back in January, and having apparently retained that confidence in the months since the deaths of the children started churning out daily headlines.

"What I really hate out of this is it seems there are some people headhunting," Social Services board member Lee Piper said of Travis.

"I am so impressed with him," she said. "He is always one to give you the bad news. He is completely honest, completely sincere. He is very capable.

"Before all this happened, he asked us to do an appraisal of how he was doing," she continued. "We talked to a lot of people within the organizations that have had dealings with him and people on the state level. We couldn't find anything anybody would say bad about him. He is one of the most respected people in the state on social services."

Chief critic

Chief among Travis' critics is Rowan County Commissioner Dave Rowland, who said after Thursday's meeting that the Social Services director should be replaced.

"I've got a problem with the fact that the report says there is a lack of training, a lack of experienced people, no emergency plan for backups and getting after-hours service," Rowland said, citing departmental faults cited in Thursdays announcement of the review findings.

"The obvious things that you expect to be in place weren't in place ... I've got a problem with leadership. Your people at Social Services aren't going to be any better than your director."

Rowland faults Travis — and Steve Blount, a fellow county commissioner —for being in "denial" about problems in the department.

"It is hard to believe when you have a director that comes in there and says they followed the rules, and the Social Services board says the same thing," Rowland said, referring to the aftermath of the earlier review, which was more favorable to Social Services. "Steve Blount writes his letter and says he did his own investigation and that they did everything right.

"I would get off people's backs a little bit if they would just own up and say, 'We screwed up.'"

Staff 'very somber'

After Thursday's announcement, the state review panel gave a similar presentation of findings to the Social Services child protection staff.

"They were very somber," Travis said of his employees. "I was surprised they didn't ask more questions. The few I've spoken with since that meeting have had the same reaction: This wasn't so bad. I don't think they feel it was another unwelcome blow. Their reaction was, it may be painful to read parts of it, but the report was honest."

Travis on March 8 called the previous report "reassuring" for showing that the department "did an adequate job." He acknowledged that his department may not have met all the standards, but called the review thorough. Thursday, Travis said he agrees with the later, more critical report.

"We realized the review procedures we used for the last five years were not adequate," Travis said Thursday. "On the first review, one person came for half a day. Basically it was a review of the record. This second review was by five people who spent two full days here, plus time in Raleigh."

But Travis said it's impossible to say whether, if Social Services investigators had asked the questions they didn't ask, they would have taken the two children from their homes.

"If you look at similar cases, you will find that some are removed from the home, and some where they stayed at home," Travis said. "I don't think we can go back and reconstruct with any certainty that procedures would have gone a certain way."

Explosion of new reports

The immediate worry for Travis is how to handle the "explosion" of new child-abuse reports waiting to be checked out. His investigation team is two workers short, and staffers worry that getting rid of the backlog could distract their attention from new high-risk cases.

Beyond that, Travis will have to begin working on carrying out the recommendations of the state review team. He will get help from the Child Abuse Task Force established by county commissioners at their most recent meeting.

County commissioners will also get a chance to go along with child protection workers as they go about their jobs, to see firsthand what the workers do.

County commissioners may not hire or fire the Social Services director — that's the Social Services board's job — but they do contrd the local share of appropriations for social work.

Rowland said the county could try to force Travis out by using its power of the purse. But commissioners would be wrong to put children at risk to make a point over the leadership of the department, he added.

Rowland said he wants to give Social Services more money for child protection but wants to make double-sure, too, that the department can't shift existing programs to come up with the money.

Steve Blount, who strongly defended the department's work on the child protection investigations last month, said Thursday he stands by his earlier statements.

"There is nothing in that report that says those kids would be alive if they had done anything different," Blount said. "I still stand by that. They did a more thorough investigation. I see it as pointing to a lot of little problems that, if fixed, will improve service.

"It is going to take a community effort," Blount added. "Hundreds and hundreds of kids are being abused I want to solve the problem. I am not too interested in pointing the finger."

Cohen: 'whitewash'

But fellow board member Newton Cohen called the review announcement a "whitewash" because the panel wouldn't assign blame.

"They didn't want to criticize anybody to a great extent; they didn't want to point the finger," Cohen said. "I'd like to ask who's responsible. I didn't get an answer. They avoided a lot of other questions."

Cohen said he's "in Rowland's corner" but wants to "get all the facts" before forming an opinion on the job the agency director has done.

Frank Tadlock, the commissioner who sits on the Social Services board, said that while "there could have been some things done differently," the Department of Social Services "did not kill those children."

"I don't think there is anything that could have been done that would have fully eliminated the deaths of those children, because that choice was made by the people that killed the children," Tadlock said.

Second review praised

Piper, on the Social Services board, said she was troubled by the state's original review because it didn't go "far enough."

The second review panelists "did an excellent job,"

she said.

"I think their findings were very thorough, far-reaching and challenging and unbiased," she said.

"I am real dismayed by the fact that there are people still trying to look for blame," Piper said. "I felt like a lot of people were saying, It is not our problem, it is a DSS problem.' That is a real narrow way to look at it.

"I still feel there were some obvious problems with DSS, but there were a lot of problems with the hospital, a lot of problems with the families involved ... (and with) the state, the way that things have been done, a lack of money, lack of training."

Staff Writer Jason Williams contributed to this article.

Abuse reported

In an unusual move, the Department of Social Services reported three incidents of child abuse to the Rowan County Sheriff's Office on Thursday afternoon for possible criminal prosecution.

Sheriff's officials say the incidents are not "life threatening." Officials say it's unusual for Social Services to report three cases in a single day. Officials would not disclose any details about the alleged abuse.

In turn, deputies turned over information about an assault against a child to the Department of Social Services.

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Statewide implications in 3 children's deaths

BY MARK WINEKA
SALISBURY POST

The director of N.C. Social Services left Salisbury Thursday persuaded that the deaths of three Rowan County children have implications not just for local officials, but for communities statewide.

"I think that we've learned a whole lot from these tragedies, and the challenge now is to make the necessary system changes to improve how we protect kids," Kevin FitzGerald said. "This review has really helped bring that lesson home."

Within a five-day period from Jan. 31 to Feb. 4, three Rowan County children who had been the subjects of previous Department of Social Services investigations into child abuse, died. In the cases of 6-year-old Budde Lee Clark and 19-month-old Christopher

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Deaths

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Jones, care givers were charged with murder. In the other instance, 16-year-old Trola Miller was shot and killed during a neighborhood argument.

A state review team found the local DSS casework prior to all their deaths at fault. It also concluded that the current review process into child fatalities is sorely lacking.

"I think all of this will be beneficial in the long run, though it's a painful process to go through," Rep. Charlotte Gardner, R-Rowan, said of the intense scrutiny the Rowan DSS has undergone.

FitzGerald suspects that a number of the issues uncovered, including concerns about caseload, supervision, training, after-hours coverage and communication, are prevalent in DSS offices throughout the state.

"Rowan County is not unique in terms of counties," FitzGerald said. "The circumstances, timing and level of scrutiny is much higher and brought things into focus."

Because of the review team's findings in Rowan, the Division of Social Services will change immediately the way it reviews child fatalities. Previously, most reviews were done by one person — a DSS employee from a county outside the one where a death occurred.

That same kind of initial review into the Rowan County deaths led to an outcry of complaints, prompting Gov. Jim Hunt to ask Human Resources Secretary David Bruton to assign a second review team.

The diverse makeup of that group and the broadening of its

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Deaths

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scope beyond the normal review process uncovered much different findings and recommendations in the Rowan County cases.

The special team's report acknowledges that the former review process was flawed and, by design, could not be comprehensive. It limited itself to interviewing only the social workers involved and looking at the paperwork the DSS compiled in each case.

Besides involving more people — several outside the DSS — the broader review also included interviews with law enforcement, foster care providers, medical care personnel and the like.

"My sense was that we had a real straight-up discussion on a number of the ways the system can be improved to better protect children," FitzGerald said of Thursday's visit to Salisbury. "My sense was a keen interest on the part of Rowan County and on the part of the state to really dramatically move things to a much better place than they are now."

The review team report also recommends that the state explore ways to open up DSS records after a child has died to satisfy the public's push for accountability.

FitzGerald thought his division took an important and welcome step by making its 10-page report public Thursday. The first review — the one criticized — had only a cover letter that was public. The bulk of the report was kept confidential.

FitzGerald said Thursday's document, though more detailed, still stayed within the confidentiality guidelines. The report did not tell exactly what steps the Rowan DSS failed to follow in each specific case.

"But we were able to say a lot more to the community in terms of what we found, and that's important," FitzGerald said. "... What we've learned is that it's important to share key system issues. ... Disclosure of more case information once a child has died is a discussion that we're going to need to have."

That will require changing laws, FitzGerald said, and Gardner expects to introduce a bill next week that has been drafted by the N.C. Press Association.

Gardner said it's important for the public to know the circumstances behind a child's death.

"I told FitzGerald yesterday, the bottom line is that if it hadn't been for the paper, I don't think the process would have been improved."

Ken Eudy, a lobbyist for the Press Association, said Gardner's bill aims to open up all manner of records once a child who has been in Child Protective Services dies.

Those records could include medical, emergency services, hospital, medical examiner, law enforcement documents and the like.

If an agency believes the release of such information would threaten the physical or mental health of a family member or compromise a criminal investigation, it could seek a court order to have that information withheld.

Eudy acknowledged that the Press Association discussed the need for this bill as early as last fall, but it was pushed aside by other concerns.

"With the Rowan cases, our interest was rekindled," Eudy said. "The Rowan cases really made it more timely."

Gardner acknowledged that she's not sure what kind of reception her bill will receive.

"It's a local situation," she said. "Now you've got to convince the General Assembly that it's a problem widespread enough that you have to relax the state law. If children are involved, the overriding concern should be the children and their welfare and what could prevent future tragedies like that."

The Child Fatality Task Force has introduced similar legislation to help in its investigations, but Gardner's bill would be much broader.

Rowan County Health Director John Shaw was one of the five members of the second state review team. He said he knew within 30 minutes of the team's first meeting that each of the members had invaluable perspectives and years of experience.

"I can't emphasize the diversity of the experiences that were brought to bear on that team," Shaw said. "Throughout the process, there was this strong desire on the part of team members to hear what the other person was saying."

Shaw said the review team's work "evolved a far better process for reviewing fatalities than had been previously used in the state."

"The other (method) just tends to limit the scope," Shaw said. "What we did was far broader in its scope. We were able to discover things that were not discovered before."

Shaw said the review showed that changes must be made in Child Protection Services here and throughout the state. The county also will have to make an investment in training, staff, supervision, computers, cellular telephones and the like.

"I think we also learned we need an action plan to adequately protect our children in this county," Shaw said.

In general, Shaw believes the community at large needs to have a better understanding about domestic violence and what contributes to child abuse.

"As a community, we need to decide what it is we want to achieve, by what time we want to achieve it and who is to do what," Shaw added. "Then we must hold ourselves accountable. ... There are a lot of people who share in that responsibility. We need to understand who is accountable in the future."

DSS & PUBLIC ACCOUNTABILITY

SALISBURY POST
4/11/97

Questions linger

Imagine this scenario: Your child goes to the hospital sick, undergoes treatment and yet dies. A medical review team says, "We're sorry, mistakes were made. But we've reviewed the situation and recommend that these changes to be sure nothing like this ever happens again. Thank you for bringing this to our attention."

Would you be satisfied? Probably not. You'd want to know exactly what the mistake was, who committed it and how that person was being held accountable.

This exaggerated example gives a flavor of the dissatisfaction that lingers following Thursday's release of the fatalities review a state task force issued concerning the Rowan County Department of Social Services.

First, the good news: This review was more thorough and candid than anyone has been to date on the violent deaths of three Rowan County children earlier this year. The professionals who investigated the situation deserve praise.

But the review team addressed issues in such broad fashion that it's still hard to get a grip on the severity of the problems at the Rowan department and to what degree these particular mistakes were a result of understaffing vs. poor judgment.

The team was hampered, and the public is kept uninformed, by a state law that keeps Social Services records confidential.

Children at risk

As always, a reminder is needed: The people whom authorities believe killed Budde Clark, Christopher Jones and Trola Miller are in jail, charged with murder. Social Services did not kill those children.

But the professionals whom the public trusts to investigate abuse and neglect missed critical warning signs that might have prevented those deaths. As the review said: "Information was available to the Rowan County Department of Social Services that, if obtained and appropriately analyzed, indicated, at least with respect to Budde Clark and Christopher Jones, that these children were at risk of further abuse and neglect."

That does not mean that the children would have been taken from the home. But it would have waved a far larger red flag and, one hopes, prompted more aggressive intervention from social services.

Still, it is difficult to discern exactly what went wrong. Take this excerpt, for example: "In the case of Christopher Jones, the failure to interview all persons with pertinent information resulted in a high risk situation not being recognized and the resultant lack of appropriate actions to protect the child. This was not detected by the initial state review."

Knowing what has been published in the Post, this could refer to the fact that the child was treated in an emergency room one month before he died, prompting two calls to Social Services — yet the social worker never interviewed the doctor or picked up photos of the child's injuries.

What about the review's reference to other people who were aware of the abuse of these children but did not report it? Who are they?

Public confidence

The public cannot find out because state law prohibits disclosure of confidential information from Social Services files. The law needs to change so that, in the case of a child who dies, citizens can be fully informed about how the system they fund works. To its credit, the review team also said that this issue should be explored.

Some people call this quest for more information finger-pointing and head-hunting. Actually, it's accountability. There must be some way, short of investigative newspaper reports, for the public to get the full story on how a tragic case was handled and what actions resulted for Social Services staff.

For the state, this recent review answers key questions about how to improve child protective services. But for Rowan County some important questions remain. Have we held the proper people accountable for their actions in these tragic cases? And are we willing to pay the price to staff Social Services so that warning signs cannot be so easily missed?

Salisbury Post 4/12/97

DSS REVIEW, CONTINUED

Positive path for protection

Though it did not answer all the questions on Rowan County's mind, the review team that looked at three recent child fatalities here has spelled out some recommendations that should considerably strengthen the way child abuse cases are handled.

The value of this review cannot be emphasized enough. The debate over these cases has been emotional and at times distorted — both by loyalties and by suspicions. Rowan is fortunate that the state chose to assemble a team from various backgrounds to step in and give the matter a more impartial look.

And look team members did, both within the Department of Social Services and elsewhere in the community. They found a lack of communication between social workers and the medical community, a failure by some people to report the abuse they saw, lax supervision of child protective workers, overwhelming caseloads, limited investigative work, poor afterhours coverage and inadequate documentation.

Evidence of these problems had been trickling out over recent weeks in Post articles, but this review gives official weight to the push for change. Now neither the Rowan DSS Board nor county commissioners can deny that changes in procedures and staffing are in order.

This can be a hopeful time. With nearly 100,000 North Carolina children reported as abused or neglected each year, the state needs a strong system for reviewing those reports and handling the cases where mistreatment is confirmed. Through tragedy, the state and Rowan County have learned some difficult lessons that should vastly improve the outlook for children living on the edge of violence.

The review process itself will undergo a transformation — from a narrow, nearly in-house review of records to a multi-disciplinary look at all the information available in a child abuse investigation. This was a crippling weakness in the state system. Broader review will cost more, but it also will yield more accurate results, like those reported this week.

Two footnotes: Social Services Director Rick Travis has weathered a very bad storm, and some clouds are still rumbling overhead. The DSS board gave him a glowing performance review in January. In light of what has happened since, it may be time to update that evaluation. His workers have given him a vote of confidence. Perhaps his superiors — including county commissioners — should review the facts and see if they can do the same.

Second, the team's suggestion that some child fatality reviews be delayed until autopsy reports are available points up another weakness in the state system: slow autopsy reports. Were that policy already in place, no one would be able to review either Budde Clark's or Christopher Jones' cases yet, because their autopsy reports remain unfinished. Either the state needs more medical examiners or cases like these must be given top priority.

MINUTES
HOUSE JUDICIARY II COMMITTEE

May 6, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on May 6, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Bowie, Cansler, Creech, Culpepper, Decker, Gardner, Goodwin, Hackney, Hensley, Nesbitt, Redwine, Russell, Saunders, Shubert, Sutton and Wilkins. A list of visitors is attached.

The following bills were discussed:

SB-132 CLERKS/YEAR'S ALLOWANCE
SB-891 LOCAL GOVERNMENT CONTRACTING

Senator Odom was recognized to explain SB-132 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Mr. Ralph Knott, Clerk of Superior Court, Franklin County and Mr. Peter Powell, Associate Counsel, Administrative Office of the Courts, answered questions of committee members.

Representative Wilkins moved for a favorable report; motion passed.

Senator Dalton was recognized to explain SB-891 and answer questions of committee members. A copy of the bill and bill explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Mr. Ron Aycock, County Commissioners Association, and Mr. Andy Romanet, General Counsel, League of Municipalities, answered questions of committee members.

Representative Hackney was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

No action was taken on HB-891.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 132
Second Edition Engrossed 4/17/97

Short Title: Clerks/Year's Allowance. (Public)

Sponsors: Senators Odom and Rand.

Referred to: Judiciary.

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CLERKS TO ALLOCATE SPOUSE'S AND CHILDREN'S YEAR'S ALLOWANCE FROM A DECEDENT'S ESTATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 30-16 reads as rewritten:

"**§ 30-16. Duty of personal representative or magistrate to assign allowance.**

It shall be the duty of every administrator, collector, or executor of a will, on application in writing, signed by the surviving spouse, at any time within one year after the death of the deceased spouse, to assign to the surviving spouse the year's allowance as provided in this Article.

If there shall be no administration, or if the personal representative shall fail or refuse to apply to a ~~magistrate,~~ magistrate or clerk of court, as provided in G.S. 30-20, for 10 days after the surviving spouse has filed the aforesaid application, or if the surviving spouse is the personal representative, the surviving spouse may make application to the ~~magistrate,~~ magistrate or clerk, and it shall be the duty of the magistrate or clerk to proceed in the same manner as though the application had been made by the personal representative.

Where any personal property of the deceased spouse shall be located outside the township or county where the deceased spouse resided at the time of his death, the personal representative or the surviving spouse may apply to any magistrate or to any clerk of court of any township or county where such personal property is located, and it shall be the duty of such magistrate or clerk to assign the year's allowance as if the deceased spouse had resided and died in that township."

Section 2. G.S. 30-17 reads as rewritten:

"**§ 30-17. When children entitled to an allowance.**

Whenever any parent dies leaving any child under the age of 18 years, including an adopted child or a child with whom the widow may be pregnant at the death of her husband, or a child who is less than 22 years of age and is a full-time student in any educational institution, or a child under 21 years of age who has been declared mentally incompetent, or a child under 21 years of age who is totally disabled, or any other person under the age of 18 years residing with the deceased parent at the time of death to whom the deceased parent or the surviving parent stood in loco parentis, every such child shall be entitled, besides its share of the estate of such deceased parent, to an allowance of two thousand dollars ($2,000) for its support for the year next ensuing the death of such parent, less, however, the value of any articles consumed by said child since the death of said parent. Such allowance shall be exempt from any lien by judgment or execution against the property of such parent. The personal representative of the deceased parent, within one year after the parent's death, shall assign to every such child the allowance herein provided for; but if there is no personal representative or if he fails or refuses to act within 10 days after written request by a guardian or next friend on behalf of such child, the allowance may be assigned by a ~~magistrate,~~ magistrate or clerk of court upon application of said guardian or next friend.

If the child resides with the widow of the deceased parent at the time such allowance is paid, the allowance shall be paid to said widow for the benefit of said child. If the child resides with its surviving parent who is other than the widow of the deceased parent, such allowance shall be paid to said surviving parent for the use and benefit of such child, regardless of whether the deceased died testate or intestate or whether the widow dissented from the will. Provided, however, the allowance shall not be available to an illegitimate child of a deceased father, unless such deceased father shall have recognized the paternity of such illegitimate child by deed, will or other paper-writing. If the child does not reside with a parent when the allowance is paid, it shall be paid to its general guardian, if any, and if none, to the clerk of the superior court who shall receive and disburse same for the benefit of such child."

Section 3. Part 2 of Article 4 of Chapter 30 of the General Statutes reads as rewritten:

"Part 2. Assigned by ~~Magistrate.~~ Magistrate or Clerk.

"**§ 30-19. Value of property ascertained.**

The value of the personal property assigned to the surviving spouse and children shall be ascertained by a magistrate or the clerk of court of the county in which administration was granted or the will probated.

"**§ 30-20. Procedure for assignment.**

Upon the application of the surviving spouse, a child by his guardian or next friend, or the personal representative of the deceased, the clerk of superior court of the county in which the deceased resided ~~shall~~ may assign the inquiry to a magistrate of the county. ~~The magistrate~~ The clerk of court, or magistrate upon assignment, shall ascertain the person or persons entitled to an allowance according to the provisions

of this Article, and determine the money or other personal property of the estate, and pay over to or assign to the surviving spouse and to the children, if any, so much thereof as they shall be entitled to as provided in this Article. Any deficiencies shall be made up from any of the personal property of the deceased, and if the personal property of the estate shall be insufficient to satisfy such allowance, the clerk of the superior court shall enter judgment against the personal representative for the amount of such deficiency, to be paid when a sufficiency of such assets shall come into his hands.

"**§ 30-21. Report of clerk or magistrate.**

The ~~magistrate~~ clerk of court, or magistrate upon assignment, shall make and sign three lists of the money or other personal property assigned to each person, stating their quantity and value, and the deficiency to be paid by the personal representative. Where the allowance is to the surviving spouse, one of these lists shall be delivered to him. Where the allowance is to a child, one of these lists shall be delivered to the surviving parent with whom the child is living; or to the child's guardian or next friend if the child is not living with said surviving parent; or to the child if said child is not living with the surviving parent and has no guardian or next friend. One list shall be delivered to the personal representative. One list shall be returned by the ~~magistrate,~~ magistrate or clerk, within 20 days after the assignment, to the superior court of the county in which administration was granted or the will probated, and the clerk shall file and record the same, together with any judgment entered pursuant to G.S. 30-20.

"**§ 30-22.** Repealed by Session Laws 1971, c. 528, s. 25.

"**§ 30-23. Right of appeal.**

The personal representative, or the surviving spouse, or child by his guardian or next friend, or any creditor, legatee or heir of the deceased, may appeal from the finding of the magistrate or clerk of court to the superior court of the county, and, within 10 days after the assignment, cite the adverse party to appear before such court on a certain day, not less than five nor exceeding 10 days after the service of the citation.

"**§ 30-24. Hearing on appeal.**

At or before the day named, the appellant shall file with the clerk a copy of the assignment and a statement of his exceptions thereto, and the issues thereby raised shall be decided ~~as other issues are directed to be.~~ de novo. ~~When the issues shall have been decided, judgment shall be entered accordingly, if it may be without injustice, without remitting the proceedings to the magistrate.~~

"**§ 30-25. Personal representative entitled to credit.**

Upon the settlement of the accounts of the personal representative, he shall be credited with the articles assigned, and the value of the deficiency assessed as aforesaid, if the same shall have been paid, unless the allowance be impeached for fraud or gross negligence in him.

"**§ 30-26. When above allowance is in full.**

If the estate of a deceased be insolvent, or if his personal estate does not exceed ten thousand dollars ($10,000), the allowances for the year's support of the surviving

spouse and the children shall not, in any case, exceed the value prescribed in G.S. 30-15 and [G.S.] 30-17; and the allowances made to them as above prescribed shall preclude them from any further allowances."

Section 4. G.S. 7A-307(b1) reads as rewritten:

"(b1) The clerk shall assess the following miscellaneous fees:

(1)	Filing and indexing a will with no probate	
	-- first page	$ 1.00
	-- each additional page or fraction thereof	.25
(2)	Issuing letters to fiduciaries, per letter over five letters issued	1.00
(3)	Inventory of safe deposits of a decedent, per box, per day	15.00
(4)	Taking a deposition	5.00
(5)	Docketing and indexing a will probated in another county in the State	
	-- first page	1.00
	-- each additional page or fraction thereof	.25
(6)	Hearing petition for year's allowance to surviving spouse or child, in cases not assigned to a magistrate, and alloting the same	4.00"

Section 5. This act becomes effective October 1, 1997, and applies to applications for year's allowances filed on or after that date.

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May 2, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: Senate Bill 132—Clerks/Years Allowance-Second Edition (Odom, Rand)

Senate Bill 132 is a recommendation of the North Carolina Courts Commission.

Article 4 of Chapter 30 governs the year's allowance given to the surviving spouse and children of an intestate or testator. A year's allowance is an amount ($10,000 for a spouse, $2,000 for a child) given from the personal property of the deceased to the deceased's spouse or children for their support. The allowance is exempt from any lien against the deceased's property.

Under current law, application is made to a magistrate to approve the year's allowance. Senate Bill 132 would amend Article 4 of Chapter 30 to allow a clerk, in addition to a magistrate, to approve a year's allowance. In many cases, the clerk actually performs the work on the application and is the proper person to approve the allowance. The bill also authorizes the clerk to assess a fee of $4.00 for hearing the application. This is the same fee charged by a magistrate under the current law.

Senate Bill 132 becomes effective October 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
S.B. 132 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE CLERKS TO ALLOCATE SPOUSE'S AND CHILDREN'S YEAR'S ALLOWANCE FROM A DECEDENT'S ESTATE.

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. (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 2

SENATE BILL 891
Second Edition Engrossed 4/24/97

Short Title: Local Government Contracting. (Public)

Sponsors: Senators Dalton; Conder, Hartsell, Odom, Warren, Weinstein, and Wellons.

Referred to: State Government, Local Government, and Personnel.

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO UPDATE AND REVISE THE LAWS AFFECTING LOCAL GOVERNMENT CONTRACTING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-129(a) reads as rewritten:

"(a) No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than one hundred thousand dollars ($100,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ~~twenty thousand dollars ($20,000),~~ thirty thousand dollars ($30,000), except in cases of group purchases made by hospitals through a competitive bidding purchasing program or in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with. For purposes of this Article, a competitive bidding group purchasing program is a formally organized program that offers purchasing services at discount prices to two or more hospital facilities. The limitation contained in this paragraph shall not apply to construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section. Further, the provisions of this section shall not apply to the purchase of

gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be subject to G.S. 143-131.

For purchases of apparatus, supplies, materials, or equipment, the governing body of any municipality, county, or other political subdivision of the State may, subject to any restriction as to dollar amount, or other conditions that the governing body elects to impose, delegate to the manager or the chief purchasing official the authority to award contracts, reject bids, readvertise to receive bids on behalf of the unit, or waive bid bonds or deposits, or performance and payment bond requirements. Any person to whom authority is delegated under this subsection shall comply with the requirements of this Article that would otherwise apply to the governing body."

Section 2. G.S. 143-129(b) reads as rewritten:

"(b) Advertisement of the letting of such contracts shall be as follows:

Where the contract is to be let by a board or governing body of the State government, or of a State institution, as distinguished from a board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina. Provided that the advertisements for bidders required by this section shall be published at such a time that at least seven full days shall lapse between the date of publication of notice and the date of the opening of bids.

Where the contract is to be let by a county, city, town or other subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening of the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or subdivision thereof shall assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract. In the event the lowest responsible bids are in excess of the funds available for the project, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission,

council or board in the case of a subdivision of the State, if such bidder will agree to perform the work at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein. In the case of proposals ~~in an estimated amount of less than one hundred thousand dollars ($100,000)~~ for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for a bid bond or other deposit.

Bids shall be sealed ~~if the invitation to bid so specifies and, in any event,~~ and the opening of an envelope or package with knowledge that it contains a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a Class 1 misdemeanor."

Section 3. G.S. 143-129(f) reads as rewritten:

"(f) The provisions of this Article shall not apply to purchases of apparatus, supplies, materials, or equipment ~~by hospitals~~ when performance or price competition for a product are not available; when a needed product is available from only one source of supply; or when standardization or compatibility is the overriding ~~consideration;~~ consideration. Notwithstanding any other provision of this section, the governing board of a municipality, county, or other subdivision of the State shall approve purchases made under this exception prior to the award of the contract. In the case of purchases by hospitals, in addition to the other exceptions in this subsection, the provisions of this Article shall not apply when a particular medical item or prosthetic appliance is needed; when a particular product is ordered by an attending physician for his patients; when additional products are needed to complete an ongoing job or task; when products are purchased for "over-the-counter" resale; when a particular product is needed or desired for experimental, developmental, or research work; or when equipment is already installed, connected, and in service under a lease or other agreement and the governing body of the hospital determines

that the equipment should be purchased. The governing body of a ~~hospital~~ hospital, municipality, county or other political subdivision of the State shall keep a record of all purchases made pursuant to this exception. These records are subject to public inspection."

Section 4. G.S. 143-129 is amended by adding a new subsection to read:

"(g) When the governing board of any municipality, county, or other subdivision of the State, or the manager or purchasing official delegated authority under subsection (a) of this section, determines that it is in the best interest of the unit, the requirements of this section may be waived for the purchase of apparatus, supplies, materials, or equipment from any person or entity that has, within the previous 12 months, contracted to furnish the apparatus, supplies, materials, or equipment to:

(1) The United States of America or any federal agency;

(2) The State of North Carolina or any agency or political subdivision of the State; or

(3) Any other state or any agency or political subdivision of that state,

if the person or entity is willing to furnish the items at the same or more favorable prices, terms, and conditions as those provided under the contract with the other unit or agency. Notwithstanding any other provision of this section, any purchase made under this subsection shall be approved by the governing body of the purchasing municipality, county, or other political subdivision of the State. Rules issued by the Secretary of Administration pursuant to G.S. 143-49(6) shall apply with respect to participation in State term contracts."

Section 5. G.S. 143-131 reads as rewritten:

"**§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.**

All contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money in the amount of five thousand dollars ($5,000) or more, but less than the limits prescribed in G.S. 143-129, made by any officer, department, board, or commission of any county, city, town, or other subdivision of this State shall be made after informal bids have been secured. All such contracts shall be awarded to the lowest responsible bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. It shall be the duty of any officer, department, board, or commission entering into such contract to keep a record of all bids submitted, and such record shall not be subject to public inspection ~~at any time.~~ until the contract has been awarded."

Section 6. G.S. 160A-266 reads as rewritten:

"**§ 160A-266. Methods of sale; limitation.**

(a) Subject to the limitations prescribed in subsection (b) of this section, and according to the procedures prescribed in this Article, a city may dispose of real or personal property belonging to the city by:

(1) Private negotiation and sale;

(2) Advertisement for sealed bids;

(3) Negotiated offer, advertisement, and upset bid;

(4) Public auction; or
(5) Exchange.

(b) Private negotiation and sale may be used only with respect to personal property valued at less than ~~ten thousand dollars ($10,000)~~ thirty thousand dollars ($30,000) for any one item or group of similar items. Real ~~property~~ property, of any value, and personal property valued at ~~ten thousand dollars ($10,000)~~ thirty thousand dollars ($30,000) or more for any one item or group of similar items may be exchanged as permitted by G.S. 160A-271, or may be sold by any method permitted in this Article other than private negotiation and sale, except as permitted in G.S. 160A-277 and G.S. 160A-279.

Provided, however, a city may dispose of real property of any value and personal property valued at ~~ten thousand dollars ($10,000)~~ thirty thousand dollars ($30,000) or more for any one item or group of similar items by private negotiation and sale where (i) said real or personal property is significant for its architectural, archaeological, artistic, cultural or historical associations, or significant for its relationship to other property significant for architectural, archaeological, artistic, cultural or historical associations, or significant for its natural, scenic or open condition; and (ii) said real or personal property is to be sold to a nonprofit corporation or trust whose purposes include the preservation or conservation of real or personal properties of architectural, archaeological, artistic, cultural, historical, natural or scenic significance; and (iii) where a preservation agreement or conservation agreement as defined in G.S. 121-35 is placed in the deed conveying said property from the city to the nonprofit corporation or trust. Said nonprofit corporation or trust shall only dispose of or use said real or personal property subject to covenants or other legally binding restrictions which will promote the preservation or conservation of the property, and, where appropriate, secure rights of public access.

(c) A city council may adopt regulations prescribing procedures for disposing of personal property valued at less than ~~five hundred dollars ($500.00)~~ five thousand dollars ($5,000) for any one item or group of items in substitution for the requirements of this Article. The regulations shall be designed to secure for the city fair market value for all property disposed of and to accomplish the disposal efficiently and economically. The regulations may, but need not, require published notice, and may provide for either public or private exchanges and sales. The council may authorize one or more city officials to declare surplus any personal property valued at less than ~~five hundred dollars ($500.00)~~ five thousand dollars ($5,000) for any one item or group of items, to set its fair market value, and to convey title to the property for the city in accord with the regulations. A city official authorized under this section to dispose of property ~~shall, on the first day of February, report in writing to the council on any property disposed of under such authorization from July 1 through December 31 of the previous year, and shall on the first day of August report in writing to the council on any property disposed of under such authorization from January 1 through June 30 of that year. The written report~~ shall keep a record of all property sold under this section and that record shall

generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or ~~exchange since the last such report was submitted.~~ exchange."

Section 7. Article 8 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-129.7. Purchase with trade-in of apparatus, supplies, materials, and equipment.**

Notwithstanding the provisions of Article 12 of Chapter 160A, municipalities, counties, and other political subdivisions of the State may include in specifications for the purchase of apparatus, supplies, materials, or equipment an opportunity for bidders to purchase as 'trade-in' specified personal property owned by the municipality, county, or other political subdivision, and the awarding authority may award a contract for both the purchase of the apparatus, supplies, materials, or equipment and the sale of trade-in property, taking into consideration the amount offered on the trade-in when applying the criteria for award established in this Article."

Section 8. This act raises the threshold amount in G.S. 143-129 and G.S. 160A-266. If any local act provides a threshold amount for the subjects addressed in these statutes that is less than the amount provided in this act, this act prevails to the extent of that conflict.

Section 9. This act is effective when it becomes law.

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May 6, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: Senate Bill 891 - Local Government Contracting

Senate Bill 891 makes several revisions to the laws governing local government contracting. Article 8 of Chapter 143 governs the conditions under which a local government must use formal bid and contracting procedures. Article 12 of Chapter 160A governs the conditions under which a local government may sell or dispose of property.

Section 1 amends G.S. 143-129(a) by increasing the threshold for contracting for the purchase of apparatus, supplies, materials, or equipment to $30,000 (from $20,000). This section also specifically grants a local governmental unit the authority to delegate their contracting power, for apparatus, supplies, materials or equipment, to a city manager or other chief purchasing officer.

Section 2 amends G.S. 143-129(b) to allow the governmental unit to waive the requirement of a bid bond for purchase of apparatus, supplies, materials or equipment in any amount. (previously did not allow waiver for contracts over $100,000) This section also provides that all formal bids must be sealed even if the invitation to bid does not specifically request it.

Section 3 amends G.S. 143-129(f) to create an exception from the requirements of this Article, subject to prior approval of the governmental unit before the contract is awarded, when purchasing apparatus, supplies, materials or equipment where performance or price competition for a product are not available; when a needed product is available from only one source of supply; or when standardization or compatibility is the overriding consideration.

Section 4 creates a new subsection G.S. 143-129(g) to allow a governmental unit to disregard the requirements of G.S. 143-129, with prior approval of the governmental unit, when purchasing apparatus, supplies, materials or equipment from vendors that have contracted with the federal,

state or other state or local governments or agencies AND will provide the items at the same or more favorable prices, terms and conditions.

Section 5 amends G.S. 143-131 to provide that submitted informal bids are not part of the public record until after the contract is awarded.

Section 6 amends G.S. 160A-266 to increase the maximum value of personal property that a municipality may dispose of by private negotiation and sale to $30,000 (from $10,000). Also amends this statute to make clear that real property of any value may not be disposed of by private negotiation or sale, except under certain circumstances. This section increases to $5,000 (from $500) the threshold for disposing of personal property under informal, city adopted regulations and removes the requirement that the authorized city official report twice a year regarding what property has been disposed of and how.

Section 7 creates a new G.S. 143-129.7 to specifically authorize bidders for contracts for apparatus, supplies, materials or equipment, to purchase "trade-ins", to allow the value of the trade-in to be included in determining the best bid and exempts the sale of the trade-in from the regular provisions regarding sale of personal property.

Section 8 clarifies that this act prevails over any local act containing a threshold amount lower than one in this act.

This act is effective when it becomes law.

§ 160A-266. Methods of sale; limitation.

(a) Subject to the limitations prescribed in subsection (b) of this section, and according to the procedures prescribed in this Article, a city may dispose of real or personal property belonging to the city by:

(1) Private negotiation and sale;

(2) Advertisement for sealed bids;

(3) Negotiated offer, advertisement, and upset bid;

(4) Public auction; or

(5) Exchange.

(b) Private negotiation and sale may be used only with respect to personal property valued at less than ten thousand dollars ($10,000) for any one item or group of similar items. Real property and personal property valued at ten thousand dollars ($10,000) or more for any one item or group of similar items may be exchanged as permitted by G.S. 160A-271, or may be sold by any method permitted in this Article other than private negotiation and sale, except as permitted in G.S. 160A-277 and 160A-279.

Provided, however, a city may dispose of real property and personal property valued at ten thousand dollars ($10,000) or more for any one item or group of similar items by private negotiation and sale where (i) said real or personal property is significant for its architectural, archaeological, artistic, cultural or historical associations, or significant for its relationship to other property significant for architectural, archaeological, artistic, cultural or historical associations, or significant for its natural, scenic or open condition; and (ii) said real or personal property is to be sold to a nonprofit corporation or trust whose purposes include the preservation or conservation of real or personal properties of architectural, archaeological, artistic, cultural, historical, natural or scenic significance; and (iii) where a preservation agreement or conservation agreement as defined in G.S. 121-35 is placed in the deed conveying said property from the city to the nonprofit corporation or trust. Said nonprofit corporation or trust shall only dispose of or use said real or personal property subject to covenants or other legally binding restrictions which will promote the preservation or conservation of the property, and, where appropriate, secure rights of public access.

(c) A city council may adopt regulations prescribing procedures for disposing of personal property valued at less than five hundred dollars ($500.00) for any one item or group of items in substitution for the requirements of this Article. The regulations shall be designed to secure for the city fair market value for all property disposed of and to accomplish the disposal efficiently and economically. The regulations may, but need not, require published notice, and may provide for either public or private exchanges and sales. The council may authorize one or more city officials to declare surplus any personal property valued at less than five hundred dollars ($500.00) for any one item or group of items, to set its fair market value, and to convey title to the property for the city in accord with the regulations. A city official authorized under this section to dispose of property shall, on the first day of February, report in writing to the council on any property disposed of under such authorization from July 1 through December 31 of the previous year, and shall on the first day of August report in writing to the council on any

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property disposed of under such authorization from January 1 through June 30 of that year. The written report shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or exchange since the last such report was submitted.

(1971, c. 698, s. 1; 1973, c. 426, s. 42.1; 1983, c. 130, s. 1; c. 456; 1987, c. 692, s. 2; 1987 (Reg. Sess., 1988), c. 1108, s. 9.)

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§ 143-129. Procedure for letting of public contracts; purchases from federal government by State, counties, etc.

(a) No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than one hundred thousand dollars ($100,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than twenty thousand dollars ($20,000), except in cases of group purchases made by hospitals through a competitive bidding purchasing program or in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with. For purposes of this Article, a competitive bidding group purchasing program is a formally organized program that offers purchasing services at discount prices to two or more hospital facilities. The limitation contained in this paragraph shall not apply to construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section. Further, the provisions of this section shall not apply to the purchase of gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be subject to G.S. 143-131.

(b) Advertisement of the letting of such contracts shall be as follows:

Where the contract is to be let by a board or governing body of the State government, or of a State institution, as distinguished from a board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina. Provided that the advertisements for bidders required by this section shall be published at such a time that at least seven full days shall lapse between the date of publication of notice and the date of the opening of bids.

Where the contract is to be let by a county, city, town or other subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening of the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or subdivision thereof shall assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract. In the event the lowest responsible bids are in excess of the funds available for the project, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in

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the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein. In the case of proposals in an estimated amount of less than one hundred thousand dollars ($100,000) for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for a bid bond or other deposit.

Bids shall be sealed if the invitation to bid so specifies and, in any event, the opening of a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a Class 1 misdemeanor.

(c) All contracts to which this section applies shall be executed in writing, and the board or governing body shall require the person to whom the award of contract is made to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of money, certified check or government securities for the full amount of said contract to secure the faithful performance of the terms of said contract and the payment of all sums due for labor and materials in a manner consistent with Article 3 of Chapter 44A; and no such contract shall be altered except by written agreement of the contractor, the sureties on his bond, and the board or governing body. Such surety bond or deposit required herein shall be deposited with the board or governing body for which the work is to be performed. When a deposit, other than a surety bond, is made with the board or governing body, said board or governing body assumes all the liabilities, obligations and duties of a surety as provided in Article 3 of Chapter 44A to the extent of said deposit. In the case of contracts for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for a surety bond or other deposit.

The owning agency or the Department of Administration, in contracts involving a State agency, and the owning agency or the governing board, in contracts involving a political subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, or funds of political subdivisions of the State, in contracts with such political subdivision, were expended, provided such claim or complaint has been

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pending more than 180 days.

(d) Nothing in this section shall operate so as to require any public agency to enter into a contract which will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal government.

(e) Any board or governing body of the State or any institution of the State government or of any county, city, town, or other subdivision of the State may enter into any contract with (i) the United States of America or any agency thereof, or (ii) any other government unit or agency thereof within the United States, for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without regard to the foregoing provisions of this section or to the provisions of any other section of this Article.

The Secretary of Administration or the governing board of any county, city, town, or other subdivision of the State may designate any officer or employee of the State, county, city, town or subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment or other property owned by (i) the United States of America or any agency thereof, or (ii) any other governmental unit or agency thereof within the United States, and may authorize such officer or employee to make any partial or down payment or payment in full that may be required by regulations of the government or agency disposing of such property.

(f) The provisions of this Article shall not apply to purchases of apparatus, supplies, materials, or equipment by hospitals when performance or price competition for a product are not available; when a needed product is available from only one source of supply; when standardization or compatibility is the overriding consideration; when a particular medical item or prosthetic appliance is needed; when a particular product is ordered by an attending physician for his patients; when additional products are needed to complete an ongoing job or task; when products are purchased for "over-the-counter" resale; when a particular product is needed or desired for experimental, developmental, or research work; or when equipment is already installed, connected, and in service under a lease or other agreement and the governing body of the hospital determines that the equipment should be purchased. The governing body of a hospital shall keep a record of all purchases made pursuant to this exception. These records are subject to public inspection.

(1931, c. 338, s. 1; 1933, c. 50; c. 400, s. 1; 1937, c. 355; 1945, c. 144; 1949, c. 257; 1951, c. 1104, ss. 1, 2; 1953, c. 1268; 1955, c. 1049; 1957, c. 269, s. 3; c. 391; c. 862, ss. 1-4; 1959, c. 392, s. 1; c. 910, s. 1; 1961, c. 1226; 1965, c. 841, s. 2; 1967, c. 860; 1971, c. 847; 1973, c. 1194, s. 2; 1975, c. 879, s. 46; 1977, c. 619, ss. 1, 2; 1979, c. 182, s. 1; 1979, 2nd Sess., c. 1081; 1981, c. 346, s. 1; c. 754, s. 1; 1985, c. 145, ss. 1, 2; 1987, c. 590; 1987 (Reg. Sess., 1988), c. 1108, ss. 7, 8; 1989, c. 350; 1993, c. 539, s. 1007; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 367, s. 6.)

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§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.

All contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money in the amount of five thousand dollars ($5,000) or more, but less than the limits prescribed in G.S. 143-129, made by any officer, department, board, or commission of any county, city, town, or other subdivision of this State shall be made after informal bids have been secured. All such contracts shall be awarded to the lowest responsible bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. It shall be the duty of any officer, department, board, or commission entering into such contract to keep a record of all bids submitted, and such record shall be subject to public inspection at any time.

(1931, c. 338, s. 2; 1957, c. 862, s. 5; 1959, c. 406; 1963, c. 172; 1967, c. 860; 1971, c. 593; 1981, c. 719, s. 1; 1987 (Reg. Sess., 1988), c. 1108, s. 6.)

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NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 891 (2nd Ed.) Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) HACKNEY
Sen.

1 moves to amend the bill on page 6, line 21
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting the line to read:
4 "Section 9. This act is effective October 1, 1997."
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SIGNED Joe Hackney

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

May 6, 1997 10:00 A.M. — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David A. Brassey	Dept of Secretary of State
Charlene P. Durbin	DOJ
Ron Haycock	County Comm Assoc
Andy R.	Cities
Jim Ramquist	NCADA
P. Buy Hall	General Statutes Commission
Hilda Hartsell	N. C. Senate
Bernard C. Robbins	Dept of Justice
Barry Miller	Dept Human Resources - CSE
Dixie Darland	Electricities
Esther D. High	NC Division of Social Services
Jack Cozort	Ct of Appeals
Bernard Allen	Secy of State
Alan Mebs	Bailey & Dixon LLP
Jill Miller	NCATL
A-A- Adams	Victim Advocate
BILL SCOGGIN	NCBA
Floyd M. Lewis	General Statutes Commission
Bill Alexander	NCPBA
John Lassiter	PRC
Christie Barbee	CHPA

MINUTES
HOUSE JUDICIARY II COMMITTEE

May 6, 1997 1:00 P.M.

The North Carolina House of Representatives Judiciary II Committee met on May 6, 1997, at 1:00 P.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Cansler, Culpepper, Decker, Gardner, Hackney, Hensley, Nesbitt, Redwine, Russell, Saunders, Shubert, Sutton and Weatherly. A list of visitors is attached.

The following bills were discussed:

SB-157 CORPORATE AMENDMENTS
SB-800 JUDICIAL STANDARDS EXECUTIVE SECRETARY
SB-891 LOCAL GOVERNMENT CONTRACTING

Senator Dalton was recognized to review SB-891 and answer questions of committee members.

Representative Baddour was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Hackney was recognized to send forth a perfecting amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Sutton moved the amendments be incorporated in a committee substitute bill, with a favorable report as to House committee substitute bill, unfavorable as to Senate bill; motion passed.

Senator Hartsell was recognized to explain SB-157 and answer questions of committee members. A copy of the bill and bill explanation prepared by the General Statutes Commission are attached.

Mr. David Massey, General Counsel, Secretary of State's Office, answered questions of committee members.

No action was taken on SB-157.

Representative Hackney was recognized to explain SB-800 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Representative Hackney moved for a favorable report; motion passed.

The meeting was adjourned at 1:50 P.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison

Betty Harrison, Committee Clerk

REP. BADGOUR

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 891

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

S891-ASA-025

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]
Second Edition

moves to amend the bill on page 4, line 11,
by

rewriting the line to read:

"months, after having completed a public, formal bid process substantially similar to that required by this Article, contracted to furnish the apparatus, supplies, materials, or equipment to:";

and on page 4, line 20,
by deleting "State." and inserting "State at a regularly scheduled meeting of the governing body no less than ten days after publication of notice, in a newspaper of general circulation in the area served by the governing body, that a

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 891

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

S891-ASA-025 Page 2 of __

waiver of the bid procedure will be considered in order to contract with a qualified supplier pursuant to this section.".

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. ~~891~~ 891 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) HACKNEY
Sen.)

amendment #1
1 moves to amend the ~~bill~~ on page 1, line 4

2 ( ) WHICH CHANGES THE TITLE

3 by deleting "October 1, 1997." and inserting "July 1, 1997."

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
S.B. 891 A BILL TO BE ENTITLED AN ACT TO UPDATE AND REVISE THE LAWS AFFECTING LOCAL GOVERNMENT CONTRACTING.

☐ 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, unfavorable as to Senate 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 D

SENATE BILL 891
Second Edition Engrossed 4/24/97
Proposed House Committee Substitute S891-PCS8698

Short Title: Local Government Contracting. (Public)

Sponsors:

Referred to:

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO UPDATE AND REVISE THE LAWS AFFECTING LOCAL GOVERNMENT CONTRACTING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-129(a) reads as rewritten:

"(a) No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than one hundred thousand dollars ($100,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ~~twenty thousand dollars ($20,000),~~ thirty thousand dollars ($30,000), except in cases of group purchases made by hospitals through a competitive bidding purchasing program or in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with. For purposes of this Article, a competitive bidding group purchasing program is a formally organized program that offers purchasing services at discount prices to two or more hospital facilities. The limitation contained in this paragraph shall not apply to construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section. Further, the provisions of this section shall not apply to the purchase of

gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be subject to G.S. 143-131.

For purchases of apparatus, supplies, materials, or equipment, the governing body of any municipality, county, or other political subdivision of the State may, subject to any restriction as to dollar amount, or other conditions that the governing body elects to impose, delegate to the manager or the chief purchasing official the authority to award contracts, reject bids, readvertise to receive bids on behalf of the unit, or waive bid bonds or deposits, or performance and payment bond requirements. Any person to whom authority is delegated under this subsection shall comply with the requirements of this Article that would otherwise apply to the governing body."

Section 2. G.S. 143-129(b) reads as rewritten:

"(b) Advertisement of the letting of such contracts shall be as follows:

Where the contract is to be let by a board or governing body of the State government, or of a State institution, as distinguished from a board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina. Provided that the advertisements for bidders required by this section shall be published at such a time that at least seven full days shall lapse between the date of publication of notice and the date of the opening of bids.

Where the contract is to be let by a county, city, town or other subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening of the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or subdivision thereof shall assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract. In the event the lowest responsible bids are in excess of the funds available for the project, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission,

council or board in the case of a subdivision of the State, if such bidder will agree to perform the work at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein. In the case of proposals ~~in an estimated amount of less than one hundred thousand dollars ($100,000)~~ for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for a bid bond or other deposit.

Bids shall be sealed ~~if the invitation to bid so specifies and, in any event,~~ and the opening of an envelope or package with knowledge that it contains a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a Class 1 misdemeanor."

Section 3. G.S. 143-129(f) reads as rewritten:

"(f) The provisions of this Article shall not apply to purchases of apparatus, supplies, materials, or equipment ~~by hospitals~~ when performance or price competition for a product are not available; when a needed product is available from only one source of supply; or when standardization or compatibility is the overriding ~~consideration;~~ consideration. Notwithstanding any other provision of this section, the governing board of a municipality, county, or other subdivision of the State shall approve purchases made under this exception prior to the award of the contract. In the case of purchases by hospitals, in addition to the other exceptions in this subsection, the provisions of this Article shall not apply when a particular medical item or prosthetic appliance is needed; when a particular product is ordered by an attending physician for his patients; when additional products are needed to complete an ongoing job or task; when products are purchased for 'over-the-counter' resale; when a particular product is needed or desired for experimental, developmental, or research work; or when equipment is already installed, connected, and in service under a lease or other agreement and the governing body of the hospital determines

that the equipment should be purchased. The governing body of a ~~hospital~~ hospital, municipality, county or other political subdivision of the State shall keep a record of all purchases made pursuant to this exception. These records are subject to public inspection."

Section 4. G.S. 143-129 is amended by adding a new subsection to read:

"(g) When the governing board of any municipality, county, or other subdivision of the State, or the manager or purchasing official delegated authority under subsection (a) of this section, determines that it is in the best interest of the unit, the requirements of this section may be waived for the purchase of apparatus, supplies, materials, or equipment from any person or entity that has, within the previous 12 months, after having completed a public, formal bid process substantially similar to that required by this Article, contracted to furnish the apparatus, supplies, materials, or equipment to:

(1) The United States of America or any federal agency;

(2) The State of North Carolina or any agency or political subdivision of the State; or

(3) Any other state or any agency or political subdivision of that state,

if the person or entity is willing to furnish the items at the same or more favorable prices, terms, and conditions as those provided under the contract with the other unit or agency. Notwithstanding any other provision of this section, any purchase made under this subsection shall be approved by the governing body of the purchasing municipality, county, or other political subdivision of the State at a regularly scheduled meeting of the governing body no fewer than 10 days after publication of notice, in a newspaper of general circulation in the area served by the governing body, that a waiver of the bid procedure will be considered in order to contract with a qualified supplier pursuant to this section. Rules issued by the Secretary of Administration pursuant to G.S. 143-49(6) shall apply with respect to participation in State term contracts."

Section 5. G.S. 143-131 reads as rewritten:

"§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.

All contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money in the amount of five thousand dollars ($5,000) or more, but less than the limits prescribed in G.S. 143-129, made by any officer, department, board, or commission of any county, city, town, or other subdivision of this State shall be made after informal bids have been secured. All such contracts shall be awarded to the lowest responsible bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. It shall be the duty of any officer, department, board, or commission entering into such contract to keep a record of all bids submitted, and such record shall not be subject to public inspection ~~at any time.~~ until the contract has been awarded."

Section 6. G.S. 160A-266 reads as rewritten:

"§ 160A-266. Methods of sale; limitation.

(a) Subject to the limitations prescribed in subsection (b) of this section, and according to the procedures prescribed in this Article, a city may dispose of real or personal property belonging to the city by:

(1) Private negotiation and sale;
(2) Advertisement for sealed bids;
(3) Negotiated offer, advertisement, and upset bid;
(4) Public auction; or
(5) Exchange.

(b) Private negotiation and sale may be used only with respect to personal property valued at less than ~~ten thousand dollars ($10,000)~~ thirty thousand dollars ($30,000) for any one item or group of similar items. Real ~~property~~ property, of any value, and personal property valued at ~~ten thousand dollars ($10,000)~~ thirty thousand dollars ($30,000) or more for any one item or group of similar items may be exchanged as permitted by G.S. 160A-271, or may be sold by any method permitted in this Article other than private negotiation and sale, except as permitted in G.S. 160A-277 and G.S. 160A-279.

Provided, however, a city may dispose of real property of any value and personal property valued at ~~ten thousand dollars ($10,000)~~ thirty thousand dollars ($30,000) or more for any one item or group of similar items by private negotiation and sale where (i) said real or personal property is significant for its architectural, archaeological, artistic, cultural or historical associations, or significant for its relationship to other property significant for architectural, archaeological, artistic, cultural or historical associations, or significant for its natural, scenic or open condition; and (ii) said real or personal property is to be sold to a nonprofit corporation or trust whose purposes include the preservation or conservation of real or personal properties of architectural, archaeological, artistic, cultural, historical, natural or scenic significance; and (iii) where a preservation agreement or conservation agreement as defined in G.S. 121-35 is placed in the deed conveying said property from the city to the nonprofit corporation or trust. Said nonprofit corporation or trust shall only dispose of or use said real or personal property subject to covenants or other legally binding restrictions which will promote the preservation or conservation of the property, and, where appropriate, secure rights of public access.

(c) A city council may adopt regulations prescribing procedures for disposing of personal property valued at less than ~~five hundred dollars ($500.00)~~ five thousand dollars ($5,000) for any one item or group of items in substitution for the requirements of this Article. The regulations shall be designed to secure for the city fair market value for all property disposed of and to accomplish the disposal efficiently and economically. The regulations may, but need not, require published notice, and may provide for either public or private exchanges and sales. The council may authorize one or more city officials to declare surplus any personal property valued at less than ~~five hundred dollars ($500.00)~~ five thousand dollars ($5,000) for any one item or group of items, to set its fair market value, and to convey title to the property for the city in accord with the regulations. A city official

authorized under this section to dispose of property ~~shall, on the first day of February, report in writing to the council on any property disposed of under such authorization from July 1 through December 31 of the previous year, and shall on the first day of August report in writing to the council on any property disposed of under such authorization from January 1 through June 30 of that year. The written report~~ shall keep a record of all property sold under this section and that record shall generally describe the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or ~~exchange since the last such report was submitted.~~ exchange."

Section 7. Article 8 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-129.7. Purchase with trade-in of apparatus, supplies, materials, and equipment.**

Notwithstanding the provisions of Article 12 of Chapter 160A of the General Statutes, municipalities, counties, and other political subdivisions of the State may include in specifications for the purchase of apparatus, supplies, materials, or equipment an opportunity for bidders to purchase as 'trade-in' specified personal property owned by the municipality, county, or other political subdivision, and the awarding authority may award a contract for both the purchase of the apparatus, supplies, materials, or equipment and the sale of trade-in property, taking into consideration the amount offered on the trade-in when applying the criteria for award established in this Article."

Section 8. This act raises the threshold amount in G.S. 143-129 and G.S. 160A-266. If any local act provides a threshold amount for the subjects addressed in these statutes that is less than the amount provided in this act, this act prevails to the extent of that conflict.

Section 9. This act becomes effective July 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 157*
Finance Committee Substitute Adopted 4/7/97

Short Title: Corporate Amendments. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING DISSENTERS' RIGHTS PROCEDURES AND THE FILING OF DOCUMENTS BY LIMITED LIABILITY COMPANIES, TO ALLOW FACSIMILE SIGNATURES AND ADVISORY REVIEW OF DOCUMENTS BY THE SECRETARY OF STATE, AND TO CLARIFY CORRECTIONS PROCEDURES, LIMITED LIABILITY NAME AVAILABILITY, AND THE DEFINITION OF FOREIGN PROFESSIONAL CORPORATIONS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. AMENDMENT OF DISSENTERS' RIGHTS PROCEDURES.

Section 1. G.S. 55-13-22(b) reads as rewritten:

"(b) The dissenters' notice must be sent no later than 10 days after ~~the corporate action was taken,~~ shareholder approval, or if no shareholder approval is required, after the approval of the board of directors, of the corporate action creating dissenters' rights under G.S. 55-13-02, and must:

(1) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(2) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(3) Supply a form for demanding payment;

(4) Set a date by which the corporation must receive the payment demand, which date may not be fewer than 30 nor more than 60 days after the date the subsection (a) notice is mailed; and

(5) Be accompanied by a copy of this Article."

Section 2. G.S. 55-13-30 reads as rewritten:

"**§ 55-13-30. Court action.**

(a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter may commence a proceeding within 60 days after the date of his payment demand under G.S. 55-13-28 ~~and petition the court~~ by filing a complaint with the Superior Court Division of the General Court of Justice to determine the fair value of the shares and accrued interest. ~~Upon~~ Within 10 days after service upon it of the ~~petition filed with the court,~~ complaint, the corporation shall pay to the dissenter the amount offered by the corporation under G.S. 55-13-25.

(a1) If the dissenter does not commence the proceeding within the 60-day period, the dissenter shall have an additional 30 days to either (i) accept in writing the amount offered by the corporation under G.S. 55-13-25, upon which the corporation shall pay such amount to the dissenter in full satisfaction of his demand, or (ii) withdraw his demand for payment and resume the status of a nondissenting shareholder. A dissenter who takes no action within such 30-day period shall be deemed to have withdrawn his dissent and demand for payment.

(b) Reserved for future codification purposes.

(c) The court shall have the discretion to make all dissenters (whether or not residents of this State) whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the ~~petition.~~ complaint. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the superior court in which the proceeding is commenced under ~~subsection (b)~~ subsection (a) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The parties are entitled to the same discovery rights as parties in other civil proceedings. The proceeding shall be tried as in other civil actions. However, in a proceeding by a dissenter in a ~~public corporation,~~ corporation that was a public corporation immediately prior to consummation of the corporate action giving rise to the right of dissent under G.S. 55-13-02, there is no right to a trial by jury.

(e) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation."

PART II. ADVISORY REVIEW OF PRELIMINARY DRAFTS OF DOCUMENTS.

Section 3. Article 1 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"**§ 55-1-22.2. Advisory review of documents.**

The Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 55-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 4. Article 1 of Chapter 55A of the General Statutes is amended by adding a new section to read:

"**§ 55A-1-22.2. Advisory review of documents.**

The Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. At the time of the advisory review, the Secretary of State shall notify the State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 55A-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 5. Article 1 of Chapter 57C of the General Statutes is amended by adding a new section to read:

"**§ 57C-1-22.2. Advisory review of documents.**

The Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 57C-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 6. Article 5 of Chapter 59 of the General Statutes is amended by adding a new section to read:

"**§ 59-206.2. Advisory review of documents.**

The Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Article. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and expedited filings as authorized by G.S. 59-1106. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 7. G.S. 55-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him for filing:

	Document	Fee
(1)	Articles of incorporation	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Corporation's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected corporation	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of incorporation	50.00
(11)	Restated articles of incorporation	10.00
	with amendment of articles	50.00
(12)	Articles of merger or share exchange	50.00
(13)	Articles of dissolution	30.00
(14)	Articles of revocation of dissolution	10.00
(15)	Certificate of administrative dissolution	No fee
(16)	Application for reinstatement following administrative dissolution	25.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee

(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Annual report	10.00
(24)	Articles of correction	10.00
(25)	Application for certificate of existence or authorization	5.00
(26)	Any other document required or permitted to be filed by this Chapter	~~10.00.~~ 10.00
(27)	Advisory review of a document	200.00."

Section 8. G.S. 55A-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	$50.00
(2)	Application for reserved name	$10.00
(3)	Notice of transfer of reserved name	$10.00
(4)	Application for registered name	$10.00
(5)	Application for renewal of registered name	$10.00
(6)	Corporation's statement of change of registered agent or registered office or both	$ 5.00
(7)	Agent's statement of change of registered office for each affected corporation	$ 5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	$ 5.00
(10)	Amendment of articles of incorporation	$25.00
(11)	Restated articles of incorporation without amendment of articles	$10.00
(12)	Restated articles of incorporation with amendment of articles	$25.00
(13)	Articles of merger	$25.00
(14)	Articles of dissolution	$15.00
(15)	Articles of revocation of dissolution	$10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Application for reinstatement following	

		administrative dissolution	$25.00
	(18)	Certificate of reinstatement	No fee
	(19)	Certificate of judicial dissolution	No fee
	(20)	Application for certificate of authority	$100.00
	(21)	Application for amended certificate of authority	$25.00
	(22)	Application for certificate of withdrawal	$10.00
	(23)	Certificate of revocation of authority to conduct affairs	No fee
	(24)	Corporation's Statement of Change of Principal Office	$5.00
	(24a)	Designation of Principal Office Address	$5.00
	(25)	Articles of correction	$10.00
	(26)	Application for certificate of existence or authorization	$ 5.00
	(27)	Any other document required or permitted to be filed by this Chapter	~~$10.00.~~ $10.00
	(28)	Advisory review of a document	$200.00."

Section 9. G.S. 57C-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	Document		Fee
	(1)	Articles of organization	$100.00
	(2)	Application for reserved name	10.00
	(3)	Notice of transfer of reserved name	10.00
	(4)	Application for registered name	10.00
	(5)	Application for renewal of registered name	10.00
	(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
	(7)	Agent's statement of change of registered office for each affected limited liability company	5.00
	(8)	Agent's statement of resignation	No fee
	(9)	Designation of registered agent or registered office or both	5.00
	(10)	Amendment of articles of organization	50.00
	(11)	Restated articles of organization without amendment of articles	10.00
	(12)	Restated articles of organization with amendment of articles	50.00
	(13)	Articles of merger	50.00
	(14)	Articles of dissolution	30.00

(15)	Articles of revocation of dissolution	10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Articles of correction	10.00
(24)	Application for certificate of existence or authorization	5.00
(25)	Annual report	200.00
(26)	Any other document required or permitted to be filed by this Chapter	~~10.00.~~ 10.00
(27)	Advisory review of a document	200.00."

Section 10. G.S. 59-1106 reads as rewritten:

"**§ 59-1106. Fees.**

The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

(1)	For filing a certificate of limited partnership (G.S. 59-201)	$50.00
(2)	For filing a certificate of amendment (G.S. 59-202; 59-905)	25.00
(3)	For filing a certificate of cancellation (G.S. 59-203; 59-906)	25.00
(4)	For filing an application for reservation of name (G.S. 59-104(a))	10.00
(5)	For filing a transfer of name (G.S. 59-104(d))	10.00
(6)	For filing an application for registration as foreign limited partnership (G.S. 59-502)	50.00
(7)	For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a limited partnership (G.S. 59-206(c)) For each page	1.00
	For affixing ~~his~~ the certificate and official seal thereto.	5.00
(8)	For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a limited partnership For each page	1.00

(9) For filing any other document not herein specifically provided for 10.00

(10) For the expedited filing by the end of the same business day of a document received in good order by 12:00 noon Eastern Standard Time ..... 200.00 additional fee

(11) For the expedited filing of a document received in good order within 24 hours after receipt, excluding weekends and holidays ..... 100.00 ~~additional fee.~~ additional fee

(12) Advisory review of a document 200.00.

The Secretary of State shall not collect the fees allowed in subdivisions (10) and (11) of this section unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document. Upon receipt of a document in proper form and payment of the required filing fee, the Secretary of State shall guarantee the expedited filing of the document."

PART III. CLARIFICATION OF ARTICLES OF CORRECTION PROCEDURES.

Section 11. G.S. 55-1-24(a) reads as rewritten:

"(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (1) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (2) was defectively executed, attested, sealed, verified, or acknowledged."

Section 12. G.S. 55A-1-24(a) reads as rewritten:

"(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (i) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged."

Section 13. G.S. 57C-1-24(a) reads as rewritten:

"(a) A domestic or foreign limited liability company may correct a document filed by the Secretary of State if the document (i) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively ~~executed.~~ executed, attested, sealed, verified, or acknowledged."

Section 14. G.S. 59-206(a) is amended by adding a new subdivision to read:

"(2b) A domestic or foreign limited partnership may correct a document filed by the Secretary of State if the document (i) contains a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged."

PART IV. RESTATEMENT OF LIMITED LIABILITY COMPANY ARTICLES OF ORGANIZATION.

Section 15. Article 2 of Chapter 57C of the General Statues is amended by adding a new section to read:

"**§ 57C-2-22.1. Restated articles of organization.**

(a) A limited liability company may restate its articles of organization at any time with or without member action.

(b) The restated articles of organization may include one or more amendments to the articles. Unless otherwise provided in the articles of organization or a written operating agreement, any amendment requires the unanimous vote of the members. The restated articles of organization may include a statement of the address of the current registered office and the name of the current registered agent of the limited liability company.

(c) A limited liability company restating its articles of organization shall deliver to the Secretary of State for filing articles of restatement that:

(1) Set forth the name of the limited liability company.

(2) Attach as an exhibit thereto the text of the restated articles of organization.

(3) State that the restated articles of organization do not contain an amendment or, if the articles do contain an amendment, that there is an amendment that was approved as required by this Chapter.

(d) Duly adopted restated articles of organization supersede the original articles of organization and all amendments to them.

(e) The Secretary of State may certify restated articles of organization as the articles of organization currently in effect, without including the other information required by subsection (c) of this section."

PART V. CANCELLATION OF ARTICLES OF DISSOLUTION OF LIMITED LIABILITY COMPANY.

Section 16. Article 6 of Chapter 57C is amended by adding a new section to read:

"**§ 57C-6-06.1. Cancellation of articles of dissolution.**

After the filing of articles of dissolution by a limited liability company dissolved pursuant to G.S. 57C-6-01(4) because of the happening of an event of withdrawal, the articles of dissolution may be cancelled if, within 90 days after the event of withdrawal, all remaining members agree in writing that the business of the limited liability company should be continued and the limited liability company files articles of cancellation with the Secretary of State. The Articles of Cancellation shall set forth:

(1) The name of the limited liability company;

(2) The date of the event of withdrawal described in the articles of dissolution;

(3) The date of filing of the company's articles of dissolution;

(4) A statement that within 90 days after the event of withdrawal, all remaining members have agreed in writing that the business of the limited liability company may be continued; and

(5) Any other information the members or managers filing the articles of cancellation determine."

Section 17. G.S. 57C-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

Document			Fee
(1)	Articles of organization		$100.00
(2)	Application for reserved name		10.00
(3)	Notice of transfer of reserved name		10.00
(4)	Application for registered name		10.00
(5)	Application for renewal of registered name		10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both		5.00
(7)	Agent's statement of change of registered office for each affected limited liability company		5.00
(8)	Agent's statement of resignation		No fee
(9)	Designation of registered agent or registered office or both		5.00
(10)	Amendment of articles of organization		50.00
(11)	Restated articles of organization without amendment of articles		10.00
(12)	Restated articles of organization with amendment of articles		50.00
(13)	Articles of merger		50.00
(14)	Articles of dissolution		30.00
(15)	~~Articles~~ Cancellation of articles of ~~revocation of~~ dissolution		10.00
(16)	Certificate of administrative dissolution		No fee
(17)	Certificate of reinstatement		No fee
(18)	Certificate of judicial dissolution		No fee
(19)	Application for certificate of authority		200.00
(20)	Application for amended certificate of authority		50.00
(21)	Application for certificate of withdrawal		10.00
(22)	Certificate of revocation of authority to transact business		No fee
(23)	Articles of correction		10.00
(24)	Application for certificate of existence or authorization		5.00
(25)	Annual report		200.00
(26)	Any other document required or permitted to be filed by this Chapter		10.00."

PART VI. AVAILABILITY OF LIMITED LIABILITY COMPANY NAME.

Section 18. G.S. 57C-2-30(f) reads as rewritten:

"(f) The name of a limited liability company dissolved under ~~G.S. 57C-6-03~~ Article 6 of this Chapter may not be used by another limited liability ~~company~~ company, business corporation, nonprofit corporation, or limited partnership ~~until the expiration of two years after the effective date of the dissolution~~ until:

(1) In the case of a dissolution pursuant to G.S. 57C-6-01, the later of (i) the date of filing of articles of dissolution pursuant to G.S. 57C-6-06 or (ii) the expiration of the time within which articles of dissolution of the limited liability company may be canceled pursuant to G.S. 57C-6-06.1; or

(2) In the case of an administrative dissolution pursuant to G.S. 57C-6-03, the expiration of the period within which the limited liability company may be reinstated pursuant to G.S. 57C-6-03, if the limited liability company's period of duration stated in its articles of organization or written operating agreement has not expired,

unless the dissolved limited liability company changes its name to a name distinguishable upon the records of the Secretary of State from the names of other limited liability companies, business corporations, nonprofit corporations, or limited partnerships organized or transacting business in this State."

PART VII. AUTHORIZATION OF FACSIMILE SIGNATURES FOR LIMITED PARTNERSHIP DOCUMENTS.

Section 19. G.S. 59-204 is amended by adding a new subsection to read:

"(b1) Any signature on any document authorized to be filed with the Secretary of State under any provision of this Article may be a facsimile."

PART VIII. MODIFICATION OF DEFINITION OF FOREIGN PROFESSIONAL CORPORATION.

Section 20. G.S. 55B-16(b) reads as rewritten:

"(b) For purposes of this section, 'foreign professional corporation' means a corporation for profit ~~that is~~ that:

(1) Is incorporated under a law other than the law of this ~~State~~ State;

(2) Is incorporated for the sole and specific purpose of rendering professional services of the type that if rendered in this State would require the obtaining of a license from a licensing board pursuant to the statutory provisions referred to in ~~G.S. 55B-2(6)~~ G.S. 55B-2(6); and ~~that (i) has as its shareholders only individuals who are duly licensed, in this State or some other state, to render the same professional services as the corporation, or (ii) is organized for the purpose of rendering professional services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, and has as its shareholders only individuals who are duly licensed, in this State or in another state, to render the same professional services as the corporation or who are nonlicensed employees of the corporation, provided that nonlicensed employees own not more~~

~~than one-third of the total issued and outstanding shares of the corporation, or (iii) is described in G.S. 55B-15.~~

(3) Has as its shareholders only individuals who:

a. Qualify to hold shares of a corporation organized under this Chapter;

b. Are licensed to provide professional services as defined in G.S. 55B-2(6) in a state in which the corporation is incorporated or is authorized to transact business, provided that such professional services are the same as the professional service rendered by the corporation; or

c. Are nonlicensed employees of a corporation rendering services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes provided that all such nonlicensed employees own no more than one-third of the total issued and outstanding shares of such corporation in the aggregate."

PART IX. CORRECTION OF DELAYED EFFECTIVE DATE STATUTES FOR LIMITED PARTNERSHIP DOCUMENTS.

Section 21. G.S. 59-201(b) reads as rewritten:

"(b) ~~A~~ Unless a delayed effective date is specified in the certificate of limited partnership, a limited partnership is formed at the ~~time~~ effective time and date of the filing of the certificate of limited partnership in the office of the Secretary of State ~~or at any later time not more than 20 days subsequent to the endorsement of the Secretary of State specified in the certificate of limited partnership if, in either case,~~ if there has been substantial compliance with the requirements of this section."

Section 22. G.S. 59-203 reads as rewritten:

"**§ 59-203. Cancellation of certificate.**

A certificate of limited partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership or at any other time that there are no limited partners. A certificate of cancellation shall be filed in the office of the Secretary of State and set forth:

(1) The name of the limited partnership;

(2) The date of filing of its certificate of limited partnership;

(3) The reason for filing the certificate of cancellation;

(4) The effective date ~~(which shall be a date certain not more than 20 days from the date of filing)~~ of cancellation if it is not to be effective upon the filing of the certificate; and

(5) Any other information the partners filing the certificate determine."

PART X. REMOVAL OF "CONFORMING TO LAW" LANGUAGE IN REVISED UNIFORM LIMITED PARTNERSHIP ACT.

Section 23. G.S. 59-206(a)(2) reads as rewritten:

"(2) The original document so signed, together with the conformed copy, shall be delivered to the Secretary of State. ~~Unless~~ If the

Secretary finds that it ~~does not conform to law,~~ satisfies the requirements of this Article, the Secretary shall, when the proper fees have been tendered, endorse upon the original the word 'filed' and the hour, day, month and year of the filing thereof and shall file the same in the Secretary's office. The Secretary of State shall thereupon immediately compare the copy with the original and if the Secretary finds that they are identical the Secretary shall make upon the conformed copy the same endorsement which appears on the original and shall attach to the copy a certificate stating that attached thereto is a true copy of the document, designated by an appropriate title, filed in the Secretary's office and showing the date of the filing. The Secretary shall thereupon return the copy so certified to the limited partnership or its representatives. Any documents filed with the Secretary of State pursuant to this Chapter may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Chapter, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of the documents reproduced. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. The authorization to make the corrections shall be confirmed, according to procedures adopted by rule, by the Secretary prior to making the correction."

Section 24. G.S. 59-903(a) reads as rewritten:

"(a) If the Secretary of State finds that an application ~~conforms to law he~~ satisfies the requirements of this Article, the Secretary shall, when all requisite fees have been tendered as in this Article prescribed:

(1) Endorse on the application the word 'filed', and the hour, day, month and year of the filing thereof;

(2) File in ~~his~~ the office the application;

(3) Issue a certificate of authority to transact business in this State to which ~~he~~ the Secretary shall affix the conformed copy of the application; and

(4) Send to the foreign limited partnership or its representative the certificate of authority, together with the conformed copy of the application affixed thereto."

PART XI. EFFECTIVE DATES.

Section 25. Sections 11 through 14, 20, and 23 through 25 of this act are effective when the act becomes law. The remainder of this act becomes effective October 1, 1997. Section 1 of this act applies to dissenter's rights created pursuant to G.S. 55-13-02 on or after October 1, 1997, and Section 2 of this act applies to

proceedings commenced on or after October 1, 1997. Sections 3 through 10 of this act apply to requests for review of documents on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 157*
Finance Committee Substitute Adopted 4/7/97
Proposed Committee Substitute S157-PCS4601

Short Title: Corporate Amendments. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE TIME CORPORATIONS AND LIMITED LIABILITY COMPANIES MAY APPLY FOR REINSTATEMENT FROM ADMINISTRATIVE DISSOLUTION, TO INCREASE THE FEE CORPORATIONS MUST PAY FOR REINSTATEMENT AFTER ADMINISTRATIVE DISSOLUTION, TO ESTABLISH A FEE LIMITED LIABILITY COMPANIES MUST PAY FOR REINSTATEMENT AFTER ADMINISTRATIVE DISSOLUTION, TO PROVIDE THAT ANNUAL REPORTS OF MOST BUSINESS CORPORATIONS AND LIMITED LIABILITY COMPANIES SHALL BE FILED WITH THE DEPARTMENT OF REVENUE RATHER THAN THE SECRETARY OF STATE, TO AMEND THE LAW GOVERNING DISSENTERS' RIGHTS PROCEDURES AND THE FILING OF DOCUMENTS BY LIMITED LIABILITY COMPANIES, TO ALLOW FACSIMILE SIGNATURES AND ADVISORY REVIEW OF DOCUMENTS BY THE SECRETARY OF STATE, AND TO CLARIFY CORRECTIONS PROCEDURES, LIMITED LIABILITY NAME AVAILABILITY, AND THE DEFINITION OF FOREIGN PROFESSIONAL CORPORATIONS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION AND OTHERS.

The General Assembly of North Carolina enacts:

PART I. ADMINISTRATIVE DISSOLUTIONS.

Section 1. G.S. 55-14-22(a) reads as rewritten:

"(a) A corporation administratively dissolved under G.S. 55-14-21 may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of dissolution. The application must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution; and

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated.

(3) Reserved.

(4) Repealed by Session Laws 1995, c. 539, s. 6."

Section 2. G.S. 55A-14-22(a) reads as rewritten:

"(a) A corporation administratively dissolved under G.S. 55A-14-21 may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of dissolution. The application shall:

(1) Recite the name of the corporation and the effective date of its administrative dissolution; and

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated."

Section 3. G.S. 57C-6-03(c) reads as rewritten:

"(c) A limited liability company administratively dissolved under this section may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of the administrative dissolution. The procedures for reinstatement and for the appeal of any denial of the limited liability company's application for reinstatement shall be the same procedures applicable to business corporations under G.S. 55-14-22, 55-14-23, and 55-14-24."

Section 4. G.S. 55-1-22 reads as rewritten:

"**§ 55-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to ~~him~~ the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Corporation's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected corporation	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00

(10)	Amendment of articles of incorporation	50.00
(11)	Restated articles of incorporation with amendment of articles	10.00 50.00
(12)	Articles of merger or share exchange	50.00
(13)	Articles of dissolution	30.00
(14)	Articles of revocation of dissolution	10.00
(15)	Certificate of administrative dissolution	No fee
(16)	Application for reinstatement following administrative dissolution	~~25.00~~ 100.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Annual report	10.00
(24)	Articles of correction	10.00
(25)	Application for certificate of existence or authorization	5.00
(26)	Any other document required or permitted to be filed by this Chapter	10.00.

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on ~~him~~ the Secretary under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if ~~he~~ the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign corporation:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate."

Section 5. G.S. 55A-1-22 reads as rewritten:

"**§ 55A-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

Document	Fee

(1)	Articles of incorporation	$50.00
(2)	Application for reserved name	$10.00
(3)	Notice of transfer of reserved name	$10.00
(4)	Application for registered name	$10.00
(5)	Application for renewal of registered name	$10.00
(6)	Corporation's statement of change of registered agent or registered office or both	$ 5.00
(7)	Agent's statement of change of registered office for each affected corporation	$ 5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	$ 5.00
(10)	Amendment of articles of incorporation	$25.00
(11)	Restated articles of incorporation without amendment of articles	$10.00
(12)	Restated articles of incorporation with amendment of articles	$25.00
(13)	Articles of merger	$25.00
(14)	Articles of dissolution	$15.00
(15)	Articles of revocation of dissolution	$10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Application for reinstatement following administrative dissolution	~~$25.00~~ $100.00
(18)	Certificate of reinstatement	No fee
(19)	Certificate of judicial dissolution	No fee
(20)	Application for certificate of authority	$100.00
(21)	Application for amended certificate of authority	$25.00
(22)	Application for certificate of withdrawal	$10.00
(23)	Certificate of revocation of authority to conduct affairs	No fee
(24)	Corporation's Statement of Change of Principal Office	$5.00
(24a)	Designation of Principal Office Address	$5.00
(25)	Articles of correction	$10.00
(26)	Application for certificate of existence or authorization	$ 5.00
(27)	Any other document required or permitted to be filed by this Chapter	$10.00.

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary under this Chapter. The party to a proceeding

causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign corporation:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate."

Section 6. G.S. 57C-1-22 reads as rewritten:

"**§ 57C-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	Document	Fee
(1)	Articles of organization	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited liability company	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(13)	Articles of merger	50.00
(14)	Articles of dissolution	30.00
(15)	Articles of revocation of dissolution	10.00
(16)	Certificate of administrative dissolution	No fee
(16a)	Application for reinstatement following administrative dissolution	100.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00

(22)	Certificate of revocation of authority to transact business	No fee
(23)	Articles of correction	10.00
(24)	Application for certificate of existence or authorization	5.00
(25)	Annual report	200.00
(26)	Any other document required or permitted to be filed by this Chapter	10.00.

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of State under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if ~~he~~ the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign limited liability company:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate."

PART II. ANNUAL CORPORATE REPORT.

Section 7. G.S. 55-16-22 reads as rewritten:

"**§ 55-16-22. Annual ~~report for Secretary of State.~~ report.**

(a) ~~Each~~ Except as provided in subsections (a1) and (a2) of this section, each domestic corporation ~~except those governed by Chapter 55B,~~ and each foreign corporation authorized to transact business in this ~~State,~~ State shall deliver ~~to the Secretary of State for filing an annual report that sets forth:~~ an annual report to the Secretary of Revenue.

(a1) Each insurance company subject to the provisions of Chapter 58 of the General Statutes shall deliver an annual report to the Secretary of State.

(a2) A domestic corporation governed by Chapter 55B of the General Statutes is exempt from this section.

(a3) The annual report required by this section shall be in a form jointly prescribed by the Secretary of Revenue and the Secretary of State. The Secretary of Revenue shall provide the form needed to file an annual report. The annual report shall set forth all of the following:

(1) The name of the corporation and the state or country under whose law it is ~~incorporated;~~ incorporated.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which its registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of such registered office or registered agent, or ~~both;~~ both.

(3) The address and telephone number of its principal ~~office;~~ office.

(4) The names, titles, and business addresses of its principal ~~officers;~~ officers.

~~(4a) The names and business addresses of its directors; and~~

(5) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(c) ~~The annual report shall be delivered to the Secretary of State each year within 60 days immediately following the last day of the month in which the domestic corporation was incorporated or the foreign corporation received a certificate of authority in this State. Forms required for the filing of the annual report shall be mailed by the Secretary of State to the domestic or foreign corporation at its registered office for the first annual report, then to its principal office for subsequent annual reports.~~ An annual report required to be delivered to the Secretary of Revenue is due by the due date for filing the corporation's income and franchise tax returns. An extension of time to file a return is an extension of time to file an annual report. An annual report required to be delivered to the Secretary of State is due by the fifteenth day of the third month following the close of the corporation's fiscal year.

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in ~~such~~ the annual report.

(f) Expired.

(g) When a statement of change of registered office or registered agent is filed in the annual report, the change shall become effective when the statement is received by the Secretary of State.

(h) If the Secretary of State does not receive an annual report within 120 days of the date the return is due, the Secretary of State may presume that the annual report is delinquent. This presumption may be rebutted by receipt of the annual report from the Secretary of Revenue or by evidence of delivery presented by the filing corporation."

Section 8. G.S. 55-1-21(a) reads as rewritten:

"(a) The Secretary of State may promulgate and furnish on request forms ~~for:~~ for the following:

(1) An application for a certificate of ~~existence;~~ existence.

(2) A foreign corporation's application for a certificate of authority to transact business in this ~~State;~~ State.

(3) A foreign corporation's application for a certificate of ~~withdrawal; and~~ withdrawal.

~~(4) The annual report.~~

If the Secretary of State so requires, use of these forms is mandatory."

Section 9. G.S. 55-1-22(a), as amended by Section 4 of this act, reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Corporation's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected corporation	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of incorporation	50.00
(11)	Restated articles of incorporation	10.00
	with amendment of articles	50.00
(12)	Articles of merger or share exchange	50.00
(13)	Articles of dissolution	30.00
(14)	Articles of revocation of dissolution	10.00
(15)	Certificate of administrative dissolution	No fee
(16)	Application for reinstatement following administrative dissolution	100.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00

(22)	Certificate of revocation of authority to transact business	No fee
(23)	Annual report	~~10.00~~ 20.00
(24)	Articles of correction	10.00
(25)	Application for certificate of existence or authorization	5.00
(26)	Any other document required or permitted to be filed by this Chapter	10.00."

Section 10. G.S. 55-1-28(b)(4) reads as rewritten:

"(4) That its most recent annual report required by G.S. 55-16-22 has either been delivered to the Secretary of ~~State;~~ State or is not delinquent;".

Section 11. G.S. 55-14-20(2) reads as rewritten:

"(2) The corporation ~~does not deliver its annual report to the Secretary of State within 60 days after it is due;~~ is delinquent in delivering its annual report;".

Section 12. G.S. 55-15-30(a)(1) reads as rewritten:

"(1) The foreign corporation ~~does not deliver its annual report to the Secretary of State within 60 days after it is due;~~ is delinquent in delivering its annual report;".

Section 13. G.S. 55-16-01(e)(7) reads as rewritten:

"(7) Its most recent annual report delivered ~~to the Secretary of State under~~ as required by G.S. 55-16-22."

Section 14. G.S. 57C-2-23 reads as rewritten:

"**§ 57C-2-23. Annual report for Secretary of State.**

(a) Each domestic limited liability company and each foreign limited liability company authorized to transact business in this State, shall deliver to the Secretary of State for filing an annual ~~report~~ report, in a form jointly prescribed by the Secretary of Revenue and Secretary of State, that sets ~~forth:~~ forth all of the following:

(1) The name of the limited liability or foreign limited liability company and the state or country under whose law it is ~~organized;~~ organized.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of the registered office or registered agent, or ~~both;~~ both.

(3) The address and telephone number of its principal ~~office;~~ office.

(4) The names and business addresses of its ~~managers; and~~ managers.

(5) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information

required by subdivisions (2) through (5) of this subsection. The Secretary of State shall make available the form required to file an annual report.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company or the foreign limited liability company.

(c) The annual report shall be delivered to the Secretary of State ~~each year within 60 days immediately following the last day of the month in which the domestic limited liability company was organized or the foreign limited liability company received a certificate of authority in this State. Forms required for the filing of the annual report shall be mailed by the Secretary of State to the domestic or foreign limited liability company at its registered office for the first annual report, and then to its principal office for subsequent annual reports.~~ by the fifteenth day of the fourth month following the close of the limited liability company's fiscal year.

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report."

Section 15. G.S. 57C-1-22(b) reads as rewritten:

"(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of State under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if ~~he~~ the party prevails in the proceeding."

Section 16. G.S. 57C-3-25(a) reads as rewritten:

"(a) Any person dealing with a limited liability company or a foreign limited liability company may rely conclusively upon its most recent annual report and any amendments ~~thereto filed with~~ to it on file with the Secretary of State ~~pursuant to G.S. 57C-2-23~~ as to the identity of its managers, except to the extent the person has actual knowledge that a person identified therein as a manager is not a manager."

Section 17. G.S. 105-228.90(a) reads as rewritten:

"(a) Scope. -- This Article applies to Subchapters I, V, and VIII of this ~~Chapter~~ Chapter, to the annual report filing requirements of G.S. 55-16-22, and to inspection taxes levied under Article 3 of Chapter 119 of the General Statutes."

Section 18. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-257.1. Secretary to administer annual report filing; fee for filing report.**

(a) Filing Duty. -- The Secretary must submit the annual reports filed with the Secretary pursuant to G.S. 55-16-22 to the Secretary of State.

(b) Fee. -- A corporation that files an annual report with the Secretary must pay a fee of twenty dollars ($20.00) with its annual report. The fees collected under this subsection shall be credited to the General Fund as tax revenue."

Section 19. G.S. 105-259 reads as rewritten:

"**§ 105-259. Secrecy required of officials; penalty for violation.**

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

(1) Employee or officer. -- The term includes a former employee, a former officer, and a current or former member of a State board or commission.

(2) Tax information. -- Any information from any source concerning the liability of a taxpayer for a tax, as defined in G.S. 105-228.90. The term includes the following:

a. Information contained on a tax return, a tax report, or an application for a license for which a tax is imposed.

b. Information obtained through an audit of a taxpayer or by correspondence with a taxpayer.

c. Information on whether a taxpayer has filed a tax return or a tax report.

d. A list or other compilation of the names, addresses, social security numbers, or similar information concerning taxpayers.

The term does not include (i) statistics classified so that information about specific taxpayers cannot be ~~identified or (ii)~~ identified, (ii) an annual report required to be filed under G.S. 55-16-22 or (iii) information submitted to the Business License Information Office of the Department of Secretary of State on a master application form for various business licenses.

(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(1) To comply with a court order or a law.

(2) Review by the Attorney General or a representative of the Attorney General.

(3) Review by a tax official of another state or the Internal Revenue Commissioner of the United States to aid the state or the Commissioner in collecting a tax imposed by this State, the other state, or the United States if the laws of the other state or the United States allow the state or the United States to provide similar tax information to a representative of this State.

(4) To provide a governmental agency or an officer of an organized association of taxpayers with a list of taxpayers who have paid a privilege license tax under Article 2 of this Chapter.

(5) To furnish to the chair of a board of county commissioners information on the county sales and use tax.

(6) To sort, process, or deliver tax information on behalf of the Department of Revenue.

(6a) To furnish the chair of a board of county commissioners a list of claimants that have received a refund of the county sales or use tax to the extent authorized in G.S. 105-164.14(f).

(7) To exchange information with the Division of Motor Vehicles of the Department of Transportation when the information is needed to fulfill a duty imposed on the Department of Revenue or the Division of Motor Vehicles.

(8) To furnish to the Department of State Treasurer, upon request, the name, address, and account and identification numbers of a taxpayer who may be entitled to property held in the Escheat Fund.

(9) To furnish to the Employment Security Commission the name, address, and account and identification numbers of a taxpayer when the information is requested by the Commission in order to fulfill a duty imposed under Article 2 of Chapter 96 of the General Statutes.

(10) Review by the State Auditor to the extent authorized in G.S. 147-64.7.

(11) To give a spouse who elects to file a joint tax return a copy of the return or information contained on the return.

(11a) To provide a copy of a return to the taxpayer who filed the return.

(11b) In the case of a return filed by a corporation, a partnership, a trust, or an estate, to provide a copy of the return or information on the return to a person who has a material interest in the return if, under the circumstances, section 6103(e)(1) of the Code would require disclosure to that person of any corresponding federal return or information.

(11c) In the case of a return of an individual who is legally incompetent or deceased, to provide a copy of the return to the legal representative of the estate of the incompetent individual or decedent.

(12) To contract with a financial institution for the receipt of withheld income tax payments under G.S. 105-163.6 or for the transmittal of payments by electronic funds transfer.

(13) To furnish the Fiscal Research Division of the General Assembly, upon request, a sample, suitable in character, composition, and size for statistical analyses, of tax returns or other tax information from which taxpayers' names and identification numbers have been removed.

(14) To exchange information concerning a tax imposed by Subchapter V of this Chapter with the Standards Division of the Department of Agriculture when the information is needed to administer the Gasoline and Oil Inspection Act, Article 3 of Chapter 119 of the General Statutes.

(15) To exchange information concerning a tax imposed by Articles 2A, 2B, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the agency:

a. The North Carolina Alcoholic Beverage Control Commission.

b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.

c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department.

(16) To furnish to the Department of Secretary of State the name, address, tax year end, and account and identification numbers of a corporation liable for corporate income or franchise taxes or of a limited liability company liable for a corporate or a partnership tax return to enable the Secretary of State to notify the corporation or the limited liability company of the annual report filing requirement or that its articles of incorporation or articles of organization or its certificate of authority has been suspended.

(17) To inform the Business License Information Office of the Department of Secretary of State of the status of an application for a license for which a tax is imposed and of any information needed to process the application.

(18) To furnish to the Office of the State Controller the name, address, and account and identification numbers of a taxpayer upon request to enable the State Controller to verify statewide vendor files or track debtors of the State.

(19) To furnish to the North Carolina Industrial Commission information concerning workers' compensation reported to the Secretary under G.S. 105-163.7.

(c) Punishment. -- A person who violates this section is guilty of a Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation."

PART III. AMENDMENT OF DISSENTERS' RIGHTS PROCEDURES.

Section 20. G.S. 55-13-22(b) reads as rewritten:

"(b) The dissenters' notice must be sent no later than 10 days after ~~the corporate action was taken,~~ shareholder approval, or if no shareholder approval is required, after the approval of the board of directors, of the corporate action creating dissenters' rights under G.S. 55-13-02, and must:

(1) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;
(2) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;
(3) Supply a form for demanding payment;
(4) Set a date by which the corporation must receive the payment demand, which date may not be fewer than 30 nor more than 60 days after the date the subsection (a) notice is mailed; and
(5) Be accompanied by a copy of this Article."

Section 21. G.S. 55-13-30 reads as rewritten:

"**§ 55-13-30. Court action.**

(a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter may commence a proceeding within 60 days after the date of his payment demand under G.S. 55-13-28 ~~and petition the court~~ by filing a complaint with the Superior Court Division of the General Court of Justice to determine the fair value of the shares and accrued interest. ~~Upon~~ Within 10 days after service upon it of the ~~petition filed with the court,~~ complaint, the corporation shall pay to the dissenter the amount offered by the corporation under G.S. 55-13-25.

(a1) If the dissenter does not commence the proceeding within the 60-day period, the dissenter shall have an additional 30 days to either (i) accept in writing the amount offered by the corporation under G.S. 55-13-25, upon which the corporation shall pay such amount to the dissenter in full satisfaction of his demand, or (ii) withdraw his demand for payment and resume the status of a nondissenting shareholder. A dissenter who takes no action within such 30-day period shall be deemed to have withdrawn his dissent and demand for payment.

(b) Reserved for future codification purposes.

(c) The court shall have the discretion to make all dissenters (whether or not residents of this State) whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the ~~petition.~~ complaint. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the superior court in which the proceeding is commenced under ~~subsection (b)~~ subsection (a) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The parties are entitled to the same discovery rights as parties in other civil proceedings. The proceeding shall be tried as in other civil actions. However, in a proceeding by a dissenter in a ~~public corporation,~~ corporation that was a public corporation immediately prior to consummation of the corporate action giving rise to the right of dissent under G.S. 55-13-02, there is no right to a trial by jury.

(e) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation."

PART IV. ADVISORY REVIEW OF PRELIMINARY DRAFTS OF DOCUMENTS.

Section 22. Article 1 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"**§ 55-1-22.2. Advisory review of documents.**

The Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 55-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 23. Article 1 of Chapter 55A of the General Statutes is amended by adding a new section to read:

"**§ 55A-1-22.2. Advisory review of documents.**

The Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. At the time of the advisory review, the Secretary of State shall notify the State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 55A-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 24. Article 1 of Chapter 57C of the General Statutes is amended by adding a new section to read:

"**§ 57C-1-22.2. Advisory review of documents.**

The Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 57C-1-22.1. Upon completion of the advisory review, the Secretary of State shall

notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 25. Article 5 of Chapter 59 of the General Statutes is amended by adding a new section to read:

"**§ 59-206.2. Advisory review of documents.**

The Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Article. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and expedited filings as authorized by G.S. 59-1106. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 26. G.S. 55-1-22(a), as amended by Sections 4 and 9 of this act, reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Corporation's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected corporation	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of incorporation	50.00
(11)	Restated articles of incorporation	10.00
	with amendment of articles	50.00
(12)	Articles of merger or share exchange	50.00
(13)	Articles of dissolution	30.00
(14)	Articles of revocation of dissolution	10.00

(15)	Certificate of administrative dissolution	No fee
(16)	Application for reinstatement following administrative dissolution	100.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Annual report	20.00
(24)	Articles of correction	10.00
(25)	Application for certificate of existence or authorization	5.00
(26)	Any other document required or permitted to be filed by this Chapter	~~10.00.~~ 10.00
(27)	Advisory review of a document	200.00."

Section 27. G.S. 55A-1-22(a), as amended by Section 5 of this act, reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	$50.00
(2)	Application for reserved name	$10.00
(3)	Notice of transfer of reserved name	$10.00
(4)	Application for registered name	$10.00
(5)	Application for renewal of registered name	$10.00
(6)	Corporation's statement of change of registered agent or registered office or both	$ 5.00
(7)	Agent's statement of change of registered office for each affected corporation	$ 5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	$ 5.00
(10)	Amendment of articles of incorporation	$25.00
(11)	Restated articles of incorporation without amendment of articles	$10.00

(12)	Restated articles of incorporation with amendment of articles	$25.00
(13)	Articles of merger	$25.00
(14)	Articles of dissolution	$15.00
(15)	Articles of revocation of dissolution	$10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Application for reinstatement following administrative dissolution	$100.00
(18)	Certificate of reinstatement	No fee
(19)	Certificate of judicial dissolution	No fee
(20)	Application for certificate of authority	$100.00
(21)	Application for amended certificate of authority	$25.00
(22)	Application for certificate of withdrawal	$10.00
(23)	Certificate of revocation of authority to conduct affairs	No fee
(24)	Corporation's Statement of Change of Principal Office	$5.00
(24a)	Designation of Principal Office Address	$5.00
(25)	Articles of correction	$10.00
(26)	Application for certificate of existence or authorization	$ 5.00
(27)	Any other document required or permitted to be filed by this Chapter	~~$10.00.~~ $10.00
(28)	Advisory review of a document	$200.00."

Section 28. G.S. 57C-1-22(a), as amended by Section 6 of this act, reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

Document		Fee
(1)	Articles of organization	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited liability company	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or	

	registered office or both	5.00
(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(13)	Articles of merger	50.00
(14)	Articles of dissolution	30.00
(15)	Articles of revocation of dissolution	10.00
(16)	Certificate of administrative dissolution	No fee
(16a)	Application for reinstatement following administrative dissolution	100.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Articles of correction	10.00
(24)	Application for certificate of existence or authorization	5.00
(25)	Annual report	200.00
(26)	Any other document required or permitted to be filed by this Chapter	~~10.00.~~ 10.00
(27)	Advisory review of a document	200.00."

Section 29. G.S. 59-1106 reads as rewritten:

"**§ 59-1106. Fees.**

The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

(1)	For filing a certificate of limited partnership (G.S. 59-201)	$50.00
(2)	For filing a certificate of amendment (G.S. 59-202; 59-905)	25.00
(3)	For filing a certificate of cancellation (G.S. 59-203; 59-906)	25.00
(4)	For filing an application for reservation of name (G.S. 59-104(a))	10.00
(5)	For filing a transfer of name (G.S. 59-104(d))	10.00
(6)	For filing an application for registration as foreign limited partnership	

	(G.S. 59-502)	50.00
(7)	For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a limited partnership (G.S. 59-206(c)) For each page	1.00
	For affixing ~~his~~ the certificate and official seal thereto.	5.00
(8)	For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a limited partnership For each page	1.00
(9)	For filing any other document not herein specifically provided for	10.00
(10)	For the expedited filing by the end of the same business day of a document received in good order by 12:00 noon Eastern Standard Time	200.00 additional fee
(11)	For the expedited filing of a document received in good order within 24 hours after receipt, excluding weekends and holidays	100.00 ~~additional fee.~~ additional fee
(12)	Advisory review of a document	200.00.

The Secretary of State shall not collect the fees allowed in subdivisions (10) and (11) of this section unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document. Upon receipt of a document in proper form and payment of the required filing fee, the Secretary of State shall guarantee the expedited filing of the document."

PART V. CLARIFICATION OF ARTICLES OF CORRECTION PROCEDURES.

Section 30. G.S. 55-1-24(a) reads as rewritten:

"(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (1) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (2) was defectively executed, attested, sealed, verified, or acknowledged."

Section 31. G.S. 55A-1-24(a) reads as rewritten:

"(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (i) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged."

Section 32. G.S. 57C-1-24(a) reads as rewritten:

"(a) A domestic or foreign limited liability company may correct a document filed by the Secretary of State if the document (i) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively ~~executed.~~ executed, attested, sealed, verified, or acknowledged."

Section 33. G.S. 59-206(a) is amended by adding a new subdivision to read:

"(2b) A domestic or foreign limited partnership may correct a document filed by the Secretary of State if the document (i) contains a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged."

PART VI. RESTATEMENT OF LIMITED LIABILITY COMPANY ARTICLES OF ORGANIZATION.

Section 34. Article 2 of Chapter 57C of the General Statues is amended by adding a new section to read:

"**§ 57C-2-22.1. Restated articles of organization.**

(a) A limited liability company may restate its articles of organization at any time with or without member action.

(b) The restated articles of organization may include one or more amendments to the articles. Unless otherwise provided in the articles of organization or a written operating agreement, any amendment requires the unanimous vote of the members. The restated articles of organization may include a statement of the address of the current registered office and the name of the current registered agent of the limited liability company.

(c) A limited liability company restating its articles of organization shall deliver to the Secretary of State for filing articles of restatement that:

(1) Set forth the name of the limited liability company.

(2) Attach as an exhibit thereto the text of the restated articles of organization.

(3) State that the restated articles of organization do not contain an amendment or, if the articles do contain an amendment, that there is an amendment that was approved as required by this Chapter.

(d) Duly adopted restated articles of organization supersede the original articles of organization and all amendments to them.

(e) The Secretary of State may certify restated articles of organization as the articles of organization currently in effect, without including the other information required by subsection (c) of this section."

PART VII. CANCELLATION OF ARTICLES OF DISSOLUTION OF LIMITED LIABILITY COMPANY.

Section 35. Article 6 of Chapter 57C is amended by adding a new section to read:

"**§ 57C-6-06.1. Cancellation of articles of dissolution.**

After the filing of articles of dissolution by a limited liability company dissolved pursuant to G.S. 57C-6-01(4) because of the happening of an event of withdrawal, the articles of dissolution may be cancelled if, within 90 days after the event of withdrawal, all remaining members agree in writing that the business of the limited liability company should be continued and the limited liability company files articles

of cancellation with the Secretary of State. The Articles of Cancellation shall set forth:

(1) The name of the limited liability company;

(2) The date of the event of withdrawal described in the articles of dissolution;

(3) The date of filing of the company's articles of dissolution;

(4) A statement that within 90 days after the event of withdrawal, all remaining members have agreed in writing that the business of the limited liability company may be continued; and

(5) Any other information the members or managers filing the articles of cancellation determine."

Section 36. G.S. 57C-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

Document		Fee
(1)	Articles of organization	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited liability company	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(13)	Articles of merger	50.00
(14)	Articles of dissolution	30.00
(15)	~~Articles~~ Cancellation of articles of ~~revocation of~~ dissolution	10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00

(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Articles of correction	10.00
(24)	Application for certificate of existence or authorization	5.00
(25)	Annual report	200.00
(26)	Any other document required or permitted to be filed by this Chapter	10.00."

PART VIII. AVAILABILITY OF LIMITED LIABILITY COMPANY NAME.

Section 37. G.S. 57C-2-30(f) reads as rewritten:

"(f) The name of a limited liability company dissolved under ~~G.S. 57C-6-03~~ Article 6 of this Chapter may not be used by another limited liability ~~company~~ company, business corporation, nonprofit corporation, or limited partnership ~~until the expiration of two years after the effective date of the dissolution~~ until:

(1) In the case of a dissolution pursuant to G.S. 57C-6-01, the later of (i) the date of filing of articles of dissolution pursuant to G.S. 57C-6-06 or (ii) the expiration of the time within which articles of dissolution of the limited liability company may be canceled pursuant to G.S. 57C-6-06.1; or

(2) In the case of an administrative dissolution pursuant to G.S. 57C-6-03, the expiration of the period within which the limited liability company may be reinstated pursuant to G.S. 57C-6-03, if the limited liability company's period of duration stated in its articles of organization or written operating agreement has not expired,

unless the dissolved limited liability company changes its name to a name distinguishable upon the records of the Secretary of State from the names of other limited liability companies, business corporations, nonprofit corporations, or limited partnerships organized or transacting business in this State."

PART IX. AUTHORIZATION OF FACSIMILE SIGNATURES FOR LIMITED PARTNERSHIP DOCUMENTS.

Section 38. G.S. 59-204 is amended by adding a new subsection to read:

"(b1) Any signature on any document authorized to be filed with the Secretary of State under any provision of this Article may be a facsimile."

PART X. MODIFICATION OF DEFINITION OF FOREIGN PROFESSIONAL CORPORATION.

Section 39. G.S. 55B-16(b) reads as rewritten:

"(b) For purposes of this section, 'foreign professional corporation' means a corporation for profit ~~that is~~ that:

(1) Is incorporated under a law other than the law of this ~~State~~ State;

(2) Is incorporated for the sole and specific purpose of rendering professional services of the type that if rendered in this State would require the obtaining of a license from a licensing board pursuant to the statutory provisions referred to in ~~G.S. 55B-2(6)~~ G.S. 55B-

2(6); and ~~that (i) has as its shareholders only individuals who are duly licensed, in this State or some other state, to render the same professional services as the corporation, or (ii) is organized for the purpose of rendering professional services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, and has as its shareholders only individuals who are duly licensed, in this State or in another state, to render the same professional services as the corporation or who are nonlicensed employees of the corporation, provided that nonlicensed employees own not more than one-third of the total issued and outstanding shares of the corporation, or (iii) is described in G.S. 55B-15.~~

(3) Has as its shareholders only individuals who:

a. Qualify to hold shares of a corporation organized under this Chapter;

b. Are licensed to provide professional services as defined in G.S. 55B-2(6) in a state in which the corporation is incorporated or is authorized to transact business, provided that such professional services are the same as the professional service rendered by the corporation; or

c. Are nonlicensed employees of a corporation rendering services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes provided that all such nonlicensed employees own no more than one-third of the total issued and outstanding shares of such corporation in the aggregate."

PART XI. CORRECTION OF DELAYED EFFECTIVE DATE STATUTES FOR LIMITED PARTNERSHIP DOCUMENTS.

Section 40. G.S. 59-201(b) reads as rewritten:

"(b) ~~A~~ Unless a delayed effective date is specified in the certificate of limited partnership, a limited partnership is formed at the ~~time~~ effective time and date of the filing of the certificate of limited partnership in the office of the Secretary of State ~~or at any later time not more than 20 days subsequent to the endorsement of the Secretary of State specified in the certificate of limited partnership if, in either case,~~ if there has been substantial compliance with the requirements of this section."

Section 41. G.S. 59-203 reads as rewritten:

"§ 59-203. Cancellation of certificate.

A certificate of limited partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership or at any other time that there are no limited partners. A certificate of cancellation shall be filed in the office of the Secretary of State and set forth:

(1) The name of the limited partnership;

(2) The date of filing of its certificate of limited partnership;

(3) The reason for filing the certificate of cancellation;

(4) The effective date ~~(which shall be a date certain not more than 20 days from the date of filing)~~ of cancellation if it is not to be effective upon the filing of the certificate; and

(5) Any other information the partners filing the certificate determine."

PART XII. REMOVAL OF "CONFORMING TO LAW" LANGUAGE IN REVISED UNIFORM LIMITED PARTNERSHIP ACT.

Section 42. G.S. 59-206(a)(2) reads as rewritten:

"(2) The original document so signed, together with the conformed copy, shall be delivered to the Secretary of State. ~~Unless~~ If the Secretary finds that it ~~does not conform to law,~~ satisfies the requirements of this Article, the Secretary shall, when the proper fees have been tendered, endorse upon the original the word 'filed' and the hour, day, month and year of the filing thereof and shall file the same in the Secretary's office. The Secretary of State shall thereupon immediately compare the copy with the original and if the Secretary finds that they are identical the Secretary shall make upon the conformed copy the same endorsement which appears on the original and shall attach to the copy a certificate stating that attached thereto is a true copy of the document, designated by an appropriate title, filed in the Secretary's office and showing the date of the filing. The Secretary shall thereupon return the copy so certified to the limited partnership or its representatives. Any documents filed with the Secretary of State pursuant to this Chapter may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Chapter, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of the documents reproduced. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. The authorization to make the corrections shall be confirmed, according to procedures adopted by rule, by the Secretary prior to making the correction."

Section 43. G.S. 59-903(a) reads as rewritten:

"(a) If the Secretary of State finds that an application ~~conforms to law he~~ satisfies the requirements of this Article, the Secretary shall, when all requisite fees have been tendered as in this Article prescribed:

(1) Endorse on the application the word 'filed', and the hour, day, month and year of the filing thereof;

(2) File in ~~his~~ the office the application;

(3) Issue a certificate of authority to transact business in this State to which ~~he~~ the Secretary shall affix the conformed copy of the application; and

(4) Send to the foreign limited partnership or its representative the certificate of authority, together with the conformed copy of the application affixed thereto."

PART XIII. EFFECTIVE DATES.

Section 44. (a) Sections 1 through 6 and Section 19 of this act become effective July 1, 1997. Sections 7 through 18 of this act become effective January 1, 1998, and apply to tax years ending on or after December 31, 1997, in the case of corporations required to file annual reports with the Secretary of Revenue and to fiscal years ending on or after December 31, 1997, in the case of corporations required to file annual reports with the Secretary of State. Sections 30 through 33, 39, 42, 43, and 44 of this act are effective when the act becomes law. The remainder of this act becomes effective October 1, 1997. Section 20 of this act applies to dissenter's rights created pursuant to G.S. 55-13-02 on or after October 1, 1997, and Section 21 of this act applies to proceedings commenced on or after October 1, 1997. Sections 22 through 29 of this act apply to requests for review of documents on or after that date.

(b) Annual reports delivered to either the Secretary of State or the Secretary of Revenue after December 31, 1997, but before January 1999, shall nevertheless be deemed filed with the correct State agency. The Secretary of State shall notify the Secretary of Revenue of reports erroneously filed with the Secretary of State, and the Secretary of Revenue shall notify the Secretary of State of reports erroneously filed with the Secretary of Revenue.

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
P.O. BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 733-6026

MEMORANDUM

TO: House Judiciary II Committee

FROM: General Statutes Commission

DATE: May 2, 1997

RE: **Senate Bill 157 (Corporate Amendments)**

General Comments

Senate Bill 157 amends various statutes relating to business corporations, nonprofit corporations, professional corporations, limited liability companies, and limited partnerships. The bill amends the law governing dissenters' rights procedures and the filing of documents by limited liability companies; allows facsimile signatures and advisory review of documents by the Secretary of State; and clarifies corrections procedures, limited liability company name availability, and the definition of foreign professional corporations. Parts II through XI of this bill were prepared in cooperation with the Office of the Secretary of State.

Specific Comments

Part I. Amendment of Dissenters' Rights Procedures.

This Part amends G.S. 55-13-22(b) to eliminate an ambiguity caused by the term "corporate action" by making it clear that the term refers to shareholder approval, or if no shareholder approval is required, then approval of the board of directors, of the corporate transaction creating dissenters' rights under G.S. 55-13-02. The Part also amends G.S. 55-13-30: (1) to clarify that a dissenters' rights proceeding is a civil action that must be heard by a superior court judge and is local rather than transitory in nature; (2) to specify a period of time within which a corporation must pay a dissenting shareholder after a complaint in a dissenters' rights proceeding is served on the corporation; and (3) to clarify that there is no right to a jury trial in a proceeding by a dissenter in a public corporation that was a public corporation immediately prior to consummation of the corporate action, e.g. merger, creating the right of dissent.

Part II. Advisory Review of Preliminary Drafts of Documents.

This Part amends Chapters 55, 55A, and 57C to provide explicit authority for the Secretary of State to perform an advance review of documents to be submitted for filing at a later date. The Part also authorizes the Secretary of State to charge a fee of $200 for the review.

Part III. Clarification of Articles of Correction Procedures.

This Part clarifies that articles of correction may be used to correct an incorrect statement in a filed document only if the statement was incorrect when the document was filed. The Part also amends Chapter 59 to permit a limited partnership to correct an incorrect statement in a document filed with the Secretary of State.

Part IV. Restatement of Limited Liability Company Articles of Organization.

This Part adds a new section to Chapter 57C to permit limited liability companies to file restated articles of organization. G.S. 57C-1-22(a) presently authorizes the Secretary of State to collect filing fees for restated articles of organization, both with and without amendments, but Chapter 57C otherwise contains no explicit authority for restated articles.

Part V. Cancellation of Articles of Dissolution of Limited Liability Company.

This Part adds a new section to Chapter 57C to permit limited liability companies to cancel articles of dissolution. The Part also makes a conforming amendment to G.S. 57C-1-22(a).

Part VI. Availability of Limited Liability Company Name.

This Part authorizes the Secretary of State to permit the name of a dissolved limited liability company to be used by another company once it is certain that the dissolved company cannot be returned to an active status either by vote of the members to carry on the business or by reinstatement from administrative dissolution.

Part VII. Authorization of Facsimile Signatures for Limited Partnership Documents.

This Part permits limited partnerships to use facsimile signatures on any document authorized to be filed with the Secretary of State. The Part brings the limited partnership statutes in conformity with the statutes governing business corporations, nonprofit corporations, and limited liability companies.

Part VIII. Modification of Definition of Foreign Professional Corporation.

This Part eliminates a conflict between G.S. 55B-15, which excludes from the scope of the Professional Corporation Act grandfathered business corporations (those incorporated and

engaging in professional services prior to June 5, 1969), and G.S. 55B-16, which requires foreign grandfathered corporations applying for certificates of authority to meet the requirements contained in G.S. 55B-16(a).

Part IX. Correction of Delayed Effective Date Statutes for Limited Partnership Documents.

This Part eliminates the 20-day delayed effective date provision in G.S. 59-201(b) for a certificate of limited partnership and in G.S. 59-203(4) for a certificate of cancellation. These provisions conflict with the 90-day delayed effective date provision in G.S. 59-206(b2) for any limited partnership document. The elimination of this conflict conforms the delayed effective date limits for limited partnerships to the delayed effective date limits authorized for business corporations, nonprofit corporations, and limited liability companies.

Part X. Removal of "Conforming to Law" Language in Revised Uniform Limited Partnership Act.

This Part requires the Secretary of State to file a limited partnership document if it satisfies the requirements of the Revised Uniform Limited Partnership Act, G.S. 59-101 et seq., rather than if the document conforms to law. The Part brings the limited partnership statutes in conformity with the statutes governing business corporations, nonprofit corporations, and limited liability companies.

Part XI. Effective Dates.

This Part contains effective date and applicability provisions.

This section differs in two respects from the Model Act. First, it specifies 11:59:59 P.M. (rather than the close of business) as the time of effectiveness of documents that specify a delayed effective date but no time. Second, it makes explicit in subsection (c) the limited effect of the Secretary of State's acceptance of documents for filing. This is probably implicit under the Model Act. *See* North Carolina Comment to G.S. 55-1-25(d), *infra*.

§ 55-1-24. Correcting filed document.

(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (1) contains an incorrect statement or (2) was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected:

(1) By preparing articles of correction that (i) describe the document (including its filing date) or attach a copy of it to the articles, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

(2) By delivering the articles to the Secretary of State for filing.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed. (1989, c. 265, s. 1.)

OFFICIAL COMMENT

Section 1.24 permits making corrections in filed documents without refiling the entire document or submitting formal articles of amendment. This correction procedure has two advantages: (1) filing articles of correction may be less expensive than refiling the document or filing articles of amendment, and (2) articles of correction do not alter the effective date of the underlying document being corrected. Indeed, under section 1.24(c), even the correction relates back to the original effective date of the document except as to persons relying on the original document and adversely affected by the correction. As to these persons, the effective date of articles of correction is the date the articles are filed.

A document may be corrected either because it contains an "incorrect statement" or because it was defectively executed (including defects in optional forms of execution that do not affect the eligibility of the original document for filing).

A provision in a document setting an effective date (section 1.23) may be corrected under this section, but the corrected effective date must comply with section 1.23 measured from the date of the original filing of the document being corrected, i.e. it cannot be before the date of filing of the document or more than 90 days thereafter.

NORTH CAROLINA COMMENTARY

This section has no counterpart in prior law.

NORTH CAROLINA COMMENTARY

This section is substantially the same as section 13.21 of the Model Act with minor clarifying changes.

§ 55-13-22. Dissenters' notice.

(a) If proposed corporate action creating dissenters' rights under G.S. 55-13-02 is authorized at a shareholders' meeting, the corporation shall mail by registered or certified mail, return receipt requested, a written dissenters' notice to all shareholders who satisfied the requirements of G.S. 55-13-21.

(b) The dissenters' notice must be sent no later than 10 days after the corporate action was taken, and must:

(1) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;
(2) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;
(3) Supply a form for demanding payment;
(4) Set a date by which the corporation must receive the payment demand, which date may not be fewer than 30 nor more than 60 days after the date the subsection (a) notice is mailed; and
(5) Be accompanied by a copy of this Article. (1925, c. 77, s. 1; 1943, c. 270; G.S., s. 55-167; 1955, c. 1371, s. 1; 1969, c. 751, s. 39; 1973, c. 469, ss. 36, 37; 1989, c. 265, s. 1.)

OFFICIAL COMMENT

The basic purpose of section 13.22 is to require the corporation to tell all actual or potential dissenters what they must do in order to take advantage of their right of dissent. The requirements of what this notice (called a "dissenters' notice") must contain are spelled out in detail to ensure that this notice serves this basic purpose.

In the case of an action that is submitted to the vote of shareholders, the dissenters' notice must be sent only to those persons who gave notice of their intention to dissent under section 13.21 and who refrained from voting in favor of the proposed actions. In the case of a transaction not involving a vote by shareholders, the dissenters' notice must be sent to all persons who are eligible to dissent and demand payment. In either case the dissenters' notice must be sent within 10 days after the corporate action is taken and must be accompanied by a copy of this chapter.

The notice must contain or be accompanied by a form which a person asserting dissenters' right may use to complete the demand for payment under section 13.23. The form must specify the date by which it must be received by the corporation, which date must be at least 30 days after the effective date of the notice of how to demand payment.

The dissenters' notice must also specify where and when share certificates must be deposited, or, in the case of uncertificated shares, when restrictions on transfer will become effective under section 13.24. The date for deposit of share certificates may not be set at a date earlier than the date for receiving the demand for payment.

Section 13.22(b)(3) requires the corporation to specify the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action. This is the critical date for determining the rights of shareholder-transferees: persons who became shareholders prior to that date are entitled to the full right to dissent and obtain payment for their shares, while persons who became shareholders on or after that date are entitled only to the more lim-

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign corporation:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate. (1957, c. 1179; 1967, c. 823, s. 24; 1969, c. 875, s. 10; 1975, 2nd Sess., c. 981, s. 2; 1983, c. 713, ss. 39-42; 1991, c. 574, s. 2; 1993, c. 398, s. 1.)

NORTH CAROLINA COMMENTARY

This section contains a new fee schedule covering documents required or permitted to be filed under the Act. The fees shown here combine the fees and taxes that were separately covered in former G.S. 55A-77 and 55A-78.

§ 55A-1-23. Effective time and date of document.

(a) Except as provided in subsection (b) of this section and G.S. 55A-1-24(c), a document accepted for filing is effective:

(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or

(2) At a later time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 11:59:59 p.m. on that date. A delayed effective date for a document shall not be later than the 90th day after the date it is filed.

(c) Except as provided in G.S. 55A-2-03(b), the fact that a document has become effective under this section does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document. (1955, c. 1230; 1967, c. 13, s. 2; c. 823, s. 21; 1985 (Reg. Sess., 1986), c. 801, s. 2; 1993, c. 398, s. 1.)

§ 55A-1-24. Correcting filed document.

(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (i) contains an incorrect statement or (ii) was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected:

(1) By preparing articles of correction that (i) describe the document (including its filing date) or have attached to them a copy of the document, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

(2) By delivering the articles to the Secretary of State for filing.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons who by relying on the uncorrected document are adversely affected by the correction. As to those persons, articles of correction are effective when filed. (1993, c. 398, s. 1.)

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This section had no counterpart prior law.

§ 55A-1-25. Filing du

(a) If a document deliver for filing satisfies the requ of State shall file it.

(b) The Secretary of Stat wise endorsing "Filed", tog and official title and the da and the exact or conformed provided in G.S. 55A-5-03 State shall deliver the exa foreign corporation or its

(c) If the Secretary of St tary of State shall return mail postage prepaid, to t representative within five together with a brief, wr reason for refusal.

(d) The Secretary of Sta that satisfy the requirem State's filing or refusing

(1) Except as provide or invalidity of

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Subsection (d) eliminates sumption contained in form 55A-82 that a certificate issue Secretary of State with respect t ment on file in his office co prima facie evidence of the fact stated. Although the filing of ment by the Secretary of State

§ 55A-1-26. Appeal fusal to

(a) If the Secretary of to the Secretary of State document for filing may, refusal to the Superior C menced by filing a petiti State requesting the cou the document. The petit to be filed and the Secret

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, added the subsection (a) and (b) designations; deleted "provided further that" at the end of subsection (a); in subsection (b) added "Notwithstanding subsection (a) of this section", and deleted "and provided further, that a professional corporation may be formed by a licensed psychologist and a physician practicing psychiatry to render psychotherapeutic and related services" at the end of the subsection; added subsection (c); and made punctuation changes.

§ 55B-15. Applicability of Chapter.

This Chapter shall not apply to any corporation which prior to June 5, 1969, was permitted by law to render professional services as herein defined or to the corporate successor of any such corporation by merger or otherwise by operation of law, provided there is no substantial change in the direct or indirect beneficial ownership of the shares of such corporation as the result of such merger or other transaction; for purposes of this section, a change of twenty percent (20%) or less shall not be considered substantial. Any such corporation or successor corporation rendering "professional service" as defined in G.S. 55B-2(6) may be brought within the provisions of this Chapter by the filing of an amendment to its articles of incorporation declaring that its shareholders have elected to bring the corporation within the provisions of this Chapter and to make the same conform to all of the provisions of this Chapter. (1969, c. 718, s. 15; 1991, c. 645, s. 20.)

§ 55B-16. Foreign professional corporations.

(a) A foreign professional corporation may apply for a certificate of authority to transact business in this State pursuant to the provisions of this Chapter and Chapter 55 of the General Statutes provided that:

(1) The corporation obtains a certificate of registration from the appropriate licensing board or boards in this State;

(2) With respect to each professional service practiced through the corporation in this State, at least one director and one officer shall be a licensee of the licensing board which regulates the profession in this State;

(3) Each officer, employee, and agent of the corporation who will provide professional services to persons in this State shall be a licensee of the appropriate licensing board in this State;

(4) The corporation shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the appropriate licensing board or boards in this State;

(5) The corporation's activities in this State shall be limited as provided by G.S. 55B-14; and

(6) The application for certificate of authority, in addition to the requirements of G.S. 55-15-03, shall set forth the personal services to be rendered by the foreign professional corporation and the individual or individuals who will satisfy the requirements of G.S. 55B-16(a)(2) and shall be accompanied by a certification by the appropriate licensing board that each individual is a "licensee" as defined in G.S. 55B-2(2) and by additional certifications as may be required to establish that the corporation is a "foreign professional corporation" as defined in G.S. 55B-16(b).

(b) For purposes of this section, "foreign professional corporation" means a corporation for profit that is incorporated under a law other than the law of this State for the sole and specific purpose of rendering professional services of the type that if rendered in this State would require the obtaining of a license from a licensing board pursuant to the statutory provisions referred to in G.S. 55B-2(6) and that (i) has as its shareholders only individuals who are duly licensed, in this State or some other state, to render the same professional services as the corporation, or (ii) is organized for the purpose of rendering professional services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, and has as its shareholders only individuals who are duly licensed, in this State or in another state, to render the same professional services as the corporation or who are nonlicensed employees of the corporation, provided that nonlicensed employees own not more than one-third of the total issued and outstanding shares of the corporation, or (iii) is described in G.S. 55B-15.

(c) A foreign professional corporation with a valid certificate or authority has the same but no greater rights and has the same but no greater privileges as, and is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic professional corporation of like character, except that the provisions of G.S. 55B-6 and G.S. 55B-7 shall not apply. (1995, c. 351, s. 18.)

Editor's Note. — Session Laws 1995, c. 351, s. 22, made this section effective October 1, 1995.

(2) Five dollars ($5.00) for the certificate. (1993, c. 354, s. 1.)

§ 57C-1-23. Effective time and date of document.

(a) Except as provided in subsection (b) of this section and G.S. 57C-1-24(c), a document accepted for filing is effective:

(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or

(2) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 11:59 p.m. Raleigh, North Carolina, time on that date. A delayed effective date for a document may not be later than the 90th day after the date it is filed.

(c) The fact that a document has become effective under this section does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document. (1993, c. 354, s. 1.)

§ 57C-1-24. Correcting filed document.

(a) A domestic or foreign limited liability company may correct a document filed by the Secretary of State if the document (i) contains an incorrect statement or (ii) was defectively executed.

(b) A document is corrected:

(1) By preparing articles of correction that (i) describe the document (including its filing date) or attach a copy of it to the articles, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

(2) By delivering the articles of correction to the Secretary of State for filing.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed. (1993, c. 354, s. 1.)

§ 57C-1-25. Filing duty of Secretary of State.

(a) If a document delivered to the Office of the Secretary of State for filing satisfies the requirements of this Chapter, the Secretary of State shall file it.

(b) The Secretary of State files a document by stamping or otherwise endorsing "Filed", together with his name and official title and the date and time of filing, on both the original and the document copy. After filing a document, the Secretary of State shall deliver the document copy to the domestic or foreign limited liability company or its representative.

(c) If the Secretary of State refuses to file a document, the Secretary of State shall return it to the domestic or foreign limited liability company or its representative within five days after the docu-

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, rewrote the first sentence in the first paragraph of subsection (c) and added the second sentence in the second paragraph of subsection (c).

Legal Periodicals. — For note, "Corporate Law — Limited Liability Company Act, N.C. Gen. Stat. §§ 57C-1-01 to 57C-10-07 (1993)," see 72 N.C.L. Rev. 1654 (1994).

For comment, "Creating the legal monster: the expansion and effect of legal malpractice liability in North Carolina", see 18 Campbell L. Rev. 121 (1996).

Part 3. Name.

§ 57C-2-30. Name.

(a) The name of a limited liability company:

(1) Must contain the words "limited liability company" or the abbreviation "L.L.C." or "LLC", or the combination "ltd. liability co.", "limited liability co.", or "ltd. liability company";

(2) May not contain language stating or implying that the limited liability company is organized for a purpose other than that permitted by G.S. 57C-2-01 and its articles of organization; and

(3) If the limited liability company is authorized to engage in rendering professional services, must comply with G.S. 57C-2-01(c).

(b) Except as authorized by subsection (c) of this section, the name of a limited liability company must be distinguishable upon the records of the Secretary of State from:

(1) The name of a corporation, nonprofit corporation, limited partnership, or limited liability company organized in this State, or a foreign corporation or nonprofit corporation, foreign limited partnership, or foreign limited liability company authorized to transact business in this State;

(2) A name reserved under G.S. 55-4-02, 55-4-03, 57C-2-31, 57C-2-32, or 59-104; and

(3) The fictitious name adopted by a foreign corporation, foreign limited partnership, or foreign limited liability company authorized to transact business in this State because its real name is unavailable.

(c) A person may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the Secretary of State's records from one or more of the names described in subsection (b) of this section. The Secretary of State shall authorize use of the name applied for if:

(1) The other person who has or uses the name or who has reserved or registered the name consents to the use in writing and submits an undertaking in a form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applicant; or

(2) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State.

(d) The use of assumed names or fictitious names, as provided for in Chapter 66 of the General Statutes, is not affected by this Chapter.

(e) Neither the reservat
nization of a limited liabilit
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the use in this State of a n
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State, or other statutory or
for violation of those right
(f) The name of a limite
57C-6-03 may not be used
the expiration of two years
unless the dissolved limite
name distinguishable upo
from the names of othe
corporations, nonprofit co
nized or transacting busin
c. 351, s. 3; c. 539, s. 33.)

Effect of Amendments. —
Laws 1995, c. 351, s. 3, effective
1, 1995, inserted "or" preceding "
law," and substituted "those rig
"any such rights" at the end of su
(e).

Part 4. Registere

§ 57C-2-41. Change tered a

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(e) Neither the reservation nor registration of a name, the organization of a limited liability company, nor the obtaining by a foreign limited liability company of a certificate of authority shall authorize the use in this State of a name in violation of the rights of any third party under the federal trademark act, the trademark act of this State, or other statutory or common law, or be a defense to an action for violation of those rights.

(f) The name of a limited liability company dissolved under G.S. 57C-6-03 may not be used by another limited liability company until the expiration of two years after the effective date of the dissolution unless the dissolved limited liability company changes its name to a name distinguishable upon the records of the Secretary of State from the names of other limited liability companies, business corporations, nonprofit corporations, or limited partnerships organized or transacting business in this State. (1993, c. 354, s. 1; 1995, c. 351, s. 3; c. 539, s. 33.)

Effect of Amendments. — Session Laws 1995, c. 351, s. 3, effective October 1, 1995, inserted "or" preceding "common law," and substituted "those rights" for "any such rights" at the end of subsection (e).

Session Laws 1995, c. 539 s. 33, effective July 29, 1995, and applicable to names filed, reserved, or registered on or after July 29, 1995, rewrote subsection (f).

Part 4. Registered Office and Registered Agent.

§ 57C-2-41. Change of registered office or registered agent.

(a) A limited liability company may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) The name of the limited liability company;

(2) The street address, and the mailing address if different from the street address, of the limited liability company's current registered office, and the county in which it is located;

(3) If the address of the limited liability company's registered office is to be changed, the street address, and the mailing address if different from the street address, of the new registered office, and the county in which it is located;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent (either on the statement or attached to it) to the appointment; and

(6) That after the change or changes are made, the addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the address of his business office, he may change the address of the registered office of any limited liability company for which he is the registered agent by notifying the limited liability company in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (a) of this section; and recites that the limited liability company has been notified of the change.

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective August 1, 1988, substituted "an office in this State" for "its registered office" in the introductory language of subsection (a).

§ 59-107. Nature of business.

A limited partnership may carry on any business that a partnership without limited partners may carry on. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-108. Business transactions of partner with the partnership.

Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to G.S. 59-804 and other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§§ 59-109 to 59-200: Reserved for future codification purposes.

Part 2. Formation; Certificate of Limited Partnership.

§ 59-201. Certificate of limited partnership.

(a) In order to form a limited partnership, a certificate of limited partnership must be executed and filed in the office of the Secretary of State and set forth:

(1) The name of the limited partnership;

(2) The address, including county and city or town, and street and number, if any, of the registered office and the name of the registered agent at such address for service of process required to be maintained by G.S. 59-105;

(3) The latest date upon which the limited partnership is to dissolve; and

(4) The name and the address, including county and city or town, and street and number, if any, of each general partner.

(5) The address, including county and city or town, and street and number, if any, of the office at which the records referred to in G.S. 59-106 are kept, if such records are not kept at the registered office.

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the Secretary of State or at any later time not more than 20 days subsequent to the endorsement of the Secretary of State specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

(c) Domestic limited partnership filings filed prior to October 1, 1986, with the Office of Register of Deeds pursuant to G.S. 59-2(a)(2) shall evidence the existence of limited partnerships formed prior to October 1, 1986, and shall be public notice of only those matters contained in G.S. 59-201(a) and shall be used for no

other purpose. (1985 (Reg. Se
1987 (Reg. Sess., 1988), c.

Editor's Note. — Section 59-2,
ferred to in this section, was repeale
Session Laws 1985 (Regular Sess
1986), c. 989, s. 2. See now this Art

§ 59-202. Amendment

(a) A certificate of limite
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State. The certificate shall
(1) The name of the lir
(2) The date of filing o
(3) The amendment to

(b) Within 30 days after t
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(2) The withdrawal of
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(c) A general partner who
a certificate of limited partne
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certificate inaccurate in any
tificate.

(d) Repealed by Session La
1986), c. 989, s. 2; 1987, c.

§ 59-203. Cancellation

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(3) The reason for filir
(4) The effective date (
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not to be effective
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§ 59-204. Execution

(a) Each certificate requ
office of the Secretary of S
manner:
(1) An original certi
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other purpose. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 3; 1987 (Reg. Sess., 1988), c. 1031, s. 3.)

Editor's Note. — Section 59-2, referred to in this section, was repealed by Session Laws 1985 (Regular Session, 1986), c. 989, s. 2. See now this Article.

Effect of Amendments. — The 1987 (Reg. Sess., 1988) amendment, effective August 1, 1988, added subdivision (a)(5).

§ 59-202. Amendment to certificate.

(a) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the Secretary of State. The certificate shall set forth:

(1) The name of the limited partnership;

(2) The date of filing of the certificate; and

(3) The amendment to the certificate.

(b) Within 30 days after the happening of any of the following events an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

(1) The admission of a new general partner;

(2) The withdrawal of a general partner; or

(3) The continuation of the business under G.S. 59-801 after an event of withdrawal of a general partner.

(c) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.

(d) Repealed by Session Laws 1987, c. 531, s. 4. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 4.)

§ 59-203. Cancellation of certificate.

A certificate of limited partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership or at any other time that there are no limited partners. A certificate of cancellation shall be filed in the office of the Secretary of State and set forth:

(1) The name of the limited partnership;

(2) The date of filing of its certificate of limited partnership;

(3) The reason for filing the certificate of cancellation;

(4) The effective date (which shall be a date certain not more than 20 days from the date of filing) of cancellation if it is not to be effective upon the filing of the certificate; and

(5) Any other information the partners filing the certificate determine. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-204. Execution of certificates.

(a) Each certificate required by this Article to be filed in the office of the Secretary of State shall be executed in the following manner:

(1) An original certificate of limited partnership must be signed by all general partners;

§ 59-103. Name.

(a) The name of the limited partnership shall contain without abbreviation the words "limited partnership";

(b) The limited partnership name shall not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner, or (ii) the business of the limited partnership has been carried on under that name before the admission of that limited partner;

(c) The limited partnership name shall not contain any word or phrase which is likely to mislead the public or which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its certificate of limited partnership;

(d) The limited partnership name shall be distinguishable upon the records of the Secretary of State from:

(1) The name of a corporation, nonprofit corporation, limited partnership, or limited liability company organized in this State, or a foreign corporation or nonprofit corporation, foreign limited partnership, or foreign limited liability company authorized to transact business in this State;

(2) A name reserved under G.S. 55-4-02, 55-4-03, 55A-4-02, 55A-4-03, 57C-2-31, 57C-2-32, 59-104, or 59-904; and

(3) The fictitious name adopted by a foreign corporation or nonprofit corporation, foreign limited partnership, or foreign limited liability company authorized to transact business in this State because its real name is unavailable. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 1; 1995, c. 539, s. 34.)

Effect of Amendments. — The 1995 amendment, applicable to names filed, reserved, or registered on or after July 29, 1995, rewrote subsection (d).

Part 2. Formation; Certificate of Limited Partnership.

§ 59-204. Execution of certificates.

(a) Each certificate required by this Article to be filed in the office of the Secretary of State shall be executed in the following manner:

(1) An original certificate of limited partnership must be signed by all general partners;

(2) A certificate of amendment must be signed by at least one general partner and by each other partner designated in the certificate as a new general partner; and

(3) A certificate of cancellation must be signed by all general partners.

(b) Any person may sign a certificate by an attorney-in-fact.

(c) The execution of a certificate or amendment by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1991, c. 153, s. 1.)

§ 59-206. Filing requirements.

(a) Whenever the provisions of this Article require any document relating to a limited partnership to be executed and filed in accordance with this Article, unless otherwise specifically stated in this Article:

(1) There shall be an original executed document and also one conformed copy.

(2) The original document so signed, together with the conformed copy, shall be delivered to the Secretary of State. Unless the Secretary finds that it does not conform to law, the Secretary shall, when the proper fees have been tendered, endorse upon the original the word "filed" and the hour, day, month and year of the filing thereof and shall file the same in the Secretary's office. The Secretary of State shall thereupon immediately compare the copy with the original and if the Secretary finds that they are identical the Secretary shall make upon the conformed copy the same endorsement which appears on the original and shall attach to the copy a certificate stating that attached thereto is a true copy of the document, designated by an appropriate title, filed in the Secretary's office and showing the date of the filing. The Secretary shall thereupon return the copy so certified to the limited partnership or its representatives. Any documents filed with the Secretary of State pursuant to this Chapter may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Chapter, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of the documents reproduced. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. The authorization to make the corrections shall be confirmed, according to procedures adopted by rule, by the Secretary prior to making the correction.

(3) Repealed by Session Laws 1991, c. 153, s. 2.

(3a) Whenever the name of any domestic or foreign limited partnership holding title to real property in this State is changed upon amendment to the certificate of limited partnership, a certificate reciting the change or transfer shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(4) The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this section. In the case of a foreign limited partnership, a similar certificate by any competent authority of the jurisdiction under which the limited partnership is organized may be registered in accordance with this section.

(5) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the limited partnership holding title to the real property before the amendment shall appear in the "Grantor" index, and the amended name of the limited partnership holding title to the real property by virtue of the amendment shall appear in the "Grantee" index.

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1986), c. 989, s. 2; 19
s. 35.)

Effect of Amendments amendment, effective Ju added the last four sentenc

§ 59-206 vid me

A photographic, mi copy of a document fi act, when certified b for all purposes and original. (1995, c. 53

Editor's Note. — Sess c. 539, s. 38(a), made thi tive October 1, 1995.

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§ 59-303. Liabi

Cited in Post & Front v. Roanoke Constr. Co., 449 S.E.2d 765 (1994).

(b) Repealed by Session Laws 1991, c. 153, s. 2.

(b1) Except as provided in subsection (b2), a document accepted for filing is effective:

(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or

(2) At the time specified in the document as its effective time on the date it is filed.

(b2) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but not time is specified, the document is effective at 11:59:59 p.m. on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

(b3) The fact that a document has become effective under this section does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document.

(c) It shall be the duty of the Secretary of State, whenever so requested and upon tender of the proper fees, to certify as aforesaid any true copy of any document on file in the office, or if requested, to make or cause to be made typewritten or photostatic copies of the documents and to certify the same as aforesaid. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 5; 1991, c. 153, s. 2; 1995, c. 539, s. 35.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, added the last four sentences in subdivision (a)(2), made the section gender neutral, and made stylistic changes.

§ 59-206.1. Evidentiary effect of copy of filed document.

A photographic, microfilm, optical disk media, or other reproduced copy of a document filed pursuant to this Chapter or any predecessor act, when certified by the Secretary, shall be considered an original for all purposes and is admissible in evidence in like manner as an original. (1995, c. 539, s. 36.)

Editor's Note. — Session Laws 1995, c. 539, s. 38(a), made this section effective October 1, 1995.

Part 3. Limited Partners.

§ 59-303. Liability to third parties.

CASE NOTES

Cited in Post & Front Properties, Ltd. v. Roanoke Constr. Co., 117 N.C. App. 93, 449 S.E.2d 765 (1994).

§ 59-903. Issuance of registration.

(a) If the Secretary of State finds that an application conforms to law he shall, when all requisite fees have been tendered as in this Article prescribed:

(1) Endorse on the application the word "filed", and the hour, day, month and year of the filing thereof;
(2) File in his office the application;
(3) Issue a certificate of authority to transact business in this State to which he shall affix the conformed copy of the application; and
(4) Send to the foreign limited partnership or its representative the certificate of authority, together with the conformed copy of the application affixed thereto. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 8.)

§ 59-904. Name.

A foreign limited partnership may register with the Secretary of State under any name (whether or not it is the name under which it is registered in its state of organization) that includes without abbreviation the words "limited partnership" and that could be registered by a domestic limited partnership. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-905. Changes and amendments.

If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the Secretary of State an original and one conformed copy of a certificate, signed by a general partner, correcting such statement. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-906. Cancellation of registration.

A foreign limited partnership may cancel its registration by filing with the Secretary of State a certificate of cancellation signed by a general partner. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transactions of business in this State. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

§ 59-907. Transaction of business without registration.

(a) No foreign limited partnership transacting business in this State without permission obtained through a certificate of authority under this Article shall be permitted to maintain any action or proceeding in any court of this State unless such foreign limited partnership shall have obtained a certificate of authority prior to trial.

(b) The failure of a foreign
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§§ 59-909 to 59-100

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Part 1

§ 59-1001. Right o

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 800

Short Title: Judicial Stds. Exec. Secretary. (Public)

Sponsors: Senator Cooper.

Referred to: Judiciary.

April 10, 1997

A BILL TO BE ENTITLED

AN ACT TO TRANSFER THE AUTHORITY TO EMPLOY AN EXECUTIVE SECRETARY FOR THE JUDICIAL STANDARDS COMMISSION FROM THE COMMISSION AS A WHOLE TO THE COMMISSION CHAIR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-375(a) reads as rewritten:

"(a) The Judicial Standards Commission shall consist of: one Court of Appeals judge, one superior court judge, and one district court judge, each appointed by the Chief Justice of the Supreme Court; two members of the State Bar who have actively practiced in the courts of the State for at least 10 years, elected by the State Bar Council; and two citizens who are not judges, active or retired, nor members of the State Bar, appointed by the Governor. The Court of Appeals judge shall act as ~~chairman~~ chair of the Commission."

Section 2. G.S. 7A-377(b) reads as rewritten:

"(b) The chair of the Commission is authorized to employ an executive secretary to assist ~~it~~ the Commission in carrying out its duties. For specific cases, the Commission may also employ special counsel or call upon the Attorney General to furnish counsel. For specific cases, the Commission may also employ an investigator or call upon the Director of the State Bureau of Investigation to furnish an investigator. While performing duties for the Commission such executive secretary, special counsel or investigator shall have authority throughout the State to serve subpoenas or other process issued by the Commission in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice."

Section 3. This act becomes effective October 1, 1997.

North Carolina General Assembly
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May 2, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis. Committee Counsel

RE: Senate Bill 800—Judicial Standards Exec. Secretary (Cooper)

Senate Bill 800 amends Article 30 of Chapter 7A of the General Statutes which governs the Judicial Standards Commission. The Judicial Standards Commission makes recommendations to the Supreme Court for the censure or removal of judges. The Commission consists of one member of the Court of Appeals, one superior court judge, and one district court judge, each appointed by the Chief Justice of the Supreme Court. Also, the State Bar Council appoints two members of the State Bar to the Commission and the Governor appoints two citizen members to the Commission.

Under current law, the Commission is authorized to employ an executive secretary to assist the Commission in carrying out its duties. The bill gives the authority to employ the executive secretary to the chair of the Commission, rather than the Commission as a whole. The Commission is chaired by the member from the Court of Appeals.

Senate Bill 800 becomes effective October 1, 1997.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

10B, 10C, 10D; District 22 and District 28, and such other districts or sets of districts as may be designated by the Administrative Office of the Courts. (1979, c. 1072, s. 10; 1987 (Reg. Sess., 1988), c. 1037, s. 27.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§ 7A-356. Duties.

The duties of each trial court administrator shall be to assist in managing civil dockets, to improve jury utilization and to perform such duties as may be assigned by the senior resident superior court judge of his district or set of districts as defined in G.S. 7A-41.1(a) or by other judges designated by that senior resident superior court judge. (1979, c. 1072, s. 10; 1987 (Reg. Sess., 1988), c. 1037, s. 28.)

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

§§ 7A-357 through 7A-374: Reserved for future codification purposes.

ARTICLE 30.

Judicial Standards Commission.

§ 7A-375. Judicial Standards Commission.

(a) The Judicial Standards Commission shall consist of: one Court of Appeals judge, one superior court judge, and one district court judge, each appointed by the Chief Justice of the Supreme Court; two members of the State Bar who have actively practiced in the courts of the State for at least 10 years, elected by the State Bar Council; and two citizens who are not judges, active or retired, nor members of the State Bar, appointed by the Governor. The Court of Appeals judge shall act as chairman of the Commission.

(b) Terms of Commission members shall be for six years, except that, to achieve overlapping of terms, one of the judges, one of the practicing members of the State Bar, and one of the citizens shall be appointed initially for a term of only three years. No member who has served a full six-year term is eligible for reappointment. If a member ceases to have the qualifications required for his appointment, he ceases to be a member. Vacancies are filled in the same manner as the original appointment, for the remainder of the term. Members who are not judges are entitled to per diem and all members are entitled to reimbursement for travel and subsistence expenses at the rate applicable to members of State boards and commissions generally, for each day engaged in official business.

(c) If a member of the Commission who is a judge becomes disabled, or becomes a respondent before the Commission, the Chief Justice shall appoint an alternate member to serve during the period of disability or disqualification. The alternate member shall

be from the same division of the General Court of Justice as the judge whose place he takes. If a member of the Commission who is not a judge becomes disabled, the Governor, if he appointed the disabled member, shall appoint, or the State Bar Council, if it elected the disabled member, shall elect, an alternate member to serve during the period of disability. In a particular case, if a member disqualifies himself, or is successfully challenged for cause, his seat for that case shall be filled by an alternate member selected as provided in this subsection.

(d) A member may serve after expiration of his term only to participate until the conclusion of a formal proceeding begun before expiration of his term. Such participation shall not prevent his successor from taking office, but the successor may not participate in the proceeding for which his predecessor's term was extended. This subsection shall apply also to any judicial member whose membership on the Commission is automatically terminated by retirement or resignation from judicial office, or expiration of the term of judicial office. (1971, c. 590, s. 1; 1973, c. 50; 1975, c. 956, s. 13.)

Editor's Note. — Former Article 30, Transitional Matters, comprising §§ 7A-400 and 7A-401, was enacted by Session Laws 1965, c. 310, s. 1, and repealed by Session Laws 1971, c. 377, s. 32, effective Oct. 1, 1971. Sections numbered 7A-400 and 7A-401 were enacted as part of new Article 31 by Session Laws 1971, c. 377, s. 1.1, which article was repealed by Session Laws 1983, c. 774, s. 1.

Session Laws 1971, c. 590, which enacted this Article, was made effective upon the condition that the amendment to N.C. Const., Art. IV, § 17, proposed by Session Laws 1971, c. 560 was approved by the voters. The amendment was approved at the general election held Nov. 2, 1972.

Legal Periodicals. — For note on the Judicial Standards Commission, see 54 N.C.L. Rev. 1074 (1976).

For survey of 1976 case law dealing with administrative law, see 55 N.C.L. Rev. 898 (1977).

For survey of 1977 law on professional responsibility and the administration of justice, see 56 N.C.L. Rev. 871 (1978).

For note discussing the power of the North Carolina Supreme Court to remove state judges in the context of In re Hardy, 294 N.C. 90, 240 S.E.2d 367 (1978), see 14 Wake Forest L. Rev. 1187 (1978).

For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

For article, "The Discipline and Removal of Judges in North Carolina," see 4 Campbell L. Rev. 1 (1981).

For survey of 1981 administrative law, see 60 N.C.L. Rev. 1165 (1982).

CASE NOTES

This Article is not unconstitutional because enacted in advance of the ratification of N.C. Const., Art. IV, § 17, since the General Assembly has power to enact a statute not authorized by the present Constitution where the statute is passed in anticipation of an amendment authorizing it, or provides that it shall take effect upon the adoption of such an amendment. In re Nowell, 293 N.C. 235, 237 S.E.2d 246 (1977).

Article Is Not Unconstitutional Delegation of Authority. — In view of the constitutional mandate in N.C. Const., Art. IV, § 17(2) that the General Assembly shall prescribe a procedure for the censure and removal of judges in addition to impeachment and address as provided in N.C. Const., Art. IV, § 17(1), respondent's contention that the General Assembly in enacting this Article abrogated its legislative duties by unconstitutionally delegating them to the Judicial Standards Commission, a creature of the General Assembly, was without merit. In re Nowell, 293 N.C. 235, 237 S.E.2d 246 (1977).

The Judicial Standards Commission Act, this Article, is constitutional and, under this Article, the Supreme Court is vested with jurisdiction to act in a case involving the removal from office of a judge. In re Martin, 295 N.C. 291, 245 S.E.2d 766 (1978).

No Violation of Doctrine of Separation of Powers. — By accepting and

among other things, the nature and type of conduct, the frequency of occurrences, the impact which knowledge of the conduct would likely have on the prevailing attitudes of the community, and whether the judge acted knowingly or with a reckless disregard for the high standards of the judicial office. In re Martin, 302 N.C. 299, 275 S.E.2d 412 (1981).

The recommendations of the Commission are not binding upon the Supreme Court, which will consider the evidence on both sides and exercise its independent judgment as to whether it should censure, remove or decline to do either. In re Hardy, 294 N.C. 90, 240 S.E.2d 367 (1978); In re Martin, 295 N.C. 291, 245 S.E.2d 766 (1978); In re Kivett, 309 N.C. 635, 309 S.E.2d 442 (1983).

Each case arising from the Commission is to be decided upon its own facts. In re Kivett, 309 N.C. 635, 309 S.E.2d 442 (1983).

§ 7A-377. Procedures; employment of executive secretary, special counsel or investigator.

(a) Any citizen of the State may file a written complaint with the Commission concerning the qualifications or conduct of any justice or judge of the General Court of Justice, and thereupon the Commission shall make such investigation as it deems necessary. The Commission may also make an investigation on its own motion. The Commission is authorized to issue process to compel the attendance of witnesses and the production of evidence, to administer oaths, to punish for contempt, and to prescribe its own rules of procedure. No justice or judge shall be recommended for censure or removal unless he has been given a hearing affording due process of law. Unless otherwise waived by the justice or judge involved, all papers filed with and proceedings before the Commission, including any preliminary investigation which the Commission may make, are confidential, except as provided herein. After the preliminary investigation is completed, and if the Commission concludes that formal proceedings should be instituted, the notice and complaint filed by the Commission, along with the answer and all other pleadings, are not confidential. Formal hearings ordered by the Commission are not confidential, and recommendations of the Commission to the Supreme Court, along with the record filed in support of such recommendations are not confidential. Testimony and other evidence presented to the Commission is privileged in any action for defamation. At least five members of the Commission must concur in any recommendation to censure or remove any justice or judge. A respondent who is recommended for censure or removal is entitled to a copy of the proposed record to be filed with the Supreme Court, and if he has objections to it, to have the record settled by the Commission. He is also entitled to present a brief and to argue his case, in person and through counsel, to the Supreme Court. A majority of the members of the Supreme Court voting must concur in any order of censure or removal. The Supreme Court may approve the recommendation, remand for further proceedings, or reject the recommendation. A justice of the Supreme Court or a member of the Commission who is a judge is disqualified from acting in any case in which he is a respondent.

(b) The Commission is authorized to employ an executive secretary to assist it in carrying out its duties. For specific cases, the Commission may also employ special counsel or call upon the Attorney General to furnish counsel. For specific cases, the Commission may also employ an investigator or call upon the Director of

the State Bureau of Investigation to furnish an investigator. While performing duties for the Commission such executive secretary, special counsel or investigator shall have authority throughout the State to serve subpoenas or other process issued by the Commission in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice. (1971, c. 590, s. 1; 1973, c. 808; 1989 (Reg. Sess., 1990), c. 995, s. 2.)

Editor's Note. — Session Laws 1989 (Reg. Sess., 1990) amended this section effective October 1, 1990, except that prior law applied to papers filed with the Commission prior to October 1, 1990, and proceedings before the Commission prior to October 1, 1990.

Legal Periodicals. — For note on the Judicial Standards Commission, see 54 N.C.L. Rev. 1074 (1976).

For survey of 1977 law on professional responsibility and the administration of justice, see 56 N.C.L. Rev. 871 (1978).

For note discussing the power of the North Carolina Supreme Court to remove state judges in the context of In re Hardy, 294 N.C. 90, 240 S.E.2d 367 (1978), see 14 Wake Forest L. Rev. 1187 (1978).

For article, "The Discipline and Removal of Judges in North Carolina," see 4 Campbell L. Rev. 1 (1981).

CASE NOTES

Commission's procedures are required to meet constitutional due process standards, since a judge's interest in continuing in public office is an individual interest of sufficient importance to warrant constitutional protection against deprivation. In re Nowell, 293 N.C. 235, 237 S.E.2d 246 (1977).

Because of the severe impact which adverse findings by the Judicial Standards Commission and censure or removal by the Supreme Court may reasonably be expected to have upon the individual, fundamental fairness entitles the judge to a hearing which meets the basic requirements of due process. In re Nowell, 293 N.C. 235, 237 S.E.2d 246 (1977).

Due Process Not Violated by Commission's Functions. — The combination of investigative and judicial functions in the Judicial Standards Commission does not violate a respondent's due process rights under either the federal or North Carolina Constitutions, since it is an administrative agency created as an arm of the court, and any alleged partiality of the Commission is cured by the final scrutiny of the Supreme Court. In re Nowell, 293 N.C. 235, 237 S.E.2d 246 (1977).

Section 7A-376 in Pari Materia. — The provisions of this section and § 7A-376 are parts of the same enactment, relate to the same class of persons, and are aimed at suppression of the same evil. The statutes are therefore in pari materia and must be construed accordingly. In re Hardy, 294 N.C. 90, 240 S.E.2d 367 (1978).

A proceeding begun before the Judicial Standards Commission is neither a civil nor a criminal action. Such a proceeding is merely an inquiry into the conduct of one exercising judicial power to determine whether he is unfit to hold a judgeship. Its aim is not to punish the individual but to maintain the honor and dignity of the judiciary and the proper administration of justice. In re Nowell, 293 N.C. 235, 237 S.E.2d 246 (1977).

The function of the Commission is to conduct hearings upon complaints filed against judges and justices, to find facts and make recommendations so as to bring before the Supreme Court the questions of whether a judge or justice should be censured or removed in order to maintain proper administration of justice, public confidence in the judicial system and the honor and integrity of judges. In re Martin, 295 N.C. 291, 245 S.E.2d 766 (1978).

Article Does Not Vest Absolute Discretion in Commission. — There is no merit in the contention that this Article illegally vests unguided and absolute discretion in the Judicial Standards Commission to choose which complaints to investigate and what evidence it will accept. In re Nowell, 293 N.C. 235, 237 S.E.2d 246 (1977).

The quantum of proof required in proceedings before the Commission of this State is proof by clear and convincing evidence — a burden greater than that of proof of a preponderance of the evidence and less than that of proof

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
S.B. 800 A BILL TO BE ENTITLED AN ACT TO TRANSFER THE AUTHORITY TO EMPLOY AN EXECUTIVE SECRETARY FOR THE JUDICIAL STANDARDS COMMISSION FROM THE COMMISSION AS A WHOLE TO THE COMMISSION CHAIR.

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. (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

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

May 6, 1997 1:00 P.M. — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Leaston	DOA P&C
Esther T. Leigh	DSS - DHR
Charlene Daughtry	DOS
David [illegible]	Sec. of State
Floyd M. Lewis	General Statutes Commission
[illegible]	do HO
Ron Aycock	Ca. Com Assoc
Andy Romanet	N.C.L.M.
Gerald K. Robbins	Dept of Justice
Alan Miles	Bailey & Dixon LLP
[illegible]	Ct of Appeals
[illegible]	Speaker's Off.

MINUTES
HOUSE JUDICIARY II COMMITTEE

May 8, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on May 8, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Bowie, Cansler, Creech, Culpepper, Decker, Gardner, Hackney, Hensley, McMahan, Nesbitt, Redwine, Russell, Saunders, Shubert, Sutton, Weatherly and Wilkins. A list of visitors is attached.

The following bill was discussed:

SB-162 ADOPTION TECHNICAL AMENDMENTS

Senator Hartsell was recognized to present a proposed committee substitute for SB-162. Representative Decker moved the proposed committee substitute be adopted for purpose of discussion; motion passed. A copy of the bill, bill explanation prepared by the General Statutes Commission, and the proposed committee substitute are attached.

Mr. Jerry Robbins, Attorney General's Office, Child Support Enforcement Agency, Ms. Esther High, Division of Social Services, Human Resources Department, Division of Adoption, and Ms. Bly Hall, General Statutes Commission, answered questions of committee members.

No action was taken on SB-162.

Representative Neely recognized Ms. Kadri Ottis, a member of the Estonian Parliament, who is in the United States to study the political system, to speak to the committee and answer questions of the committee members. Ms. Ottis is one of only eleven women in the 101 member Estonian Parliament.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 162*
Judiciary Committee Substitute Adopted 4/22/97

Short Title: Adoption Law Amendments. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND SIMILAR MINOR CHANGES TO THE ADOPTION LAWS AS FOUND IN CHAPTER 48 OF THE GENERAL STATUTES INVOLVING CERTIFICATION OF DOCUMENTS, NOTICE, PROCEDURES FOR REPORTS TO THE COURT, ACCEPTANCE OF RELINQUISHMENTS BY AGENCIES, INDEXING, CAPTIONS ON ADOPTION PETITIONS, AND STANDBY GUARDIANS; TO STANDARDIZE PROCEDURES FOR REQUESTING NEW BIRTH CERTIFICATES IN ALL ADOPTIONS; AND TO AMEND PROVISIONS FOR OBTAINING CERTIFICATION OF IDENTIFICATION FOR INDIVIDUALS OF FOREIGN BIRTH AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION; AND TO ALLOW FOR PREBIRTH RIGHT-TO-CONSENT DETERMINATION, CLARIFY WHEN COUNTY DEPARTMENTS OF SOCIAL SERVICES MUST DO PREPLACEMENT ASSESSMENTS, TO ADD CHILDREN TO THE LIST OF PERSONS WHO CAN GET COPIES OF BIRTH CERTIFICATES OF ADOPTEES, AND TO EXTEND THE EFFECTIVE PERIOD OF PREPLACEMENT ASSESSMENTS TO EIGHTEEN MONTHS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 48-2-305 reads as rewritten:

"**§ 48-2-305. Petition for adoption; additional documents.**

At the time the petition is filed, the petitioner shall file or cause to be filed the following documents:

(1) Any required affidavit of parentage executed pursuant to G.S. 48-3-206;
(2) Any required consent or relinquishment that has been executed;
(3) A certified copy of any court order terminating the rights and duties of a parent or a guardian of the adoptee;
(4) A certified copy of any court order or pleading in a pending proceeding concerning custody of or visitation with the adoptee;
(5) A copy of any required preplacement assessment certified by the agency that prepared it or an affidavit from the petitioner stating why the assessment is not available;
(6) A ~~certified~~ copy of any document containing the information required under G.S. 48-3-205 concerning the health, social, educational, and genetic history of the adoptee and the adoptee's original family which the petitioner received before the placement or at any later time, certified by the person who prepared it, or if this document is not available, an affidavit stating the reason why it is not available;
(7) Any signed copy of the form required by the Interstate Compact on the Placement of Children, G.S. 110-57.1, et seq., authorizing a minor to come into this State;
(8) A writing that states the name of any individual whose consent is or may be required, but who has not executed a consent or a relinquishment or whose parental rights have not been legally terminated, and any fact or circumstance that may excuse the lack of consent or relinquishment; and
(9) In an adoption pursuant to Article 4 of this Chapter, a copy of any agreement to release past-due child support payments.

The petitioner may also file any other document necessary or helpful to the court's determination."

Section 2. G.S. 48-2-401(d) reads as rewritten:

"(d) In the adoption of an adult, the petitioner shall also serve notice of the filing on any adult children of the prospective adoptive parent and any parent, spouse, or adult child of the adoptee who are listed in the petition to adopt."

Section 3. G.S. 48-2-403 reads as rewritten:

"**§ 48-2-403. Notice of proceedings by clerk.**

No later than five days after a petition is filed, the clerk of the court shall ~~give notice of the adoption proceeding by certified mail, return receipt requested,~~ mail or otherwise deliver to any agency that has undertaken but not yet completed a preplacement assessment and any agency ordered to make a report to the court pursuant to Part 5 of this Article."

Section 4. G.S. 48-2-502(b) reads as rewritten:

"(b) The report must be in writing and contain:
(1) An account of the petitioner's marital or family status, physical and mental health, home environment, property, income, and financial

obligations; if there has been a preplacement assessment, the account may be limited to any changes since the filing of the preplacement assessment;

(2) All reasonably available nonidentifying information concerning the physical, mental, and emotional condition of the adoptee required by G.S. 48-3-205 which is not already included in the document prepared under that section;

(3) Copies of any court order, judgment, decree, or pending legal proceeding affecting the adoptee, the petitioner, or any child of the petitioner relevant to the welfare of the adoptee;

(4) A list of the expenses, fees, or other charges incurred, paid, or to be paid in connection with the adoption that can reasonably be ascertained by the agency;

(5) Any fact or circumstance known to the agency that raises a specific concern about whether the proposed adoption is contrary to the best interest of the adoptee because it poses a significant risk of harm to the well-being of the adoptee;

(6) A finding by the agency concerning the suitability of the petitioner and the petitioner's home for the adoptee;

(7) A recommendation concerning the granting of the petition; and

(8) Such other information as may be required by rules adopted pursuant to subsection (c) of this section.

In an agency adoption, the report shall be written in such a way as to exclude all information that could reasonably be expected to lead directly to the identity of the adoptee at birth or any former parent or family member of the adoptee, and any copies of documents included pursuant to subdivision (3) of this subsection shall be redacted to exclude this information."

Section 5. (a) G.S. 48-2-503(a) reads as rewritten:

"(a) The agency shall complete a written report and file it with the court within 60 days after ~~receipt~~ the mailing or delivery of the order under G.S. 48-2-501 unless the court extends the time for filing. The agency shall have three additional days to complete and file the report if the order was mailed."

(b) G.S. 48-2-503(b) reads as rewritten:

"(b) If the agency identifies a specific concern about the suitability of the petitioner or the petitioner's home for the adoptee, the agency must file an interim report immediately, which must contain an account of the specific concern. The agency shall indicate in the final report whether its concerns have been satisfied and in what manner."

(c) G.S. 48-2-503 is amended by adding a new subsection to read:

"(b1) When an agency identifies a specific concern in a final report and the court extends the time for a final hearing or disposition to allow resolution of these concerns, the agency shall file a supplemental report indicating whether its concerns have been satisfied and in what manner."

(d) Subsection (a) of this section applies to reports to the court prepared in response to a notice under G.S. 48-2-403 mailed or delivered after the effective date of this act.

Section 6. (a) G.S. 48-2-604 reads as rewritten:

"**§ 48-2-604. Denying petition to adopt a minor.**

(a) If at any time between the filing of a petition to adopt a minor and the issuance of the final order completing the adoption it appears to the court that the minor should not be adopted by the petitioners or the petition should be dismissed for some other reason, the court may dismiss the proceeding.

(b) The court, before entering an order to dismiss the proceeding, shall give at least five days' notice of the motion to dismiss to the parties, to the agency that made the report to the court, and to the Department of Human Resources. The parties and agency entitled to notice under this subsection, and the Department, shall be entitled to a hearing on the issue of dismissing the proceeding.

(c) If the court denies ~~a petition to adopt a minor,~~ the petition, the custody of the minor shall revert to any agency or person having custody immediately before the filing of the petition. If the placement of the ~~child~~ minor was a direct placement under Article 3 of this Chapter, the court shall notify the director of social services of the county in which the petition was filed of the dismissal, and the director of social services shall be responsible for taking appropriate action for the protection of the ~~child.~~ minor."

(b) This section becomes effective October 1, 1997.

Section 7. (a) G.S. 48-3-702 reads as rewritten:

"**§ 48-3-702. Procedures for relinquishment.**

(a) A relinquishment executed by a parent or guardian must conform substantially to the requirements in this Part and must be signed and acknowledged under oath before an individual authorized to administer oaths or take acknowledgments.

(b) The provisions of G.S. 48-3-605(b), (c), (e), and (f), also apply to a relinquishment executed under this ~~Part, except that an individual before whom a relinquishment is signed and acknowledged shall also certify that an employee of the agency to which the minor is being relinquished signed a statement indicating the agency's willingness to accept the relinquishment.~~ Part.

(c) An agency that accepts a relinquishment shall furnish each parent or guardian who signs the relinquishment a letter or other writing indicating the agency's willingness to accept that person's relinquishment."

(b) This section applies to relinquishments executed on or after the effective date of this act.

Section 8. (a) G.S. 48-3-608(a) reads as rewritten:

"(a) A consent to the adoption of an infant who is in utero or is three months old or less at the time the consent is given may be revoked within 21 days following the day on which it is executed, inclusive of weekends and holidays. A consent to the adoption of any other minor may be revoked within seven days following the day on which it is executed, inclusive of weekends and holidays. If the final day of the revocation period falls on a weekend or North Carolina or federal holiday, then the

revocation period extends to the next business day. The individual who gave the consent may revoke by giving written notice to the person specified in the consent. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the person to whom consent was given at the address specified in the consent. If notice is given by overnight delivery service, notice is deemed complete on the date it is deposited with the service as shown by the receipt from the service, with delivery charges paid by the sender, addressed to the person to whom consent was given at the address specified in the consent."

(b) This section applies to notices given on or after the effective date of this act.

Section 9. (a) G.S. 48-9-102(a) reads as rewritten:

"(a) All records created or filed in connection with an adoption, except the decree of ~~adoption,~~ adoption and the entry in the special proceedings index in the office of the clerk of court, and on file with or in the possession of the court, an agency, the State, a county, an attorney, or other provider of professional services, are confidential and may not be disclosed or used except as provided in this Chapter."

(b) G.S. 48-9-102(f) reads as rewritten:

"(f) The Division shall transmit a report of ~~the~~ each adoption ~~of a minor~~ and any name change to the State Registrar if the ~~minor~~ adoptee was born in this ~~State, or~~ State. In the case of an adoptee who was not born in this State, the Division shall transmit the report and any name change to the appropriate official responsible for issuing birth certificates or their ~~equivalent if the minor was not born in this State.~~ equivalent."

(c) G.S. 48-9-102(g) reads as rewritten:

"(g) ~~In the adoption of an adult born in this State in which the name of the adoptee is changed, the clerk of superior court shall, within 10 days after the decree of adoption is entered, send the State Registrar a copy of the final order, any separate order of name change, and a report in a form acceptable to the State Registrar containing sufficient information for a new birth certificate. In the adoption of an adult who was not born in this State, the clerk shall transmit a copy of the final order and any other required information to the adoptee.~~ In any adoption, the State Registrar may, in addition to receiving the report from the Division, request a copy of the final order and any separate order of name change directly from the clerk of court."

(d) G.S. 48-2-303 reads as rewritten:

"**§ 48-2-303. Caption of petition for adoption.**

The caption of the petition shall be substantially as follows:

STATE OF NORTH CAROLINA

IN THE DISTRICT COURT

.....COUNTY

BEFORE THE CLERK

.....

*(Full name of petitioning father)
and
.....PETITION FOR ADOPTION
*(Full name of petitioning mother)
and
FOR THE ADOPTION OF
.....
*(Full name ~~of adoptee as used in proceeding).~~ by which the adoptee is to be known if the adoption is granted)."

(e) Subsection (a) of this section is effective on and after July 1, 1996. The remainder of this section becomes effective October 1, 1997. Subsections (b) and (c) apply to final orders entered on or after the effective date of this act.

Section 10. (a) G.S. 48-2-601(a) reads as rewritten:

"(a) If it appears to the court that ~~the petition~~ a petition to adopt a minor is not contested, the court may dispose of the petition without a formal hearing."

(b) This section applies to petitions filed on or after the effective date.

Section 11. (a) G.S. 48-3-603(a) reads as rewritten:

"(a) Consent to an adoption of a minor is not required of a person or entity whose consent is not required under G.S. 48-3-601, or:

(1) An individual whose parental rights and duties have been terminated under Article 24B of Chapter 7A of the General Statutes or by a court of competent jurisdiction in another state;

(2) A man described in G.S. 48-3-601(2), other than an adoptive father, if (i) the man has been judicially determined not to be the father of the minor to be adopted, or (ii) another man has been judicially determined to be the father of the minor to be adopted;

~~(3) A parent for whose minor child a guardian has been appointed;~~

(4) An individual who has relinquished parental rights or guardianship powers, including the right to consent to adoption, to an agency pursuant to Part 7 of this Article;

(5) A man who is not married to the minor's birth mother and who, after the conception of the minor, has executed a notarized statement denying paternity or disclaiming any interest in the minor;

(6) A deceased parent or the personal representative of a deceased parent's estate; or

(7) An individual listed in G.S. 48-3-601 who has not executed a consent or a relinquishment and who fails to respond to a notice of the adoption proceeding within 30 days after the service of the notice."

(b) G.S. 48-3-201(d) reads as rewritten:

"(d) ~~An agency having legal and physical custody of a minor may place the minor for adoption at any time after a relinquishment is executed, even if only one parent has executed a relinquishment pursuant to Part 7 of this Article or has had parental~~

~~rights terminated, unless the other parent notifies the agency in writing of the parent's objections before the placement. The agency shall act promptly after accepting a relinquishment from one parent to obtain the consent or relinquishment of the other parent or to terminate the rights between the minor and the other parent pursuant to Article 24B of Chapter 7A of the General Statutes.~~ An agency having legal and physical custody of a minor may place the minor for adoption at any time after a relinquishment is executed by anyone as permitted by G.S. 48-3-701. The agency may place the minor for adoption even if other consents are required before an adoption can be granted, unless an individual whose consent is required notifies the agency in writing of the individual's objections before the placement. The agency shall act promptly after accepting a relinquishment to obtain all other necessary consents, relinquishments, or terminations of any guardian's authority pursuant to Chapter 35A of the General Statutes or parental rights pursuant to Article 24B of Chapter 7A of the General Statutes."

(c) G.S. 48-4-102 reads as rewritten:

"**§ 48-4-102. Consent to adoption of stepchild.**

Except under circumstances described in G.S. 48-3-603, a petition to adopt a minor stepchild may be granted only if consent to the adoption has been executed by the adoptee if 12 or more years of age; and

(1) The adoptee's parents as described in G.S. 48-3-601; ~~or~~ and

(2) Any guardian of the adoptee.

The consent of an incompetent parent may be given pursuant to the procedures in G.S. 48-3-602."

(d) G.S. 48-3-602 reads as rewritten:

"**§ 48-3-602. Consent of incompetent parents.**

If a parent as described in G.S. 48-3-601 has been adjudicated incompetent, then the court shall appoint a guardian ad litem for that parent ~~and~~ and, unless the child already has a guardian, a guardian ad litem for the child to make a full investigation as to whether the adoption should proceed. The investigation shall include an evaluation of the parent's current condition and any reasonable likelihood that the parent will be restored to competency, the relationship between the child and the incompetent parent, alternatives to adoption, and any other relevant fact or circumstance. If the court determines after a hearing on the matter that it will be in the best interest of the child for the adoption to proceed, the court shall order the guardian ad litem of the parent to execute a consent for that parent."

(e) G.S. 48-1-101(8) reads as rewritten:

"(8) 'Guardian' means an individual, other than a parent, appointed by a clerk of court in North Carolina to exercise all of the powers conferred by ~~G.S. 35A-1241;~~ G.S. 35A-1241, including a standby guardian appointed under Article 21 of Chapter 35A of the General Statutes whose authority has actually commenced; and also means an individual, other than a parent, appointed in another jurisdiction according to the law of that jurisdiction who

has the power to consent to adoption under the law of that jurisdiction."

Section 12. (a) G.S. 48-2-501 reads as rewritten:

"**§ 48-2-501. Report to the court during proceeding for adoption of a minor.**

(a) Whenever a petition for adoption of a minor is filed, the court shall order a report to the court made to assist the court to determine if the proposed adoption of the minor by the petitioner is in the minor's best interest.

(b) Consistent with G.S. 48-1-109, the court shall order the report to be prepared:

(1) By the agency that placed the minor;

(2) By the agency that made the preplacement assessment pursuant to Part 3 of Article 3 of this Chapter; or

(3) By another agency.

(c) The court shall provide the individual who prepares the report with copies of: ~~(i) the petition to adopt; and (ii) the documents filed with it.~~

(1) The petition to adopt; and

(2) The documents filed with it.

(d) As an exception to this section, in any stepparent adoption under Article 4 of this Chapter in which the minor has lived with the stepparent for at least the two consecutive years immediately preceding the filing of the petition, the court may order a report, but it is not required to order a report unless the minor's consent is to be waived, the minor has revoked a consent, or both of the minor's parents are dead."

(b) G.S. 48-4-104 is repealed.

(c) This section becomes effective October 1, 1997.

Section 13. G.S. 130A-108 reads as rewritten:

"**§ 130A-108. Certificate of identification for ~~child~~ individual of foreign birth.**

In the case of an adopted ~~child~~ individual born in a foreign country and ~~having legal settlement in this State,~~ residing in this State at the time of application, the State Registrar shall, upon the presentation of a certified copy of the original birth certificate from the country of birth and a certified copy of the final order of adoption signed by the clerk of court or other appropriate official, prepare a certificate of identification for the ~~child.~~ individual. The certificate shall contain the same information required by G.S. 48-9-107(a) for ~~children~~ individuals adopted in this State, except that the country of birth shall be specified in lieu of the state of birth."

Section 14. Part 2 of Article 2 of Chapter 48 is amended by adding a new section to read:

"**§ 48-2-206. Prebirth determination of right to consent.**

(a) Anytime after six months from the date of conception as reasonably determined by a physician, the biological mother, agency, or adoptive parents chosen by the biological mother may file a special proceeding with the clerk requesting the court to determine whether consent of the biological father is required. The biological father shall be served with notice of the intent of the biological mother to

place the child for adoption, allowing the biological father 15 days after service to assert a claim that his consent is required.

(b) The notice required under this subsection shall contain the special proceeding case caption and file number and shall be substantially similar to the following language:

'[Name of the biological mother], the biological mother, is expected to give birth to a child on or about [birth due date]. You have been identified as the biological father. It is the intention of the biological mother to place the child for adoption. It is her belief that your consent to the adoption is not required. If you believe your consent to the adoption of this child is required pursuant to G.S. 48-3-601, you must notify the court in writing no later than 15 days from the date you received this notice that you believe your consent is required. A copy of your notice to the court must also be sent to the person or agency that sent you this notice. If you fail to notify the court within 15 days that you believe your consent is required, the court will rule that your consent is not required.'

(c) If the biological father fails to respond within the time required, the court shall enter an order that the biological father's consent is not required for the adoption.

(d) If the biological father notifies the court within 15 days of his receipt of the notice required by this subsection that he believes his consent to the adoption is required, the biological mother, agency, or adoptive parents may seek an immediate determination by the court as to whether the consent of the biological father is required by G.S. 48-3-601. A hearing on this question may be held upon 10 days' notice to the parties. During the hearing, the court may take such evidence as necessary and shall enter an order which shall be the final order.

(e) The manner of service under this section shall be the same as set forth in G.S. 48-2-402.

(f) The jurisdiction provisions of Article 6A of Chapter 1 of the General Statutes and the venue provisions of Article 7 of Chapter 1 of the General Statutes rather than the provisions of Part 1 of this Article apply to proceedings under this section.

(g) Computation of periods of time provided for in this section shall be calculated as set forth in G.S. 1A-1, Rule 6.

(h) Transfer under G.S. 1-272 and appeal under G.S. 1-279.1 shall be as for an adoption proceeding.

(i) A determination by the court under this section that the consent of the biological father is not required shall only apply to an adoption petition filed within three months of the birth of the child."

Section 15. G.S. 48-3-302(e) reads as rewritten:

"(e) If an individual requesting a preplacement assessment has identified a prospective adoptive child and has otherwise been unable to obtain a preplacement assessment, the county department of social services must, upon request, prepare or contract for the preparation of the preplacement assessment. As used in this subsection, 'unable to obtain a preplacement assessment' includes the inability to

obtain a preplacement assessment at the fee the county department of social services is permitted to charge the individual. Except as provided in this subsection, no agency is required to conduct a preplacement assessment unless it agrees to do so."

Section 16. G.S. 48-3-601(2)b.4. reads as rewritten:

"4. Before the earliest of the filing of the ~~petition,~~ petition or the receipt of the notice pursuant to G.S. 48-2-206, has acknowledged his paternity of the minor and

I. Is obligated to support the minor under written agreement or by court order;

II. Has provided, in accordance with his financial means, reasonable and consistent payments for the support of the biological mother during or after the term of pregnancy, or the support of the minor, or both, which may include the payment of medical expenses, living expenses, or other tangible means of support, and has regularly visited or communicated, or attempted to visit or communicate with the biological mother during or after the term of pregnancy, or with the minor, or with both; or

III. After the minor's birth but before the minor's placement for adoption or the mother's relinquishment, has married or attempted to marry the mother of the minor by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid; or".

Section 17. G.S. 48-3-603(a) is amended by adding a new subdivision to read:

"(8) An individual notified under G.S. 48-2-206 who does not respond in a timely manner or whose consent is not required as determined by the court."

Section 18. G.S. 48-9-107(c) reads as rewritten:

"(c) The State Registrar shall seal the original certificate of birth and all records in the possession of that office pertaining to the adoption. These records shall not be unsealed except as provided in this Article. The State Registrar shall provide certified typed copies or abstracts of the new certificate of birth of an adoptee prepared pursuant to subsection (a) of this section to the adoptee, the adoptee's children, the adoptive parents, and the adoptee's spouse, brothers, and sisters. For purposes of this subsection, 'parent', 'brother', and 'sister' shall mean the adoptee's adoptive parent, brother, or sister and shall not mean a former parent, brother, or sister."

Section 19. G.S. 48-3-301(a)(1) reads as rewritten:

"(1) Has been completed or updated within the ~~12~~ 18 months immediately preceding the placement; and".

Section 20. Except as otherwise provided, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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S162-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 162
THIS IS A DRAFT 6-MAY-97 11:23:16
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Adoption Law Technical Amendments. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND SIMILAR MINOR CHANGES TO THE ADOPTION LAWS AS FOUND IN CHAPTER 48 OF THE GENERAL STATUTES INVOLVING CERTIFICATION OF DOCUMENTS, NOTICE, PROCEDURES FOR REPORTS TO THE COURT, ACCEPTANCE OF RELINQUISHMENTS BY AGENCIES, INDEXING, CAPTIONS ON ADOPTION PETITIONS, AND STANDBY GUARDIANS; TO STANDARDIZE PROCEDURES FOR REQUESTING NEW BIRTH CERTIFICATES IN ALL ADOPTIONS; AND TO AMEND PROVISIONS FOR OBTAINING CERTIFICATION OF IDENTIFICATION FOR INDIVIDUALS OF FOREIGN BIRTH AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION; AND TO ALLOW FOR PREBIRTH RIGHT-TO-CONSENT DETERMINATION, CLARIFY WHEN COUNTY DEPARTMENTS OF SOCIAL SERVICES MUST DO PREPLACEMENT ASSESSMENTS, TO ADD CHILDREN TO THE LIST OF PERSONS WHO CAN GET COPIES OF BIRTH CERTIFICATES OF ADOPTEES, TO EXTEND THE EFFECTIVE PERIOD OF PREPLACEMENT ASSESSMENTS TO EIGHTEEN MONTHS, TO PROVIDE THAT EXECUTION OF A RELINQUISHMENT DOES NOT TERMINATE THE DUTY OF SUPPORT, AND TO PERMIT ALL RELINQUISHMENTSTO BE RESCINDED BY MUTUAL AGREEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 48-2-305 reads as rewritten:

"**§ 48-2-305. Petition for adoption; additional documents.**

At the time the petition is filed, the petitioner shall file or cause to be filed the following documents:

(1) Any required affidavit of parentage executed pursuant to G.S. 48-3-206;

(2) Any required consent or relinquishment that has been executed;

(3) A certified copy of any court order terminating the rights and duties of a parent or a guardian of the adoptee;

(4) A certified copy of any court order or pleading in a pending proceeding concerning custody of or visitation with the adoptee;

(5) A copy of any required preplacement assessment certified by the agency that prepared it or an affidavit from the petitioner stating why the assessment is not available;

(6) A ~~certified~~ copy of any document containing the information required under G.S. 48-3-205 concerning the health, social, educational, and genetic history of the adoptee and the adoptee's original family which the petitioner received before the placement or at any later time, certified by the person who prepared it, or if this document is not available, an affidavit stating the reason why it is not available;

(7) Any signed copy of the form required by the Interstate Compact on the Placement of Children, G.S. 110-57.1, et seq., authorizing a minor to come into this State;

(8) A writing that states the name of any individual whose consent is or may be required, but who has not executed a consent or a relinquishment or whose parental rights have not been legally terminated, and any fact or circumstance that may excuse the lack of consent or relinquishment; and

(9) In an adoption pursuant to Article 4 of this Chapter, a copy of any agreement to release past-due child support payments.

The petitioner may also file any other document necessary or helpful to the court's determination."

Section 2. G.S. 48-2-401(d) reads as rewritten:

"(d) In the adoption of an adult, the petitioner shall also serve notice of the filing on any adult children of the prospective adoptive parent and any parent, spouse, or adult child of the adoptee who are listed in the petition to adopt."

Section 3. G.S. 48-2-403 reads as rewritten:

"**§ 48-2-403. Notice of proceedings by clerk.**

No later than five days after a petition is filed, the clerk of the court shall ~~give notice of the adoption proceeding by certified mail, return receipt requested,~~ mail or otherwise deliver notice of the adoption proceeding to any agency that has undertaken but not yet completed a preplacement assessment and any agency ordered to make a report to the court pursuant to Part 5 of this Article."

Section 4. G.S. 48-2-502(b) reads as rewritten:

"(b) The report must be in writing and contain:

(1) An account of the petitioner's marital or family status, physical and mental health, home environment, property, income, and financial obligations; if there has been a preplacement assessment, the account may be limited to any changes since the filing of the preplacement assessment;

(2) All reasonably available nonidentifying information concerning the physical, mental, and emotional condition of the adoptee required by G.S. 48-3-205 which is not already included in the document prepared under that section;

(3) Copies of any court order, judgment, decree, or pending legal proceeding affecting the adoptee, the petitioner, or any child of the petitioner relevant to the welfare of the adoptee;

(4) A list of the expenses, fees, or other charges incurred, paid, or to be paid in connection with

the adoption that can reasonably be ascertained by the agency;

(5) Any fact or circumstance known to the agency that raises a specific concern about whether the proposed adoption is contrary to the best interest of the adoptee because it poses a significant risk of harm to the well-being of the adoptee;

(6) A finding by the agency concerning the suitability of the petitioner and the petitioner's home for the adoptee;

(7) A recommendation concerning the granting of the petition; and

(8) Such other information as may be required by rules adopted pursuant to subsection (c) of this section.

In an agency adoption, the report shall be written in such a way as to exclude all information that could reasonably be expected to lead directly to the identity of the adoptee at birth or any former parent or family member of the adoptee, and any copies of documents included pursuant to subdivision (3) of this subsection shall be redacted to exclude this information."

Section 5. (a) G.S. 48-2-503(a) reads as rewritten:

"(a) The agency shall complete a written report and file it with the court within 60 days after ~~receipt~~ the mailing or delivery of the order under G.S. 48-2-501 unless the court extends the time for filing. The agency shall have three additional days to complete and file the report if the order was mailed."

(b) G.S. 48-2-503(b) reads as rewritten:

"(b) If the agency identifies a specific concern about the suitability of the petitioner or the petitioner's home for the adoptee, the agency must file an interim report immediately, which must contain an account of the specific concern. The agency shall indicate in the final report whether its concerns have been satisfied and in what manner."

(c) G.S. 48-2-503 is amended by adding a new subsection to read:

"(b1) When an agency identifies a specific concern in a final report and the court extends the time for a final hearing or disposition to allow resolution of these concerns, the agency

shall file a supplemental report indicating whether its concerns have been satisfied and in what manner."

(d) Subsection (a) of this section applies to reports to the court prepared in response to a notice under G.S. 48-2-403 mailed or delivered after the effective date of this act.

Section 6. (a) G.S. 48-2-604 reads as rewritten:

"**§ 48-2-604. Denying petition to adopt a minor.**

(a) If at any time between the filing of a petition to adopt a minor and the issuance of the final order completing the adoption it appears to the court that the minor should not be adopted by the petitioners or the petition should be dismissed for some other reason, the court may dismiss the proceeding.

(b) The court, before entering an order to dismiss the proceeding, shall give at least five days' notice of the motion to dismiss to the parties, to the agency that made the report to the court, and to the Department of Human Resources. The parties and agency entitled to notice under this subsection, and the Department, shall be entitled to a hearing on the issue of dismissing the proceeding.

(c) If the court denies ~~a petition to adopt a minor,~~ the petition, the custody of the minor shall revert to any agency or person having custody immediately before the filing of the petition. If the placement of the ~~child~~ minor was a direct placement under Article 3 of this Chapter, the court shall notify the director of social services of the county in which the petition was filed of the dismissal, and the director of social services shall be responsible for taking appropriate action for the protection of the ~~child.~~ minor."

(b) This section becomes effective October 1, 1997.

Section 7. (a) G.S. 48-3-702 reads as rewritten:

"**§ 48-3-702. Procedures for relinquishment.**

(a) A relinquishment executed by a parent or guardian must conform substantially to the requirements in this Part and must be signed and acknowledged under oath before an individual authorized to administer oaths or take acknowledgments.

(b) The provisions of G.S. 48-3-605(b), (c), (e), and (f), also apply to a relinquishment executed under this ~~Part, except that an individual before whom a relinquishment is signed and acknowledged shall also certify that an employee of the agency to which the minor is being relinquished signed a statement~~

~~indicating the agency's willingness to accept the relinquishment.~~ Part.

(c) An agency that accepts a relinquishment shall furnish each parent or guardian who signs the relinquishment a letter or other writing indicating the agency's willingness to accept that person's relinquishment."

(b) This section applies to relinquishments executed on or after the effective date of this act.

Section 8. (a) G.S. 48-3-608(a) reads as rewritten:

"(a) A consent to the adoption of an infant who is in utero or is three months old or less at the time the consent is given may be revoked within 21 days following the day on which it is executed, inclusive of weekends and holidays. A consent to the adoption of any other minor may be revoked within seven days following the day on which it is executed, inclusive of weekends and holidays. If the final day of the revocation period falls on a weekend or North Carolina or federal holiday, then the revocation period extends to the next business day. The individual who gave the consent may revoke by giving written notice to the person specified in the consent. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the person to whom consent was given at the address specified in the consent. If notice is given by overnight delivery service, notice is deemed complete on the date it is deposited with the service as shown by the receipt from the service, with delivery charges paid by the sender, addressed to the person to whom consent was given at the address specified in the consent."

(b) This section applies to notices given on or after the effective date of this act.

Section 9. (a) G.S. 48-9-102(a) reads as rewritten:

"(a) All records created or filed in connection with an adoption, except the decree of ~~adoption,~~ adoption and the entry in the special proceedings index in the office of the clerk of court, and on file with or in the possession of the court, an agency, the State, a county, an attorney, or other provider of professional services, are confidential and may not be disclosed or used except as provided in this Chapter."

(b) G.S. 48-9-102(f) reads as rewritten:

"(f) The Division shall transmit a report of ~~the~~ each adoption ~~of a minor~~ and any name change to the State Registrar if the ~~minor~~ adoptee was born in this ~~State, or~~ State. In the case of an adoptee who was not born in this State, the Division shall transmit the report and any name change to the appropriate official responsible for issuing birth certificates or their ~~equivalent if the minor was not born in this State.~~ equivalent."

(c) G.S. 48-9-102(g) reads as rewritten:

"(g) ~~In the adoption of an adult born in this State in which the name of the adoptee is changed, the clerk of superior court shall, within 10 days after the decree of adoption is entered, send the State Registrar a copy of the final order, any separate order of name change, and a report in a form acceptable to the State Registrar containing sufficient information for a new birth certificate. In the adoption of an adult who was not born in this State, the clerk shall transmit a copy of the final order and any other required information to the adoptee.~~ In any adoption, the State Registrar may, in addition to receiving the report from the Division, request a copy of the final order and any separate order of name change directly from the clerk of court."

(d) G.S. 48-2-303 reads as rewritten:

"**§ 48-2-303. Caption of petition for adoption.**

The caption of the petition shall be substantially as follows:

STATE OF NORTH CAROLINA
IN THE DISTRICT COURT
COUNTY
BEFORE THE CLERK

*(Full name of petitioning father)
and
PETITION FOR ADOPTION
*(Full name of petitioning mother)
and
FOR THE ADOPTION OF

*(Full name ~~of adoptee as used in proceeding).~~ by which the adoptee is to be known if the adoption is granted)."

(e) Subsection (a) of this section is effective on and after July 1, 1996. The remainder of this section becomes

effective October 1, 1997. Subsections (b) and (c) apply to final orders entered on or after the effective date of this act.

Section 10. (a) G.S. 48-2-601(a) reads as rewritten:

"(a) If it appears to the court that ~~the petition~~ a petition to adopt a minor is not contested, the court may dispose of the petition without a formal hearing."

(b) This section applies to petitions filed on or after the effective date.

Section 11. (a) G.S. 48-3-603(a) reads as rewritten:

"(a) Consent to an adoption of a minor is not required of a person or entity whose consent is not required under G.S. 48-3-601, or:

(1) An individual whose parental rights and duties have been terminated under Article 24B of Chapter 7A of the General Statutes or by a court of competent jurisdiction in another state;

(2) A man described in G.S. 48-3-601(2), other than an adoptive father, if (i) the man has been judicially determined not to be the father of the minor to be adopted, or (ii) another man has been judicially determined to be the father of the minor to be adopted;

~~(3) A parent for whose minor child a guardian has been appointed;~~

(4) An individual who has relinquished parental rights or guardianship powers, including the right to consent to adoption, to an agency pursuant to Part 7 of this Article;

(5) A man who is not married to the minor's birth mother and who, after the conception of the minor, has executed a notarized statement denying paternity or disclaiming any interest in the minor;

(6) A deceased parent or the personal representative of a deceased parent's estate; or

(7) An individual listed in G.S. 48-3-601 who has not executed a consent or a relinquishment and who fails to respond to a notice of the adoption proceeding within 30 days after the service of the notice."

(b) G.S. 48-3-201(d) reads as rewritten:

"(d) ~~An agency having legal and physical custody of a minor may place the minor for adoption at any time after a relinquishment is executed, even if only one parent has executed a relinquishment pursuant to Part 7 of this Article or has had parental rights terminated, unless the other parent notifies the agency in writing of the parent's objections before the placement. The agency shall act promptly after accepting a relinquishment from one parent to obtain the consent or relinquishment of the other parent or to terminate the rights between the minor and the other parent pursuant to Article 24B of Chapter 7A of the General Statutes.~~ An agency having legal and physical custody of a minor may place the minor for adoption at any time after a relinquishment is executed by anyone as permitted by G.S. 48-3-701. The agency may place the minor for adoption even if other consents are required before an adoption can be granted, unless an individual whose consent is required notifies the agency in writing of the individual's objections before the placement. The agency shall act promptly after accepting a relinquishment to obtain all other necessary consents, relinquishments, or terminations of any guardian's authority pursuant to Chapter 35A of the General Statutes or parental rights pursuant to Article 24B of Chapter 7A of the General Statutes."

(c) G.S. 48-4-102 reads as rewritten:

"**§ 48-4-102. Consent to adoption of stepchild.**

Except under circumstances described in G.S. 48-3-603, a petition to adopt a minor stepchild may be granted only if consent to the adoption has been executed by the adoptee if 12 or more years of age; and

(1) The adoptee's parents as described in G.S. 48-3-601; ~~or~~ and

(2) Any guardian of the adoptee.

The consent of an incompetent parent may be given pursuant to the procedures in G.S. 48-3-602."

(d) G.S. 48-3-602 reads as rewritten:

"**§ 48-3-602. Consent of incompetent parents.**

If a parent as described in G.S. 48-3-601 has been adjudicated incompetent, then the court shall appoint a guardian ad litem for that parent ~~and~~ and, unless the child already has a guardian, a guardian ad litem for the child to make a full investigation as

to whether the adoption should proceed. The investigation shall include an evaluation of the parent's current condition and any reasonable likelihood that the parent will be restored to competency, the relationship between the child and the incompetent parent, alternatives to adoption, and any other relevant fact or circumstance. If the court determines after a hearing on the matter that it will be in the best interest of the child for the adoption to proceed, the court shall order the guardian ad litem of the parent to execute a consent for that parent."

(e) G.S. 48-1-101(8) reads as rewritten:

"(8) 'Guardian' means an individual, other than a parent, appointed by a clerk of court in North Carolina to exercise all of the powers conferred by ~~G.S. 35A-1241;~~ G.S. 35A-1241, including a standby guardian appointed under Article 21 of Chapter 35A of the General Statutes whose authority has actually commenced; and also means an individual, other than a parent, appointed in another jurisdiction according to the law of that jurisdiction who has the power to consent to adoption under the law of that jurisdiction."

Section 12. (a) G.S. 48-2-501 reads as rewritten:

"**§ 48-2-501. Report to the court during proceeding for adoption of a minor.**

(a) Whenever a petition for adoption of a minor is filed, the court shall order a report to the court made to assist the court to determine if the proposed adoption of the minor by the petitioner is in the minor's best interest.

(b) Consistent with G.S. 48-1-109, the court shall order the report to be prepared:

(1) By the agency that placed the minor;

(2) By the agency that made the preplacement assessment pursuant to Part 3 of Article 3 of this Chapter; or

(3) By another agency.

(c) The court shall provide the individual who prepares the report with copies of: ~~(i) the petition to adopt; and (ii) the documents filed with it.~~

(1) The petition to adopt; and

(2) The documents filed with it.

(d) As an exception to this section, in any stepparent adoption under Article 4 of this Chapter in which the minor has lived with the stepparent for at least the two consecutive years immediately preceding the filing of the petition, the court may order a report, but it is not required to order a report unless the minor's consent is to be waived, the minor has revoked a consent, or both of the minor's parents are dead."

(b) G.S. 48-4-104 is repealed.

(c) This section becomes effective October 1, 1997.

Section 13. G.S. 130A-108 reads as rewritten:

"**§ 130A-108. Certificate of identification for ~~child~~ individual of foreign birth.**

In the case of an adopted ~~child~~ individual born in a foreign country and ~~having legal settlement in this State,~~ residing in this State at the time of application, the State Registrar shall, upon the presentation of a certified copy of the original birth certificate from the country of birth and a certified copy of the final order of adoption signed by the clerk of court or other appropriate official, prepare a certificate of identification for the ~~child.~~ individual. The certificate shall contain the same information required by G.S. 48-9-107(a) for ~~children~~ individuals adopted in this State, except that the country of birth shall be specified in lieu of the state of birth."

Section 14. Part 2 of Article 2 of Chapter 48 is amended by adding a new section to read:

"**§ 48-2-206. Prebirth determination of right to consent.**

(a) Anytime after six months from the date of conception as reasonably determined by a physician, the biological mother, agency, or adoptive parents chosen by the biological mother may file a special proceeding with the clerk requesting the court to determine whether consent of the biological father is required. The biological father shall be served with notice of the intent of the biological mother to place the child for adoption, allowing the biological father 15 days after service to assert a claim that his consent is required.

(b) The notice required under this subsection shall contain the special proceeding case caption and file number and shall be substantially similar to the following language:

'[Name of the biological mother], the biological mother, is expected to give birth to a child on or about [birth due

date]. You have been identified as the biological father. It is the intention of the biological mother to place the child for adoption. It is her belief that your consent to the adoption is not required. If you believe your consent to the adoption of this child is required pursuant to G.S. 48-3-601, you must notify the court in writing no later than 15 days from the date you received this notice that you believe your consent is required. A copy of your notice to the court must also be sent to the person or agency that sent you this notice. If you fail to notify the court within 15 days that you believe your consent is required, the court will rule that your consent is not required.'

(c) If the biological father fails to respond within the time required, the court shall enter an order that the biological father's consent is not required for the adoption.

(d) If the biological father notifies the court within 15 days of his receipt of the notice required by this subsection that he believes his consent to the adoption is required, the biological mother, agency, or adoptive parents may seek an immediate determination by the court as to whether the consent of the biological father is required by G.S. 48-3-601. A hearing on this question may be held upon 10 days' notice to the parties. During the hearing, the court may take such evidence as necessary and shall enter an order which shall be the final order.

(e) The manner of service under this section shall be the same as set forth in G.S. 48-2-402.

(f) The jurisdiction provisions of Article 6A of Chapter 1 of the General Statutes and the venue provisions of Article 7 of Chapter 1 of the General Statutes rather than the provisions of Part 1 of this Article apply to proceedings under this section.

(g) Computation of periods of time provided for in this section shall be calculated as set forth in G.S. 1A-1, Rule 6.

(h) Transfer under G.S. 1-272 and appeal under G.S. 1-279.1 shall be as for an adoption proceeding.

(i) A determination by the court under this section that the consent of the biological father is not required shall only apply to an adoption petition filed within three months of the birth of the child."

Section 15. G.S. 48-3-302(e) reads as rewritten:

"(e) If an individual requesting a preplacement assessment has identified a prospective adoptive child and has otherwise been

unable to obtain a preplacement assessment, the county department of social services must, upon request, prepare or contract for the preparation of the preplacement assessment. As used in this subsection, 'unable to obtain a preplacement assessment' includes the inability to obtain a preplacement assessment at the fee the county department of social services is permitted to charge the individual. Except as provided in this subsection, no agency is required to conduct a preplacement assessment unless it agrees to do so."

Section 16. G.S. 48-3-601(2)b.4. reads as rewritten:

"4. Before the earliest of the filing of the ~~petition,~~ petition or the receipt of the notice pursuant to G.S. 48-2-206, has acknowledged his paternity of the minor and

I. Is obligated to support the minor under written agreement or by court order;

II. Has provided, in accordance with his financial means, reasonable and consistent payments for the support of the biological mother during or after the term of pregnancy, or the support of the minor, or both, which may include the payment of medical expenses, living expenses, or other tangible means of support, and has regularly visited or communicated, or attempted to visit or communicate with the biological mother during or after the term of pregnancy, or with the minor, or with both; or

III. After the minor's birth but before the minor's placement for adoption or the mother's relinquishment, has married or attempted to marry the mother of the minor by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid; or".

Section 17. G.S. 48-3-603(a) is amended by adding a new subdivision to read:

"(8) An individual notified under G.S. 48-2-206 who does not respond in a timely manner or whose consent is not required as determined by the court."

Section 18. G.S. 48-9-107(c) reads as rewritten:

"(c) The State Registrar shall seal the original certificate of birth and all records in the possession of that office pertaining to the adoption. These records shall not be unsealed except as provided in this Article. The State Registrar shall provide certified typed copies or abstracts of the new certificate of birth of an adoptee prepared pursuant to subsection (a) of this section to the adoptee, the adoptee's children, the adoptive parents, and the adoptee's spouse, brothers, and sisters. For purposes of this subsection, 'parent', 'brother', and 'sister' shall mean the adoptee's adoptive parent, brother, or sister and shall not mean a former parent, brother, or sister."

Section 19. (a) G.S. 48-3-301(a)(1) reads as rewritten:

"(1) Has been completed or updated within the ~~12~~ 18 months immediately preceding the placement; and".

(b) This section applies to placements made on or after the effective date of this act.

Section 19.1 (a) G.S. 48-3-704 reads as rewritten:

"**§ 48-3-704. Content of relinquishment; optional provisions.**

In addition to the mandatory provisions listed in G.S. 48-3-703, a relinquishment may also state that the relinquishment may be revoked upon notice by the agency that an adoption by a specific prospective adoptive parent, named or described in the relinquishment is not ~~completed, or if the agency and the person relinquishing the minor mutually agree to rescind the relinquishment before placement with a prospective adoptive parent occurs.~~ completed."

(b) G.S. 48-3-705(c) reads as rewritten:

"(c) A relinquishment terminates:

(1) Any right and duty of the individual who executed the relinquishment with respect to the legal and physical custody of the ~~minor;~~ minor.

(2) The right to consent to the minor's ~~adoption; and~~ adoption.

~~(3) The duty to support the minor.~~"

(c) G.S. 48-3-707(a) reads as rewritten:

"(a) A relinquishment shall become void ~~if,~~ if:

(1) Before ~~before~~ the entry of the adoption decree, the individual who executed the relinquishment establishes by clear and convincing evidence that it was obtained by fraud or duress.

(2) Before placement with a prospective adoptive parent occurs, the agency and the person relinquishing the minor agree to rescind the relinquishment."

(d) This section applies to relinquishments executed on or after August 1, 1997.

Section 20. Sections 14, 15, and 17 become effective October 1, 1997. Except as otherwise provided, the remaining sections of this act are effective when the act becomes law.

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
P.O. BOX 629
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(919) 733-6026

MEMORANDUM:

TO: House Judiciary II Committee

FROM: General Statutes Commission

DATE: May 2, 1997

RE: Senate Bill 162 (Adoption Law Amendments)

General Comments

Chapter 48 of the General Statutes, the chapter on adoptions, was completely revised in 1995, with an effective date of July 1, 1996. The portion of this bill that is recommended by the General Statutes Commission makes amendments to the new act that fall into four basic categories: (i) corrections to the new adoptions act itself, (ii) clarification of the language in the new act, (iii) changes necessitated by other legislation, and (iv) recently suggested minor changes to previously-existing law that was carried forward by the new act. None of these amendments are believed to be controversial.

Under the first category, the bill addresses confusion over certification of one of the documents that must be filed with an adoption petition and over notification of minor children in the adoption of an adult (Sections 1 and 2); allows the clerk of court to send orders for a report to the court to the designated agency by first-class mail rather than certified mail, return receipt requested, and makes a conforming change in the way the agency's reporting deadline is computed (Sections 3 and 5(a)); brings forward the former law's more detailed procedures for the clerks of court to follow in denying an adoption petition (Section 6); removes a requirement that agencies send a representative with a parent or guardian to have a relinquishment notarized (Section 7); treats revocations sent by overnight delivery service in the same manner as those sent by mail (Section 8); restores the clerk of court's index entry to its original, unsealed status, correcting an inadvertent error (Section 9(a)); clarifies that the statutes allowing hearings to be waived applies only to the adoption of minors (Section 10).

Under the second category, the amendments are intended to make it absolutely clear that in an agency adoption the report to the court must not contain any identifying information about the minor's former family (Section 4); that agencies that identify a concern in the report to the court must file a follow up report (Section 5(b) and (c)); and that the adoptee's adoptive name is the one to be used in the petition caption (Section 9(d)).

Under the third category, the bill amends various sections to take standby guardians into account (Section 11).

In the fourth category, the bill removes the requirement of a report to the court in many if not most stepparent adoptions (Section 12); standardizes the procedure for obtaining new birth certificates (Section 9(b) and (c)); and allows adopted foreign-born adults to obtain certificates of identification, which the current statute apparently makes available to adopted foreign-born minors (Section 13).

Sections 14 through the end of the bill have not been reviewed by the General Statutes Commission.

A more detailed explanation for Sections 1 through 13 appears below.

Specific Comments

Section 1. G.S. 48-2-305 requires various documents to be filed with an adoption petition. Subdivision (6) of that section requires a "certified" copy of one particular document, the nonidentifying health and background information report required by G.S. 48-3-205. The use of "certified" in this subdivision is causing confusion, because the document is not made or filed with a government official in the manner of, e.g., a birth certificate or a court order. This section makes the wording of the subdivision parallel to the certification language of the preceding subdivision, which has not caused confusion.

Section 2. G.S. 48-2-401(d) requires that various family members, including any children of the parties, be notified of the filing of an adoption petition in the adoption of an adult. The provision was added to the law by the new adoption act and is intended to provide a mechanism for bringing to the attention of the court those adult adoptions in which one of the parties is potentially being exploited. Confusion has arisen over what to do when there are minor children. This section amends the statutes to specify adult children, which should remove the confusion while adequately preserving the safeguard.

Section 3. G.S. 48-2-403 requires notice of the adoption proceeding to be sent by certified mail to the agency ordered to make a report to the court. This requirement was added by the new act to provide assurance of receipt by the designated agency, which has 60 days after receipt to complete the report. Several individual clerks of court have questioned the need for certified mail, return receipt requested. They note that in many cases the agency and the clerk's office may be in the same building, and the clerk formerly had such orders hand-delivered. Various individuals also noted that the clerk can extend the agency's time for completion if an order sent by ordinary mail is not actually received. This section amends G.S. 48-2-403 to permit these orders to be either mailed or delivered in some way other than mailing.

Section 4. This section amends G.S. 48-2-502(b) to make it absolutely clear that in an agency adoption, the report to the court cannot contain identifying information about an adopted person's former family.

Section 5. This section has three primary parts.

Subsection (a) changes the method for calculating an agency's time to complete a report to the court to conform to the amendment in Section 3. If the order for the report is mailed, time is counted from the date of mailing but the agency is given three extra days to complete the report.

Subsections (b) and (c) address a problem with reports to the court that actually occurred in at least one case, although the problem does not appear to be attributable to the new adoptions act. It needs to be absolutely clear that when an agency files a report (whether denominated an interim or final report) that recommends a delay in granting a petition until the occurrence or correction of certain conditions, the agency needs to file a report that tells the court whether these conditions have occurred or been met.

Section 6. Individual clerks of court asked to have former G.S. 48-20(a) and (b) incorporated into G.S. 48-2-604, because of the greater detail in the former statute. This section implements that request.

Section 7. G.S. 48-3-702 requires an agency to send a specially designated employee to accompany a parent or guardian before the notary who is to notarize that person's relinquishment. The agency employee must sign a statement indicating the agency's acceptance of the relinquishment, and this fact is then certified by the notary. In practice, it has proved awkward for the agency employee and the parent or guardian to schedule an appearance before the same notary. This section amends G.S. 48-3-702 to require only that the agency give the parent or guardian a letter or other statement indicating its acceptance.

Section 8. This section amends G.S. 48-3-608(a) to give revocations sent by overnight delivery service the same treatment given to revocations sent by certified mail, return receipt requested. The revocation is effective on deposit with the service.

Section 9. This section amends G.S. 48-9-102 in two principal respects.

First, the section amends G.S. 48-9-102(a) to correct an unintended effect in the new act. The former Chapter 48 contained no definition of "record," although it sealed most "records" other than the final adoption decree. The final decree was always a public record. No one can find a final decree, however, without the docket number which is obtainable from the clerk's special proceedings index. The entry in the special proceedings index, has, therefore, always been treated as public. The new adoption act was intended to bring forward the confidentiality provisions of the former act. Final decrees remain public record under the new act. However,

the new act also contains a definition of "record" that includes indexes. The result is that the new act arguably (unintentionally) seals the index entry in the clerk of court's office. This section corrects that error. Please note that the entry in the special proceedings index is in the name of the adoptive parents and the adopted person's intended name and that the clerk retains no documents in the clerk's files that include identifying information about the adopted person's former name or family.

At the suggestion of the State agency most affected, the section amends subsections (b) and (c) to make the procedure for notifying the proper state official to obtain a new birth certificate the same for all types of adoptions. Currently, for adult adoptions the necessary information is transmitted directly by the clerk of court to the State Registrar or to the adopted adult, if the person was born in another state. The Division of Social Services has this responsibility for minors. Standardizing this procedure for every adoption would simplify matters and arguably result in better, more consistent service for all adoptees. Please note that there are comparatively few adult adoptions each year.

This section also amends G.S. 48-2-303 to make it absolutely clear that the name of the adoptee in the caption of the petition is to be the person's adoptive name.

Section 10. This section amends G.S. 48-2-601(a) to clarify that the waiver of a hearing provided for in this section applies only in the adoption of minors.

Section 11. When the revision of Chapter 48 was introduced, the statutes allowing "standby guardians" had not been enacted. Until that time, it was not possible in this State for a minor to have both a guardian of the person and a live parent unless that parent's parental rights had been terminated. With the procedures for "standby guardians," this condition is now possible. This section accordingly repeals G.S. 48-3-603(a)(3) and makes other conforming amendments in four other sections. Because a standby guardian whose authority has actually commenced has concurrent rights with parents and does not supplant them, the conforming amendments are intended to recognize the standby guardian's authority while not excluding the continuing authority of the parents.

Section 12. This section amends G.S. 48-2-501 to eliminate the requirement of a report to the court in most stepparent adoptions of minor children. Except where there is an obvious caution sign, the clerk is allow to dispense with the requirement if the minor has lived with the stepparent for at least two years. After two years, any "honeymoon" effect should have passed, and both the stepparent and the minor child should have a more realistic view of a proposed adoption.

Section 13. This section amends G.S. 130A-108 to allow the State Registrar to issue certificates of identification to foreign-born adults. It also clarifies the phrase "having legal settlement in this State"; the substitute phrase, "residing in this State at the time of application", is the interpretation actually given to the deleted phrase by the agency.

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May 5, 1997

MEMORANDUM

TO: **Rep. Charles B. Neely, Jr., Chairman, House Judiciary II Committee**

FROM: **Tim Hovis, and O. Walker Reagan, Staff Attorneys**

RE: **SENATE BILL 162 - ADOPTION LAW AMENDMENTS -Second Edition**
Senator Hartsell

Senate Bill 162 makes several technical, clarifying and other minor changes to the Adoptions Law as rewritten in 1995. Sections 1 through 13 were recommended by the General Statutes Commission. Sections 14 through 18 have been added at the request of other parties and have not been approved by the Commission.

A summary and analysis of Sections 1 through 13 has been prepared by Bly Hall, Counsel to the General Statutes Commission and is attached hereto. Reference to Ms. Hall's document should be made for additional information on those sections. Below is a summary of Sections 14 through 18 of the bill.

Section 14, would establish a process for determining whether a biological father is required to consent to an adoption prior to the birth of the child. In cases where the biological mother is willing to consent to the adoption prior to birth, this procedure would be helpful to expedite the adoption process when the biological father will not sign a consent prior to birth. Because of situations set forth in G.S. 48-3-601 where the biological father's consent is not required, when the father is unwilling to consent, the adoption process can be shortened if the determination of whether the father is entitled to consent can be made earlier. If the father's consent is not required the child can be placed with the adoptive family at birth. If the consent is required an action to terminate the father's parental rights can be started earlier.

Sections 16 and 17 make conforming changes arising from Section 14 of the bill.

Section 15 clarifies when county departments of social services must prepare preplacement assessments. Current law requires county DSS's to do the assessment when a prospective adoptive parent who has identified a prospective adoptive child is unable to obtain an assessment. This provision in the bill clarifies that if a prospective

adoptive parent cannot obtain an assessment at the fee county DSS's are permitted to charge for this service, the county DSS will have to do the assessment at that fee.

Section 18 conforms the law on who is permitted to obtain a copy of a birth certificate of an adopted person to the law on who is permitted to obtain a copy of a birth certificate in a non-adoptive situation by permitting the children of an adoptee to get a copy.

Sections 1-4, 11, and 13 through 18 are effective when they become law. Sections 6, 9, and 12 have varying effective dates and Sections 5 and 7-10 have specific application provisions.

S162-SMRU-001

Ward v. Howard, 217 N.C. 201, 7 S.E.2d 625 (1940).

An agreement to adopt a minor, between the person desiring to adopt the minor and the minor's parents, as the respective parties to the agreement, was not an adoption of a minor under the former Chapter. Chambers v. Byers, 214 N.C. 373, 199 S.E. 398 (1938).

§48-1-101. Definitions.

In this Chapter, the following definitions apply:

(1) "Adoptee" means an individual who is adopted, is placed for adoption, or is the subject of a petition for adoption properly filed with the court.

(2) "Adoption" means the creation by law of the relationship of parent and child between two individuals.

(3) "Adult" means an individual who has attained 18 years of age, or if under the age of 18, is either married or has been emancipated under the applicable State law.

(3a) "Adoption facilitator" means an individual or a nonprofit entity that assists biological parents in locating and evaluating prospective adoptive parents without charge.

(4) "Agency" means a public or private association, corporation, institution, or other person or entity that is licensed or otherwise authorized by the law of the jurisdiction where it operates to place minors for adoption. "Agency" also means a county department of social services in this State.

(5) "Child" means a son or daughter, whether by birth or adoption.

(6) "Department" means the North Carolina Department of Human Resources.

(7) "Division" means the Division of Social Services of the Department.

(8) "Guardian" means an individual, other than a parent, appointed by a clerk of court in North Carolina to exercise all of the powers conferred by G.S. 35A-1241; and also means an individual, other than a parent, appointed in another jurisdiction according to the law of that jurisdiction who has the power to consent to adoption under the law of that jurisdiction.

(9) "Legal custody" of an individual means the general right to exercise continuing care of and control over the individual as authorized by law, with or without a court order, and:

a. Includes the right and the duty to protect, care for, educate, and discipline the individual;

b. Includes the right and the duty to provide the individual with food, shelter, clothing, and medical care; and

c. May include the right to have physical custody of the individual.

(10) "Minor" means an individual under 18 years of age who is not an adult.

(11) "Party" means a petitioner, adoptee, or any person whose consent to an adoption is necessary under this Chapter but has not been obtained.

(12) "Physical custody" means the physical care of and control over an individual.

(13) "Placement" means transfer of physical custody of a minor to the selected prospective adoptive parent. Placement may be either:

a. Direct placement by a parent or the guardian of the minor; or
b. Placement by an agency.

(14) "Preplacement assessment" means a document, whether prepared before or after placement, that contains the information required by G.S. 48-3-303 and any rules adopted by the Social Services Commission.
(15) "Relinquishment" means the voluntary surrender of a minor to an agency for the purpose of adoption.
(16) "Report to the court" means a document prepared in accordance with G.S. 48-2-501, et seq.
(17) "State" means a state as defined in G.S. 12-3(11).
(18) "Stepparent" means an individual who is the spouse of a parent of a child, but who is not a legal parent of the child. (1949, c. 300; 1953, c. 880; 1957, c. 778, s. 1; 1961, c. 241; 1969, c. 982; 1971, c. 157, ss. 1, 2; c. 1231, s. 1; 1973, c. 476, s. 138; 1975, c. 321, s. 2; 1977, c. 879, s. 1; 1981, c. 924, s. 1; 1985, c. 758, s. 4; 1995, c. 457, s. 2.)

§ 48-1-102. Parent includes adoptive parent.

As used in this Article, the term "parent" includes one who has become a parent by adoption. (1949, c. 300; 1953, c. 880; 1957, c. 778, s. 1; 1961, c. 241; 1969, c. 982; 1971, c. 157, ss. 1, 2; c. 1231, s. 1; 1973, c. 476, s. 138; 1975, c. 321, s. 2; 1977, c. 879, s. 1; 1981, c. 924, s. 1; 1985, c. 758, s. 4; 1995, c. 457, s. 2.)

§ 48-1-103. Who may adopt.

Any adult may adopt another individual as provided in this Chapter, but spouses may not adopt each other. (1949, c. 300; 1963, c. 699; 1967, c. 619, ss. 1-3; c. 693; c. 880, s. 3; 1969, c. 21, ss. 3-6; 1971, c. 395; c. 1231, s. 1; 1973, c. 849, s. 3; c. 1354, ss. 1-4; 1975, c. 91; 1979, c. 107, s. 6; 1981, c. 657; 1983, c. 454, s. 6; 1989, c. 208; c. 727, s. 219(4); 1993, c. 553, s. 14; 1995, c. 88, s. 3; 1995, c. 457, s. 2.)

§ 48-1-104. Who may be adopted.

Any individual may be adopted as provided in this Chapter. (1949, c. 300; 1957, c. 778, s. 2; 1967, c. 880, ss. 2, 3; 1969, c. 21, ss. 3-6; 1971, c. 1231, s. 1; 1973, c. 849, s. 3; 1975, c. 91; 1981, c. 657; 1987, c. 716, s. 1; 1989, c. 208; c. 727, s. 219(4); 1993, c. 539, s. 410; c. 553, s. 14; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 457, s. 2.)

§ 48-1-105. Name of adoptee after adoption.

When a decree of adoption becomes final, the name of the adoptee shall become the name designated in the decree. (1949, c. 300; 1951, c. 730, ss. 1-4; 1955, c. 951, s. 1; 1967, c. 880, s. 3; c. 1042, ss. 1-3; 1969, c. 21, s. 2-6; c. 977; 1971, c. 1231, s. 1; 1973, c. 476, s. 128; c. 849, ss. 1-3; 1975, c. 91; 1981, c. 657; 1983, c. 454, s. 6; 1989, c. 208; c. 727, s. 219(3), (4); 1993, c. 553, s. 14; 1995, c. 457, s. 2.)

§ 48-1-106. Legal effect of decree of adoption.

(a) A decree of adoption effects a complete substitution of families for all legal purposes after the entry of the decree.

(b) A decree of adoption establishes the relation child between each petitioner and the adoptee. From the date of the signing of the decree, the adoptee inherit real and personal property by, through adoptive parents in accordance with the statutes succession and has the same legal status, including and obligations of any kind whatsoever, as a natural mate child of the adoptive parents.

(c) A decree of adoption severs the relationship child between the individual adopted and that individual or previous adoptive parents. After the entry of the the former parents are relieved of all legal duties due from them to the adoptee, except that a former make past-due payments for child support is the former parents are divested of all rights adoptee.

(d) Notwithstanding any other provision of an adoption by a stepparent nor a readoption 48-6-102 has any effect on the relationship between the parent who is the stepparent's spouse.

(e) In any deed, grant, will, or other written before October 1, 1985, the words "child", "issue", "descendant", or an equivalent, or any import, shall be held to include any adopted person of the decree of adoption, unless a contrary intent from the terms of the instrument, whether executed before or after the entry of the decree of the phrase "hereafter born" or similar instrument to establish a class of persons sufficient to exclude adoptees from inclusion deed, grant, will, or other written instrument October 1, 1985, any reference to a adopted person after the entry of the decree instrument explicitly states that adopted whether the instrument was executed before decree of adoption.

(f) Nothing in this Chapter deprives a biological any visitation rights with an adopted minor 50-13.2(b1), 50-13.2A, and 50-13.5(j). (1949, 1955, c. 813, s. 5; 1957, c. 778, s. 5; 1963, c. 880, s. 3; 1969, c. 21, ss. 3-6; c. 911, s. 6; 1973, s. 1; 1973, c. 849, s. 3; c. 1354, s. 5; 1975, c. 30; c. 454, ss. 2, 6; 1985, c. 67, ss. 1-4; c. 575, s. 219(4); 1993, c. 553, s. 14; 1995, c. 457,

Legal Periodicals. — For comment on the 1945 amendment to former § 48-6, see 23 N.C.L. Rev. 346 (1945).

For article on inheritance rights consequent to adoption, see 29 N.C.L. Rev. 227 (1951).

For brief comment on the 1953 amendment to former § 48-6, see 31 N.C.L. Rev. 388 (1953).

For comment on the 1955 amendment to former § 48-6, see 33 N.C.L. Rev. 521 (1955).

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(8) Such other information as may be required by rules adopted pursuant to subsection (c) of this section.

(c) The Social Services Commission may adopt rules to implement the provisions of this section. (1949, c. 300; 1961, c. 186; 1969, c. 982; 1973, c. 476, s. 138; 1983, c. 454, s. 5; 1991, c. 335, s. 2; 1995, c. 457, s. 2.)

CASE NOTES

Editor's Note. — The notes below were decided prior to the 1995 revision of Chapter 48.

Department of Social Services Has Duty to Make Investigations. — Under former § 48-16(a), the legislature clearly vested the Department of Social Services with the duty and responsibility to make investigations regarding adoptions; thus, absent any responsibilities or duties to perform, the guardian ad litem is superfluous to an adoption proceeding. In re James S., 86 N.C. App. 364, 357 S.E.2d 430 (1987).

§ 48-2-503. Timing and filing of report.

(a) The agency shall complete a written report and file it with the court within 60 days after receipt of the order under G.S. 48-2-501 unless the court extends the time for filing.

(b) If the agency identifies a specific concern about the suitability of the petitioner or the petitioner's home for the adoptee, the agency must file an interim report immediately, which must contain an account of the specific concern.

(c) The agency shall give the petitioner a copy of each report filed with the court, and the agency shall retain a copy. (1949, c. 300; 1961, c. 186; 1969, c. 982; 1973, c. 476, s. 138; 1983, c. 454, s. 5; 1991, c. 335, s. 2; 1995, c. 457, s. 2.)

§ 48-2-504. Fee for report.

(a) An agency that prepares a report to the court may charge the petitioner a reasonable fee for preparing and writing the report. No fee may be charged except pursuant to a written fee agreement which must be signed by the parties to be charged prior to the beginning of the preparation. The fee agreement may not be based on the outcome of the report or the adoption proceeding.

(b) A fee for a report is subject to review by the court pursuant to G.S. 48-2-602 and G.S. 48-2-603.

(c) The Department shall set the maximum fees, based on ability to pay and other factors, which may be charged by county departments of social services. The Department shall require waiver of fees for those unable to pay. Fees collected under this section shall be applied to the costs of preparing and writing reports and shall be used by the county department of social services to supplement and not to supplant appropriated funds. (1995, c. 457, s. 2.)

Part 6. Dispositional Hearing; Decree of Adoption.

§ 48-2-601. Hearing on, or disposition of, adoption petition; timing.

(a) If it appears to the court that the petition is not contested, the court may dispose of the petition without a formal hearing.

(b) No later than 90 days after a petit filed, the court shall set a date and time f the petition.

(c) The hearing or disposition must ta months after the petition is filed, but the c the time for the hearing or disposition. (1959, cc. 340, 561; 1961, cc. 186, 384; 196 c. 982; 1973, c. 1354, s. 6; 1989 (Reg. Ses c. 457, s. 2.)

§ 48-2-602. Disclosure of fees a

At least 10 days before the date of the h petitioner shall file with the court an a payment or disbursement of money or a agreed to be made by or on behalf of ea with the adoption, or pursuant to Article each payment or disbursement made or and address of each recipient. The co request a more specific statement of any made or to be made by any petition adoption. (1995, c. 457, s. 2.)

§ 48-2-603. Hearing on, or dis to adopt a minor.

(a) At the hearing on, or dispositio minor, the court shall grant the petitio derance of the evidence that the adoptio of the adoptee, and that:

(1) At least 90 days have elapsed s for adoption, unless the court f ment;

(2) The adoptee has been in the tioner for at least 90 days, unl this requirement;

(3) Notice of the filing of the peti person entitled to receive noti

(4) Each necessary consent, relinq order terminating parental ri filed with the court and the ti

(5) Any assessment required by with and considered by the c

(6) If applicable, the requirement the Placement of Children, G. met;

(7) Any motion to dismiss the pr

(8) Each petitioner is a suitable

(9) Any accounting and affidavit has been reviewed by the co modified, or ordered reimb disbursement that violates when compared with the ex connection with an adoptio

(10) The petitioner has received and the adoptee's biologic 48-3-205; and

ARTICLE 3.

Adoption of Minors.

Part 1. General Provisions.

§ 48-3-100. Application of Article.

This Article shall apply to the adoption of minors by adults who are not their stepparents. (1995, c. 457, s. 2.)

Editor's Note. — Session Laws 1995, c. 457, s. 11, provides: "Nothing in this act shall affect the validity of an adoption completed or validated under any prior law."

Session Laws 1995, c. 457, s. 12, provides that this article is effective July 1, 1996, and that any petition for adoption filed prior to and still pending on that date shall be completed in accordance with the law in effect immediately prior to that date.

Part 2. Placement of Minors for Adoption.

§ 48-3-201. Who may place minors for adoption.

(a) Only the following may place the minor for adoption:

(1) An agency,

(2) A guardian,

(3) Both parents acting jointly, if

a. Both parents are married to each other and living together, or

b. One parent has legal custody of a minor and the other has physical custody but neither has both, or

(4) A parent with legal and physical custody of a minor, except as provided in subdivision (3) of this subsection.

(b) A parent, guardian, or agency that places a minor directly for adoption shall execute a consent to the minor's adoption pursuant to Part 6 of this Article.

(c) A parent or guardian of a minor who wants an agency to place the minor for adoption must execute a relinquishment to the agency pursuant to Part 7 of this Article before the agency can place the minor.

(d) An agency having legal and physical custody of a minor may place the minor for adoption at any time after a relinquishment is executed, even if only one parent has executed a relinquishment pursuant to Part 7 of this Article or has had parental rights terminated, unless the other parent notifies the agency in writing of the parent's objections before the placement. The agency shall act promptly after accepting a relinquishment from one parent to obtain the consent or relinquishment of the other parent or to terminate the rights between the minor and the other parent pursuant to Article 24B of Chapter 7A of the General Statutes. (1995, c. 457, s. 2.)

§ 48-3-202. Direct placement for adoption.

(a) In a direct placement, a parent or guardian must personally select a prospective adoptive parent, but a parent or guardian may

(3) If the person who placed the minor executes a consent before receiving a copy of the preplacement assessment, G.S. 48-3-608 shall determine the time within which that person may revoke. (1949, c. 300; 1957, c. 778, s. 2; 1967, c. 880, s. 2; 1987, c. 716, s. 1; 1993, c. 539, s. 410; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 457, s. 2.)

§ 48-3-302. Request for preplacement assessment.

(a) An individual seeking to adopt may request a preplacement assessment at any time by an agency authorized by G.S. 48-1-109 to prepare preplacement assessments.

(b) An individual requesting a preplacement assessment need not have located a prospective adoptee when the request is made.

(c) An individual may have more than one preplacement assessment or may request that an assessment, once initiated, not be completed.

(d) If an individual is seeking to adopt a minor from a particular agency, the agency may require the individual to be assessed by its own employee, even if the individual has already had a favorable preplacement assessment completed by another agency.

(e) If an individual requesting a preplacement assessment has identified a prospective adoptive child and has otherwise been unable to obtain a preplacement assessment, the county department of social services must, upon request, prepare or contract for the preparation of the preplacement assessment. Except as provided in this subsection, no agency is required to conduct a preplacement assessment unless it agrees to do so. (1949, c. 300; 1957, c. 778, s. 2; 1967, c. 880, s. 2; 1987, c. 716, s. 1; 1993, c. 539, s. 410; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 457, s. 2.)

§ 48-3-303. Content and timing of preplacement assessment.

(a) A preplacement assessment shall be completed within 90 days after a request has been accepted.

(b) The preplacement assessment must be based on at least one personal interview with each individual being assessed in the individual's residence and any report received pursuant to subsection (c) of this section.

(c) The preplacement assessment must, after a reasonable investigation, report on the following about the individual being assessed:

(1) Age and date of birth, nationality, race, or ethnicity, and any religious preference;
(2) Marital and family status and history, including the presence of any children born to or adopted by the individual and any other children in the household;
(3) Physical and mental health, including any addiction to alcohol or drugs;
(4) Educational and employment history and any special skills;
(5) Property and income, and current financial information provided by the individual;
(6) Reason for wanting to adopt;
(7) Any previous request for an assessment or involvement in an adoptive placement and the outcome of the assessment or placement;

Oxendine v. Department of Social Servs., 303 N.C. 699, 281 S.E.2d 370 (1981); In re Scearce, 81 N.C. App. 531, 345 S.E.2d 404, cert. denied, 318 N.C. 415, 349 S.E.2d 589 (1986).

But Transfer of Custody to Foster Parents Is Not Prohibited. — The case of Oxendine v. Department of Social Servs., 303 N.C. 699, 281 S.E.2d 370, (1981) does not prohibit the transfer of legal care, custody and control of a foster child to its foster parents. Oxendine stands for the proposition that foster parents have no standing to bring a custody action pursuant to § 50-13.2 et seq. In re Scearce, 81 N.C. App. 531, 345 S.E.2d 404, cert. denied, 318 N.C. 415, 349 S.E.2d 589 (1986).

Part 6. Consent to Adoption.

§ 48-3-601. Persons whose consent to adoption is required.

Unless consent is not required under G.S. 48-3-603, a petition to adopt a minor may be granted only if consent to the adoption has been executed by:

(1) The minor to be adopted if 12 or more years of age;

(2) In a direct placement, by:

a. The mother of the minor;

b. Any man who may or may not be the biological father of the minor but who:

1. Is or was married to the mother of the minor if the minor was born during the marriage or within 280 days after the marriage is terminated or the parties have separated pursuant to a written separation agreement or an order of separation entered under Chapters 50 or 50B of the General Statutes or a similar order of separation entered by a court in another jurisdiction;

2. Attempted to marry the mother of the minor before the minor's birth, by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the minor is born during the attempted marriage, or within 280 days after the attempted marriage is terminated by annulment, declaration of invalidity, divorce, or, in the absence of a judicial proceeding, by the cessation of cohabitation;

3. Before the filing of the petition, has legitimated the minor under the law of any state;

4. Before the filing of the petition, has acknowledged his paternity of the minor and

I. Is obligated to support the minor under written agreement or by court order;

II. Has provided, in accordance with his financial means, reasonable and consistent payments for the support of the biological mother during or after the term of pregnancy, or the support of the minor, or both, which may include the payment of medical expenses, living expenses, or other tangible means of support, and has regularly visited or communicated, or attempted to visit or communicate with the biological mother during or after the term of pregnancy, or with the minor, or with both; or

III. After the minor
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5. Before the filing of
minor into his home
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6. Is the adoptive fathe

c. A guardian of the minor;

(3) In an agency placement by:

a. The agency that placed th

b. Each individual describe
section who has not reli
to Part 7 of Article 3
1953, c. 906; 1957, c.
1969, c. 534, s.1; c. 911
13; c. 1185, s. 17; 1975
c. 702, ss. 1-3; c. 714;
107, s. 7; 2nd Sess., c.
454, ss. 2, 6; 1985, c. 7
1995, c. 457, s. 2.)

CA[illegible]NOTE

Editor's Note. — *The notes* [illegible] *were decided prior to the 1995 revision of Chapter 48.*

Jurisdiction, Generally. — Where neither the father nor the mother of the child was a party to the proceeding within the contemplation of the statute, and the clerk had no jurisdiction of their person, consequently he had no jurisdiction of the subject matter. Truelove v. Parker, 191 N.C. 430, 132 S.E. 295 (1926), discussed in 5 N.C.L. Rev. 67.

Consent is essential to an order of adoption. In re Daughtridge, 25 N.C. App. 141, 212 S.E.2d 519 (1975).

And parent's consent to adoption must be shown within the record and must relate to the particular persons seeking to adopt the child. In re Holder, 218 N.C. 136, 10 S.E.2d 620 (1940).

Except as Provided in Former §§ 48-5 and 48-6. — Under former § 48-7, except as provided in former §§ 48-5 and 48-6, before a child can be adopted the written consent of the parents or surviving parent or guardian of the person of the child must be obtained. In re Hoose, 243 N.C. 589, 91 S.E.2d 555 (1956).

Absent consent of the adoptive parents, the court was without jurisdiction to order the adoption of a child un[illegible]

III. After the minor's birth but before the minor's placement for adoption or the mother's relinquishment, has married or attempted to marry the mother of the minor by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid; or

5. Before the filing of the petition, has received the minor into his home and openly held out the minor as his biological child; or

6. Is the adoptive father of the minor; and

c. A guardian of the minor; and

(3) In an agency placement by:

a. The agency that placed the minor for adoption; and

b. Each individual described in subdivision (2) of this section who has not relinquished the minor pursuant to Part 7 of Article 3 of this Chapter. (1949, c. 300; 1953, c. 906; 1957, c. 90; c. 778, ss. 3-5; 1961, c. 186; 1969, c. 534, s.1; c. 911, ss. 6, 7; c. 982; 1971, c. 1093, s. 13; c. 1185, s. 17; 1973, c. 1354, s. 5; 1975, c. 321, s. 1; c. 702, ss. 1-3; c. 714; 1977, c. 879, ss. 2, 3, 5; 1979, c. 107, s. 7; 2nd Sess., c. 1088, s. 1; 1983, cc. 30, 292; c. 454, ss. 2, 6; 1985, c. 758, ss. 5-11; 1987, c. 371, s. 1; 1995, c. 457, s. 2.)

CASE NOTES

Editor's Note. — The notes below were decided prior to the 1995 revision of Chapter 48.

Jurisdiction, Generally. — Where neither the father nor the mother of the child was a party to the proceeding within the contemplation of the statute, and the clerk had no jurisdiction of their person, consequently he had no jurisdiction of the subject matter. Truelove v. Parker, 191 N.C. 430, 132 S.E. 295 (1926), discussed in 5 N.C.L. Rev. 67.

Consent is essential to an order of adoption. In re Daughtridge, 25 N.C. App. 141, 212 S.E.2d 519 (1975).

And parent's consent to adoption must be shown within the record and must relate to the particular persons seeking to adopt the child. In re Holder, 218 N.C. 136, 10 S.E.2d 620 (1940).

Except as Provided in Former §§ 48-5 and 48-6. — Under former § 48-7, except as provided in former §§ 48-5 and 48-6, before a child can be adopted the written consent of the parents or surviving parent or guardian of the person of the child must be obtained. In re Hoose, 243 N.C. 589, 91 S.E.2d 555 (1956).

Absent consent of the adoptive parents, the court was without jurisdiction to order the adoption of a child unless her adoptive parents had abandoned such child within the meaning of our statutes. In re Hoose, 243 N.C. 589, 91 S.E.2d 555 (1956).

But Agency's Consent Is Simply an Additional Safeguard. — The consent of those in custody of the child under statutory provisions, unlike the absolute required consent of competent natural parents, is simply an additional safeguard to the welfare and best interests of the child. In re Daughtridge, 25 N.C. App. 141, 212 S.E.2d 519 (1975).

But consent may not be unreasonably and unjustly withheld. In re Daughtridge, 25 N.C. App. 141, 212 S.E.2d 519 (1975).

When Court May Order Adoption to Proceed Without Agency's Consent. — Should a court find that an agency has unreasonably withheld its consent, the court has the right to order that the adoption proceed without the written consent of the agency, resulting, as a practical matter, in the adoption of the child proceeding with the consent of the court substituted for the consent of the agency. In re Daughtridge, 25 N.C. App. 141, 212 S.E.2d 519 (1975).

If the court finds that a failure to grant petition for adoption would be inimical to the best interests and welfare of the

CASE NOTES

Editor's Note. — The notes below were decided prior to the 1995 revision of Chapter 48.

Purpose. — The purpose of former § 48-11 was obvious: to give stability to the adoptive process. It allows prospective adoptive parents, as well as the child, to settle into a stable home environment, to be disturbed only upon those occasions when, prior to the final order, county directors of social services or adoptive agencies conduct studies of the provisions being made for the child. It also gives the natural parents a period of license review of their decision to allow the adoption. In re Kasim, 58 N.C. App. 36, 293 S.E.2d 247, cert. denied, 306 N.C. 743, 295 S.E.2d 478 (1982).

Instrument held sufficient revocation of consent to adoption. In re Hoose, 243 N.C. 589, 91 S.E.2d 555 (1956).

Letter mailed by natural mother to one of the petitioners, stating that she was withdrawing her consent to child's adoption, constituted sufficient notice of revocation under the law as it stood prior to Oct. 1, 1983, the effective date of subsection (b) of former § 48-11, and was timely made inasmuch as less than three months (now 30 days) had elapsed since execution of the consent to adopt and no interlocutory or final order of adoption had been entered. In re Terry, 317 N.C. 132, 343 S.E.2d 923 (1986).

Evidence held sufficient to support findings that social worker made a misrepresentation of an existing fact with knowledge that it was false and with the intent to deceive 17-year-old parents into signing adoption consent forms, and that a prudent person could have reasonably relied on her statements concerning the adoption process and the contents of the forms and signed the forms without reading them. In re Baby Boy Shamp, 82 N.C. App. 606, 347 S.E.2d 848 (1986), cert. denied, 318 N.C. 695, 351 S.E.2d 750 (1987).

As to revocation of consent within six months under former § 48-11, see In re Hoose, 243 N.C. 589, 91 S.E.2d 555 (1956).

§ 48-3-608. Revocation of consent.

(a) A consent to the adoption of an infant who is in utero or is three months old or less at the time the consent is given may be revoked within 21 days following the day on which it is executed, inclusive of weekends and holidays. A consent to the adoption of any other minor may be revoked within seven days following the day on which it is executed, inclusive of weekends and holidays. If the final day of the revocation period falls on a weekend or North Carolina or federal holiday, then the revocation period extends to the next business day. The individual who gave the consent may revoke by giving written notice to the person specified in the consent. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the person to whom consent was given at the address specified in the consent.

(b) In a direct placement, if:

(1) A preplacement assessment is required, and

(2) Placement occurs before the preplacement assessment is given to the parent or guardian who is placing the minor,

then that individual's time under subsection (a) of this section to revoke any consent previously given shall be either five business days after the date the individual receives the preplacement assessment or the remainder of the time provided in subsection (a) of this section, whichever is longer. The date of receipt is the earlier of the date of actual receipt or the date established pursuant to G.S. 48-3-307.

(c) If a person who has physical custody places the minor with the prospective adoptive parent and thereafter revokes a consent pursuant to this section, the prospective adoptive parent shall, immediately upon request, return the minor to that person. The revocation restores the right to physical custody and any right to legal custody to the person who placed the minor and divests the prospective adoptive parent of any right to legal or physical custody and any further responsibility for the care and support of the minor. In any subsequent proceeding, the court shall award reasonable attorneys' fees to the person who revoked if the prospective adoptive parent fails upon request to return the minor.

(d) If a person other than a person described in subsection (c) of this section revokes a consent pursuant to this section and this person's consent is required, the adoption cannot proceed until another consent is obtained or the person's parental rights are terminated. The person who revoked consent is not thereby entitled to physical custody of the minor. If the minor whose consent is required revokes consent, the county department of social services shall be notified for appropriate action.

(e) A second consent to adoption by the same adoptive parents is irrevocable. (1949, c. 300; 1957, c. 778, s. 6; 1961, c. 186; 1969, c. 982; 1983, cc. 83, 688; 1985, c. 758, s. 12; 1987, c. 541, s. 1; 1991, c. 667, s. 1; 1995, c. 457, s. 2.)

§ 48-3-609. Challenges to validity of consent.

(a) A consent shall be void if:

(1) Before the entry of the adoption decree, the individual who executed the consent establishes by clear and convincing evidence that it was obtained by fraud or duress;

(2) The prospective adoptive parent and the individual who executed the consent mutually agree in writing to set it aside;

(3) The petition to adopt is voluntarily dismissed with prejudice; or

(4) The court dismisses the petition to adopt and no appeal has been taken, or the dismissal has been affirmed on appeal and all appeals have been exhausted.

(b) If the consent of an individual who previously had legal and physical custody of a minor becomes void under subsection (a) of this section and no grounds exist under G.S. 48-3-603 for dispensing with this individual's consent, the court shall order the return of the minor to the custody of that individual and shall dismiss any pending adoption proceeding. If the court has reasonable cause to believe that the return will be detrimental to the minor, the court shall not order the return of the minor but shall notify the county department of social services for appropriate action.

(c) If the consent of an individual who did not previously have physical custody of a minor becomes void under subsection (a) of this section and no ground exists under G.S. 48-3-603 for dispensing with this individual's consent, the court shall dismiss any pending proceeding for adoption. If return of the minor is not ordered under subsection (b) of this section, the court shall notify the county department of social services for appropriate action. (1995, c. 457, s. 2.)

§48-3-610. Collateral agreem

If a person executing a consent a parent or parents enter into an agre communication, support, and any ot respect to the minor, this agreemer precedent to the consent itself, failure date a consent already given, and the enforceable. (1995, c. 457, s. 2.)

Part 7. Relinquishment of

§ 48-3-701. Individuals who timing.

(a) A parent or guardian may reli guardianship powers, including the ri an agency. If both parents are marr together, both parents must act jointly agency.

(b) The mother of a minor child ma any time after the child is born but no is required under G.S. 48-3-601 m either before or after the child is bor

(c) A guardian may execute a relin c. 300; 1953, c. 906; 1961, c. 186; 196 702, ss. 1-3; 1977, c. 879, s. 5; 1985, s. 2.)

§ 48-3-702. Procedures for

(a) A relinquishment executed by conform substantially to the requirer signed and acknowledged under oat rized to administer oaths or take ac

(b) The provisions of G.S. 48-3-605 a relinquishment executed under th ual before whom a relinquishment is also certify that an employee of th being relinquished signed a stat willingness to accept the relinquish

§ 48-3-703. Content of reli provisions.

(a) A relinquishment executed by 48-3-701 must be in writing and s

(1) The date and place of the

(2) The name, date of birth, individual executing the

(3) The date of birth or the ex the name of the minor, if

(4) The name and address of being relinquished;

(5) That the individual volu transfer of legal and ph agency for the purposes

b. A statement that the guardian is voluntarily consenting to:
   1. The transfer of any right the guardian has to legal or physical custody of the adoptee to the adoptive stepparent; and
   2. The adoption of the adoptee by the stepparent;
c. That the adoption will not terminate the legal relation of parent and child between a parent who is or was the stepparent's spouse and the adoptee;
d. That the adoption will terminate the legal relation of parent and child between the adoptee and a parent who is not or has not been the stepparent's spouse, including all right of the adoptee to inherit from or through that parent, and will extinguish any court order of custody, visitation, or communication with the adoptee, except that a parent whose relation to the adoptee is terminated by the adoption will remain liable for past-due child support payments unless legally released from this obligation.

(d) G.S. 48-3-608(a) applies to consents executed pursuant to subsections (a) through (c) of this section. Unless so revoked, the consent is final and irrevocable except under a circumstance set forth in G.S. 48-3-609.

(e) A consent executed by an adoptee in a proceeding for adoption by a stepparent must be signed and acknowledged under oath before an individual authorized to administer oaths or take acknowledgments. The minor may revoke the consent at any time before the decree is entered by filing written notice with the court in which the petition is pending. (1949, c. 300; 1957, c. 778, s. 6; 1961, c. 186; 1969, c. 982; 1983, cc. 83, 688; 1985, c. 758, s. 12; 1987, c. 541, s. 1; 1991, c. 667, s. 1.)

§ 48-4-104. Report to the court.

Whenever a petition is filed for adoption of a minor stepchild by a stepparent, the court shall order an agency to prepare a report to the court as provided in Part 5 of Article 2 of this Chapter to determine if the adoption will be in the adoptee's best interest. (1949, c. 300; 1961, c. 186; 1969, c. 982; 1973, c. 476, s. 138; 1983, c. 454, s. 5; 1991, c. 335, s. 2; 1995, c. 457, s. 2.)

§ 48-4-105. Visitation awards to grandparents pursuant to Chapter 50 of the General Statutes.

(a) An adoption under this Article does not terminate or otherwise affect visitation rights awarded to a biological grandparent of a minor pursuant to G.S. 50-13.2.

(b) An adoption under this Article does not affect the right of a biological grandparent to petition for visitation rights pursuant to G.S. 50-13.2A or G.S. 50-13.5(j). (1949, c. 300; 1953, c. 824; 1955, c. 813, s. 5; 1963, c. 967; 1967, c. 619, s. 5; 1983, c. 454, s. 6; 1985, c. 67, ss. 1-4; c. 575, s. 1; 1995, c. 457, s. 2.)

ARTICLE 7.

[Reserved.]

ARTICLE 8.

[Reserved.]

ARTICLE 9.

Confidentiality of Records and Disclosure of Information.

§ 48-9-101. Records defined.

For purposes of this Article, "records" means any petition, affidavit, consent or relinquishment, transcript or notes of testimony, deposition, power of attorney, report, decree, order, judgment, correspondence, document, invoice, receipt, certificate, or other printed, written, microfilmed or microfiched, video-taped or tape-recorded material or electronic data processing records regardless of physical form or characteristics pertaining to a proceeding for adoption under this Chapter. (1995, c. 457, s. 2.)

Editor's Note. — Session Laws 1995, c. 457, s. 11, provides: "Nothing in this act shall affect the validity of an adoption completed or validated under any prior law."

Session Laws 1995, c. 457, s. 12, provides that this article is effective July 1, 1996, and that any petition for adoption filed prior to and still pending on that date shall be completed in accordance with the law in effect immediately prior to that date.

§ 48-9-102. Records confidential and sealed.

(a) All records created or filed in connection with an adoption, except the decree of adoption, and on file with or in the possession of the court, an agency, the State, a county, an attorney, or other provider of professional services, are confidential and may not be disclosed or used except as provided in this Chapter.

(b) During a proceeding for adoption, records shall not be open to inspection by any person except upon an order of the court finding that disclosure is necessary to protect the interest of the adoptee.

(c) When a decree of adoption becomes final, all records and all indices of records on file with the court, an agency, or this State shall be retained permanently and sealed. Sealed records shall not be open to inspection by any person except as otherwise provided in this Article.

(d) Records must be sent by the clerk of superior court to the Division in the following order:

(1) Within 10 days after the petition is filed with the clerk of the superior court, a copy of the petition giving the date of the filing of the original petition and the original of each consent and relinquishment must be filed by the clerk with the Division.

(2) Within 10 days after the decree of adoption is entered, the clerk must file with the Division the additional documents

filed pursuant to G.S. 48-2-305, any report to the court, any additional documents submitted and orders entered, and a copy of the final order.

(e) The Division must cause the papers and reports related to the proceeding to be permanently indexed and filed.

(f) The Division shall transmit a report of the adoption of a minor and any name change to the State Registrar if the minor was born in this State, or to the appropriate official responsible for issuing birth certificates or their equivalent if the minor was not born in this State.

(g) In the adoption of an adult born in this State in which the name of the adoptee is changed, the clerk of superior court shall, within 10 days after the decree of adoption is entered, send the State Registrar a copy of the final order, any separate order of name change, and a report in a form acceptable to the State Registrar containing sufficient information for a new birth certificate. In the adoption of an adult who was not born in this State, the clerk shall transmit a copy of the final order and any other required information to the adoptee. (1949, c. 300; 1957, c. 778, s. 7; 1961, c. 186; 1967, c. 619, ss. 6, 7; c. 880, s. 3; 1969, c. 21, ss. 3-6; c. 982; 1971, c. 1231, s. 1; 1973, c. 476, s. 138; c. 849, s. 3; 1975, c. 91; 1979, c. 739, ss. 1, 2; 1981, c. 657; c. 924, ss. 2, 3; 1983, c. 454, s. 6; 1989, c. 208; c. 727, s. 219(4); 1993, c. 539, s. 411; c. 553, s. 14; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 457, s. 2.)

Legal Periodicals. — For comment, "The Adoptee's Right of Access to Sealed Adoption Records in North Carolina," see 16 Wake Forest L. Rev. 563 (1980).

For survey of 1981 family law, see 60 N.C.L. Rev. 1379 (1982).

CASE NOTES

Editor's Note. — The cases below were decided prior to the 1995 revision of Chapter 48.

Requirement that adoption records be sealed reflects legislative recognition of potential harm to adopted children and their adoptive families, and ultimately to society, which may arise from unwarranted revelation of private facts about adoptions, and suggests that the circumstances surrounding a particular adoption and the identities of the parties involved are ordinarily not matters of public interest. Hall v. Post, 85 N.C. App. 610, 355 S.E.2d 819 (1987), rev'd on other grounds, 323 N.C. 259, 372 S.E.2d 711 (1988).

Service of Motion and Notice of Hearing upon Director of Social Services Required. — Former § 48-25(c) requires that before a director of social services shall be required to disclose any information acquired in contemplation of the adoption of a child, the director must be served with the motion and notice of hearing. In re Spinks, 32 N.C. App. 422, 232 S.E.2d 479 (1977).

There is no requirement that the natural parents be served. In re Spinks, 32 N.C. App. 422, 232 S.E.2d 479 (1977).

Failure to Grant Protective Order. — An appellate court could not hold that a district court in a child custody proceeding erred in failing to grant the defendant county department of social services a "protective order based upon confidentiality of records as set out in [former] § 48-25," where the record on appeal did not reveal exactly what type of "protective order" was requested by the defendant and did not even clearly reveal that the district court, after being presented with a proper motion by the defendant for any such order, refused to grant it. Francis v. Durham County Dep't of Social Servs., 41 N.C. App. 444, 255 S.E.2d 263 (1979).

§ 48-9-103. Release of n[redacted]en

(a) An adoptive parent, an adoptee wh
the request, or a minor adoptee who is
parent may request a copy of any docun
G.S. 48-3-205 and a copy of any additio
related information about the adoptee'
been submitted to a court, agency, or the
treatment pursuant to G.S. 90-21.1 may
information be sent to the treating phys
placed the adoptee or prepared the repo
shall furnish the individual making th
physician named by a minor making the
relevant report or information that is in
of the agency. If a request under this s
that issued the decree of adoption, the c
ual to the Division, or, if known to the co
the adoptee or prepared the report to t
refer the individual to the agency that
court. If the agency no longer exists, th
information to an agency convenient to

(c) Any report or information release
edited by the sender to exclude the na
mation that could reasonably be expe
identity of an adoptee at birth or an ado
birth or other member of the adopte
contain an express reference to the co
Chapter.

(d) An individual who is de[redacted]ce
requested under this section[redacted]pe
jurisdiction for review of the reasonab

(e) If the court or the agency r
adoptee's former parent or from an ad
health or genetic condition that may a
or the adoptee's child, an appropria
reasonable effort to contact and for
adoptee who is 18 or more years of ag
adoptee who is under 18 years of age.

(f) Nothing in this section shall pro
ing nonidentifying information about
stances, in the nature of information
to a former parent, an adult sibling
sibling on request.

(g) The Department shall prescri
verifying the identity, age, or other
individual who requests or provides
this section and the Department, the
reasonable fee for locating and mak
mation.

(h) No request under this sectio
Registrar of Vital Statistics. (1949, c
186; 1969, c. 982; 1973, c. 476, s. 13
924, ss. 2, 3; 1983, c. 454, s. 6; 199
c. 24, s. 14(c); 1995, c. 457, s. 2.)

Legal Periodicals. — For survey of 1977 law on domestic relations, see 56 N.C.L. Rev. 1045 (1978).

For comment, "The Adoptee's Right of Access to Sealed Adoption Records in North Carolina," see 16 Wake Forest L. Rev. 563 (1980).

CASE NOTES

Editor's Note. — The cases below were decided prior to the 1995 revision of Chapter 48.

Circumvention of Section Under Guise of Waiver of Attorney-Client Privilege. — In a child custody action, the trial court was correct in preventing circumvention of this section under the guise of a waiver of the attorney-client privilege, where the plaintiff subpoenaed the files of the plaintiff's former counsel, who were employed to aid plaintiff and her deceased husband in adopting their first child, and the files most likely contained duplicates of many of the papers protected by former §§ 48-24, 48-25 and 48-26. Sheppard v. Sheppard, 38 N.C. App. 712, 248 S.E.2d 871 (1978), cert. denied, 296 N.C. 586, 254 S.E.2d 34 (1979).

Discretion of Trial Judge. — Under this section, disclosure is permitted when the trial judge determines it to be in the best interests of the child or the public. In re Spinks, 32 N.C. App. 422, 232 S.E.2d 479 (1977).

In making the determination that disclosure of any necessary information would be in the best interest of the child or the public, the judge should carefully weigh the interests of the child and the public, including the interests of the adoptive parents and the natural parents. Any conflict should be resolved in favor of the best interest of the child. In re Spinks, 32 N.C. App. 422, 232 S.E.2d 479 (1977).

Finding of Fact Required. — There must be a finding of fact that the information sought to be revealed is necessary for the best interest of the child or the public before an order may be entered requiring disclosure of the information. In re Spinks, 32 N.C. App. 422, 232 S.E.2d 479 (1977).

§ 48-9-106. Release of original certificate of birth.

Upon receipt of a certified copy of a court order issued pursuant to G.S. 48-9-105 authorizing the release of an adoptee's original certificate of birth, the State Registrar shall give the individual who obtained the order a copy of the original certificate of birth with a certification that the copy is a true copy of a record that is no longer a valid certificate of birth. (1995, c. 457, s. 2.)

§ 48-9-107. New birth certificates.

(a) Upon receipt of a report of the adoption of a minor from the Division, or the documents required by G.S. 48-9-102(g) from the clerk of superior court in the adoption of an adult, or a report of an adoption from another state, the State Registrar shall prepare a new birth certificate for the adoptee that shall contain the adoptee's full adoptive name, sex, state of birth, and date of birth; the full name of the adoptive father, if applicable; the full maiden name of the adoptive mother, if applicable; and any other pertinent information consistent with this section as may be determined by the State Registrar. The new certificate shall contain no reference to the adoption of the adoptee and shall not refer to the adoptive parents in any way other than as the adoptee's parents.

(b) In an adoption by a stepparent, the State Registrar shall prepare a new birth certificate pursuant to subsection (a) of this section except:

(1) The adoptive parent and the parent whose relation with the adoptee remains unchanged shall be listed as the adoptee's mother and father on the new birth certificate; and

(2) The city and county of birth of the adoptee shall be the same on the new birth certificate as on the original certificate.

The names of the adoptee's parents shall not be changed as provided in subdivision (1) of this subsection if the petitioner, the petitioner's spouse, the adoptee if age 12 or older, and any living parent whose parental rights are terminated by the adoption jointly file a request that the parents' names not be changed with the court prior to the entry of the adoption decree. The Division shall send a copy of this request with its report to the State Registrar or other appropriate official in the adoption of a minor stepchild, and the clerk of superior court shall send a copy with the documents required by G.S. 48-9-102(g) in the adoption of an adult stepchild.

(c) The State Registrar shall seal the original certificate of birth and all records in the possession of that office pertaining to the adoption. These records shall not be unsealed except as provided in this Article. The State Registrar shall provide certified typed copies or abstracts of the new certificate of birth of an adoptee prepared pursuant to subsection (a) of this section to the adoptee, the adoptive parents, and the adoptee's spouse, brothers, and sisters. For purposes of this subsection, "parent", "brother", and "sister" shall mean the adoptee's adoptive parent, brother, or sister and shall not mean a former parent, brother, or sister.

(d) At the time of preparing the new birth certificate pursuant to subsection (a) of this section, the State Registrar shall notify the register of deeds or appropriate official in the health department in the county of the adoptee's birth to remove the adoptee's birth certificate from the records and forward it to the State Registrar for retention under seal with the original certificate of birth in the State Registrar's office. The register of deeds shall also delete all index entries for that birth certificate. The State Registrar shall not issue copies of birth certificates for adoptees to registers of deeds. Only the State Registrar shall issue certified copies of such records, and these copies shall be prepared as prescribed in subsection (c) of this section.

(e) The State Registrar may by rule prescribe requirements for reports of adoptions from other states. (1949, c. 300; 1951, c. 730, ss. 1-4; 1955, c. 951, s. 1; 1967, c. 880, s. 3; c. 1042, ss. 1-3; 1969, c. 21, s. 2-6; c. 977; 1971, c. 1231, s. 1; 1973, c. 476, s. 128; c. 849, ss. 1-3; 1975, c. 91; 1981, c. 657; 1983, c. 454, s. 6; 1989, c. 208; c. 727, s. 219(3), (4); 1993, c. 553, s. 14; 1995, c. 457, s. 2.)

Legal Periodicals. — For comment, "The Adoptee's Right of Access to Sealed Adoption Records in North Carolina," see 16 Wake Forest L. Rev. 563 (1980).

§ 48-9-108. Restoration of original birth certificates if a decree of adoption is set aside.

If a final decree of adoption is set aside, the court shall send a certified copy of the order within 10 days after it becomes final to the State Registrar if the adoptee was born in this State or to the appropriate official responsible for issuing birth certificates or their equivalent if the adoptee was not born in this State. The court shall also send a copy to the Division. If the adoptee desires to have the adoptive name shown on the original birth certificate when it is restored, the order must include this directive. Upon receipt of such

an order, the State Registrar shall sea
this section and restore the adoptee's
This sealed file may subsequently be
valid court order pursuant to G.S.
(1995, c. 457, s. 2.)

§ 48-9-109. Certain disclosur

Nothing in this Article shall be
prevent an employee of a court, agenc
(1) Inspecting permanent, confide
than records maintained by
purpose of discharging any ot
(2) Disclosing the name of the c
adoption occurred, or the nam
adoptee, to an individual de
can verify his or her identity
(3) Disclosing or using inform
and sealed records, other t
State Registrar, for statistic
long as the disclosure will
person who is the subject of
any further conditions the
impose. (1995, c. 457, s. 2.)

ARTICLE

Prohibited Practices [redacted]nn

§ 48-10-101. Prohibited acti

(a) No one other than a person or e
may place a minor for adoption. No on
specified in G.S. 48-3-201, or an ad
potential adoptive parents for childre
other than an agency or an adoption f
a completed preplacement assessme
the individual is suitable to be an a
ual's immediate family, may solicit fo

(b) No one other than a county de
adoption facilitator, or an agency lice
State may advertise in any periodi
television, or other public medium,
place or accept a child for adoption.

(c) A person who violates subsect
guilty of a Class 1 misdemeanor.

(d) The district court may enjoin
section. (1975, c. 335, s. 2; 1981, c. 27
Ex. Sess., c. 24, s. 14(c); 1995, c. 45

Editor's Note. — Session Laws 1995, c. 457, s. 11, provides: "Nothing in this act shall affect the validity of an adoption completed or validated under any prior law."

Session Laws 1995, c. 457, s. 12, [redacted]

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **May 8, 1997**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charlene P. Hawkins	DOA
David A. Munn	Dept of Secretary of State
Esther T. Johnson	DSS-DHR
Jerold K. Robbins	Dept of Justice
[illegible]	DOR
[illegible]	Moore Van Allen
Floyd Lewis	General Statutes Commission
[illegible]	N.C. Senate
Deborah Ross	ACLU

MINUTES
HOUSE JUDICIARY II COMMITTEE

May 13, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on May 13, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Kiser, Vice-Chairman, called the meeting to order.

Those in attendance were Representatives Kiser, Baddour, Bowie, Cansler, Culpepper, Gardner, Goodwin, Hensley, McMahan, Nesbitt, Redwine, Russell, Saunders, Shubert, Sutton, Weatherly, and Wilkins. A list of visitors is attached.

The following bill was discussed:

SB-162 ADOPTION LAW AMENDMENTS

Senator Hartsell was recognized to present a proposed committee substitute. Representative Wilkins moved the proposed committee substitute be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute is attached.

Mr. Tim Hovis, Committee Counsel, explained the proposed committee substitute.

Mr. Paul Newby, Attorney and adoptive parent, and Ms. Bly Hall, Staff Attorney, General Statutes Commission, answered questions of committee members.

No action was taken on SB-162.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S162-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 162
THIS IS A DRAFT 13-MAY-97 09:08:33
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Adoption Law Technical Amendments. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND SIMILAR MINOR CHANGES TO THE ADOPTION LAWS AS FOUND IN CHAPTER 48 OF THE GENERAL STATUTES INVOLVING CERTIFICATION OF DOCUMENTS, NOTICE, PROCEDURES FOR REPORTS TO THE COURT, ACCEPTANCE OF RELINQUISHMENTS BY AGENCIES, INDEXING, CAPTIONS ON ADOPTION PETITIONS, AND STANDBY GUARDIANS; TO STANDARDIZE PROCEDURES FOR REQUESTING NEW BIRTH CERTIFICATES IN ALL ADOPTIONS; AND TO AMEND PROVISIONS FOR OBTAINING CERTIFICATION OF IDENTIFICATION FOR INDIVIDUALS OF FOREIGN BIRTH AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION; AND TO ALLOW FOR PREBIRTH RIGHT-TO-CONSENT DETERMINATION, CLARIFY WHEN COUNTY DEPARTMENTS OF SOCIAL SERVICES MUST DO PREPLACEMENT ASSESSMENTS, TO ADD CHILDREN TO THE LIST OF PERSONS WHO CAN GET COPIES OF BIRTH CERTIFICATES OF ADOPTEES, TO EXTEND THE EFFECTIVE PERIOD OF PREPLACEMENT ASSESSMENTS TO EIGHTEEN MONTHS, TO PROVIDE THAT EXECUTION OF A RELINQUISHMENT DOES NOT TERMINATE THE DUTY OF SUPPORT, AND TO PERMIT ALL RELINQUISHMENTS TO BE RESCINDED BY MUTUAL AGREEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 48-2-305 reads as rewritten:

"**§ 48-2-305. Petition for adoption; additional documents.**

At the time the petition is filed, the petitioner shall file or cause to be filed the following documents:

(1) Any required affidavit of parentage executed pursuant to G.S. 48-3-206;

(2) Any required consent or relinquishment that has been executed;

(3) A certified copy of any court order terminating the rights and duties of a parent or a guardian of the adoptee;

(4) A certified copy of any court order or pleading in a pending proceeding concerning custody of or visitation with the adoptee;

(5) A copy of any required preplacement assessment certified by the agency that prepared it or an affidavit from the petitioner stating why the assessment is not available;

(6) A ~~certified~~ copy of any document containing the information required under G.S. 48-3-205 concerning the health, social, educational, and genetic history of the adoptee and the adoptee's original family which the petitioner received before the placement or at any later time, certified by the person who prepared it, or if this document is not available, an affidavit stating the reason why it is not available;

(7) Any signed copy of the form required by the Interstate Compact on the Placement of Children, G.S. 110-57.1, et seq., authorizing a minor to come into this State;

(8) A writing that states the name of any individual whose consent is or may be required, but who has not executed a consent or a relinquishment or whose parental rights have not been legally terminated, and any fact or circumstance that may excuse the lack of consent or relinquishment; and

(9) In an adoption pursuant to Article 4 of this Chapter, a copy of any agreement to release past-due child support payments.

The petitioner may also file any other document necessary or helpful to the court's determination."

Section 2. G.S. 48-2-401(d) reads as rewritten:

"(d) In the adoption of an adult, the petitioner shall also serve notice of the filing on any adult children of the prospective adoptive parent and any parent, spouse, or adult child of the adoptee who are listed in the petition to adopt."

Section 3. G.S. 48-2-403 reads as rewritten:

"**§ 48-2-403. Notice of proceedings by clerk.**

No later than five days after a petition is filed, the clerk of the court shall ~~give notice of the adoption proceeding by certified mail, return receipt requested,~~ mail or otherwise deliver notice of the adoption proceeding to any agency that has undertaken but not yet completed a preplacement assessment and any agency ordered to make a report to the court pursuant to Part 5 of this Article."

Section 4. G.S. 48-2-502(b) reads as rewritten:

"(b) The report must be in writing and contain:

(1) An account of the petitioner's marital or family status, physical and mental health, home environment, property, income, and financial obligations; if there has been a preplacement assessment, the account may be limited to any changes since the filing of the preplacement assessment;

(2) All reasonably available nonidentifying information concerning the physical, mental, and emotional condition of the adoptee required by G.S. 48-3-205 which is not already included in the document prepared under that section;

(3) Copies of any court order, judgment, decree, or pending legal proceeding affecting the adoptee, the petitioner, or any child of the petitioner relevant to the welfare of the adoptee;

(4) A list of the expenses, fees, or other charges incurred, paid, or to be paid in connection with

the adoption that can reasonably be ascertained by the agency;

(5) Any fact or circumstance known to the agency that raises a specific concern about whether the proposed adoption is contrary to the best interest of the adoptee because it poses a significant risk of harm to the well-being of the adoptee;

(6) A finding by the agency concerning the suitability of the petitioner and the petitioner's home for the adoptee;

(7) A recommendation concerning the granting of the petition; and

(8) Such other information as may be required by rules adopted pursuant to subsection (c) of this section.

In an agency adoption, the report shall be written in such a way as to exclude all information that could reasonably be expected to lead directly to the identity of the adoptee at birth or any former parent or family member of the adoptee, and any copies of documents included pursuant to subdivision (3) of this subsection shall be redacted to exclude this information."

Section 5. (a) G.S. 48-2-503(a) reads as rewritten:

"(a) The agency shall complete a written report and file it with the court within 60 days after ~~receipt~~ the mailing or delivery of the order under G.S. 48-2-501 unless the court extends the time for filing. The agency shall have three additional days to complete and file the report if the order was mailed."

(b) G.S. 48-2-503(b) reads as rewritten:

"(b) If the agency identifies a specific concern about the suitability of the petitioner or the petitioner's home for the adoptee, the agency must file an interim report immediately, which must contain an account of the specific concern. The agency shall indicate in the final report whether its concerns have been satisfied and in what manner."

(c) G.S. 48-2-503 is amended by adding a new subsection to read:

"(b1) When an agency identifies a specific concern in a final report and the court extends the time for a final hearing or disposition to allow resolution of these concerns, the agency

shall file a supplemental report indicating whether its concerns have been satisfied and in what manner."

(d) Subsection (a) of this section applies to reports to the court prepared in response to a notice under G.S. 48-2-403 mailed or delivered after the effective date of this act.

Section 6. (a) G.S. 48-2-604 reads as rewritten:

"**§ 48-2-604. Denying petition to adopt a minor.**

(a) If at any time between the filing of a petition to adopt a minor and the issuance of the final order completing the adoption it appears to the court that the minor should not be adopted by the petitioners or the petition should be dismissed for some other reason, the court may dismiss the proceeding.

(b) The court, before entering an order to dismiss the proceeding, shall give at least five days' notice of the motion to dismiss to the parties, to the agency that made the report to the court, and to the Department of Human Resources. The parties and agency entitled to notice under this subsection, and the Department, shall be entitled to a hearing on the issue of dismissing the proceeding.

(c) If the court denies ~~a petition to adopt a minor,~~ the petition, the custody of the minor shall revert to any agency or person having custody immediately before the filing of the petition. If the placement of the ~~child~~ minor was a direct placement under Article 3 of this Chapter, the court shall notify the director of social services of the county in which the petition was filed of the dismissal, and the director of social services shall be responsible for taking appropriate action for the protection of the ~~child.~~ minor."

(b) This section becomes effective October 1, 1997.

Section 7. (a) G.S. 48-3-702 reads as rewritten:

"**§ 48-3-702. Procedures for relinquishment.**

(a) A relinquishment executed by a parent or guardian must conform substantially to the requirements in this Part and must be signed and acknowledged under oath before an individual authorized to administer oaths or take acknowledgments.

(b) The provisions of G.S. 48-3-605(b), (c), (e), and (f), also apply to a relinquishment executed under this ~~Part, except that an individual before whom a relinquishment is signed and acknowledged shall also certify that an employee of the agency to which the minor is being relinquished signed a statement~~

~~indicating the agency's willingness to accept the relinquishment.~~ Part.

(c) An agency that accepts a relinquishment shall furnish each parent or guardian who signs the relinquishment a letter or other writing indicating the agency's willingness to accept that person's relinquishment."

(b) This section applies to relinquishments executed on or after the effective date of this act.

Section 8. (a) G.S. 48-3-608(a) reads as rewritten:

"(a) A consent to the adoption of an infant who is in utero or is three months old or less at the time the consent is given may be revoked within 21 days following the day on which it is executed, inclusive of weekends and holidays. A consent to the adoption of any other minor may be revoked within seven days following the day on which it is executed, inclusive of weekends and holidays. If the final day of the revocation period falls on a weekend or North Carolina or federal holiday, then the revocation period extends to the next business day. The individual who gave the consent may revoke by giving written notice to the person specified in the consent. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the person to whom consent was given at the address specified in the consent. If notice is given by overnight delivery service, notice is deemed complete on the date it is deposited with the service as shown by the receipt from the service, with delivery charges paid by the sender, addressed to the person to whom consent was given at the address specified in the consent."

(b) This section applies to notices given on or after the effective date of this act.

Section 9. (a) G.S. 48-9-102(a) reads as rewritten:

"(a) All records created or filed in connection with an adoption, except the decree of ~~adoption,~~ adoption and the entry in the special proceedings index in the office of the clerk of court, and on file with or in the possession of the court, an agency, the State, a county, an attorney, or other provider of professional services, are confidential and may not be disclosed or used except as provided in this Chapter."

(b) G.S. 48-9-102(f) reads as rewritten:

"(f) The Division shall transmit a report of ~~the~~ each adoption ~~of a minor~~ and any name change to the State Registrar if the ~~minor~~ adoptee was born in this ~~State, or~~ State. In the case of an adoptee who was not born in this State, the Division shall transmit the report and any name change to the appropriate official responsible for issuing birth certificates or their ~~equivalent if the minor was not born in this State.~~ equivalent."

(c) G.S. 48-9-102(g) reads as rewritten:

"(g) ~~In the adoption of an adult born in this State in which the name of the adoptee is changed, the clerk of superior court shall, within 10 days after the decree of adoption is entered, send the State Registrar a copy of the final order, any separate order of name change, and a report in a form acceptable to the State Registrar containing sufficient information for a new birth certificate. In the adoption of an adult who was not born in this State, the clerk shall transmit a copy of the final order and any other required information to the adoptee.~~ In any adoption, the State Registrar may, in addition to receiving the report from the Division, request a copy of the final order and any separate order of name change directly from the clerk of court."

(d) G.S. 48-2-303 reads as rewritten:

"**§ 48-2-303. Caption of petition for adoption.**

The caption of the petition shall be substantially as follows:

STATE OF NORTH CAROLINA
IN THE DISTRICT COURT
COUNTY
BEFORE THE CLERK

*(Full name of petitioning father)
and
PETITION FOR ADOPTION
*(Full name of petitioning mother)
and
FOR THE ADOPTION OF

*(Full name ~~of adoptee as used in proceeding).~~ by which the adoptee is to be known if the adoption is granted)."

(e) Subsection (a) of this section is effective on and after July 1, 1996. The remainder of this section becomes

effective October 1, 1997. Subsections (b) and (c) apply to final orders entered on or after the effective date of this act.

Section 10. (a) G.S. 48-2-601(a) reads as rewritten:

"(a) If it appears to the court that ~~the petition~~ a petition to adopt a minor is not contested, the court may dispose of the petition without a formal hearing."

(b) This section applies to petitions filed on or after the effective date.

Section 11. (a) G.S. 48-3-603(a) reads as rewritten:

"(a) Consent to an adoption of a minor is not required of a person or entity whose consent is not required under G.S. 48-3-601, or:

(1) An individual whose parental rights and duties have been terminated under Article 24B of Chapter 7A of the General Statutes or by a court of competent jurisdiction in another state;

(2) A man described in G.S. 48-3-601(2), other than an adoptive father, if (i) the man has been judicially determined not to be the father of the minor to be adopted, or (ii) another man has been judicially determined to be the father of the minor to be adopted;

~~(3) A parent for whose minor child a guardian has been appointed;~~

(4) An individual who has relinquished parental rights or guardianship powers, including the right to consent to adoption, to an agency pursuant to Part 7 of this Article;

(5) A man who is not married to the minor's birth mother and who, after the conception of the minor, has executed a notarized statement denying paternity or disclaiming any interest in the minor;

(6) A deceased parent or the personal representative of a deceased parent's estate; or

(7) An individual listed in G.S. 48-3-601 who has not executed a consent or a relinquishment and who fails to respond to a notice of the adoption proceeding within 30 days after the service of the notice."

(b) G.S. 48-3-201(d) reads as rewritten:

"(d) ~~An agency having legal and physical custody of a minor may place the minor for adoption at any time after a relinquishment is executed, even if only one parent has executed a relinquishment pursuant to Part 7 of this Article or has had parental rights terminated, unless the other parent notifies the agency in writing of the parent's objections before the placement. The agency shall act promptly after accepting a relinquishment from one parent to obtain the consent or relinquishment of the other parent or to terminate the rights between the minor and the other parent pursuant to Article 24B of Chapter 7A of the General Statutes.~~ An agency having legal and physical custody of a minor may place the minor for adoption at any time after a relinquishment is executed by anyone as permitted by G.S. 48-3-701. The agency may place the minor for adoption even if other consents are required before an adoption can be granted, unless an individual whose consent is required notifies the agency in writing of the individual's objections before the placement. The agency shall act promptly after accepting a relinquishment to obtain all other necessary consents, relinquishments, or terminations of any guardian's authority pursuant to Chapter 35A of the General Statutes or parental rights pursuant to Article 24B of Chapter 7A of the General Statutes."

(c) G.S. 48-4-102 reads as rewritten:

"**§ 48-4-102. Consent to adoption of stepchild.**

Except under circumstances described in G.S. 48-3-603, a petition to adopt a minor stepchild may be granted only if consent to the adoption has been executed by the adoptee if 12 or more years of age; and

(1) The adoptee's parents as described in G.S. 48-3-601; ~~or~~ and

(2) Any guardian of the adoptee.

The consent of an incompetent parent may be given pursuant to the procedures in G.S. 48-3-602."

(d) G.S. 48-3-602 reads as rewritten:

"**§ 48-3-602. Consent of incompetent parents.**

If a parent as described in G.S. 48-3-601 has been adjudicated incompetent, then the court shall appoint a guardian ad litem for that parent ~~and~~ and, unless the child already has a guardian, a guardian ad litem for the child to make a full investigation as

to whether the adoption should proceed. The investigation shall include an evaluation of the parent's current condition and any reasonable likelihood that the parent will be restored to competency, the relationship between the child and the incompetent parent, alternatives to adoption, and any other relevant fact or circumstance. If the court determines after a hearing on the matter that it will be in the best interest of the child for the adoption to proceed, the court shall order the guardian ad litem of the parent to execute a consent for that parent."

(e) G.S. 48-1-101(8) reads as rewritten:

"(8) 'Guardian' means an individual, other than a parent, appointed by a clerk of court in North Carolina to exercise all of the powers conferred by ~~G.S. 35A-1241;~~ G.S. 35A-1241, including a standby guardian appointed under Article 21 of Chapter 35A of the General Statutes whose authority has actually commenced; and also means an individual, other than a parent, appointed in another jurisdiction according to the law of that jurisdiction who has the power to consent to adoption under the law of that jurisdiction."

Section 12. (a) G.S. 48-2-501 reads as rewritten:

"**§ 48-2-501. Report to the court during proceeding for adoption of a minor.**

(a) Whenever a petition for adoption of a minor is filed, the court shall order a report to the court made to assist the court to determine if the proposed adoption of the minor by the petitioner is in the minor's best interest.

(b) Consistent with G.S. 48-1-109, the court shall order the report to be prepared:

(1) By the agency that placed the minor;

(2) By the agency that made the preplacement assessment pursuant to Part 3 of Article 3 of this Chapter; or

(3) By another agency.

(c) The court shall provide the individual who prepares the report with copies of: ~~(i) the petition to adopt; and (ii) the documents filed with it.~~

(1) The petition to adopt; and

(2) The documents filed with it.

(d) As an exception to this section, in any stepparent adoption under Article 4 of this Chapter in which the minor has lived with the stepparent for at least the two consecutive years immediately preceding the filing of the petition, the court may order a report, but it is not required to order a report unless the minor's consent is to be waived, the minor has revoked a consent, or both of the minor's parents are dead."

(b) G.S. 48-4-104 is repealed.

(c) This section becomes effective October 1, 1997.

Section 13. G.S. 130A-108 reads as rewritten:

"**§ 130A-108. Certificate of identification for ~~child~~ individual of foreign birth.**

In the case of an adopted ~~child~~ individual born in a foreign country and ~~having legal settlement in this State,~~ residing in this State at the time of application, the State Registrar shall, upon the presentation of a certified copy of the original birth certificate from the country of birth and a certified copy of the final order of adoption signed by the clerk of court or other appropriate official, prepare a certificate of identification for the ~~child.~~ individual. The certificate shall contain the same information required by G.S. 48-9-107(a) for ~~children~~ individuals adopted in this State, except that the country of birth shall be specified in lieu of the state of birth."

Section 14. Part 2 of Article 2 of Chapter 48 is amended by adding a new section to read:

"**§ 48-2-206. Prebirth determination of right to consent.**

(a) Anytime after six months from the date of conception as reasonably determined by a physician, the biological mother, agency, or adoptive parents chosen by the biological mother may file a special proceeding with the clerk requesting the court to determine whether consent of the biological father is required. The biological father shall be served with notice of the intent of the biological mother to place the child for adoption, allowing the biological father 15 days after service to assert a claim that his consent is required.

(b) The notice required under this subsection shall contain the special proceeding case caption and file number and shall be substantially similar to the following language:

'[Name of the biological mother], the biological mother, is expected to give birth to a child on or about [birth due

date]. You have been identified as the biological father. It is the intention of the biological mother to place the child for adoption. It is her belief that your consent to the adoption is not required. If you believe your consent to the adoption of this child is required pursuant to G.S. 48-3-601, you must notify the court in writing no later than 15 days from the date you received this notice that you believe your consent is required. A copy of your notice to the court must also be sent to the person or agency that sent you this notice. If you fail to notify the court within 15 days that you believe your consent is required, the court will rule that your consent is not required.'

(c) If the biological father fails to respond within the time required, the court shall enter an order that the biological father's consent is not required for the adoption.

(d) If the biological father notifies the court within 15 days of his receipt of the notice required by this subsection that he believes his consent to the adoption is required, the biological mother, agency, or adoptive parents may seek an immediate determination by the court as to whether the consent of the biological father is required by G.S. 48-3-601. A hearing on this question may be held upon 10 days' notice to the parties. During the hearing, the court may take such evidence as necessary and shall enter an order which shall be the final order. However, if the biological father notifies the court that he believes his consent is required by G.S. 48-3-601 and the biological father refuses to provide his consent, the court may not enter an order under this section.

(e) The manner of service under this section shall be the same as set forth in G.S. 48-2-402.

(f) The jurisdiction provisions of Article 6A of Chapter 1 of the General Statutes and the venue provisions of Article 7 of Chapter 1 of the General Statutes rather than the provisions of Part 1 of this Article apply to proceedings under this section.

(g) Computation of periods of time provided for in this section shall be calculated as set forth in G.S. 1A-1, Rule 6.

(h) Transfer under G.S. 1-272 and appeal under G.S. 1-279.1 shall be as for an adoption proceeding.

(i) A determination by the court under this section that the consent of the biological father is not required shall only apply

to an adoption petition filed within three months of the birth of the child."

Section 15. G.S. 48-3-302(e) reads as rewritten:

"(e) If an individual requesting a preplacement assessment has identified a prospective adoptive child and has otherwise been unable to obtain a preplacement assessment, the county department of social services must, upon request, prepare or contract for the preparation of the preplacement assessment. As used in this subsection, 'unable to obtain a preplacement assessment' includes the inability to obtain a preplacement assessment at the fee the county department of social services is permitted to charge the individual. Except as provided in this subsection, no agency is required to conduct a preplacement assessment unless it agrees to do so."

Section 16. G.S. 48-3-601(2)b.4. reads as rewritten:

"4. Before the earliest of the ~~petition,~~ petition or the receipt of the notice pursuant to G.S. 48-2-206, has acknowledged his paternity of the minor and

I. Is obligated to support the minor under written agreement or by court order;

II. Has provided, in accordance with his financial means, reasonable and consistent payments for the support of the biological mother during or after the term of pregnancy, or the support of the minor, or both, which may include the payment of medical expenses, living expenses, or other tangible means of support, and has regularly visited or communicated, or attempted to visit or communicate with the biological mother during or after the term of pregnancy, or with the minor, or with both; or

III. After the minor's birth but before the minor's placement for adoption or the mother's relinquishment, has married or attempted to marry the mother of the minor by a marriage solemnized in

apparent compliance with law, although the attempted marriage is or could be declared invalid; or".

Section 17. G.S. 48-3-603(a) is amended by adding a new subdivision to read:

"(8) An individual notified under G.S. 48-2-206 who does not respond in a timely manner or whose consent is not required as determined by the court."

Section 18. G.S. 48-9-107(c) reads as rewritten:

"(c) The State Registrar shall seal the original certificate of birth and all records in the possession of that office pertaining to the adoption. These records shall not be unsealed except as provided in this Article. The State Registrar shall provide certified typed copies or abstracts of the new certificate of birth of an adoptee prepared pursuant to subsection (a) of this section to the adoptee, the adoptee's children, the adoptive parents, and the adoptee's spouse, brothers, and sisters. For purposes of this subsection, 'parent', 'brother', and 'sister' shall mean the adoptee's adoptive parent, brother, or sister and shall not mean a former parent, brother, or sister."

Section 19. (a) G.S. 48-3-301(a)(1) reads as rewritten:

"(1) Has been completed or updated within the ~~12~~ 18 months immediately preceding the placement; and".

(b) This section applies to placements made on or after the effective date of this act.

Section 19.1 (a) G.S. 48-3-704 reads as rewritten:

"**§ 48-3-704. Content of relinquishment; optional provisions.**

In addition to the mandatory provisions listed in G.S. 48-3-703, a relinquishment may also state that the relinquishment may be revoked upon notice by the agency that an adoption by a specific prospective adoptive parent, named or described in the relinquishment is not ~~completed, or if the agency and the person relinquishing the minor mutually agree to rescind the relinquishment before placement with a prospective adoptive parent occurs.~~ completed."

(b) G.S. 48-3-705(c) reads as rewritten:

"(c) A relinquishment terminates:

(1) Any right and duty of the individual who executed the relinquishment with respect to the legal and physical custody of the ~~minor;~~ minor.

(2) The right to consent to the minor's ~~adoption; and~~ adoption.

~~(3) The duty to support the minor.~~"

(c) G.S. 48-3-707(a) reads as rewritten:

"(a) A relinquishment shall become void ~~if,~~ if:

(1) Before ~~before~~ the entry of the adoption decree, the individual who executed the relinquishment establishes by clear and convincing evidence that it was obtained by fraud or duress.

(2) Before placement with a prospective adoptive parent occurs, the agency and the person relinquishing the minor agree to rescind the relinquishment."

(d) This section applies to relinquishments executed on or after August 1, 1997.

Section 20. Sections 14, 16, and 17 become effective October 1, 1997. Except as otherwise provided, the remaining sections of this act are effective when the act becomes law.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

May 13, 1997 10:00 A.M. — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charlene Dawkins	SOS
Scott Templeton	Sec. State
Dan Fulton	ABC
[illegible]	DOR
Jim KERR	Smith, Anderson Law Firm
J Rumancik	MCI
Andy Romanet	N.C.L.M.
BILL SLOGGIN	NCBA
Bill Brooks	NCFPC
Ray Hall	General Statutes Commission
Floyd M. Lewis	General Statutes Commission
Esther L. High	DSS/DHR
Tom Henderson	CAL of N.C.
Bernard Allen	SOS
Ron Aycock	County Com. Assoc
[illegible]	[illegible]
David Thomas	Secretary of State
Robyn Gaskill	Lobbyist
Rondeo Pettie	DHR
[illegible]	NC Assoc of Realtors
Lucius Pullen	Attorney
John Rustin	NCFPA

MINUTES
HOUSE JUDICIARY II COMMITTEE

May 13, 1997 1:00 P.M.

The North Carolina House of Representatives Judiciary II Committee met on May 13, 1997, at 1:00 P.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Baddour, Berry, Cansler, Culpepper, Decker, Gardner, Hackney, Hensley, Redwine, Russell, Saunders, Sutton, Weatherly and Wilkins. A list of visitors is attached.

The following bills were discussed:

SB-157 CORPORATE AMENDMENTS
SB-452 LOCAL REGULATION ADULT ENTERTAINMENT

Senator Hartsell was recognized to present a proposed committee substitute for SB-157. Representative Culpepper moved the proposed committee substitute be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute is attached.

Ms. Bly Hall, Staff Attorney, General Statutes Commission, Mr. David Massey, representing the Secretary of State Office, and Mr. Jack Harper, Department of Revenue, answered questions of committee members.

Representative Culpepper was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Decker moved the amendment be incorporated in a committee substitute, with a favorable report as to the House committee substitute bill, unfavorable as to Senate committee substitute bill, and recommendation that the House committee substitute bill be re-referred to the Committee on Finance; motion passed.

Senator Cooper was recognized to present SB-452 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Walker Reagan, Staff Attorney, and Ms. Susan Hayes, Committee Counsel, are attached.

Mr. David Owens, Institute of Government, UNC-CH, answered questions of committee members.

Representative Decker was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Hackney was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Culpepper moved the amendments be incorporated in a committee substitute with a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill; motion passed.

The meeting was adjourned at 1:50 P.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S157-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 157
THIS IS A DRAFT 7-MAY-97 15:19:20
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Corporate Amendments. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT EXPAND THE TIME CORPORATIONS AND LIMITED LIABILITY COMPANIES MAY APPLY FOR REINSTATEMENT FROM ADMINISTRATIVE DISSOLUTION, TO INCREASE THE FEE CORPORATIONS MUST PAY FOR REINSTATEMENT AFTER ADMINISTRATIVE DISSOLUTION, TO ESTABLISH A FEE LIMITED LIABILITY COMPANIES MUST PAY FOR REINSTATEMENT AFTER ADMINISTRATIVE DISSOLUTION, TO PROVIDE THAT ANNUAL REPORTS OF MOST BUSINESS CORPORATIONS AND LIMITED LIABILITY COMPANIES SHALL BE FILED WITH THE DEPARTMENT OF REVENUE RATHER THAN THE SECRETARY OF STATE, TO AMEND THE LAW GOVERNING DISSENTERS' RIGHTS PROCEDURES AND THE FILING OF DOCUMENTS BY LIMITED LIABILITY COMPANIES, TO ALLOW FACSIMILE SIGNATURES AND ADVISORY REVIEW OF DOCUMENTS BY THE SECRETARY OF STATE, AND TO CLARIFY CORRECTIONS PROCEDURES, LIMITED LIABILITY NAME AVAILABILITY, AND THE DEFINITION OF FOREIGN PROFESSIONAL CORPORATIONS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION AND OTHERS.

The General Assembly of North Carolina enacts:

PART I. ADMINISTRATIVE DISSOLUTIONS.

Section 1. G.S. 55-14-22(a) reads as rewritten:

"(a) A corporation administratively dissolved under G.S. 55-14-21 may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of dissolution. The application must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution; and

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated.

(3) Reserved.

(4) Repealed by Session Laws 1995, c. 539, s. 6."

Section 2. G.S. 55A-14-22(a) reads as rewritten:

"(a) A corporation administratively dissolved under G.S. 55A-14-21 may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of dissolution. The application shall:

(1) Recite the name of the corporation and t effective date of its administrative dissolution; and

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated."

Section 3. G.S. 57C-6-03(c) reads as rewritten:

"(c) A limited liability company administratively dissolved under this section may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of the administrative dissolution. The procedures for reinstatement and for the appeal of any denial of the limited liability company's application for reinstatement shall be the same procedures applicable to business corporations under G.S. 55-14-22, 55-14-23, and 55-14-24."

Section 4. G.S. 55-1-22 reads as rewritten:

"**§ 55-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to ~~him~~ the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	$100.00
(2)	Application for reserved name	10.0

(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Corporation's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected corporation	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of incorporation	50.00
(11)	Restated articles of incorporation	10.00
	with amendment of articles	50.00
(12)	Articles of merger or share exchange	50.00
(13)	Articles of dissolution	30.00
(14)	Articles of revocation of dissolution	10.00
(15)	Certificate of administrative dissolution	No fee
(16)	Application for reinstatement following administrative dissolution	~~25.00~~ 100.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Annual report	10.00
(24)	Articles of correction	10.00
(25)	Application for certificate of existence or authorization	5.00

(26) Any other document required or permitted to be filed by this Chapter 10.00.

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on ~~him~~ the Secretary under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if ~~he~~ the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign corporation:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate."

Section 5. G.S. 55A-1-22 reads as rewritten:

"**§ 55A-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	$50.00
(2)	Application for reserved name	$10.00
(3)	Notice of transfer of reserved name	$10.00
(4)	Application for registered name	$10.00
(5)	Application for renewal of registered name	$10.00
(6)	Corporation's statement of change of registered agent or registered office or both	$ 5.00
(7)	Agent's statement of change of registered office for each affected corporation	$ 5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	$ 5.00
(10)	Amendment of articles of incorporation	$25.00
(11)	Restated articles of incorporation without amendment of articles	$10.00
(12)	Restated articles of incorporation with amendment of articles	$25.00
(13)	Articles of merger	$25.00
(14)	Articles of dissolution	$15.00

(15)	Articles of revocation of dissolution	$10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Application for reinstatement following administrative dissolution	~~$25.00~~ $100.00
(18)	Certificate of reinstatement	No fee
(19)	Certificate of judicial dissolution	No fee
(20)	Application for certificate of authority	$100.00
(21)	Application for amended certificate of authority	$25.00
(22)	Application for certificate of withdrawal	$10.00
(23)	Certificate of revocation of authority to conduct affairs	No fee
(24)	Corporation's Statement of Change of Principal Office	$5.00
(24a)	Designation of Principal Office Address	$5.00
(25)	Articles of correction	$10.00
(26)	Application for certificate of existence or authorization	$ 5.00
(27)	Any other document required or permitted to be filed by this Chapter	$10.00.

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign corporation:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate."

Section 6. G.S. 57C-1-22 reads as rewritten:

"**§ 57C-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

Document		Fee
(1)	Articles of organization	$100.00
(2)	Application for reserved name	10.00

(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited liability company	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(13)	Articles of merger	50.00
(14)	Articles of dissolution	30.00
(15)	Articles of revocation of dissolution	10.00
(16)	Certificate of administrative dissolution	No fee
(16a)	Application for reinstatement following administrative dissolution	100.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Articles of correction	10.00
(24)	Application for certificate of existence or authorization	5.00
(25)	Annual report	200.00
(26)	Any other document required or permitted to be filed by this Chapter	10.00

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(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of Stat

under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if ~~he~~ the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign limited liability company:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate."

PART II. ANNUAL CORPORATE REPORT.

Section 7. G.S. 55-16-22 reads as rewritten:

"§ 55-16-22. Annual ~~report for Secretary of State.~~ report.

(a) ~~Each~~ Except as provided in subsections (a1) and (a2) of this section, each domestic corporation ~~except those governed by Chapter 55B,~~ and each foreign corporation authorized to transact business in this ~~State,~~ State shall deliver ~~to the Secretary of State for filing an annual report that sets forth:~~ an annual report to the Secretary of Revenue.

(a1) Each insurance company subject to the provisions of Chapter 58 of the General Statutes shall deliver an annual report to the Secretary of State.

(a2) A domestic corporation governed by Chapter 55B of the General Statutes is exempt from this section.

(a3) The annual report required by this section shall be in a form jointly prescribed by the Secretary of Revenue and the Secretary of State. The Secretary of Revenue shall provide the form needed to file an annual report. The annual report shall set forth all of the following:

(1) The name of the corporation and the state or country under whose law it is ~~incorporated;~~ incorporated.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which its registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of such registered office or registered agent, or ~~both;~~ both.

(3) The address and telephone number of its principal ~~office;~~ office.
(4) The names, titles, and business addresses of its principal ~~officers;~~ officers.
~~(4a) The names and business addresses of its directors; and~~
(5) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(c) ~~The annual report shall be delivered to the Secretary of State each year within 60 days immediately following the last day of the month in which the domestic corporation was incorporated or the foreign corporation received a certificate of authority in this State. Forms required for the filing of the annual report shall be mailed by the Secretary of State to the domestic or foreign corporation at its registered office for the first annual report, then to its principal office for subsequent annual reports.~~ An annual report required to be delivered to the Secretary of Revenue is due by the due date for filing the corporation's income and franchise tax returns. An extension of time to file a return is an extension of time to file an annual report. An annual report required to be delivered to the Secretary of State is due by the fifteenth day of the third month following the close of the corporation's fiscal year.

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in ~~such~~ the annual report.

(f) Expired.

(g) When a statement of change of registered office or registered agent is filed in the annual report, the change shall become effective when the statement is received by the Secretary of State.

(h) If the Secretary of State does not receive an annual report within 120 days of the date the return is due, the Secretary of State may presume that the annual report is delinquent. This presumption may be rebutted by receipt of the annual report from the Secretary of Revenue or by evidence of delivery presented by the filing corporation."

Section 8. G.S. 55-1-21(a) reads as rewritten:

"(a) The Secretary of State may promulgate and furnish on request forms ~~for:~~ for the following:

(1) An application for a certificate of ~~existence;~~ existence.

(2) A foreign corporation's application for a certificate of authority to transact business in this ~~State;~~ State.

(3) A foreign corporation's application for a certificate of ~~withdrawal; and~~ withdrawal.

~~(4) The annual report.~~

If the Secretary of State so requires, use of these forms is mandatory."

Section 9. G.S. 55-1-22(a), as amended by Section 4 of this act, reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Corporation's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected	

	corporation	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of incorporation	50.00
(11)	Restated articles of incorporation	10.00
	with amendment of articles	50.00
(12)	Articles of merger or share exchange	50.00
(13)	Articles of dissolution	30.00
(14)	Articles of revocation of dissolution	10.00
(15)	Certificate of administrative dissolution	No fee
(16)	Application for reinstatement following administrative dissolution	100.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Annual report	~~10.00~~ 20.00
(24)	Articles of correction	10.00
(25)	Application for certificate of existence or authorization	5.00
(26)	Any other document required or permitted to be filed by this Chapter	10.00."

Section 10. G.S. 55-1-28(b)(4) reads as rewritten:

"(4) That its most recent annual report required by G.S. 55-16-22 has either been delivered to the Secretary of ~~State;~~ State or is not delinquent;".

Section 11. G.S. 55-14-20(2) reads as rewritten:

"(2) The corporation ~~does not deliver its annual report to the Secretary of State within 60 days after i~~

~~is due;~~ is delinquent in delivering its annual report;".

Section 12. G.S. 55-15-30(a)(1) reads as rewritten:

"(1) The foreign corporation ~~does not deliver its annual report to the Secretary of State within 60 days after it is due;~~ is delinquent in delivering its annual report;".

Section 13. G.S. 55-16-01(e)(7) reads as rewritten:

"(7) Its most recent annual report delivered ~~to the Secretary of State under~~ as required by G.S. 55-16-22."

Section 14. G.S. 57C-2-23 reads as rewritten:

"§ 57C-2-23. Annual report for Secretary of State.

(a) Each domestic limited liability company and each foreign limited liability company authorized to transact business in this State, shall deliver to the Secretary of State for filing an annual ~~report~~ report, in a form jointly prescribed by the Secretary of Revenue and Secretary of State, that sets ~~forth:~~ forth all of the following:

(1) The name of the limited liability or foreign limited liability company and the state or country under whose law it is ~~organized;~~ organized.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of the registered office or registered agent, or ~~both;~~ both.

(3) The address and telephone number of its principal ~~office;~~ office.

(4) The names and business addresses of its ~~managers; and~~ managers.

(5) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection. The Secretary of State shall make available the form required to file an annual report.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company or the foreign limited liability company.

(c) The annual report shall be delivered to the Secretary of State ~~each year within 60 days immediately following the last day of the month in which the domestic limited liability company was organized or the foreign limited liability company received a certificate of authority in this State. Forms required for the filing of the annual report shall be mailed by the Secretary of State to the domestic or foreign limited liability company at its registered office for the first annual report, and then to its principal office for subsequent annual reports.~~ by the fifteenth day of the fourth month following the close of the limited liability company's fiscal year.

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report."

Section 15. G.S. 57C-1-22(b) reads as rewritten:

"(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of State under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if ~~he~~ the party prevails in the proceeding."

Section 16. G.S. 57C-3-25(a) reads as rewritten:

"(a) Any person dealing with a limited liability company or a foreign limited liability company may rely conclusively upon its most recent annual report and any amendments ~~thereto filed with~~ to it on file with the Secretary of State ~~pursuant to G.S. 57C-2-23~~ as to the identity of its managers, except to the extent the person has actual knowledge that a person identified therein as a manager is not a manager."

Section 17. G.S. 105-228.90(a) reads as rewritten:

"(a) Scope. -- This Article applies to Subchapters I, V, and VIII of this ~~Chapter~~ Chapter, to the annual report filing requirements of G.S. 55-16-22, and to inspection taxes levied under Article 3 of Chapter 119 of the General Statutes."

Section 18. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-257.1. Secretary to administer annual report filing; fee for filing report.

(a) Filing Duty. -- The Secretary must submit the annual reports filed with the Secretary pursuant to G.S. 55-16-22 to the Secretary of State.

(b) Fee. -- A corporation that files an annual report with the Secretary must pay a fee of twenty dollars ($20.00) with its annual report. The fees collected under this subsection shall be credited to the General Fund as tax revenue."

Section 19. G.S. 105-259 reads as rewritten:

"**§ 105-259. Secrecy required of officials; penalty for violation.**

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

(1) Employee or officer. -- The term includes a former employee, a former officer, and a current or former member of a State board or commission.

(2) Tax information. -- Any information from any source concerning the liability of a taxpayer for a tax, as defined in G.S. 105-228.90. The term includes the following:

a. Information contained on a tax return, a tax report, or an application for a license for which a tax is imposed.

b. Information obtained through an audit of a taxpayer or by correspondence with a taxpayer.

c. Information on whether a taxpayer has filed a tax return or a tax report.

d. A list or other compilation of the names, addresses, social security numbers, or similar information concerning taxpayers.

The term does not include (i) statistics classified so that information about specific taxpayers cannot

be ~~identified or (ii)~~ identified, (ii) an annual report required to be filed under G.S. 55-16-22 or (iii) information submitted to the Business License Information Office of the Department of Secretary of State on a master application form for various business licenses.

(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(1) To comply with a court order or a law.

(2) Review by the Attorney General or a representative of the Attorney General.

(3) Review by a tax official of another state or the Internal Revenue Commissioner of the United States to aid the state or the Commissioner in collecting a tax imposed by this State, the other state, or the United States if the laws of the other state or the United States allow the state or the United States to provide similar tax information to a representative of this State.

(4) To provide a governmental agency or an officer of an organized association of taxpayers with a list of taxpayers who have paid a privilege license tax under Article 2 of this Chapter.

(5) To furnish to the chair of a board of county commissioners information on the county sales and use tax.

(6) To sort, process, or deliver tax information on behalf of the Department of Revenue.

(6a) To furnish the chair of a board of county commissioners a list of claimants that have received a refund of the county sales or use tax to the extent authorized in G.S. 105- 164.14(f).

(7) To exchange information with the Division of Motor Vehicles of the Department of Transportation when the information is needed to fulfill a duty imposed on the Department of Revenue or the Division of Motor Vehicles.

(8) To furnish to the Department of State Treasurer, upon request, the name, address, and account and identification numbers of a taxpayer who may be entitled to property held in the Escheat Fund.

(9) To furnish to the Employment Security Commission the name, address, and account and identification numbers of a taxpayer when the information is requested by the Commission in order to fulfill a duty imposed under Article 2 of Chapter 96 of the General Statutes.

(10) Review by the State Auditor to the extent authorized in G.S. 147-64.7.

(11) To give a spouse who elects to file a joint tax return a copy of the return or information contained on the return.

(11a) To provide a copy of a return to the taxpayer who filed the return.

(11b) In the case of a return filed by a corporation, a partnership, a trust, or an estate, to provide a copy of the return or information on the return to a person who has a material interest in the return if, under the circumstances, section 6103(e)(1) of the Code would require disclosure to that person of any corresponding federal return or information.

(11c) In the case of a return of an individual who is legally incompetent or deceased, to provide a copy of the return to the legal representative of the estate of the incompetent individual or decedent.

(12) To contract with a financial institution for the receipt of withheld income tax payments under G.S. 105-163.6 or for the transmittal of payments by electronic funds transfer.

(13) To furnish the Fiscal Research Division of the General Assembly, upon request, a sample, suitable in character, composition, and size for statistical analyses, of tax returns or other tax information

from which taxpayers' names and identification numbers have been removed.

(14) To exchange information concerning a tax imposed by Subchapter V of this Chapter with the Standards Division of the Department of Agriculture when the information is needed to administer the Gasoline and Oil Inspection Act, Article 3 of Chapter 119 of the General Statutes.

(15) To exchange information concerning a tax imposed by Articles 2A, 2B, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the agency:

a. The North Carolina Alcoholic Beverage Control Commission.

b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.

c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department.

(16) To furnish to the Department of Secretary of Stat the name, address, tax year end, and account and identification numbers of a corporation liable for corporate income or franchise taxes or of a limited liability company liable for a corporate or a partnership tax return to enable the Secretary of State to notify the corporation or the limited liability company of the annual report filing requirement or that its articles of incorporation or articles of organization or its certificate of authority has been suspended.

(17) To inform the Business License Information Office of the Department of Secretary of State of the status of an application for a license for which a tax is imposed and of any information needed to process the application.

(18) To furnish to the Office of the State Controller the name, address, and account and identification numbers of a taxpayer upon request to enable the State Controller to verify statewide vendor files or track debtors of the State.

(19) To furnish to the North Carolina Industrial Commission information concerning workers' compensation reported to the Secretary under G.S. 105-163.7.

(c) Punishment. -- A person who violates this section is guilty of a Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation."

PART III. AMENDMENT OF DISSENTERS' RIGHTS PROCEDURES.

Section 20. G.S. 55-13-22(b) reads as rewritten:

"(b) The dissenters' notice must be sent no later than 10 days after ~~the corporate action was taken,~~ shareholder approval, or if no shareholder approval is required, after the approval of the board of directors, of the corporate action creating dissenters' rights under G.S. 55-13-02, and must:

(1) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(2) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(3) Supply a form for demanding payment;

(4) Set a date by which the corporation must receive the payment demand, which date may not be fewer than 30 nor more than 60 days after the date the subsection (a) notice is mailed; and

(5) Be accompanied by a copy of this Article."

Section 21. G.S. 55-13-30 reads as rewritten:

"**§ 55-13-30. Court action.**

(a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter may commence a proceeding within 60 days after the date of his payment demand under G.S. 55-13-28 ~~and petition the court~~ by filing a complaint with the Superior Court Division of the General Court of Justice to determine the fair value of the shares and accrued interest. ~~Upon~~ Within 10 days after service upon it of the ~~petition filed with the court,~~ complaint, the corporation shall pay to the dissenter the amount offered by the corporation under G.S. 55-13-25.

(a1) If the dissenter does not commence the proceeding within the 60-day period, the dissenter shall have an additional 30 days to either (i) accept in writing the amount offered by the corporation under G.S. 55-13-25, upon which the corporation shall pay such amount to the dissenter in full satisfaction of his demand, or (ii) withdraw his demand for payment and resume the status of a nondissenting shareholder. A dissenter who takes no action within such 30-day period shall be deemed to have withdrawn his dissent and demand for payment.

(b) Reserved for future codification purposes.

(c) The court shall have the discretion to make all dissenters (whether or not residents of this State) whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the ~~petition.~~ complaint. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the superior court in which the proceeding is commenced under ~~subsection (b)~~ subsection (a) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The parties are entitled to the same discovery rights as parties in other civil proceedings. The proceeding shall be tried as in other civil actions. However, in a proceeding by a dissenter in a ~~public corporation,~~ corporation that was a public corporation immediately prior to consummation of the corporate action giving rise to the right of dissent under G.S. 55-13-02, there is no right to a trial by jury.

(e) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation."

PART IV. ADVISORY REVIEW OF PRELIMINARY DRAFTS OF DOCUMENTS.

Section 22. Article 1 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"**§ 55-1-22.2. Advisory review of documents.**

The Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of

document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 55-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 23. Article 1 of Chapter 55A of the General Statutes is amended by adding a new section to read:

"**§ 55A-1-22.2. Advisory review of documents.**

The Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. At the time of the advisory review, the Secretary of State shall notify the State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 55A-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 24. Article 1 of Chapter 57C of the General Statutes is amended by adding a new section to read:

"**§ 57C-1-22.2. Advisory review of documents.**

The Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise

notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 57C-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 25. Article 5 of Chapter 59 of the General Statutes is amended by adding a new section to read:

"§ 59-206.2. Advisory review of documents.

The Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Article. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and expedited filings as authorized by G.S. 59-1106. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 26. G.S. 55-1-22(a), as amended by Sections 4 and 9 of this act, reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Corporation's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected	

	corporation	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of incorporation	50.00
(11)	Restated articles of incorporation with amendment of articles	10.00 50.00
(12)	Articles of merger or share exchange	50.00
(13)	Articles of dissolution	30.00
(14)	Articles of revocation of dissolution	10.00
(15)	Certificate of administrative dissolution	No fee
(16)	Application for reinstatement following administrative dissolution	100.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Annual report	20.00
(24)	Articles of correction	10.00
(25)	Application for certificate of existence or authorization	5.00
(26)	Any other document required or permitted to be filed by this Chapter	~~10.00.~~ 10.00
(27)	Advisory review of a document	200.00."

Section 27. G.S. 55A-1-22(a), as amended by Section 5 of this act, reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

Document	Fee

(1)	Articles of incorporation	$50.00
(2)	Application for reserved name	$10.00
(3)	Notice of transfer of reserved name	$10.00
(4)	Application for registered name	$10.00
(5)	Application for renewal of registered name	$10.00
(6)	Corporation's statement of change of registered agent or registered office or both	$ 5.00
(7)	Agent's statement of change of registered office for each affected corporation	$ 5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	$ 5.00
(10)	Amendment of articles of incorporation	$25.00
(11)	Restated articles of incorporation without amendment of articles	$10.00
(12)	Restated articles of incorporation with amendment of articles	$25.00
(13)	Articles of merger	$25.00
(14)	Articles of dissolution	$15.00
(15)	Articles of revocation of dissolution	$10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Application for reinstatement following administrative dissolution	$100.00
(18)	Certificate of reinstatement	No fee
(19)	Certificate of judicial dissolution	No fee
(20)	Application for certificate of authority	$100.00
(21)	Application for amended certificate of authority	$25.00
(22)	Application for certificate of withdrawal	$10.00
(23)	Certificate of revocation of authority to conduct affairs	No fee
(24)	Corporation's Statement of Change of Principal Office	$5.00
(24a)	Designation of Principal Office Address	$5.00
(25)	Articles of correction	$10.00
(26)	Application for certificate of existence or authorization	$ 5.00
(27)	Any other document required or	

permitted to be filed by this Chapter ~~$10.00.~~ $10.00

(28) Advisory review of a document $200.00."

Section 28. G.S. 57C-1-22(a), as amended by Section 6 of this act, reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

Document		Fee
(1)	Articles of organization	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited liability company	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(13)	Articles of merger	50.00
(14)	Articles of dissolution	30.00
(15)	Articles of revocation of dissolution	10.00
(16)	Certificate of administrative dissolution	No fee
(16a)	Application for reinstatement following administrative dissolution	100.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00

(21) Application for certificate of withdrawal 10.00
(22) Certificate of revocation of authority to transact business No fee
(23) Articles of correction 10.00
(24) Application for certificate of existence or authorization 5.00
(25) Annual report 200.00
(26) Any other document required or permitted to be filed by this Chapter ~~10.00~~ 10.00
(27) Advisory review of a document 200.00."

Section 29. G.S. 59-1106 reads as rewritten:

"§ 59-1106. Fees.

The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

(1) For filing a certificate of limited partnership (G.S. 59-201)..... $50.00
(2) For filing a certificate of amendment (G.S. 59-202; 59-905)..... 25.00
(3) For filing a certificate of cancellation (G.S. 59-203; 59-906)..... 25.00
(4) For filing an application for reservation of name (G.S. 59-104(a))..... 10.00
(5) For filing a transfer of name (G.S. 59-104(d))..... 10.00
(6) For filing an application for registration as foreign limited partnership (G.S. 59-502)..... 50.00
(7) For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a limited partnership (G.S. 59-206(c)) For each page..... 1.00
For affixing ~~his~~ the certificate and official seal thereto..... 5.00
(8) For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a limited partnership For each page..... 1.00
(9) For filing any other document not herein specifically

provided for..... 10.00
(10) For the expedited filing by the end of the same business day of a document received in good order by 12:00 noon Eastern Standard Time..... 200.00
additional fee
(11) For the expedited filing of a document received in good order within 24 hours after receipt, excluding weekends and holidays..... 100.00
~~additional fee.~~
additional fee
(12) Advisory review of a document 200.00.

The Secretary of State shall not collect the fees allowed in subdivisions (10) and (11) of this section unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document. Upon receipt of a document in proper form and payment of the required filing fee, the Secretary of State shall guarantee the expedited filing of the document."

PART V. CLARIFICATION OF ARTICLES OF CORRECTION PROCEDURES.

Section 30. G.S. 55-1-24(a) reads as rewritten:

"(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (1) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (2) was defectively executed, attested, sealed, verified, or acknowledged."

Section 31. G.S. 55A-1-24(a) reads as rewritten:

"(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (i) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged."

Section 32. G.S. 57C-1-24(a) reads as rewritten:

"(a) A domestic or foreign limited liability company may correct a document filed by the Secretary of State if the document (i) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively ~~executed.~~ executed, attested, sealed, verified, or acknowledged."

Section 33. G.S. 59-206(a) is amended by adding a new subdivision to read:

"(2b) A domestic or foreign limited partnership may correct a document filed by the Secretary of State if the document (i) contains a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged."

PART VI. RESTATEMENT OF LIMITED LIABILITY COMPANY ARTICLES OF ORGANIZATION.

Section 34. Article 2 of Chapter 57C of the General Statues is amended by adding a new section to read:

"§ 57C-2-22.1. Restated articles of organization.

(a) A limited liability company may restate its articles of organization at any time with or without member action.

(b) The restated articles of organization may include one or more amendments to the articles. Unless otherwise provided in the articles of organization or a written operating agreement, any amendment requires the unanimous vote of the members. The restated articles of organization may include a statement of the address of the current registered office and the name of the current registered agent of the limited liability company.

(c) A limited liability company restating its articles of organization shall deliver to the Secretary of State for filing articles of restatement that:

(1) Set forth the name of the limited liability company.

(2) Attach as an exhibit thereto the text of the restated articles of organization.

(3) State that the restated articles of organization do not contain an amendment or, if the articles do contain an amendment, that there is an amendment that was approved as required by this Chapter.

(d) Duly adopted restated articles of organization supersede the original articles of organization and all amendments to them.

(e) The Secretary of State may certify restated articles of organization as the articles of organization currently in effect, without including the other information required by subsection (c) of this section."

PART VII. CANCELLATION OF ARTICLES OF DISSOLUTION OF LIMITED LIABILITY COMPANY.

Section 35. Article 6 of Chapter 57C is amended by adding a new section to read:

"§ 57C-6-06.1. Cancellation of articles of dissolution.

After the filing of articles of dissolution by a limited liability company dissolved pursuant to G.S. 57C-6-01(4) because of the happening of an event of withdrawal, the articles of dissolution may be cancelled if, within 90 days after the event of withdrawal, all remaining members agree in writing that the business of the limited liability company should be continued and the limited liability company files articles of cancellation with the Secretary of State. The Articles of Cancellation shall set forth:

(1) The name of the limited liability company;

(2) The date of the event of withdrawal described in the articles of dissolution;

(3) The date of filing of the company's articles of dissolution;

(4) A statement that within 90 days after the event of withdrawal, all remaining members have agreed in writing that the business of the limited liability company may be continued; and

(5) Any other information the members or managers filing the articles of cancellation determine."

Section 36. G.S. 57C-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

Document		Fee
(1)	Articles of organization	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited	

	liability company	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(13)	Articles of merger	50.00
(14)	Articles of dissolution	30.00
(15)	~~Articles~~ Cancellation of articles of ~~revocation of~~ dissolution	10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Articles of correction	10.00
(24)	Application for certificate of existence or authorization	5.00
(25)	Annual report	200.00
(26)	Any other document required or permitted to be filed by this Chapter	10.00."

PART VIII. AVAILABILITY OF LIMITED LIABILITY COMPANY NAME.

Section 37. G.S. 57C-2-30(f) reads as rewritten:

"(f) The name of a limited liability company dissolved under ~~G.S. 57C-6-03~~ Article 6 of this Chapter may not be used by another limited liability ~~company~~ company, business corporation, nonprofit corporation, or limited partnership ~~until the expiration of two years after the effective date of the dissolution~~ until:

(1) In the case of a dissolution pursuant to G.S. 57C-6-01, the later of (i) the date of filing of articles of dissolution pursuant to G.S. 57C-6-06 or (ii) the expiration of the time within whic

articles of dissolution of the limited liability company may be canceled pursuant to G.S. 57C-6-06.1; or

(2) In the case of an administrative dissolution pursuant to G.S. 57C-6-03, the expiration of the period within which the limited liability company may be reinstated pursuant to G.S. 57C-6-03, if the limited liability company's period of duration stated in its articles of organization or written operating agreement has not expired,

unless the dissolved limited liability company changes its name to a name distinguishable upon the records of the Secretary of State from the names of other limited liability companies, business corporations, nonprofit corporations, or limited partnerships organized or transacting business in this State."

PART IX. AUTHORIZATION OF FACSIMILE SIGNATURES FOR LIMITED PARTNERSHIP DOCUMENTS.

Section 38. G.S. 59-204 is amended by adding a new subsection to read:

"(b1) Any signature on any document authorized to be filed with the Secretary of State under any provision of this Article may be a facsimile."

PART X. MODIFICATION OF DEFINITION OF FOREIGN PROFESSIONAL CORPORATION.

Section 39. G.S. 55B-16(b) reads as rewritten:

"(b) For purposes of this section, 'foreign professional corporation' means a corporation for profit ~~that is~~ that:

(1) Is incorporated under a law other than the law of this ~~State~~ State:

(2) Is incorporated for the sole and specific purpose of rendering professional services of the type that if rendered in this State would require the obtaining of a license from a licensing board pursuant to the statutory provisions referred to in ~~G.S. 55B-2(6)~~ G.S. 55B-2(6); and ~~that (i) has as its shareholders only individuals who are duly licensed, in this State or some other state, to render the same professional services as the corporation, or (ii) is organized for the purpose of rendering professional services of the type~~

~~defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, and has as its shareholders only individuals who are duly licensed, in this State or in another state, to render the same professional services as the corporation or who are nonlicensed employees of the corporation, provided that nonlicensed employees own not more than one-third of the total issued and outstanding shares of the corporation, or (iii) is described in G.S. 55B-15.~~

(3) Has as its shareholders only individuals who:

a. Qualify to hold shares of a corporation organized under this Chapter;

b. Are licensed to provide professional services as defined in G.S. 55B-2(6) in a state in which the corporation is incorporated or is authorized to transact business, provided that such professional services are the same as the professional service rendered by the corporation; or

c. Are nonlicensed employees of a corporation rendering services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes provided that all such nonlicensed employees own no more than one-third of the total issued and outstanding shares of such corporation in the aggregate."

PART XI. CORRECTION OF DELAYED EFFECTIVE DATE STATUTES FOR LIMITED PARTNERSHIP DOCUMENTS.

Section 40. G.S. 59-201(b) reads as rewritten:

"(b) ~~A~~ Unless a delayed effective date is specified in the certificate of limited partnership, a limited partnership is formed at the ~~time~~ effective time and date of the filing of the certificate of limited partnership in the office of the Secretary of State ~~or at any later time not more than 20 days subsequent to the endorsement of the Secretary of State specified in the certificate of limited partnership if, in either case,~~ if there has been substantial compliance with the requirements of this section."

Section 41. G.S. 59-203 reads as rewritten:

"**§ 59-203. Cancellation of certificate.**

A certificate of limited partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership or at any other time that there are no limited partners. A certificate of cancellation shall be filed in the office of the Secretary of State and set forth:

(1) The name of the limited partnership;

(2) The date of filing of its certificate of limited partnership;

(3) The reason for filing the certificate of cancellation;

(4) The effective date ~~(which shall be a date certain not more than 20 days from the date of filing)~~ of cancellation if it is not to be effective upon the filing of the certificate; and

(5) Any other information the partners filing the certificate determine."

PART XII. REMOVAL OF "CONFORMING TO LAW" LANGUAGE IN REVISED UNIFORM LIMITED PARTNERSHIP ACT.

Section 42. G.S. 59-206(a)(2) reads as rewritten:

"(2) The original document so signed, together with the conformed copy, shall be delivered to the Secretary of State. ~~Unless~~ If the Secretary finds that it ~~does not conform to law,~~ satisfies the requirements of this Article, the Secretary shall, when the proper fees have been tendered, endorse upon the original the word 'filed' and the hour, day, month and year of the filing thereof and shall file the same in the Secretary's office. The Secretary of State shall thereupon immediately compare the copy with the original and if the Secretary finds that they are identical the Secretary shall make upon the conformed copy the same endorsement which appears on the original and shall attach to the copy a certificate stating that attached thereto is a true copy of the document, designated by an appropriate title, filed in the Secretary's office and showing the date of the filing. The Secretary shall thereupon return the copy so certified to the limited partnership or its representatives. Any documents filed with the Secretary of State

pursuant to this Chapter may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Chapter, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of the documents reproduced. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. The authorization to make the corrections shall be confirmed, according to procedures adopted by rule, by the Secretary prior to making the correction."

Section 43. G.S. 59-903(a) reads as rewritten:

"(a) If the Secretary of State finds that an application ~~conforms to law he~~ satisfies the requirements of this Article the Secretary shall, when all requisite fees have been tendered as in this Article prescribed:

(1) Endorse on the application the word 'filed', and the hour, day, month and year of the filing thereof;

(2) File in ~~his~~ the office the application;

(3) Issue a certificate of authority to transact business in this State to which ~~he~~ the Secretary shall affix the conformed copy of the application; and

(4) Send to the foreign limited partnership or its representative the certificate of authority, together with the conformed copy of the application affixed thereto."

PART XIII. EFFECTIVE DATES.

Section 44. (a) Sections 1 through 6 and Section 19 of this act become effective July 1, 1997. Sections 7 through 18 of this act become effective January 1, 1998, and apply to tax years ending on or after December 31, 1997, in the case of corporations required to file annual reports with the Secretary of Revenue and to fiscal years ending on or after December 31, 1997, in the cas

of corporations required to file annual reports with the Secretary of State. Sections 30 through 33, 39, 42 and 43 of this act are effective when the act becomes law. The remainder of this act becomes effective October 1, 1997. Section 20 of this act applies to dissenter's rights created pursuant to G.S. 55-13-02 on or after October 1, 1997, and Section 21 of this act applies to proceedings commenced on or after October 1, 1997. Sections 22 through 29 of this act apply to requests for review of documents on or after that date.

(b) Annual reports delivered to either the Secretary of State or the Secretary of Revenue after December 31, 1997, but before January 1999, shall nevertheless be deemed filed with the correct State agency. The Secretary of State shall notify the Secretary of Revenue of reports erroneously filed with the Secretary of State, and the Secretary of Revenue shall notify the Secretary of State of reports erroneously filed with the Secretary of Revenue.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 157 Proposed Comm. Sub. Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 33, line 2

( ) WHICH CHANGES THE TITLE

by deleting "42 and 43" and substituting "42, 43 and 44"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

X Committee Substitute for
S.B.157 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW GOVERNING DISSENTERS' RIGHTS PROCEDURES AND THE FILING OF DOCUMENTS BY LIMITED LIABILITY COMPANIES, TO ALLOW FACSIMILE SIGNATURES AND ADVISORY REVIEW OF DOCUMENTS BY THE SECRETARY OF STATE, AND TO CLARIFY CORRECTIONS PROCEDURES, LIMITED LIABILITY NAME AVAILABILITY, AND THE DEFINITION OF FOREIGN PROFESSIONAL CORPORATIONS AS RECOMMENDED BY THE GENERAL STATUTES 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 ☐

☐ 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 recommendation that the House committee substitute bill be re-referred to the Committee on Finance.

☐ 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 2

SENATE BILL 452
Judiciary Committee Substitute Adopted 4/9/97

Short Title: Local Regulation Adult Entertainment. (Public)

Sponsors:

Referred to:

March 24, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY LOCAL GOVERNMENT AUTHORITY TO REGULATE THE LOCATION AND OPERATION OF SEXUALLY ORIENTED BUSINESSES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 160A of the General Statutes is amended by adding the following new section:

"**§ 160A-181.1. Regulation of sexually oriented businesses.**

(a) The General Assembly finds and determines that sexually oriented businesses can and do cause adverse secondary impacts on neighboring properties. Numerous studies that are relevant to North Carolina have found increases in crime rates and decreases in neighboring property values as a result of the location of sexually oriented businesses in inappropriate locations or from the operation of such businesses in an inappropriate manner. Reasonable local government regulation of sexually oriented businesses in order to prevent or ameliorate adverse secondary impacts is consistent with the federal constitutional protection afforded to nonobscene but sexually explicit speech.

(b) In addition to State laws on obscenity, indecent exposure, and adult establishments, local government regulation of the location and operation of sexually oriented businesses is necessary to prevent undue adverse secondary impacts that would otherwise result from these businesses.

(c) A city or county may regulate sexually oriented businesses through zoning regulations, licensing requirements, or other appropriate local ordinances. The city

or county may require a fee for the initial license and any annual renewal. Such local regulations may include, but are not limited to:

(1) Restrictions on location of sexually oriented businesses, such as limitation to specified zoning districts and minimum separation from sensitive land uses and other sexually oriented businesses;

(2) Regulations on operation of sexually oriented businesses, such as limits on hours of operation, open booth requirements, limitations on exterior advertising and noise, age of patrons and employees, required separation of patrons and performers, clothing restrictions for masseuses, and clothing restrictions for servers of alcoholic beverages;

(3) Clothing restrictions for entertainers; and

(4) Registration and disclosure requirements for owners and employees with a criminal record other than minor traffic offenses, and restrictions on ownership or employment by a person with a criminal record that includes offenses reasonably related to the legal operation of sexually oriented businesses.

(d) In order to preserve the status quo while appropriate studies are conducted and the scope of potential regulations is deliberated, cities and counties may enact moratoria of reasonable duration on either the opening of any new businesses authorized to be regulated under this section or the expansion of any such existing business. Businesses existing at the time of the effective date of regulations adopted under this section may be required to come into compliance with newly adopted regulations within an appropriate and reasonable period of time.

(e) Cities and counties may enter into cooperative agreements regarding coordinated regulation of sexually oriented businesses, including provision of adequate alternative sites for the location of constitutionally protected speech within an interrelated geographic area.

(f) For the purpose of this section 'sexually oriented businesses' means any businesses or enterprises that have as one of their principal business purposes or as a significant portion of their business an emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities specified in G.S. 14-202.10. Local governments may adopt detailed definitions of these and similar businesses in order to precisely define the scope of any local regulations."

Section 2. G.S. 14-190.1 is amended by adding a new subsection to read:

"(i) Nothing in this section shall be deemed to preempt local government regulation of the location or operation of sexually oriented businesses to the extent consistent with the constitutional protection afforded free speech."

Section 3. G.S. 14-190.9 is amended by adding a new subsection to read:

"(c) Notwithstanding any other provision of law, a local government may regulate the location and operation of sexually oriented businesses. Such local regulation may restrict or prohibit nude, seminude, or topless dancing to the extent consistent with the constitutional protection afforded free speech."

Section 4. G.S. 14-202.10(1) reads as rewritten:

"(1) 'Adult bookstore' means a bookstore:

a. Which receives a majority of its gross income during any calendar month from the sale or rental of publications (including books, magazines, ~~and other periodicals)~~ other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section; or

b. Having as a preponderance (either in terms of the weight and importance of the material or in terms of greater volume of materials) of its publications (including books, magazines, ~~and other periodicals~~ other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section."

Section 5. G.S. 14-202.11 reads as rewritten:

"**§ 14-202.11. Restrictions as to adult establishments.**

(a) No person shall permit any building, premises, structure, or other facility that contains any adult establishment to contain any other kind of adult establishment. No person shall permit any building, premises, structure, or other facility in which sexually oriented devices are sold, distributed, exhibited, or contained to contain any adult establishment.

(b) No person shall permit any viewing booth in an adult mini motion picture theatre to be occupied by more than one person at any time.

(c) Nothing in this section shall be deemed to preempt local government regulation of the location or operation of adult establishments or other sexually oriented businesses to the extent consistent with the constitutional protection afforded free speech."

Section 6. G.S. 18B-904 is amended by adding the following new subsection:

'(g) Nothing in this Chapter shall be deemed to preempt local governments from regulating the location or operation of adult establishments or other sexually oriented businesses to the extent consistent with the constitutional protection afforded free speech, or from requiring any additional fee for licensing as permitted under G.S. 160A-181.1(c)."

Section 7. G.S. 19-1 reads as rewritten:

"**§ 19-1. What are nuisances under this Chapter.**

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of

narcotic drugs as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance.

(b) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated acts which create and constitute a breach of the peace shall constitute a nuisance.

(b1) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted any activities or conditions which violate any local ordinance pertaining to sexually oriented businesses shall constitute a nuisance.

(c) The building, ~~or place, or vehicle,~~ place, vehicle, or the ground itself, in or upon which a nuisance as defined in ~~subsections (a) or (b) above~~ subsection (a), (b), or (b1) of this section is carried on, and the furniture, fixtures, and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided."

Section 8. This act is effective when it becomes law.

North Carolina General Assembly
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May 8, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: O. Walker Reagan, Staff Attorney
Susan L. Hayes, Committee Counsel

RE: Senate Bill 452 - Local Regulation Adult Entertainment

Senate Bill 452 would clarify the authority of cities and counties to regulate the location and operation of sexually oriented businesses by giving local governments the authority to restrict where these adult entertainment establishments may be locate; when and how they may operate; what type of clothing restrictions may apply to masseuses, servers of alcohol, and entertainers; and ownership and employment by persons with criminal records.

Section 1 amends Chapter 160A by setting out the legislative intent to give local governments authority to regulate adult entertainment establishments, within constitutional limits, to prevent adverse secondary effects on neighboring properties which arise from these businesses.

This section allows the use of zoning regulations, licensing requirements, and other appropriate local ordinances to be used for regulation, including requiring fees for licensing. These local regulations may include restricting where these businesses may locate including specific zoning districts and minimum separation distances from other sensitive land uses and from other similar businesses. Local governments may also regulate hours of operation, open booth requirements, exterior advertising, noise, age of patrons and employees, separation of patrons from performers, and clothing restrictions for masseuses, servers of alcohol, and entertainers. The bill permits local governments to require registration and disclosure by these business owners and their employees of these person's criminal records other than minor traffic offenses, and may restrict ownership and employment by people with criminal records reasonably related to the legal operation of the business.

Section 1 also gives local governments authority to impose moratoriums on new businesses and once ordinances are adopted, can require non-conforming businesses to conform within

reasonable time periods. This section also allows various local governments to enter into cooperative agreements for coordinated regulation of these businesses including providing for adequate alternative sites within interrelated geographic areas.

Section 1 defines "sexually oriented businesses" as those that have as one of their principal business purposes or as a significant portion of their business an emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities specified in G.S. 14-202.10 (a copy attached). Local governments are permitted to adopt detailed definitions of these businesses in order to precisely define the scope of any local regulations.

Sections 2, 3, and 5 make conforming changes to various criminal statutes to make it clear that the criminal statues do not override the local governments rights to regulate these establishments to the extent consistent with constitutional protection afforded free speech.

Section 4 amends the definition of "adult bookstore" to include rentals and videotapes, compact discs, photographic, electronic, magnetic, digital, or other magnetic imaging. It also clarifies how a "preponderance" is determined.

Section 6 makes is clear that the alcoholic beverage control laws do not override the right of local governments to regulate and license these adult entertainment businesses.

Section 7 amends the public nuisance statute by adding a provision that the use of property in violation of a local ordinance regulating sexually oriented businesses is a nuisance.

The bill is effective when it becomes law.

§ 14-202.10. Definitions.

As used in this Article:

(1) "Adult bookstore" means a bookstore:

a. Which receives a majority of its gross income during any calendar month from the sale of publications (including books, magazines, and other periodicals) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section; or

b. Having as a preponderance of its publications books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section.

(2) "Adult establishment" means an adult bookstore, adult motion picture theatre, adult mini motion picture theatre, adult live entertainment business, or massage business as defined in this section.

(3) "Adult live entertainment" means any performance of or involving the actual presence of real people which exhibits specified sexual activities or specified anatomical areas, as defined in this section.

(4) "Adult live entertainment business" means any establishment or business wherein adult live entertainment is shown for observation by patrons.

(5) "Adult motion picture theatre" means an enclosed building or premises used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section, for observation by patrons therein. "Adult motion picture theatre" does not include any adult mini motion picture theatre as defined in this section.

(6) "Adult mini motion picture theatre" means an enclosed building with viewing booths designed to hold patrons which is used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined in this section, for observation by patrons therein.

(7) "Massage" means the manipulation of body muscle or tissue by rubbing, stroking, kneading, or tapping, by hand or mechanical device.

(8) "Massage business" means any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios, or massage parlors.

(9) "Sexually oriented devices" means without limitation any artificial or simulated specified anatomical area or other device or paraphernalia that is designed principally for specified sexual activities but shall not mean any contraceptive device.

(10) "Specified anatomical areas" means:

a. Less than completely and opaquely covered: (i) human genitals, pubic region, (ii) buttock,

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or (iii) female breast below a point immediately above the top of the areola; or

b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(11) "Specified sexual activities" means:

a. Human genitals in a state of sexual stimulation or arousal;

b. Acts of human masturbation, sexual intercourse or sodomy; or

c. Fondling or other erotic touchings of human genitals, pubic regions, buttocks or female breasts.

(1977, c. 987, s. 1; 1985, c. 731, s. 1.)

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§ 14-190.1. Obscene literature and exhibitions.

(a) It shall be unlawful for any person, firm or corporation to intentionally disseminate obscenity. A person, firm or corporation disseminates obscenity within the meaning of this Article if he or it:

(1) Sells, delivers or provides or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene; or

(2) Presents or directs an obscene play, dance or other performance or participates directly in that portion thereof which makes it obscene; or

(3) Publishes, exhibits or otherwise makes available anything obscene; or

(4) Exhibits, presents, rents, sells, delivers or provides; or offers or agrees to exhibit, present, rent or to provide: any obscene still or motion picture, film, filmstrip, or projection slide, or sound recording, sound tape, or sound track, or any matter or material of whatever form which is a representation, embodiment, performance, or publication of the obscene.

(b) For purposes of this Article any material is obscene if:

(1) The material depicts or describes in a patently offensive way sexual conduct specifically defined by subsection (c) of this section; and

(2) The average person applying contemporary community standards relating to the depiction or description of sexual matters would find that the material taken as a whole appeals to the prurient interest in sex; and

(3) The material lacks serious literary, artistic, political, or scientific value; and

(4) The material as used is not protected or privileged under the Constitution of the United States or the Constitution of North Carolina.

(c) As used in this Article, "sexual conduct" means:

(1) Vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted; or

(2) Masturbation, excretory functions, or lewd exhibition of uncovered genitals; or

(3) An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in revealing or bizarre costume.

(d) Obscenity shall be judged with reference to ordinary adults except that it shall be judged with reference to children or other especially susceptible audiences if it appears from the character of the material or the circumstances of its dissemination to be especially designed for or directed to such children or audiences.

(e) It shall be unlawful for any person, firm or corporation to knowingly and intentionally create, buy, procure or possess obscene material with the purpose and intent of disseminating it unlawfully.

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(f) It shall be unlawful for a person, firm or corporation to advertise or otherwise promote the sale of material represented or held out by said person, firm or corporation as obscene.

(g) Violation of this section is a Class I felony.

(h) Obscene material disseminated, procured, or promoted in violation of this section is contraband.

(1971, c. 405, s. 1; 1973, c. 1434, s. 1; 1985, c. 703, s. 1; 1993, c. 539, s. 1194; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 14-190.9. Indecent exposure.

(a) Any person who shall willfully expose the private parts of his or her person in any public place and in the presence of any other person or persons, of the opposite sex, or aids or abets in any such act, or who procures another to perform such act; or any person, who as owner, manager, lessee, director, promoter or agent, or in any other capacity knowingly hires, leases or permits the land, building, or premises of which he is owner, lessee or tenant, or over which he has control, to be used for purposes of any such act, shall be guilty of a Class 2 misdemeanor.

(b) Notwithstanding any other provision of law, a woman may breast feed in any public or private location where she is otherwise authorized to be, irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the breast feeding.

(1971, c. 591, s. 1; 1993, c. 301, s. 1; c. 539, s. 124; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 18B-904. Miscellaneous provisions concerning permits.

(a) Who Receives Permit. - An ABC permit shall authorize the permitted activity only on the premises of the establishment named in the permit. An ABC permit shall be issued to the owner of the business conducted on the premises, or to the management company employed to independently manage and operate the business. The ABC Commission may determine if a management agreement delegates sufficient managerial control and independence to a manager or management company to require an ABC permit to be issued to the manager.

(b) Posting Permit. - Each ABC permit that is held by an establishment shall be posted in a prominent place on the premises.

(c) Business Not Operating. - An ABC permit shall automatically expire and shall be surrendered to the Commission if the person to whom it is issued does not commence the activity authorized by the permit within six months of the date the permit is effective. Before the expiration of the six-month period, the Commission may waive this provision in individual cases for good cause.

(d) Notice of Issuance. - Upon issuing a permit the Commission shall send notice of the issuance, with the name and address of the permittee and the establishment, to:

(1) The Department of Revenue;

(2) The local board, if one exists, for the city or county in which the establishment is located;

(3) The governing body, sheriff, and tax collector of the county in which the establishment is located;

(4) If the establishment is located inside a city, the governing body, chief of police, and tax collector for the city; and

(5) The ALE Division.

(e) Business or Location No Longer Suitable. - The Commission may suspend or revoke a permit issued by it if, after compliance with the provisions of Chapter 150B of the General Statutes, it finds that the location occupied by the permittee is no longer a suitable place to hold ABC permits or that the operation of the business with an ABC permit at that location is detrimental to the neighborhood. No order revoking or suspending an ABC permit pursuant to this section may be made except upon substantial evidence admissible under G.S. 150B-29(a).

(f) Local Government Objections. - The governing body of a city or county may designate an official of the city or county, by name or by position, to make recommendations concerning the suitability of a person or of a location for an ABC permit. The governing body of a city or county shall notify the Commission of an official designated under this subsection. An official designated under this subsection shall be allowed to testify at a contested case hearing in which the suitability of a person or of a location for an ABC permit is an issue without further qualification or authorization.

(1939, c. 158, s. 514; 1943, c. 400, s. 6; 1949, c. 974, s. 14; 1953, c. 1207, ss. 2-4; 1957, c. 1440; 1963, c. 426, ss. 4, 5; 1971, c. 872, s. 1; 1981, c. 412, s. 2; c. 747, s. 58; 1989, c. 800, ss. 9, 10; 1991, c. 459, s. 4; 1993, c. 415, s. 12.)

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§ 19-1. What are nuisances under this Chapter.

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of narcotic drugs as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance.

(b) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated acts which create and constitute a breach of the peace shall constitute a nuisance.

(c) The building, or place, or vehicle, or the ground itself, in or upon which a nuisance as defined in subsections (a) or (b) above is carried on, and the furniture, fixtures, and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided.

(Pub. Loc. 1913, c. 761, s. 25; 1919, c. 288; C.S., s. 3180; 1949, c. 1164; 1967, c. 142; 1971, c. 655; 1977, c. 819, ss. 1, 2; 1981, c. 412, s. 4; c. 747, s. 66.)

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NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 452 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) DECKER
Sen.)

moves to amend the bill on page 2, line 15

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"restrictions on ownership by or employment of a person with a"

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. 452 (2nd Ed.) Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) HACKNEY
Sen.)

moves to amend the bill on page 4, line 16

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"Section 8. This act becomes effective October 1, 1997."

SIGNED Hackney

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

X Committee Substitute for
S.B. 452 A BILL TO BE ENTITLED AN ACT TO CLARIFY LOCAL GOVERNMENT AUTHORITY TO REGULATE THE LOCATION AND OPERATION OF SEXUALLY ORIENTED BUSINESSES.

☐ 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, 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 D

SENATE BILL 452
Judiciary Committee Substitute Adopted 4/9/97
Proposed House Committee Substitute S452-PCS7798

Short Title: Local Regulation Adult Entertainment. (Public)

Sponsors:

Referred to:

March 24, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY LOCAL GOVERNMENT AUTHORITY TO REGULATE THE LOCATION AND OPERATION OF SEXUALLY ORIENTED BUSINESSES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 160A of the General Statutes is amended by adding the following new section:

"**§ 160A-181.1. Regulation of sexually oriented businesses.**

(a) The General Assembly finds and determines that sexually oriented businesses can and do cause adverse secondary impacts on neighboring properties. Numerous studies that are relevant to North Carolina have found increases in crime rates and decreases in neighboring property values as a result of the location of sexually oriented businesses in inappropriate locations or from the operation of such businesses in an inappropriate manner. Reasonable local government regulation of sexually oriented businesses in order to prevent or ameliorate adverse secondary impacts is consistent with the federal constitutional protection afforded to nonobscene but sexually explicit speech.

(b) In addition to State laws on obscenity, indecent exposure, and adult establishments, local government regulation of the location and operation of sexually oriented businesses is necessary to prevent undue adverse secondary impacts that would otherwise result from these businesses.

(c) A city or county may regulate sexually oriented businesses through zoning regulations, licensing requirements, or other appropriate local ordinances. The city or county may require a fee for the initial license and any annual renewal. Such local regulations may include, but are not limited to:

(1) Restrictions on location of sexually oriented businesses, such as limitation to specified zoning districts and minimum separation from sensitive land uses and other sexually oriented businesses;

(2) Regulations on operation of sexually oriented businesses, such as limits on hours of operation, open booth requirements, limitations on exterior advertising and noise, age of patrons and employees, required separation of patrons and performers, clothing restrictions for masseuses, and clothing restrictions for servers of alcoholic beverages;

(3) Clothing restrictions for entertainers; and

(4) Registration and disclosure requirements for owners and employees with a criminal record other than minor traffic offenses, and restrictions on ownership by or employment of a person with a criminal record that includes offenses reasonably related to the legal operation of sexually oriented businesses.

(d) In order to preserve the status quo while appropriate studies are conducted and the scope of potential regulations is deliberated, cities and counties may enact moratoria of reasonable duration on either the opening of any new businesses authorized to be regulated under this section or the expansion of any such existing business. Businesses existing at the time of the effective date of regulations adopted under this section may be required to come into compliance with newly adopted regulations within an appropriate and reasonable period of time.

(e) Cities and counties may enter into cooperative agreements regarding coordinated regulation of sexually oriented businesses, including provision of adequate alternative sites for the location of constitutionally protected speech within an interrelated geographic area.

(f) For the purpose of this section, 'sexually oriented businesses' means any businesses or enterprises that have as one of their principal business purposes or as a significant portion of their business an emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities specified in G.S. 14-202.10. Local governments may adopt detailed definitions of these and similar businesses in order to precisely define the scope of any local regulations."

Section 2. G.S. 14-190.1 is amended by adding a new subsection to read:

"(i) Nothing in this section shall be deemed to preempt local government regulation of the location or operation of sexually oriented businesses to the extent consistent with the constitutional protection afforded free speech."

Section 3. G.S. 14-190.9 is amended by adding a new subsection to read:

"(c) Notwithstanding any other provision of law, a local government may regulate the location and operation of sexually oriented businesses. Such local regulation may

restrict or prohibit nude, seminude, or topless dancing to the extent consistent with the constitutional protection afforded free speech."

Section 4. G.S. 14-202.10(1) reads as rewritten:

"(1) 'Adult bookstore' means a bookstore:

a. Which receives a majority of its gross income during any calendar month from the sale or rental of publications (including books, magazines, ~~and other periodicals~~) other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section; or

b. Having as a preponderance (either in terms of the weight and importance of the material or in terms of greater volume of materials) of its publications (including books, magazines, ~~and other periodicals~~ other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section."

Section 5. G.S. 14-202.11 reads as rewritten:

"**§ 14-202.11. Restrictions as to adult establishments.**

(a) No person shall permit any building, premises, structure, or other facility that contains any adult establishment to contain any other kind of adult establishment. No person shall permit any building, premises, structure, or other facility in which sexually oriented devices are sold, distributed, exhibited, or contained to contain any adult establishment.

(b) No person shall permit any viewing booth in an adult mini motion picture theatre to be occupied by more than one person at any time.

(c) Nothing in this section shall be deemed to preempt local government regulation of the location or operation of adult establishments or other sexually oriented businesses to the extent consistent with the constitutional protection afforded free speech."

Section 6. G.S. 18B-904 is amended by adding the following new subsection:

"(g) Nothing in this Chapter shall be deemed to preempt local governments from regulating the location or operation of adult establishments or other sexually oriented businesses to the extent consistent with the constitutional protection afforded free speech, or from requiring any additional fee for licensing as permitted under G.S. 160A-181.1(c)."

Section 7. G.S. 19-1 reads as rewritten:

"**§ 19-1. What are nuisances under this Chapter.**

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of narcotic drugs as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance.

(b) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated acts which create and constitute a breach of the peace shall constitute a nuisance.

(b1) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted any activities or conditions which violate any local ordinance pertaining to sexually oriented businesses shall constitute a nuisance.

(c) The building, ~~or place, or vehicle,~~ place, vehicle, or the ground itself, in or upon which a nuisance as defined in ~~subsections (a) or (b) above~~ subsection (a), (b), or (b1) of this section is carried on, and the furniture, fixtures, and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided."

Section 8. This act becomes effective October 1, 1997.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **May 13, 1997 1:00 P.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Drew Cook	Intern
Sandy Mar	ACLU
Deborah Ess	DCLR
Charlene Hawkins	DOA
Jim Kerr	Smith, Anderson Law Firm
Jack J. Hoyt	DOR
David Owens	Dept of Govt - UNC-CH
Stephen McWilliams	Concerned Citizen
David Bryson	S of S
John Bason & Crew	UNC-TV
[illegible]	Attorney
Ann Fulton	ABC
Roy Cooper	NC Senate
Bernard Allen	SOS
Bill Graham	NCBA
[illegible]	[illegible]

MINUTES
HOUSE JUDICIARY II COMMITTEE

May 15, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on May 15, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Baddour, Berry, Cansler, Creech, Culpepper, Decker, Goodwin, Hackney, Hensley, McMahan, Nesbitt, Russell, Saunders, Sutton and Wilkins. A list of visitors is attached.

The following bills were discussed:

SB-305 SOLICITOR'S SECURITY OPTION
SB-370 COMMERCIAL ARBITRATION AMEND
SB-371 INTERNATIONAL COMM. CONCILIATION
SB-372 TIME LIMITS FOR FOREIGN SERVICE

Senator Odom was recognized to present SB-305 and answer questions of committee members. A copy of the bill and bill explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Representative Culpepper moved for a favorable report; motion passed.

Representative Odom was recognized to present SB-370 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis and Mr. Walker Reagan, Staff Attorneys, are attached.

Mr. David Robinson, Attorney, answered questions of committee members.

Representative Hackney was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Hackney moved the amendment be incorporated in a committee substitute, with a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill; motion passed.

Senator Odom was recognized to present SB-371 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Walker Reagan, Staff Attorney, and Ms. Susan Hayes, Committee Counsel, are attached.

Representative Goodwin was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Goodwin moved the amendment be incorporated in a committee substitute, with a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill; motion passed.

Senator Odom was recognized to present SB-372 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis and Mr. Walker Reagan, Staff Attorneys, are attached.

Representative Hackney was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Mr. Bill Scoggin, North Carolina Bar Association, answered questions of committee members.

No action was taken on SB-372.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 305

Short Title: Solicitor's Security Option. (Public)

Sponsors: Senator Odom.

Referred to: Children & Human Resources.

March 5, 1997

A BILL TO BE ENTITLED

AN ACT TO REINSTATE THE OPTION THAT A LICENSED SOLICITOR OF CHARITABLE SOLICITATIONS MAY SUBMIT A CERTIFICATE OF DEPOSIT IN LIEU OF A SECURITY BOND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131F-16 is amended by adding a new subsection to read:

"(d1) In lieu of the bond required under subsection (d) of this section, a solicitor may submit a certificate of deposit in the amount as for a bond pursuant to subsection (d) of this section. The certificate of deposit shall be payable to the State and unrestrictively endorsed to the Department; or, in the case of a negotiable certificate of deposit, unrestrictively endorsed to the Department; or, in the case of a nonnegotiable certificate of deposit, assigned to the Department in a form satisfactory to the Department. Access to the certificate of deposit in favor of the State is subject to the same conditions as for a bond under subsection (d) of this section and shall extend for a period not less than four years after the solicitor ceases activities that are subject to this Chapter. The Department shall deliver to the State Treasurer certificates of deposit submitted under this section."

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

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Terrence D. Sullivan, Director
Research Division
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Raleigh, NC 27603-5925
(919) 733-2578

May 15, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: Senate Bill 305 - Solicitor's Security Option

Senate Bill 305 amends G.S. 131F-16 to allow a solicitor for a charitable organization to submit a certificate of deposit rather than a security bond.

This act is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§ 131F-16. License required for solicitors.

(a) Licensure Required. - Unless exempted under G.S. 131F-3, a person shall not act as a solicitor in this State unless that person has obtained a license from the Department and paid the applicable fees.

(b) Applications. - Applications for a license or renewal of a license shall be submitted on a form provided by the Department, shall be signed under oath, and shall include the following information:

(1) The street address and telephone number of the principal place of business of the applicant and any North Carolina street addresses if the principal place of business is located outside this State.

(2) The form of the applicant's business.

(3) The place and date when the applicant, if other than an individual, was legally established.

(4) The names and residence addresses of all officers, directors, and owners.

(5) A statement as to whether any of the owners, directors, officers, or employees of the applicant are related as parent, spouse, child, or sibling to:

a. Any other directors, officers, owners, or employees of the applicant.

b. Any officer, director, trustee, or employee of any charitable organization or sponsor under contract to the applicant.

c. Any supplier or vendor providing goods or services to any charitable organization or sponsor under contract to the applicant.

(6) A statement as to whether the applicant or any of the directors, officers, persons with a controlling interest in the applicant, or employees or agents involved in solicitation have been convicted, within the last five years, of any felony, or of a misdemeanor arising from the conduct of a solicitation for any charitable organization or sponsor or charitable or sponsor purpose, or been enjoined from violating a charitable solicitation law in this or any other state.

(7) The names of all persons in charge of any solicitation activity.

(c) Fees. - The application for an initial or renewal license shall be accompanied by a fee of two hundred dollars ($200.00). A solicitor that is a partnership or corporation may register for and pay a single fee on behalf of all of the partners, members, officers, directors, agents, and employees. In that case, the names and street addresses of all the officers, employees, and agents of the solicitor and all other persons with whom the solicitor has contracted to work under that solicitor's direction, including solicitors, shall be listed in the license application or furnished to the Department within five days after the date of employment or contractual arrangement. Each license is valid for one year or a part of one year and expires on March 31 of each year. The license may be renewed on or before March 31 of each year for an additional one-year period upon application to the Department and payment of the license fee.

(d) Bond. - A solicitor shall, at the time of application or renewal of the license, file with and

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have approved by the Department a bond with a surety authorized to do business in this State and to which the solicitor is the principal obligor. The amount of the bond shall be determined as follows:

(1) Twenty thousand dollars ($20,000), if the contributions received for the last fiscal year were less than one hundred thousand dollars ($100,000).

(2) Thirty thousand dollars ($30,000), if the contributions received for the last fiscal year were at least one hundred thousand dollars ($100,000) but less than two hundred thousand dollars ($200,000).

(3) Fifty thousand dollars ($50,000), if the contributions received for the last fiscal year were at least two hundred thousand dollars ($200,000).

The solicitor shall maintain the bond in effect as long as the license is in effect. The liability of the surety under the bond shall not exceed an all-time aggregate liability of fifty thousand dollars ($50,000). The bond, which may be in the form of a rider to a larger blanket liability bond, shall be payable to the State and to any person who may have a cause of action against the principal obligor of the bond for any liability arising out of a violation by the obligor of any provision of this Chapter or any rule adopted under this Chapter.

(e) Departmental Review. - The Department shall examine each application filed by a solicitor. If the Department determines that the requirements are not satisfied, the Department shall notify the solicitor within 10 days after its receipt of the application. If the Department does not respond within 10 days, the license is deemed approved. Within seven days after receipt of a notification that the requirements are not satisfied, the applicant may request a hearing. The state shall bear the burden of proof at such hearing. The hearing shall be held within seven days after receipt of the request. Any recommended order, if one is issued, shall be rendered within three days after the hearing. The final order shall then be issued within two days after the recommended order. If there is no recommended order, the final order shall be issued within five days after the hearing. The proceedings shall be conducted in accordance with Chapter 150B of the General Statutes, except that the time limits and provision set forth in this subsection prevail to the extent of any conflict. The applicant shall be permitted to continue to operate or continue operations pending judicial review of the Department's denial of the application. The Department shall make rules regarding the custody and control of any funds collected during the review period and disposal of such funds in the event the denial of the application is affirmed on appeal.

(f) Solicitation Notice. - No less than five days before commencing any solicitation campaign or event, the solicitor shall file with the Department a solicitation notice on a form provided by the Department. The notice shall be signed and sworn to by the contracting officer of the solicitor and shall include:

(1) A description of the solicitation event or campaign.

(2) Each location and telephone number from which the solicitation is to be conducted.

(3) The legal name and residence address of each person responsible for directing and supervising the conduct of the campaign.

(4) A statement as to whether the solicitor will, at any time, have custody of contributions.

(5) The account number and location of each bank account where receipts from the campaign are to be deposited.

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(6) A full and fair description of the charitable or sponsor program for which the solicitation campaign is being carried out as provided in the contract between the solicitor and the charitable organization or sponsor.

(7) The fund-raising methods to be used.

(8) A copy of the contract executed in accordance with subsection (g) of this section.

(g) Contracts. - Each contract or agreement between a solicitor and a charitable organization or sponsor for each solicitation campaign shall be in writing, shall be signed by two authorized officials of the charitable organization or sponsor, one of whom shall be a member of the organization's governing body and one of whom shall be the authorized contracting officer for the solicitor. Each contract or agreement shall contain all of the following provisions:

(1) A statement of the charitable or sponsor purpose and program for which the solicitation campaign is being conducted.

(2) A statement of the respective obligations of the solicitor and the charitable organization or sponsor.

(3) A statement of the guaranteed minimum percentage of the gross receipts from contributions which will be remitted to the charitable organization or sponsor. If the solicitation involves the sale of goods, services, or tickets to a fund-raising event, the percentage of the purchase price which will be remitted to the charitable organization or sponsor. Any stated percentage shall exclude any amount which the charitable organization or sponsor shall pay as fund-raising costs.

(4) A statement of the percentage of the gross revenue for which the solicitor shall be compensated. If the compensation of the professional solicitor is not contingent upon the number of contributions or the amount of revenue received, the compensation shall be expressed as a reasonable estimate of the percentage of the gross revenue, and the contract shall clearly disclose the assumptions upon which the estimate is based. The stated assumptions shall be based upon all of the relevant facts known to the solicitor regarding the solicitation to be conducted by the solicitor.

(5) The effective and termination dates of the contract.

(h) Financial Report. - Within 90 days after a solicitation campaign has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one year, the solicitor shall provide to the charitable organization or sponsor and file with the Department a financial report of the campaign, including the gross revenue received and an itemization of all expenses incurred. The report shall be completed on a form provided by the Department and shall be signed by an authorized official of the solicitor who shall certify under oath that the report is true and correct.

(i) Handling of Contributions. - Each contribution collected by or in the custody of the solicitor shall be solely in the name of the charitable organization or sponsor on whose behalf the contribution was solicited. Not later than two days after receipt of each contribution, the solicitor shall deposit the entire amount of the contribution in an account at a bank or other federally insured financial institution, which account shall be in the name of that charitable organization or sponsor. The charitable organization or sponsor shall have sole control of all withdrawals from the account and the solicitor shall not be given the authority to withdraw any deposited funds

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from the account.

(j) Records of Solicitors. - During each solicitation campaign, and for not less than three years after its completion, the solicitor shall maintain the following records:

(1) The date and amount of each contribution received and the name, address, and telephone number of each contributor.

(2) The name and residence street address of each employee, agent, and any other person, however designated, who is involved in the solicitation, the amount of compensation paid to each, and the dates on which the payments were made.

(3) A record of all contributions that at any time are in the custody of the solicitor.

(4) A record of all expenses incurred by the solicitor for the payment of which the solicitor is liable.

(5) A record of all expenses incurred by the solicitor for the payment of which the charitable organization or sponsor is liable.

(6) The location of each bank or financial institution in which the solicitor has deposited revenue from the solicitation campaign and the account number of each account in which the deposits were made.

(7) A copy of each pitch sheet or solicitation script used during the completed solicitation campaign.

(8) If a refund of a contribution has been requested, the name and address of each person requesting the refund. If a refund was made, the amount and the date it was made.

(k) Records of Tickets. - If the solicitor sells tickets to any event and represents that the tickets will be donated for use by another person, the solicitor shall maintain for at least three years the following records:

(1) The name and address of each contributor who purchases or donates tickets and the number of tickets purchased or donated by the contributor.

(2) The name and address of each organization that receives the donated tickets for the use of others, and the number of tickets received by the organization.

(*l*) Review of Records. - Any of the records described in this section shall be made available to the Department upon request and shall be furnished within 10 days after the request.

(m) Change in Information. - Unless otherwise provided in this Chapter, any change in any information filed with the Department under this section shall be reported in writing to the Department within seven days after the change occurs.

(n) License Rescinded. - Any person licensed as a solicitor shall permanently lose that person's license if it is determined that that person, any officer or director thereof, any person with a ten percent (10%) or greater interest therein, or any person the solicitor employs, engages, or procures to solicit for compensation, has been convicted in the last five years of a crime arising from the conduct of a solicitation for a charitable organization or sponsor or a charitable purpose or sponsor purpose.

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(1981, c. 886, s. 1; 1985, c. 497, s. 1; 1989, c. 566, s. 2; 1993 (Reg. Sess., 1994), c. 759, s. 2.)

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1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
S.B.305 A BILL TO BE ENTITLED AN ACT TO REINSTATE THE OPTION THAT A LICENSED SOLICITOR OF CHARITABLE SOLICITATIONS MAY SUBMIT A CERTIFICATE OF DEPOSIT IN LIEU OF A SECURITY BOND.

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. (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 2

SENATE BILL 370
Judiciary Committee Substitute Adopted 4/1/97

Short Title: Commercial Arbitration Amend. (Public)

Sponsors:

Referred to:

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA INTERNATIONAL COMMERCIAL ARBITRATION ACT TO PROVIDE FOR THE ENFORCEMENT OF ARBITRATION AWARDS PURSUANT TO THE ACT ENTERED OUTSIDE NORTH CAROLINA AND TO GIVE A PARTY THE RIGHT TO BE REPRESENTED BY AN ATTORNEY AT A PROCEEDING PURSUANT TO THE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-567.31(b) reads as rewritten:

"(b) The provisions of this ~~Article~~ Article, except ~~G.S. 1-567.38 and G.S. 1-567.39,~~ G.S. 1-567.38, 1-567.39, and 1-567.65, apply only if the place of arbitration is in this State."

Section 2. G.S. 1-567.48 reads as rewritten:

"**§ 1-567.48. Equal treatment of ~~parties.~~ parties; representation by attorney.**

(a) The parties shall be treated with equality and each party shall be given a full opportunity to present its case.

(b) A party has the right to be represented by an attorney at any proceeding or hearing under this Article. A waiver of this right prior to the proceeding or hearing is ineffective."

Section 3. This act is effective when it becomes law and applies to proceedings initiated on or after that date.

North Carolina General Assembly
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May 14, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman,
House Judiciary II Committee

FROM: Tim Hovis and O. Walker Reagan, Staff Attorneys

RE: **Senate Bill 370 - Commercial Arb. Amendments-Second Edition (Odom)**

Senate Bill 370 amends the International Commercial Arbitration Act by making international commercial arbitration awards reached outside of North Carolina enforceable in North Carolina under the International Commercial Arbitration Act and by giving every party the right to be represented by an attorney in these arbitrations. This bill is a recommendation of the North Carolina Bar Association.

Section 1 of the bill adds G.S. 1-567.65 (copy attached) to the provisions of International Commercial Arbitration Act that are enforceable in North Carolina despite the fact that the arbitration is in another place other than North Carolina. G.S. 1-567.65 provides that upon the application of a party to an arbitral award to the superior court, the court may enter a judgment which may thereafter be enforced as any other judgment entered in the State.

Section 2 amends G.S. 1-567.48 by adding a new subsection that ensures that a party to an international commercial arbitration shall have a right to be represented by an attorney, and that a waiver of this right is ineffective.

This bill would become effective when it becomes law and would apply to proceedings initiated on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

1-567.31. Scope of application.

(a) This Article applies to international commercial arbitration, subject to any applicable international agreement in force between the United States of America and any other nation or nations, or any federal statute.

(b) The provisions of this Article except G.S. 1-567.38 and G.S. 1-567.39, apply only if the place of arbitration is in this State.

(c) An arbitration is international if:

(1) The parties to the arbitration agreement have their places of business in different nations when the agreement is concluded; or

(2) One or more of the following places is situated outside the nations in which the parties have their places of business:

a. The place of arbitration if determined pursuant to the arbitration agreement;

b. Any place where a substantial part of the obligations of the commercial relationship is to be performed; or

c. The place with which the subject matter of the dispute is most closely connected; or

(3) The parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one nation.

(d) For the purposes of subsection (c) of this section:

(1) If a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;

(2) If a party does not have a place of business, reference is to be made to the party's domicile.

(e) An arbitration is deemed commercial for the purposes of this Article if it arises out of a relationship of a commercial nature, including, but not limited to the following:

(1) A transaction for the exchange of goods and services;

(2) A distribution agreement;

(3) A commercial representation or agency;

(4) An exploitation agreement or concession;

(5) A joint venture or other related form of industrial or business cooperation;

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(6) The carriage of goods or passengers by air, sea, land, or road;

(7) A contract or agreement relating to construction, insurance, licensing, factoring, leasing, consulting, engineering, financing, or banking;

(8) The transfer of data or technology;

(9) The use or transfer of intellectual or industrial property, including trade secrets, trademarks, trade names, patents, copyrights, and software programs;

(10) A contract for the provision of any type of professional service, whether provided by an employee or an independent contractor.

(f) This Article shall not affect any other law in force by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Article.

(g) This Article shall not apply to any agreement providing explicitly that it shall not be subject to the North Carolina International Commercial Arbitration Act. This Article shall not apply to any agreement executed prior to June 13, 1991.

(1991, c. 292, s. 1.)

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§ 1-567.65. Confirmation and enforcement of awards.

Subject to the relevant provisions of federal law or any applicable international agreement in force between the United States of America and any other nation or nations, upon application of a party, the superior court shall confirm an arbitral award, unless it finds grounds for modifying or vacating the award under G.S. 1-567.64. An award shall not be confirmed unless the time for correction and interpretation of awards prescribed by G.S. 1-567.63 shall have expired or been waived by all the parties. Upon the granting of an order confirming, modifying, or correcting an award, judgment or decree shall be entered in conformity therewith and enforced as any other judgment or decree. The superior court may award costs of the application and of the subsequent proceedings.

(1991, c. 292, s. 1.)

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NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 370 Second Edition
COMMITTEE SUBSTITUTE _____ Amendment No. _____
(to be filled in by Principal Clerk)

Rep.)
) Hackney
Sen.)

moves to amend the bill on page 1, line 20

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"Section 3. This act ~~is~~ becomes effective ~~September~~ October ~~1~~, 1997 and applies to"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Neely** for the Committee on **Judiciary II.**

☒ Committee Substitute for
S.B. 370 A BILL TO BE ENTITLED AN ACT TO AMEND THE NORTH CAROLINA INTERNATIONAL COMMERCIAL ARBITRATION ACT TO PROVIDE FOR THE ENFORCEMENT OF ARBITRATION AWARDS PURSUANT TO THE ACT ENTERED OUTSIDE NORTH CAROLINA AND TO GIVE A PARTY THE RIGHT TO BE REPRESENTED BY AN ATTORNEY AT A PROCEEDING PURSUANT TO THE ACT.

☐ 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, 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 D

SENATE BILL 370
Judiciary Committee Substitute Adopted 4/1/97
Proposed Committee Substitute S370-PCS4602

Short Title: Commercial Arbitration Amend. (Public)

Sponsors:

Referred to:

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA INTERNATIONAL COMMERCIAL ARBITRATION ACT TO PROVIDE FOR THE ENFORCEMENT OF ARBITRATION AWARDS PURSUANT TO THE ACT ENTERED OUTSIDE NORTH CAROLINA AND TO GIVE A PARTY THE RIGHT TO BE REPRESENTED BY AN ATTORNEY AT A PROCEEDING PURSUANT TO THE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-567.31(b) reads as rewritten:

"(b) The provisions of this ~~Article~~ Article, except ~~G.S. 1-567.38 and G.S. 1-567.39,~~ G.S. 1-567.38, 1-567.39, and 1-567.65, apply only if the place of arbitration is in this State."

Section 2. G.S. 1-567.48 reads as rewritten:

"**§ 1-567.48. Equal treatment of ~~parties.~~ parties; representation by attorney.**

(a) The parties shall be treated with equality and each party shall be given a full opportunity to present its case.

(b) A party has the right to be represented by an attorney at any proceeding or hearing under this Article. A waiver of this right prior to the proceeding or hearing is ineffective."

Section 3. This act becomes effective October 1, 1997, and applies to proceedings initiated on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

X Committee Substitute for
S.B. 370 A BILL TO BE ENTITLED AN ACT TO AMEND THE NORTH CAROLINA INTERNATIONAL ARBITRATION ACT TO PROVIDE FOR THE ENFORCEMENT OF ARBITRATION AWARDS PURSUANT TO THE ACT ENTERED OUTSIDE NORTH CAROLINA AND TO GIVE A PARTY THE RIGHT TO BE REPRESENTED BY AN ATTORNEY AT A PROCEEDING PURSUANT TO THE ACT.

☐ 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. (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 2

SENATE BILL 371
Judiciary Committee Substitute Adopted 4/30/97

Short Title: International Commercial Conciliation. (Public)

Sponsors:

Referred to:

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE INTERNATIONAL COMMERCIAL ARBITRATION ACT TO PROVIDE FOR CONCILIATION OF DISPUTES.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 45B of Chapter 1 of the General Statutes reads as rewritten:

"International Commercial ~~Arbitration.~~ Arbitration and Conciliation."

Section 2. G.S. 1-567.30 through G.S. 1-567.33 are codified as Part 1 of Article 45B of Chapter 1 of the General Statutes to be entitled "General Provisions".

Section 3. G.S. 1-567.68 is recodified as G.S. 1-567.33A, to be included in Part 1 of Article 45B of Chapter 1 of the General Statutes, as codified in Section 2 of this act.

Section 4. G.S. 1-567.34 through G.S. 1-567.67 are codified as Part 2 of Article 45B of Chapter 1 of the General Statutes, to be entitled "International Commercial Arbitration".

Section 5. G.S. 1-567.30 reads as rewritten:

"**§ 1-567.30. Preamble and short title.**

It is the policy of the State of North Carolina to promote and facilitate international trade and commerce, and to provide a forum for the resolution of disputes that may arise from participation therein. Pursuant to this policy, the purpose of this Article is to encourage the use of arbitration or conciliation as a means of resolving such disputes, to provide rules for the conduct of arbitration or conciliation proceedings, and to assure access to the courts of this State for legal

proceedings ancillary to such ~~arbitration.~~ arbitration or conciliation. This Article shall be known as the North Carolina International Commercial Arbitration and Conciliation Act".

Section 6. G.S. 1-567.31 reads as rewritten:

"**§ 1-567.31. Scope of application.**

(a) This Article applies to international commercial ~~arbitration,~~ arbitration and conciliation, subject to any applicable international agreement in force between the United States of America and any other nation or nations, or any federal statute.

(b) The provisions of this ~~Article~~ Article, except G.S. 1-567.38 and G.S. 1-567.39, apply only if the place of arbitration is in this State.

(c) An arbitration or conciliation is international if:

(1) The parties to the arbitration or conciliation agreement have their places of business in different nations when the agreement is concluded; or

(2) One or more of the following places is situated outside the nations in which the parties have their places of business:

a. The place of arbitration or conciliation if determined pursuant to the arbitration agreement;

b. Any place where a substantial part of the obligations of the commercial relationship is to be performed; or

c. The place with which the subject matter of the dispute is most closely connected; or

(3) The parties have expressly agreed that the subject matter of the arbitration or conciliation agreement relates to more than one nation.

(d) For the purposes of subsection (c) of this section:

(1) If a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration or conciliation agreement;

(2) If a party does not have a place of business, reference is to be made to the party's domicile.

(e) An arbitration or conciliation, respectively, is deemed commercial for the purposes of this Article if it arises out of a relationship of a commercial nature, including, but not limited to the following:

(1) A transaction for the exchange of goods and services;

(2) A distribution agreement;

(3) A commercial representation or agency;

(4) An exploitation agreement or concession;

(5) A joint venture or other related form of industrial or business cooperation;

(6) The carriage of goods or passengers by air, sea, land, or road;

(7) A contract or agreement relating to construction, insurance, licensing, factoring, leasing, consulting, engineering, financing, or banking;

(8) The transfer of data or technology;
(9) The use or transfer of intellectual or industrial property, including trade secrets, trademarks, trade names, patents, copyrights, and software programs;
(10) A contract for the provision of any type of professional service, whether provided by an employee or an independent contractor.

(f) This Article shall not affect any other law in force by virtue of which certain disputes may not be submitted to ~~arbitration~~ arbitration, conciliation, or mediation, or may be submitted to ~~arbitration~~ arbitration, conciliation, or mediation only according to provisions other than those of this Article.

(g) This Article shall not apply to any agreement providing explicitly that it shall not be subject to the North Carolina International Commercial Arbitration and Conciliation Act. This Article shall not apply to any agreement executed prior to June 13, 1991."

Section 7. Article 45B of Chapter 1 of the General Statutes is amended by adding a new Part to read:

"Part 3. International Commercial Conciliation.

"§ 1-567.68. Appointment of conciliators.

(a) The parties may select or permit an arbitral tribunal or other third party to select one or more persons to serve as the conciliators.

(b) The conciliator shall assist the parties in an independent and impartial manner in the parties' attempt to reach an amicable settlement of their dispute. The conciliator shall be guided by principles of objectivity, fairness, and justice and shall give consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned, and the circumstances surrounding the dispute, including any previous practices between the parties.

(c) The conciliator may conduct the conciliation proceedings in a manner that the conciliator considers appropriate, considering the circumstances of the case, the wishes of the parties, and the desirability of a prompt settlement of the dispute. Except as otherwise provided by this Article, other provisions of the law of this State governing procedural matters do not apply to conciliation proceedings brought under this Part.

"§ 1-567.69. Representation.

The parties may appear in person or be represented or assisted by any person of their choice.

"§ 1-567.70. Report of conciliators.

(a) At any time during the proceedings, a conciliator may prepare a draft conciliation agreement and send copies to the parties, specifying the time within which the parties must signify their approval. The draft conciliation agreement may include the assessment and apportionment of costs between the parties.

(b) A party is not required to accept a settlement proposed by the conciliator.

"§ 1-567.71. Confidentiality.

(a) Evidence of anything said or of an admission made in the course of a conciliation is not admissible, and disclosure of that evidence shall not be compelled

in any arbitration or civil action in which, under law, testimony may be compelled to be given. This subsection does not limit the admissibility of evidence when all parties participating in conciliation consent to its disclosure.

(b) If evidence is offered in violation of this section, the arbitral tribunal or the court shall make any order it considers appropriate to deal with the matter, including an order restricting the introduction of evidence or dismissing the case.

(c) Unless the document otherwise provides, a document prepared for the purpose of, in the course of, or pursuant to the conciliation, or a copy of such document, is not admissible in evidence, and disclosure of the document shall not be compelled in any arbitration or civil action in which, under law, testimony may be compelled.

"§ 1-567.72. Stay of arbitration; resort to other proceedings.

(a) The agreement of the parties to submit a dispute to conciliation is considered an agreement between or among those parties to stay all judicial or arbitral proceedings from the beginning of conciliation until the termination of conciliation proceedings.

(b) All applicable limitation periods, including periods of prescription, are tolled or extended on the beginning of conciliation proceedings under this Part as to all parties to the conciliation proceedings until the tenth day following the date of termination of the proceedings. For purposes of this section, conciliation proceedings are considered to have begun when the parties have all agreed to participate in the conciliation proceedings.

"§ 1-567.73. Termination of conciliation.

(a) A conciliation proceeding may be terminated as to all parties by any one of the following means:

(1) On the date of the declaration, a written declaration of the conciliators that further efforts at conciliation are no longer justified.

(2) On the date of the declaration, a written declaration of the parties addressed to the conciliators that the conciliation proceedings are terminated.

(3) On the date of the agreement, a conciliation agreement signed by all of the parties.

(4) On the date of the order, order of the court when the matter submitted to conciliation is in litigation in the courts of this State.

(b) A conciliation proceeding may be terminated as to particular parties by any one of the following means:

(1) On the date of the declaration, a written declaration of the particular party to the other parties and the conciliators that the conciliation proceedings are to be terminated as to that party.

(2) On the date of the agreement, a conciliation agreement signed by some of the parties.

(3) On the date of the order, order of the court when the matter submitted to conciliation is in litigation in the courts of this State.

"§ 1-567.74. Enforceability of decree.

If the conciliation proceeding settles the dispute and the result of the conciliation is in writing and signed by the conciliators and the parties or their representatives, the written agreement shall be treated as an arbitral award rendered by an arbitral tribunal under this Article and has the same force and effect as a final award in arbitration.

"**§ 1-567.75. Costs.**

(a) On termination of the conciliation proceeding, the conciliators shall set the costs of the conciliation and give written notice of the costs to the parties. For purposes of this section, 'costs' includes all of the following:

(1) A reasonable fee to be paid to the conciliators.

(2) Travel and other reasonable expenses of the conciliators.

(3) Travel and other reasonable expenses of witnesses requested by the conciliators, with the consent of the parties.

(4) The cost of any expert advice requested by the conciliators, with the consent of the parties.

(5) The cost of any court.

(b) Costs shall be borne equally by the parties unless a conciliation agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

"**§ 1-567.76. Effect on jurisdiction.**

Requesting conciliation, consenting to participate in the conciliation proceedings, participating in conciliation proceedings, or entering into a conciliation agreement does not constitute consenting to the jurisdiction of any court in this State if conciliation fails.

"**§ 1-567.77. Immunity of conciliators and parties.**

(a) A conciliator, party, or representative of a conciliator or party, while present in this State for the purpose of arranging for or participating in conciliation under this Part, is not subject to service of process on any civil matter related to the conciliation.

(b) A person who serves as a conciliator shall have the same immunity as judges from civil liability for their official conduct in any proceeding subject to this Part. This qualified immunity does not apply to acts or omissions which occur with respect to the operation of a motor vehicle."

Section 8. This act becomes effective September 1, 1997, and applies to any international commercial disputes that are subject on or after that date to conciliation pursuant to Article 45B of Chapter 1 of the General Statutes, as amended by this act.

North Carolina General Assembly
Legislative Services Office

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May 15, 1997

MEMORANDUM

TO: Representative Charles B. Neely, Jr., Chairman

FROM: O. Walker Reagan, Staff Attorney
Susan L. Hayes, Committee Counsel

RE: **Senate Bill 371 - International Commercial Conciliation** - Senator Odom

Senate Bill 371 would amend the International Commercial Arbitration statute by adding provisions for conciliation in addition to arbitration. This bill is a recommendation of the North Carolina Bar Association.

This bill adds conciliation processes to the arbitration processes recognized under North Carolina law for disputes arising in international commercial transactions as defined in the law.

Conciliation provides for an informal process directed by a independent impartial person whose job is to help the parties to a dispute reach an amiable settlement. Under this procedure, the discussions can be in any form the conciliator deems appropriate and agreed to by the parties.

The bill provides protections to the parties to this type of settlement process by insuring that all evidence or admissions made in the conciliation process are inadmissible in any subsequent court proceeding. The bill also provides that any applicable time limits, including statutes of limitation, are stayed during the conciliation process and for 10 days beyond the termination. The bill specifies when a conciliation is terminated, the enforceability of any agreement arising from the conciliation, and how the costs of the process are to be shared between the parties. The bill also gives protection against conciliation being deemed consent to jurisdiction.

This bill would become effective September 1, 1997 and would apply to international commercial disputes made subject to conciliation on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

ARTICLE 45B.
International Commercial Arbitration.

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§ 1-567.30. Preamble and short title.

It is the policy of the State of North Carolina to promote and facilitate international trade and commerce, and to provide a forum for the resolution of disputes that may arise from participation therein. Pursuant to this policy, the purpose of this Article is to encourage the use of arbitration

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as a means of resolving such disputes, to provide rules for the conduct of arbitration proceedings, and to assure access to the courts of this State for legal proceedings ancillary to such arbitration. This Article shall be known as the North Carolina International Commercial Arbitration Act.

(1991, c. 292, s. 1.)

§ 1-567.31. Scope of application.

(a) This Article applies to international commercial arbitration, subject to any applicable international agreement in force between the United States of America and any other nation or nations, or any federal statute.

(b) The provisions of this Article except G.S. 1-567.38 and G.S. 1-567.39, apply only if the place of arbitration is in this State.

(c) An arbitration is international if:

(1) The parties to the arbitration agreement have their places of business in different nations when the agreement is concluded; or

(2) One or more of the following places is situated outside the nations in which the parties have their places of business:

a. The place of arbitration if determined pursuant to the arbitration agreement;

b. Any place where a substantial part of the obligations of the commercial relationship is to be performed; or

c. The place with which the subject matter of the dispute is most closely connected; or

(3) The parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one nation.

(d) For the purposes of subsection (c) of this section:

(1) If a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;

(2) If a party does not have a place of business, reference is to be made to the party's domicile.

(e) An arbitration is deemed commercial for the purposes of this Article if it arises out of a relationship of a commercial nature, including, but not limited to the following:

(1) A transaction for the exchange of goods and services;

(2) A distribution agreement;

(3) A commercial representation or agency;

(4) An exploitation agreement or concession;

(5) A joint venture or other related form of industrial or business cooperation;

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(6) The carriage of goods or passengers by air, sea, land, or road;

(7) A contract or agreement relating to construction, insurance, licensing, factoring, leasing, consulting, engineering, financing, or banking;

(8) The transfer of data or technology;

(9) The use or transfer of intellectual or industrial property, including trade secrets, trademarks, trade names, patents, copyrights, and software programs;

(10) A contract for the provision of any type of professional service, whether provided by an employee or an independent contractor.

(f) This Article shall not affect any other law in force by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Article.

(g) This Article shall not apply to any agreement providing explicitly that it shall not be subject to the North Carolina International Commercial Arbitration Act. This Article shall not apply to any agreement executed prior to June 13, 1991.

(1991, c. 292, s. 1.)

§ 1-567.32. Definitions and rules of interpretation.

(a) For the purposes of this Article:

(1) "Arbitral award" means any decision of an arbitral tribunal on the substance of a dispute submitted to it, and includes an interlocutory, or partial award;

(2) "Arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

(3) "Arbitration" means any arbitration whether or not administered by a permanent arbitral institution;

(4) "Party" means a party to an arbitration agreement;

(5) "Superior court" means the superior court of any county in this State selected pursuant to G.S. 1-567.36.

(b) Where a provision of this Article, except G.S. 1-567.58, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination.

(c) Where a provision of this Article refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement.

(d) Where a provision of this Article, other than in G.S. 1-567.55(1) and G.S. 1-567.62(b)(1), refers to a claim, it also applies to a counterclaim, and where it refers to a defense, it also applies to a defense to such counterclaim.

(1991, c. 292, s. 1.)

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§ 1-567.33. Receipt of written communications or submissions.

(a) Unless otherwise agreed by the parties, any written communication or submission is deemed to have been received if it is delivered to the addressee personally or if it is delivered at the addressee's place of business, domicile or mailing address and the communication or submission is deemed to have been received on the day it is so delivered. Delivery by facsimile transmission shall constitute valid receipt if the communication or submission is in fact received.

(b) If none of the places referred to in subsection (a) can be found after making reasonable inquiry, a written communication or submission is deemed to have been received if it is sent to the addressee's last known place of business, domicile or mailing address by registered mail or any other means which provide a record of the attempt to deliver it.

(c) The provisions of this Article do not apply to a written communication or submission relating to a court, administrative or special proceeding.

(1991, c. 292, s. 1.)

§ 1-567.34. Waiver of right to object.

A party who knows that any provision of this Article or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating an objection to such noncompliance without undue delay or, if a time limit is provided therefor, within that period of time, shall be deemed to have waived any right to object.

(1991, c. 292, s. 1.)

§ 1-567.35. Extent of court intervention.

In matters governed by this Article, no court shall intervene except where so provided in this Article or applicable federal law or any applicable international agreement in force between the United States of America and any other nation or nations.

(1991, c. 292, s. 1.)

§ 1-567.36. Venue and jurisdiction of courts.

(a) The functions referred to in G.S. 1-567.41(c) and (d), 1-567.43(a), 1-567.44(b), 1-567.46(c), and 1-567.57 shall be performed by the superior court in:

(1) The county where the arbitration agreement is to be performed or was made;

(2) If the arbitration agreement does not specify a county where the agreement is to be performed and the agreement was not made in any county in the State of North Carolina, the county where any party to the court proceeding resides or has a place of business;

(3) In any case not covered by subdivisions (1) or (2) of this subsection, in any county in the State of North Carolina.

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(b) All other functions assigned by this Article to the superior court shall be performed by the superior court of the county in which the place of arbitration is located.

(1991, c. 292, s. 1.)

§ 1-567.37. Definition and form of arbitration agreement.

(a) An "arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether or not contractual. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(b) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams, facsimile transmission, or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

(c) Such arbitration agreement shall be valid, enforceable and irrevocable, except with the consent of all the parties, without regard to the justiciable character of the controversy.

(1991, c. 292, s. 1.)

§ 1-567.38. Arbitration agreement and substantive claim before court.

(a) When a party to an international commercial arbitration agreement as defined in this Article commences judicial proceedings seeking relief with respect to a matter covered by the agreement to arbitrate, any other party to the agreement may apply to the superior court for an order to stay the proceedings and compel arbitration.

(b) Arbitration proceedings may begin or continue, and an award may be made, while an action described in subsection (a) is pending before the court.

(1991, c. 292, s. 1.)

§ 1-567.39. Interim relief and the enforcement of interim measures.

(a) In the case of an arbitration where the arbitrator or arbitrators have not been appointed, or where the arbitrator or arbitrators are unavailable, a party may seek interim relief directly from the superior court as provided in subsection (c). Enforcement shall be granted as provided by the law applicable to the type of interim relief sought.

(b) In all other cases, a party shall seek interim measures under G.S. 1-567.47 from the arbitral tribunal and shall have no right to seek interim relief from the superior court, except that a party to an arbitration governed by this Article may request from the superior court enforcement of an order of an arbitral tribunal granting interim measures under G.S. 1-567.47.

(c) In connection with an agreement to arbitrate or a pending arbitration, the superior court

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may grant, pursuant to subsection (a) of this section:

(1) An order of attachment of garnishment;

(2) A temporary restraining order or preliminary injunction;

(3) An order for claim and delivery;

(4) The appointment of a receiver;

(5) Delivery of money or other property into court;

(6) Any other order that may be necessary to ensure the preservation or availability either of assets or of documents, the destruction or absence of which would be likely to prejudice the conduct or effectiveness of the arbitration.

(d) In considering a request for interim relief or the enforcement of interim measures, the court shall give preclusive effect to any finding of fact of the arbitral tribunal in the proceeding, including the probable validity of the claim that is the subject of the interim relief sought or the interim measures granted.

(e) Where the arbitral tribunal has not ruled on an objection to its jurisdiction, the court shall not grant preclusive effect to the tribunal's findings until the court has made an independent finding as to the jurisdiction of the arbitral tribunal. If the court rules that the arbitral tribunal did not have jurisdiction, the application for interim relief or the enforcement of interim measures shall be denied. Such a ruling by the court that the arbitral tribunal lacks jurisdiction is not binding on the arbitral tribunal or subsequent judicial proceedings.

(f) The availability of interim relief under this section may be limited by prior written agreement of the parties.

(1991, c. 292, s. 1.)

§ 1-567.40. Number of arbitrators.

There shall be one arbitrator unless the parties agree on a greater number of arbitrators.

(1991, c. 292, s. 1.)

§ 1-567.41. Appointment of arbitrators.

(a) A person of any nationality may be an arbitrator.

(b) The parties may agree on a procedure of appointing the arbitral tribunal subject to the provisions of subsections (d) and (e) of this section.

(c) (1) If an agreement is not made under subsection (b) of this section, in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within 30 days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the appointment shall be made, upon request of a party, by the superior court.

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(2) In an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, a sole arbitrator shall be appointed, upon request of a party, by the superior court.

(3) In an arbitration involving more than two parties, if no agreement is reached under subsection (b) of this section, the superior court, on request of a party, shall appoint one or more arbitrators, as provided in G.S. 1-567.40.

(d) The superior court, on request of any party, may take the necessary measures, unless the agreement on the appointment procedure provides other means for securing the appointment, if, under an appointment procedure agreed upon by the parties:

(1) A party fails to act as required under such procedure; or

(2) The parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure; or

(3) A third party, including an institution, fails to perform any function entrusted to it under such procedure.

(e) A decision of the superior court on a matter entrusted by subsection (c) or (d) of this section shall be final and not subject to appeal.

(f) The superior court, in appointing an arbitrator, shall consider:

(1) Any qualifications required of the arbitrator by the agreement of the parties;

(2) Such other considerations as are likely to secure the appointment of an independent and impartial arbitrator;

(3) In the case of a sole or third arbitrator, the advisability of appointing an arbitrator of a nationality other than those of the parties.

(g) The parties may agree to employ an established arbitration institution to conduct the arbitration. If they do not so agree, the superior court may in its discretion designate an established arbitration institution to conduct the arbitration.

(h) Unless otherwise agreed, an arbitrator shall be entitled to compensation at an hourly or daily rate which reflects the size and complexity of the case, and the experience of the arbitrator. If the parties are unable to agree on such a rate, the rate shall be determined by the arbitral institution chosen pursuant to subsection (g) of this section or by the arbitral tribunal, in either case subject to the review of the superior court upon the motion of any dissenting party.

(1991, c. 292, s. 1; 1993, c. 553, s. 6.)

§ 1-567.42. Grounds for challenge.

(a) Except as otherwise provided in this Article, all persons whose names have been submitted for consideration for appointment or designation as arbitrators, or who have been appointed or designated as such, shall make a disclosure to the parties within 15 days of such submission, appointment, or designation of any information which might cause their impartiality to be questioned including, but not limited to, any of the following instances:

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(1) The person has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) The person served as a lawyer in the matter in controversy, or the person is or has been associated with another who has participated in the matter during such association, or has been a material witness concerning it;

(3) The person served as an arbitrator in another proceeding involving one or more of the parties to the proceeding;

(4) The person, individually or as a fiduciary, or such person's spouse or minor child residing in such person's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) The person, his or her spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person meets any of the following conditions:

a. The person is or has been a party to the proceeding, or an officer, director, or trustee of a party;

b. The person is acting or has acted as a lawyer in the proceeding;

c. The person is known to have an interest that could be substantially affected by the outcome of the proceeding;

d. The person is likely to be a material witness in the proceeding;

(6) The person has a close personal or professional relationship with a person who meets any of the following conditions:

a. The person is or has been a party to the proceeding, or an officer, director, or trustee of a party;

b. The person is acting or has acted as a lawyer or representative in the proceeding;

c. The person is or expects to be nominated as an arbitrator or conciliator in the proceeding;

d. The person is known to have an interest that could be substantially affected by the outcome of the proceeding;

e. The person is likely to be a material witness in the proceeding.

(b) The obligation to disclose information set forth in subsection (a) of this section is mandatory and cannot be waived as to the parties with respect to persons serving either as sole arbitrator or as the chief or prevailing arbitrator. The parties may otherwise agree to waive such disclosure.

(c) From the time of appointment and throughout the arbitral proceedings, an arbitrator shall disclose to the parties without delay any circumstances referred to in subsection (a) of this section which were not previously disclosed.

(d) Unless otherwise agreed by the parties or the rules governing the arbitration, an arbitrator

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may be challenged only if circumstances exist that give rise to justifiable doubts as to his or her independence or impartiality, or as to his or her possession of the qualifications upon which the parties have agreed.

(e) A party may challenge an arbitrator appointed by it, or in whose appointment it has participated only for reasons of which it becomes aware after the appointment has been made.

(1991, c. 292, s. 1.)

§ 1-567.43. Challenge procedure.

(a) The parties may agree on a procedure for challenging an arbitrator, subject to the provisions of subsection (c) of this section.

(b) If there is no agreement under subsection (a) of this section, a party challenging an arbitrator shall, within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in G.S. 1-567.42(a), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(c) If a challenge under any procedure agreed upon by the parties or under the procedure of subsection (b) of this section is not successful, the challenging party may, within 30 days after having received notice of the decision rejecting the challenge, request the superior court to decide on the challenge, which decision shall be final and subject to no appeal. While such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue to conduct the arbitral proceedings and make an award.

(1991, c. 292, s. 1.)

§ 1-567.44. Failure or impossibility to act.

(a) The mandate of an arbitrator terminates if the arbitrator becomes unable to perform the arbitrator's functions or for other reasons fails to act without undue delay or the arbitrator withdraws or the parties agree to the termination.

(b) If a controversy remains concerning any of the grounds referred to in subsection (a) of this section, a party may request the superior court to decide on the termination of the mandate. The decision of the superior court shall be final and not subject to appeal.

(c) If under this section or under G.S. 1-567.43, an arbitrator withdraws or otherwise agrees to the termination of his or her mandate, no acceptance of the validity of any ground referred to in this section or G.S. 1-567.43(b) shall be implied in consequence of such action.

(1991, c. 292, s. 1.)

§ 1-567.45. Appointment of substitute arbitrator.

(a) Where the mandate of an arbitrator terminates for any reason, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator

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being replaced.

(b) Unless otherwise agreed by the parties:

(1) Where the number of arbitrators is less than three and an arbitrator is replaced, any hearings previously held shall be repeated;

(2) Where the presiding arbitrator is replaced, any hearings previously held shall be repeated;

(3) Where the number of arbitrators is three or more and an arbitrator other than the presiding arbitrator is replaced, any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(c) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section is not invalid because there has been a change in the composition of the tribunal.

(1991, c. 292, s. 1.)

§ 1-567.46. Competence of arbitral tribunal to rule on its jurisdiction.

(a) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms a part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause, unless the arbitral tribunal finds that the arbitration clause was obtained by fraud, whether in the inducement or in the factum.

(b) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense. However, a party is not precluded from raising such a plea by the fact that the party has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. In either case, the arbitral tribunal may admit a later plea if it considers the delay justified.

(c) The arbitral tribunal may rule on a plea referred to in subsection (b) of this section either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, after having received notice of that ruling, any party may request the superior court to decide the matter. The decision of the superior court shall be final and not subject to appeal. While such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

(1991, c. 292, s. 1.)

§ 1-567.47. Power of arbitral tribunal to order interim measures.

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute, including an interim measure analogous to any type of interim relief specified in G.S. 1-567.39(c). The arbitral tribunal may require any

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party to provide appropriate security, including security for costs as provided in G.S. 1-567.61(h)(2), in connection with such measure.

(1991, c. 292, s. 1.)

§ 1-567.48. Equal treatment of parties.

The parties shall be treated with equality and each party shall be given a full opportunity to present its case.

(1991, c. 292, s. 1.)

§ 1-567.49. Determination of rules of procedure.

(a) Subject to the provisions of this Article, the parties may agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(b) If there is no agreement under subsection (a) of this section, the arbitral tribunal may, subject to the provisions of this Article, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to order such discovery as it deems necessary and to determine the admissibility, relevance, materiality, and weight of any evidence. Evidence need not be limited by the rules of evidence applicable in judicial proceedings, except as to immunities and privilege. Each party shall have the burden of proving the facts relied on to support its claim, setoff, or defense.

(1991, c. 292, s. 1.)

§ 1-567.50. Place of arbitration.

(a) The parties may agree on the place of arbitration. If the parties do not agree, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(b) Notwithstanding the provisions of subsection (a) of this section, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property, or documents.

(1991, c. 292, s. 1.)

§ 1-567.51. Commencement of arbitral proceedings.

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute shall commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

(1991, c. 292, s. 1.)

§ 1-567.52. Language.

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(a) The parties may agree on the language or languages to be used in the arbitral proceedings. If the parties do not agree, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision, or other communication by the arbitral tribunal.

(b) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

(c) The arbitral tribunal may employ one or more translators at the expense of the parties.

(1991, c. 292, s. 1.)

§ 1-567.53. Statements of claim and defense.

(a) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting its claim, the points at issue and the relief or remedy sought, and the respondent shall state its defenses and counterclaims or setoffs in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence the party will submit.

(b) Unless otherwise agreed by the parties, either party may amend or supplement a claim or defense during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

(c) If there are more than two parties to the arbitration, each party shall state its claims, setoffs, and defenses as provided in subsection (a) of this section.

(1991, c. 292, s. 1.)

§ 1-567.54. Hearings and written proceedings.

(a) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. Unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(b) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property, or documents.

(c) All statements, documents, or other information supplied to the arbitral tribunal by one party shall be served on the other party and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be served on the parties. The arbitral tribunal shall direct the timing of such service to protect the parties from undue surprise.

(d) Unless otherwise agreed by the parties, all oral hearings and meetings in arbitral proceedings shall be held in camera. Confidential information disclosed during the proceedings

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by the parties or by witnesses shall not be divulged by the arbitrator or arbitrators. Unless otherwise agreed by the parties, or required by applicable law, the arbitral tribunal and the parties shall keep confidential all matters relating to the arbitration and the award.

(e) The parties may agree on:

(1) The attendance of a court reporter,

(2) The creation of a transcript of proceedings, or

(3) The making of an audio or video record of proceedings, at the expense of the parties.

Any party may provide for any of the actions specified in subdivisions (1) through (3) of this subsection at that party's own expense.

(f) After asking the parties if they have any further testimony or evidentiary submissions and upon receiving negative replies or being satisfied that the record is complete, the arbitral tribunal may declare the hearings closed. The arbitral tribunal may reopen the hearings, upon terms it considers just, at any time before the award is made.

(1991, c. 292, s. 1.)

§ 1-567.55. Default of a party.

Unless otherwise agreed by the parties, where, without showing sufficient cause:

(1) The claimant fails to submit a statement of claim in accordance with G.S. 1-567.53(a), the arbitral tribunal shall terminate the proceedings;

(2) The respondent fails to submit a statement of defense in accordance with G.S. 1-567.53(c), the arbitral tribunal shall continue to conduct the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(3) Any party fails to appear at a hearing or to produce documentary evidence as directed by the arbitral tribunal, the arbitral tribunal may continue to conduct the proceedings and make the award on the evidence before it.

(1991, c. 292, s. 1.)

§ 1-567.56. Expert appointed by arbitral tribunal.

(a) Unless otherwise agreed by the parties, the arbitral tribunal:

(1) May appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(2) May require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods, or other property for the expert's inspection.

(b) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in an oral hearing where the parties have the opportunity to question the expert and to present

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expert witnesses on the points at issue.

(1991, c. 292, s. 1.)

§ 1-567.57. Court assistance in obtaining discovery and taking evidence.

(a) The arbitral tribunal or a party with the approval of the arbitral tribunal may request from the superior court assistance in obtaining discovery and taking evidence. The court may execute the request within its competence and according to its rules on discovery and taking evidence, and may impose sanctions for failure to comply with its orders. A subpoena may be issued as provided by G.S. 8-59, in which case the witness compensation provisions of G.S. 6-51, 6-53, and 7A-314 shall apply.

(b) If the parties to two or more arbitration agreements agree, in their respective arbitration agreements or otherwise, to consolidate the arbitrations arising out of those agreements, the superior court, on application by one party with the consent of all the other parties to those arbitration agreements, may:

(1) Order the arbitrations to be consolidated on terms the court considers just and necessary;

(2) If all the parties cannot agree on an arbitral tribunal for the consolidated arbitration, appoint an arbitral tribunal as provided by G.S. 1-567.41; and

(3) If all the parties cannot agree on any other matter necessary to conduct the consolidated arbitration, make any other order it considers necessary.

(1991, c. 292, s. 1.)

§ 1-567.58. Rules applicable to substance of dispute.

(a) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given country or political subdivision thereof shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country or political subdivision and not to its conflict of laws rules.

(b) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(c) The arbitral tribunal shall decide ex aequo et bono (on the basis of fundamental fairness), or as amiable compositeur (as an "amicable compounder"), only if the parties have expressly authorized it to do so.

(d) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

(1991, c. 292, s. 1; c. 761, s. 1.)

§ 1-567.59. Decision making by panel of arbitrators.

Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator,

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any decision of the arbitral tribunal shall be made by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, is authorized by the parties or all members of the arbitral tribunal.

(1991, c. 292, s. 1.)

§ 1-567.60. Settlement.

(a) An arbitral tribunal may encourage settlement of the dispute and, with the agreement of the parties, may use mediation, conciliation, or other procedures at any time during the arbitral proceedings to encourage settlement.

(b) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(c) An award on agreed terms shall be made in accordance with the provisions of G.S. 1-567.61 and shall state that it is an arbitral award. Such an award shall have the same status and effect as any other award on the substance of the dispute.

(1991, c. 292, s. 1.)

§ 1-567.61. Form and contents of award.

(a) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(b) The award shall not state the reasons upon which it is based, unless the parties have agreed that reasons are to be given.

(c) The award shall state its date and the place of arbitration as determined in accordance with G.S. 1-567.50. The award shall be considered to have been made at that place.

(d) After the award is made, a copy signed by the arbitrator or arbitrators in accordance with subsection (a) of this section shall be delivered to each party.

(e) The award may be denominated in foreign currency, by agreement of the parties or in the discretion of the arbitral tribunal if the parties are unable to agree.

(f) Unless otherwise agreed by the parties, the arbitral tribunal may award interest.

(g) The arbitral tribunal may award specific performance in its discretion to a party requesting an award of specific performance.

(h) (1) Unless otherwise agreed by the parties, the awarding of costs of an arbitration shall be at the discretion of the arbitral tribunal.

(2) In making an order for costs, the arbitral tribunal may include as costs:

a. The fees and expenses of the arbitrator or arbitrators, expert witnesses, and translators;

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b. Fees and expenses of counsel and of the institution supervising the arbitration, if any; and

c. Any other expenses incurred in connection with the arbitral proceedings.

(3) In making an order for costs, the arbitral tribunal may specify:

a. The party entitled to costs;

b. The party who shall pay the costs;

c. The amount of costs or method of determining that amount; and

d. The manner in which the costs shall be paid.

(1991, c. 292, s. 1.)

§ 1-567.62. Termination of proceedings.

(a) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with subsection (b) of this section.

(b) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings if:

(1) The claimant withdraws the claim, unless the respondent objects to the order and the arbitral tribunal recognizes a legitimate interest on the respondent's part in obtaining a final settlement of the dispute;

(2) The parties agree on the termination of the proceedings; or

(3) The arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(c) Subject to the provisions of G.S. 1-567.63, the mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings.

(1991, c. 292, s. 1.)

§ 1-567.63. Correction and interpretation of awards; additional awards.

(a) Within 30 days of receipt of the award, unless another period of time has been agreed upon by the parties:

(1) A party may request the arbitral tribunal to correct in the award any computation, clerical or typographical errors or other errors of a similar nature;

(2) A party may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers such request to be justified, it shall make the correction or give the interpretation within 30 days of receipt of the request. Such correction or interpretation shall become part of the award.

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(b) The arbitral tribunal may correct any error of the type referred to in subsection (a) of its own initiative within 30 days of the date of the award.

(c) Unless otherwise agreed by the parties, within 30 days of receipt of the award, a party may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within 60 days after the date of receipt of the request.

(d) The arbitral tribunal may extend, if necessary, the period within which it shall make a correction interpretation, or an additional award under subsection (a) or (c).

(e) The provisions of G.S. 1-567.61 shall apply to a correction or interpretation of the award or to an additional award made under this section.

(1991, c. 292, s. 1.)

§ 1-567.64. Modifying or vacating of awards.

Subject to the relevant provisions of federal law or any applicable international agreement in force between the United States of America and any other nation or nations, an arbitral award may be vacated by a court only upon a showing that the award is tainted by illegality, or substantial unfairness in the conduct of the arbitral proceedings. In determining whether an award is so tainted, the superior court shall have regard to the provisions of this Article, and of G.S. 1-567.13 and G.S. 1-567.14, but shall not engage in de novo review of the subject matter of the dispute giving rise to the arbitration proceedings.

(1991, c. 292, s. 1.)

§ 1-567.65. Confirmation and enforcement of awards.

Subject to the relevant provisions of federal law or any applicable international agreement in force between the United States of America and any other nation or nations, upon application of a party, the superior court shall confirm an arbitral award, unless it finds grounds for modifying or vacating the award under G.S. 1-567.64. An award shall not be confirmed unless the time for correction and interpretation of awards prescribed by G.S. 1-567.63 shall have expired or been waived by all the parties. Upon the granting of an order confirming, modifying, or correcting an award, judgment or decree shall be entered in conformity therewith and enforced as any other judgment or decree. The superior court may award costs of the application and of the subsequent proceedings.

(1991, c. 292, s. 1.)

§ 1-567.66. Applications to superior court.

Except as otherwise provided, an application to the superior court under this Article shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a

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summons in an action.

(1991, c. 292, s. 1.)

§ 1-567.67. Appeals.

(a) An appeal may be taken from:

(1) An order denying an application to compel arbitration made under G.S. 1-567.38;

(2) An order granting an application to stay arbitration made under G.S. 1-567.38;

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

(5) An order vacating an award without directing a rehearing; or

(6) A judgment or decree entered pursuant to the provisions of this Article.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

(1991, c. 292, s. 1.)

§ 1-567.68. Severability.

In the event any provision of this act is held to be invalid, the court's holding as to that provision shall not affect the validity or operation of other provisions of the act; and to that end the provisions of the act are severable.

(1991, c. 292, s. 1.)

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NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2nd

H. B. No. _____ DATE _____

S. B. No. 371 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Goodwin
Sen.)

moves to amend the bill on page 5, line 34

( ) WHICH CHANGES THE TITLE

by deleting "September 1, 1997" and inserting "October 1, 1997"

SIGNED Wayne Goodwin

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

X Committee Substitute for
S.B. 371 A BILL TO BE ENTITLED AN ACT TO EXTEND THE INTERNATIONAL COMMERCIAL ARBITRATION ACT TO PROVIDE FOR CONCILIATION OF DISPUTES.

☐ 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, 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 D

SENATE BILL 371
Judiciary Committee Substitute Adopted 4/30/97
Proposed House Committee Substitute S371-PCS1810

Short Title: International Commercial Conciliation. (Public)

Sponsors:

Referred to:

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE INTERNATIONAL COMMERCIAL ARBITRATION ACT TO PROVIDE FOR CONCILIATION OF DISPUTES.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 45B of Chapter 1 of the General Statutes reads as rewritten:

"International Commercial ~~Arbitration.~~ Arbitration and Conciliation."

Section 2. G.S. 1-567.30 through G.S. 1-567.33 are codified as Part 1 of Article 45B of Chapter 1 of the General Statutes to be entitled "General Provisions."

Section 3. G.S. 1-567.68 is recodified as G.S. 1-567.33A, to be included in Part 1 of Article 45B of Chapter 1 of the General Statutes, as codified in Section 2 of this act.

Section 4. G.S. 1-567.34 through G.S. 1-567.67 are codified as Part 2 of Article 45B of Chapter 1 of the General Statutes, to be entitled "International Commercial Arbitration."

Section 5. G.S. 1-567.30 reads as rewritten:

"**§ 1-567.30. Preamble and short title.**

It is the policy of the State of North Carolina to promote and facilitate international trade and commerce, and to provide a forum for the resolution of disputes that may arise from participation therein. Pursuant to this policy, the purpose of this Article is to encourage the use of arbitration or conciliation as a means of resolving such disputes, to provide rules for the conduct of arbitration or

conciliation proceedings, and to assure access to the courts of this State for legal proceedings ancillary to such ~~arbitration.~~ arbitration or conciliation. This Article shall be known as the North Carolina International Commercial Arbitration and Conciliation Act".

Section 6. G.S. 1-567.31 reads as rewritten:

"**§ 1-567.31. Scope of application.**

(a) This Article applies to international commercial ~~arbitration,~~ arbitration and conciliation, subject to any applicable international agreement in force between the United States of America and any other nation or nations, or any federal statute.

(b) The provisions of this ~~Article~~ Article, except G.S. 1-567.38 and G.S. 1-567.39, apply only if the place of arbitration is in this State.

(c) An arbitration or conciliation is international if:

(1) The parties to the arbitration or conciliation agreement have their places of business in different nations when the agreement is concluded; or

(2) One or more of the following places is situated outside the nations in which the parties have their places of business:

a. The place of arbitration or conciliation if determined pursuant to the arbitration agreement;

b. Any place where a substantial part of the obligations of the commercial relationship is to be performed; or

c. The place with which the subject matter of the dispute is most closely connected; or

(3) The parties have expressly agreed that the subject matter of the arbitration or conciliation agreement relates to more than one nation.

(d) For the purposes of subsection (c) of this section:

(1) If a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration or conciliation agreement;

(2) If a party does not have a place of business, reference is to be made to the party's domicile.

(e) An arbitration or conciliation, respectively, is deemed commercial for the purposes of this Article if it arises out of a relationship of a commercial nature, including, but not limited to the following:

(1) A transaction for the exchange of goods and services;

(2) A distribution agreement;

(3) A commercial representation or agency;

(4) An exploitation agreement or concession;

(5) A joint venture or other related form of industrial or business cooperation;

(6) The carriage of goods or passengers by air, sea, land, or road;

(7) A contract or agreement relating to construction, insurance, licensing, factoring, leasing, consulting, engineering, financing, or banking;
(8) The transfer of data or technology;
(9) The use or transfer of intellectual or industrial property, including trade secrets, trademarks, trade names, patents, copyrights, and software programs;
(10) A contract for the provision of any type of professional service, whether provided by an employee or an independent contractor.

(f) This Article shall not affect any other law in force by virtue of which certain disputes may not be submitted to ~~arbitration~~ arbitration, conciliation, or mediation, or may be submitted to ~~arbitration~~ arbitration, conciliation, or mediation only according to provisions other than those of this Article.

(g) This Article shall not apply to any agreement providing explicitly that it shall not be subject to the North Carolina International Commercial Arbitration and Conciliation Act. This Article shall not apply to any agreement executed prior to June 13, 1991."

Section 7. Article 45B of Chapter 1 of the General Statutes is amended by adding a new Part to read:

"Part 3. International Commercial Conciliation.

"**§ 1-567.68. Appointment of conciliators.**

(a) The parties may select or permit an arbitral tribunal or other third party to select one or more persons to serve as the conciliators.

(b) The conciliator shall assist the parties in an independent and impartial manner in the parties' attempt to reach an amicable settlement of their dispute. The conciliator shall be guided by principles of objectivity, fairness, and justice and shall give consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned, and the circumstances surrounding the dispute, including any previous practices between the parties.

(c) The conciliator may conduct the conciliation proceedings in a manner that the conciliator considers appropriate, considering the circumstances of the case, the wishes of the parties, and the desirability of a prompt settlement of the dispute. Except as otherwise provided by this Article, other provisions of the law of this State governing procedural matters do not apply to conciliation proceedings brought under this Part.

"**§ 1-567.69. Representation.**

The parties may appear in person or be represented or assisted by any person of their choice.

"**§ 1-567.70. Report of conciliators.**

(a) At any time during the proceedings, a conciliator may prepare a draft conciliation agreement and send copies to the parties, specifying the time within which the parties must signify their approval. The draft conciliation agreement may include the assessment and apportionment of costs between the parties.

(b) A party is not required to accept a settlement proposed by the conciliator.

"**§ 1-567.71. Confidentiality.**

(a) Evidence of anything said or of an admission made in the course of a conciliation is not admissible, and disclosure of that evidence shall not be compelled in any arbitration or civil action in which, under law, testimony may be compelled to be given. This subsection does not limit the admissibility of evidence when all parties participating in conciliation consent to its disclosure.

(b) If evidence is offered in violation of this section, the arbitral tribunal or the court shall make any order it considers appropriate to deal with the matter, including an order restricting the introduction of evidence or dismissing the case.

(c) Unless the document otherwise provides, a document prepared for the purpose of, in the course of, or pursuant to the conciliation, or a copy of such document, is not admissible in evidence, and disclosure of the document shall not be compelled in any arbitration or civil action in which, under law, testimony may be compelled.

"**§ 1-567.72. Stay of arbitration; resort to other proceedings.**

(a) The agreement of the parties to submit a dispute to conciliation is considered an agreement between or among those parties to stay all judicial or arbitral proceedings from the beginning of conciliation until the termination of conciliation proceedings.

(b) All applicable limitation periods, including periods of prescription, are tolled or extended on the beginning of conciliation proceedings under this Part as to all parties to the conciliation proceedings until the tenth day following the date of termination of the proceedings. For purposes of this section, conciliation proceedings are considered to have begun when the parties have all agreed to participate in the conciliation proceedings.

"**§ 1-567.73. Termination of conciliation.**

(a) A conciliation proceeding may be terminated as to all parties by any one of the following means:

(1) On the date of the declaration, a written declaration of the conciliators that further efforts at conciliation are no longer justified.

(2) On the date of the declaration, a written declaration of the parties addressed to the conciliators that the conciliation proceedings are terminated.

(3) On the date of the agreement, a conciliation agreement signed by all of the parties.

(4) On the date of the order, order of the court when the matter submitted to conciliation is in litigation in the courts of this State.

(b) A conciliation proceeding may be terminated as to particular parties by any one of the following means:

(1) On the date of the declaration, a written declaration of the particular party to the other parties and the conciliators that the conciliation proceedings are to be terminated as to that party.

(2) On the date of the agreement, a conciliation agreement signed by some of the parties.

(3) On the date of the order, order of the court when the matter submitted to conciliation is in litigation in the courts of this State.

"**§ 1-567.74. Enforceability of decree.**

If the conciliation proceeding settles the dispute and the result of the conciliation is in writing and signed by the conciliators and the parties or their representatives, the written agreement shall be treated as an arbitral award rendered by an arbitral tribunal under this Article and has the same force and effect as a final award in arbitration.

"**§ 1-567.75. Costs.**

(a) On termination of the conciliation proceeding, the conciliators shall set the costs of the conciliation and give written notice of the costs to the parties. For purposes of this section, 'costs' includes all of the following:

(1) A reasonable fee to be paid to the conciliators.

(2) Travel and other reasonable expenses of the conciliators.

(3) Travel and other reasonable expenses of witnesses requested by the conciliators, with the consent of the parties.

(4) The cost of any expert advice requested by the conciliators, with the consent of the parties.

(5) The cost of any court.

(b) Costs shall be borne equally by the parties unless a conciliation agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

"**§ 1-567.76. Effect on jurisdiction.**

Requesting conciliation, consenting to participate in the conciliation proceedings, participating in conciliation proceedings, or entering into a conciliation agreement does not constitute consenting to the jurisdiction of any court in this State if conciliation fails.

"**§ 1-567.77. Immunity of conciliators and parties.**

(a) A conciliator, party, or representative of a conciliator or party, while present in this State for the purpose of arranging for or participating in conciliation under this Part, is not subject to service of process on any civil matter related to the conciliation.

(b) A person who serves as a conciliator shall have the same immunity as judges from civil liability for their official conduct in any proceeding subject to this Part. This qualified immunity does not apply to acts or omissions which occur with respect to the operation of a motor vehicle."

Section 8. This act becomes effective October 1, 1997, and applies to any international commercial disputes that are subject on or after that date to conciliation pursuant to Article 45B of Chapter 1 of the General Statutes, as amended by this act.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 372
Judiciary Committee Substitute Adopted 4/30/97

Short Title: Time Limits for Foreign Service. (Public)

Sponsors:

Referred to:

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND, FOR SERVICE IN A CIVIL ACTION UPON A DEFENDANT LOCATED OUTSIDE THE UNITED STATES, THE TIME LIMITS REGARDING THE SECURING OF AN ENDORSEMENT UPON THE ORIGINAL SUMMONS OR THE SUING OUT OF AN ALIAS OR PLURIES SUMMONS WHEN THE DEFENDANT IS NOT SERVED WITHIN THE TIME ALLOWED FOR SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 4(d) reads as rewritten:

"(d) Summons -- Extension; endorsement, alias and pluries. -- When any defendant in a civil action is not served within the time allowed for service, the action may be continued in existence as to such defendant by either of the following methods of extension:

(1) The plaintiff may secure an endorsement upon the original summons for an extension of time within which to complete service of process. Return of the summons so endorsed shall be in the same manner as the original process. Such endorsement may be secured within 90 days after the issuance of summons or the date of the last prior endorsement, or

(2) The plaintiff may sue out an alias or pluries summons returnable in the same manner as the original process. Such alias or pluries summons may be sued out at any time within 90 days after the date

of issue of the last preceding summons in the chain of summonses or within 90 days of the last prior endorsement.

Provided, in tax and assessment foreclosures under G.S. 47-108.25 and G.S. 105-374, the first endorsement may be made at any time within two years after the issuance of the original summons, and subsequent endorsements may thereafter be made as in other actions; or an alias or pluries summons may be sued out at any time within two years after the issuance of the original summons, and after the issuance of such alias or pluries summons, the chain of summonses may be kept up as in any other action.

Provided, for service upon a defendant in a place not within the United States, the first endorsement may be made at any time within two years after the issuance of the original summons, and subsequent endorsements may thereafter be made at least once every two years; or an alias or pluries summons may be sued out at any time within two years after the issuance of the original summons, and after the issuance of such alias or pluries summons, the chain of summonses may be kept up as in any other action if sued out within two years of the last preceding summons in the chain of summonses or within two years of the last prior endorsement.

Provided, further, the methods of extension may be used interchangeably in any case and regardless of the form of the preceding extension."

Section 2. This act is effective when it becomes law and applies to actions commenced on or after that date.

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Legislative Services Office

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May 13, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman,
House Judiciary II Committee

FROM: Tim Hovis and O. Walker Reagan, Staff Attorneys

RE: **Senate Bill 372 - Time Limits For Foreign Service (Second Edition)-** Senator Odom

Senate Bill 372 amends the time that a civil summons, or an alias and pluries summons, can remain valid when the defendant is located outside of the United States. This bill is a recommendation of the North Carolina Bar Association.

This bill amends the Rules of Civil Procedures, G.S. 1A-1, Rule 4(d), which governs the extension of time to serve summons and alias and pluries summons in civil cases. Under current law, to extend the time within which a summons may be served, a plaintiff must secure an endorsement on the original summons, or sue out an alias and pluries summons, within **90 days** of the last summons or endorsement.

Under this bill, **for service upon a defendant not within the United States,** an endorsement may be made or an alias and pluries summons may be sued out at any time within **two years** of the original summons and every two years thereafter. The summons may then be kept up if within two years of the last preceding summons or endorsement, another summons is sued out.

This bill would become effective when it becomes law and would apply to actions begun on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Rule 4. Process.

(a) *Summons - Issuance; who may serve.* - Upon the filing of the complaint, summons shall be issued forthwith, and in any event within five days. The complaint and summons shall be delivered to some proper person for service. In this State, such proper person shall be the sheriff of the county where service is to be made or some other person duly authorized by law to serve summons. Outside this State, such proper person shall be anyone who is not a party and is not less than 21 years of age or anyone duly authorized to serve summons by the law of the place where service is to be made. Upon request of the plaintiff separate or additional summons shall be issued against any defendants. A summons is issued when, after being filled out and dated, it is signed by the officer having authority to do so. The date the summons bears shall be prima facie evidence of the date of issue.

(b) *Summons - Contents.* - The summons shall run in the name of the State and be dated and signed by the clerk, assistant clerk, or deputy clerk of the court in the county in which the action is commenced. It shall contain the title of the cause and the name of the court and county wherein the action has been commenced. It shall be directed to the defendant or defendants and shall notify each defendant to appear and answer within 30 days after its service upon him and further that if he fails so to appear, the plaintiff will apply to the court for the relief demanded in the complaint. It shall set forth the name and address of plaintiff 's attorney, or if there be none, the name and address of plaintiff. If a request for admission is served with the summons, the summons shall so state.

(c) *Summons - Return.* - Personal service or substituted personal service of summons as prescribed by Rule 4(j)(1) a and b must be made within 30 days after the date of the issuance of summons, except that in tax and assessment foreclosures under G.S. 47-108.25 or G.S. 105-374 the time allowed for service is 60 days. When a summons has been served upon every party named in the summons, it shall be returned immediately to the clerk who issued it, with notation thereon of its service.

Failure to make service within the time allowed or failure to return a summons to the clerk after it has been served on every party named in the summons shall not invalidate the summons. If the summons is not served within the time allowed upon every party named in the summons, it shall be returned immediately upon the expiration of such time by the officer to the clerk of the court who issued it with notation thereon of its nonservice and the reasons therefor as to every such party not served, but failure to comply with this requirement shall not invalidate the summons.

(d) *Summons - Extension; endorsement, alias and pluries.* - When any defendant in a civil action is not served within the time allowed for service, the action may be continued in existence as to such defendant by either of the following methods of extension:

(1) The plaintiff may secure an endorsement upon the original summons for an extension of time within which to complete service of process. Return of the summons so endorsed shall be in

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the same manner as the original process. Such endorsement may be secured within 90 days after the issuance of summons or the date of the last prior endorsement, or

(2) The plaintiff may sue out an alias or pluries summons returnable in the same manner as the original process. Such alias or pluries summons may be sued out at any time within 90 days after the date of issue of the last preceding summons in the chain of summonses or within 90 days of the last prior endorsement.

Provided, in tax and assessment foreclosures under G.S. 47-108.25 and G.S. 105-374, the first endorsement may be made at any time within two years after the issuance of the original summons, and subsequent endorsements may thereafter be made as in other actions; or an alias or pluries summons may be sued out at any time within two years after the issuance of the original summons, and after the issuance of such alias or pluries summons, the chain of summonses may be kept up as in any other action.

Provided, further, the methods of extension may be used interchangeably in any case and regardless of the form of the preceding extension.

(e) *Summons - Discontinuance.* - When there is neither endorsement by the clerk nor issuance of alias or pluries summons within the time specified in Rule 4(d), the action is discontinued as to any defendant not theretofore served with summons within the time allowed. Thereafter, alias or pluries summons may issue, or an extension be endorsed by the clerk, but, as to such defendant, the action shall be deemed to have commenced on the date of such issuance or endorsement.

(f) *Summons - Date of multiple summonses.* - If the plaintiff shall cause separate or additional summonses to be issued as provided in Rule 4(a), the date of issuance of such separate or additional summonses shall be considered the same as that of the original summons for purposes of endorsement or alias summons under Rule 4(d).

(g) *Summons - Docketing by clerk.* - The clerk shall keep a record in which he shall note the day and hour of issuance of every summons, whether original, alias, pluries, or endorsement thereon. When the summons is returned, the clerk shall note on the record the date of the return and the fact as to service or non-service.

(h) *Summons - When proper officer not available.* - If at any time there is not in a county a proper officer, capable of executing process, to whom summons or other process can be delivered for service, or if a proper officer refuses or neglects to execute such process, or if such officer is a party to or otherwise interested in the action or proceeding, the clerk of the issuing court, upon the facts being verified before him by written affidavit of the plaintiff or his agent or attorney, shall appoint some suitable person who, after he accepts such process for service, shall execute such process in the same manner, with like effect, and subject to the same liabilities, as if such person were a proper officer regularly serving process in that county.

(h1) *Summons - When process returned unexecuted.* - If a proper officer returns a summons or other process unexecuted, the plaintiff or his agent or attorney may cause service to be made

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by anyone who is not less than 21 years of age, who is not a party to the action, and who is not related by blood or marriage to a party to the action or to a person upon whom service is to be made. This subsection shall not apply to executions pursuant to Article 28 of Chapter 1 or summary ejectment pursuant to Article 3 of Chapter 42 of the General Statutes.

(i) *Summons - Amendment.* - At any time, before or after judgment, in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to substantial rights of the party against whom the process issued.

(j) *Process - Manner of service to exercise personal jurisdiction.* - In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process within or without the State shall be as follows:

(1) Natural Person. - Except as provided in subsection (2) below, upon a natural person:

a. By delivering a copy of the summons and of the complaint to him or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

(2) Natural Person under Disability. - Upon a natural person under disability by serving process in any manner prescribed in this section (j) for service upon a natural person and, in addition, where required by paragraph a or b below, upon a person therein designated.

a. Where the person under disability is a minor, process shall be served separately in any manner prescribed for service upon a natural person upon a parent or guardian having custody of the child, or if there be none, upon any other person having the care and control of the child. If there is no parent, guardian, or other person having care and control of the child when service is made upon the child, then service of process must also be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

b. If the plaintiff actually knows that a person under disability is under guardianship of any kind, process shall be served separately upon his guardian in any manner applicable and appropriate under this section (j). If the plaintiff does not actually know that a guardian has been appointed when service is made upon a person known to him to be incompetent to have charge of his affairs, then service of process must be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

(3) The State. - Upon the State by personally delivering a copy of the summons and of the

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complaint to the Attorney General or to a deputy or assistant attorney general or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or to a deputy or assistant attorney general.

(4) An Agency of the State. -

a. Upon an agency of the State by personally delivering a copy of the summons and of the complaint to the process agent appointed by the agency in the manner hereinafter provided or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to said process agent.

b. Every agency of the State shall appoint a process agent by filing with the Attorney General the name and address of an agent upon whom process may be served.

c. If any agency of the State fails to comply with paragraph b above, then service upon such agency may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General, or to a deputy or assistant attorney general.

d. For purposes of this rule, the term "agency of the State" includes every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(5) Counties, Cities, Towns, Villages and Other Local Public Bodies. -

a. Upon a city, town, or village by personally delivering a copy of the summons and of the complaint to its mayor, city manager or clerk or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its mayor, city manager or clerk.

b. Upon a county by personally delivering a copy of the summons and of the complaint to its county manager or to the chairman, clerk or any member of the board of commissioners for such county or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its county manager or to the chairman, clerk, or any member of this board of commissioners for such county.

c. Upon any other political subdivision of the State, any county or city board of education, or other local public district, unit, or body of any kind (i) by personally delivering a copy of the summons and of the complaint to an officer or director thereof, or (ii) by personally delivering a copy of the summons and of the complaint to an agent or attorney-in-fact authorized by appointment or by statute to be served or to accept service in its behalf, or (iii) by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii).

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d. In any case where none of the officials, officers or directors specified in paragraphs a, b and c can, after due diligence, be found in the State, and that fact appears by affidavit to the satisfaction of the court, or a judge thereof, such court or judge may grant an order that service upon the party sought to be served may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or any deputy or assistant attorney general of the State of North Carolina, or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina.

(6) Domestic or Foreign Corporation. - Upon a domestic or foreign corporation:

a. By delivering a copy of the summons and of the complaint to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the office; or

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service or [of] process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director or agent to be served as specified in paragraphs a and b.

(7) Partnerships. - Upon a general or limited partnership:

a. By delivering a copy of the summons and of the complaint to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf, or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf, or by leaving copies thereof in the office of such general partner, attorney-in-fact or agent with the person who is apparently in charge of the office.

b. If relief is sought against a partner specifically, a copy of the summons and of the complaint must be served on such partner as provided in this section (j).

(8) Other Unincorporated Associations and Their Officers. - Upon any unincorporated association, organization, or society other than a partnership:

a. By delivering a copy of the summons and of the complaint to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society, or by leaving copies thereof in the office of such officer, director, managing agent or member of the governing body with the person who is apparently in charge of the office; or

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon

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such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent or member of the governing body to be served as specified in paragraphs a and b.

(9) Service upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. § 1608.

(j1) *Service by publication on party that cannot otherwise be served.* - A party that cannot with due diligence be served by personal delivery or registered or certified mail may be served by publication. Except in actions involving jurisdiction in rem or quasi in rem as provided in section (k), service of process by publication shall consist of publishing a notice of service of process by publication once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is believed by the serving party to be located, or if there is no reliable information concerning the location of the party then in a newspaper circulated in the county where the action is pending. If the party's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the party at or immediately prior to the first publication a copy of the notice of service of process by publication. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence. Upon completion of such service there shall be filed with the court an affidavit showing the publication and mailing in accordance with the requirements of G.S. 1-75.10(2), the circumstances warranting the use of service by publication, and information, if any, regarding the location of the party served.

The notice of service of process by publication shall (i) designate the court in which the action has been commenced and the title of the action, which title may be indicated sufficiently by the name of the first plaintiff and the first defendant; (ii) be directed to the defendant sought to be served; (iii) state either that a pleading seeking relief against the person to be served has been filed or has been required to be filed therein not later than a date specified in the notice; (iv) state the nature of the relief being sought; (v) require the defendant being so served to make defense to such pleading within 40 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of the first publication of notice, or the date when the complaint is required to be filed, whichever is later, and notify the defendant that upon his failure to do so the party seeking service of process by publication will apply to the court for the relief sought; (vi) in cases of attachment, state the information required by G.S. 1-440.14; (vii) be subscribed by the party seeking service or his attorney and give the post-office address of such party or his attorney; and (viii) be substantially in the following form:

NOTICE OF SERVICE OF PROCESS BY PUBLICATION

STATE OF NORTH CAROLINA _____ COUNTY

In the _____ Court

[Title of action or special proceeding] To [Person to be served]:

Take notice that a pleading seeking relief against you (has been filed) (is required to be filed not later than _____, 19____) in the above-entitled (action) (special proceeding). The nature of the relief being sought is as follows: (State nature.)

You are required to make defense to such pleading not later than (_____, 19____) and upon your failure to do so the party seeking service against you will apply to the court for the relief sought.

This, the _____ day of _____, 19____

_____ (Attorney) (Party)

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_____ (Address)

(j2) *Proof of service.* - Proof of service of process shall be as follows:

(1) Personal Service. - Before judgment by default may be had on personal service, proof of service must be provided in accordance with the requirements of G.S. 1-75.10(1).

(2) Registered or Certified Mail. - Before judgment by default may be had on service by registered or certified mail, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of G.S. 1-75.10(4). This affidavit together with the return receipt signed by the person who received the mail if not the addressee raises a presumption that the person who received the mail and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode. In the event the presumption described in the preceding sentence is rebutted by proof that the person who received the receipt at the addressee's dwelling house or usual place of abode was not a person of suitable age and discretion residing therein, the statute of limitation may not be pleaded as a defense if the action was initially commenced within the period of limitation and service of process is completed within 60 days from the date the service is declared invalid. Service shall be complete on the day the summons and complaint are delivered to the address.

(3) Publication. - Before judgment by default may be had on service by publication, the serving party shall file an affidavit with the court showing the circumstances warranting the use of service by publication, information, if any, regarding the location of the party served which was used in determining the area in which service by publication was printed and proof of service in accordance with G.S. 1-75.10(2).

(j3) *Service in a foreign country.* - Unless otherwise provided by federal law, service upon a defendant, other than an infant or an incompetent person, may be effected in a place not within the United States:

(1) By any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) If there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

a. In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

b. As directed by the foreign authority in response to a letter rogatory or letter of request; or

c. Unless prohibited by the law of the foreign country, by

1. Delivery to the individual personally of a copy of the summons and the complaint and,

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upon a corporation, partnership, association or other such entity, by delivery to an officer or a managing or general agent;

2. Any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) By other means not prohibited by international agreement as may be directed by the court.

Service under subdivision (2)c.1. or (3) of this subsection may be made by any person authorized by subsection (a) of this Rule or who is designated by order of the court or by the foreign court.

On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service. Proof of service may be made as prescribed in G.S. 1-75.10, by the order of the court, or by the law of the foreign country.

Proof of service by mail shall include an affidavit or certificate of addressing and mailing by the clerk of court.

(j4) *Process or judgment by default not to be attacked on certain grounds.* - No party may attack service of process or a judgment of default on the basis that service should or could have been effected by personal service rather than service by registered or certified mail. No party that receives timely actual notice may attack a judgment by default on the basis that the statutory requirement of due diligence as a condition precedent to service by publication was not met.

(j5) *Personal jurisdiction by acceptance of service.* - Any party personally, or through the persons provided in Rule 4(j), may accept service of process by notation of acceptance of service together with the signature of the party accepting service and the date thereof on an original or copy of a summons, and such acceptance shall have the same force and effect as would exist had the process been served by delivery of copy and summons and complaint to the person signing said acceptance.

(k) *Process - Manner of service to exercise jurisdiction in rem or quasi in rem.* - In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for the exercise of jurisdiction in rem or quasi in rem as provided in G.S. 1-75.8, the manner of service of process shall be as follows:

(1) Defendant Known. - If the defendant is known, he may be served in the appropriate manner prescribed for service of process in section (j), or, if otherwise appropriate section (j1); except that the requirement for service by publication in (j1) shall be satisfied if made in the county where the action is pending and proof of service is made in accordance with section (j2).

(2) Defendant Unknown. - If the defendant is unknown, he may be designated by description and process may be served by publication in the manner provided in section (j1), except that the requirement for service by publication in (j1) shall be satisfied if made in the county where the action is pending and proof of service is made in accordance with section (j2).

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NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2nd

H. B. No. _____ DATE _____

S. B. No. 372 Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Hackney
Sen.)

moves to amend the bill on page 2, line 20

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"Section 2. This act becomes effective October 1, 1997 and applies to "

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

May 15, 1997 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Anne Winner	NCBA
BILL SCOGGIN	NCBA
David Robinson	Moore & Van Allen
Drew Cook	Intern
[redacted]	
Charles Cramer	NCATL
Rocky Balboa	Philadelphia Pa

MINUTES
HOUSE JUDICIARY II COMMITTEE

May 20, 1997

The North Carolina House of Representatives Judiciary II Committee met on May 20, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Baddour, Bowie, Creech, Decker, Hackney, Hensley, McMahan, Nesbitt, Redwine, Russell, Saunders, Weatherly and Wilson. A list of visitors is attached.

The following bills were discussed:

SB-997 IGNORE EMERGENCY WARNING
SB-998 FRAUD/"PRETEND" CRIME VICTIM

Senator Plyler was recognized to explain SB-997 and answer questions of committee members. A copy of the bill and bill explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

No action was taken on SB-997.

Senator Plyler was recognized to explain SB-998 and answer questions of committee members. A copy of the bill and bill explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

No action was taken on SB-998.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 997
Judiciary Committee Substitute Adopted 4/30/97

Short Title: Ignore Emergency Warning. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON WHO IGNORES A WARNING REGARDING PERSONAL SAFETY IN A DISASTER SITUATION AND PLACES HIMSELF OR HERSELF OR ANOTHER IN DANGER AND REQUIRES AN EMERGENCY RESCUE IS CIVILLY LIABLE FOR THE COSTS OF THE RESCUE EFFORT.

The General Assembly of North Carolina enacts:

Section 1. Article 36A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-288.21. Willfully ignore warning in a disaster.**

(a) In a disaster as defined by G.S. 166A-4, a person shall comply with warnings regarding personal safety issued by a federal, State, or local law enforcement agency, emergency management agency, or other governmental agency responsible for emergency management under G.S. 166A-5, 166A-7, or 166A-8. A person who willfully ignores such warning is civilly liable for the cost of a rescue effort to any governmental agency or nonprofit agency cooperating with a governmental agency conducting a rescue on the endangered person's behalf if:

(1) The person ignores the warning, and: (i) engages in an activity or course of action that a reasonable person would not pursue, or (ii) fails to take a course of action that a reasonable person would pursue;

(2) As a result of ignoring the warning the person places himself or herself or another in danger; and

(3) A governmental rescue effort is undertaken on the endangered person's behalf."

Section 2. 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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May 20, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: Senate Bill 997 - Ignore Emergency Warning - Senator Plyler

Senate Bill 997 requires anyone who must be rescued as a result of ignoring an emergency warning in a disaster is civilly liable for the cost of the rescue and must reimburse the agency performing the rescue if:

1) The person ignores the warning AND: a) acts unreasonably, or b) fails to act reasonably;

2) As a result of ignoring the warning, places himself or another in danger; AND

3) A governmental rescue effort is taken on that person's behalf.

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

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

§ 166A-4. Definitions.

The following definitions apply in this Article:

(1) "Emergency Management." -. Those measures taken by the populace and governments at federal, State, and local levels to minimize the adverse effect of any type disaster, which include the never-ending preparedness cycle of prevention, mitigation, warning, movement, shelter, emergency assistance and recovery.

(2) "Emergency Management Agency." -. A State or local governmental agency charged with coordination of all emergency management activities for its jurisdiction.

(3) "Disaster." -. An occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made accidental, military or paramilitary cause.

(4) "Political Subdivision." -. Counties and incorporated cities, towns and villages.

(1951, c. 1016, s. 2; 1953, c. 1099, s. 1; 1955, c. 387, s. 1; 1975, c. 734, ss. 4-6, 14; 1977, c. 848, s. 2; 1979, 2nd Sess., c. 1310, s. 2; 1995, c. 509, s. 123.)

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 998

Short Title: Fraud/"Pretend" Crime Victim. (Public)

Sponsors: Senators Plyler; and Conder.

Referred to: Judiciary.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT IT IS A CLASS 1 MISDEMEANOR FOR A PERSON FRAUDULENTLY TO REPRESENT HIMSELF OR HERSELF AS A CRIME VICTIM.

The General Assembly of North Carolina enacts:

Section 1. Article 20 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-118.6. Perpetrating hoax by fraudulent representation as a crime victim.**

It is unlawful for a person, with the intent to perpetrate a hoax, falsely to represent himself or herself as the victim of a crime and as a result to cause another reasonably to believe that the person is the victim of a crime and to report that crime to a law enforcement agency."

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

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Legislative Services Office

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(919) 733-2578

May 20, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: Senate Bill 998 - Fraud/"Pretend" Crime Victim - Senator Plyler

Senate Bill 998 creates a Class 1 misdemeanor for a person, with the intent to perpetrate a hoax, to falsely represent himself as the victim of a crime, with the result that another person believes the representation and reports the crime to a law enforcement agency.

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

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **May 20, 1997 10:00 A.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Beth Bayer	Secretary of State
Powell Glidewell	Secretary of State
Scott Templeton	Secretary of State
[illegible] Ramsay	Chairman Neely
[illegible] Cromer	NCATL
[illegible] Allen	SOS
Lucius Pullen	Attorney
Floyd Lewis	General Statutes Commission
Patricia A. Yancey	APPCNC / State Council for Social Legis
Mary Cornilia	Mecklenburg County
[illegible]	" "
[illegible]	" "
Bill Scoggin	NCBA
[illegible]	N.C. Senate
[illegible]	General Statutes Commission
Bill Brooks	NCFPC
John [illegible]	NCFPC
Sharon Schmidt	NCJCDC
Cathy [illegible]	DSS/DHR
[illegible]	TDA
Joe McClees	TDA

MINUTES
HOUSE JUDICIARY II COMMITTEE

May 20, 1997

The North Carolina House of Representatives Judiciary II Committee met on May 20, 1997, at 1:00 P.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Cansler, Decker, Gardner, Goodwin, Hensley, Russell, Shubert, Sutton and Wilkins. A list of visitors is attached.

The following bills were discussed:

SB-162 ADOPTION TECHNICAL AMENDMENTS
SB-554 PATERNITY/PARENTAL SUPPORT
SB-864 UPDATE AND REVISE TRADEMARK ACT
SB-997 IGNORE EMERGENCY WARNING

Representative Wilkins moved the proposed committee substitute for Senate Bill 162 be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute is attached.

Ms. Bly Hall, Department of Justice, explained the proposed committee substitute and answered questions of committee members.

Representative Goodwin moved for a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill; motion passed.

Senator Hartsell was recognized to explain SB-554 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Representative Cansler moved for a favorable report; motion passed.

Senator McDaniel was recognized to explain SB-864 and answer questions of committee members. A copy of the bill and bill explanation prepared by Messrs. Tim Hovis and Walker Reagan, Staff Attorneys, are attached.

Mr. Bill Scoggin, North Carolina Bar Association, answered questions of committee members.

Representative Decker moved for a favorable report; motion passed.

Representative Decker moved the proposed committee substitute for Senate Bill 997 be adopted for purpose of discussion; motion passed.

Mr. Hovis explained the proposed committee substitute and answered questions of committee members.

Representative Cansler was recognized to send forth an amendment and moved it be adopted; motion passed.

Representative Shubert moved the amendment be incorporated in a committee substitute, with a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill; motion passed.

The meeting was adjourned at 1:50 P.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S162-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 162
THIS IS A DRAFT 15-MAY-97 11:21:43
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Adoption Law Technical Amendments. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND SIMILAR MINOR CHANGES TO THE ADOPTION LAWS AS FOUND IN CHAPTER 48 OF THE GENERAL STATUTES INVOLVING CERTIFICATION OF DOCUMENTS, NOTICE, PROCEDURES FOR REPORTS TO THE COURT, ACCEPTANCE OF RELINQUISHMENTS BY AGENCIES, INDEXING, CAPTIONS ON ADOPTION PETITIONS, AND STANDBY GUARDIANS; TO STANDARDIZE PROCEDURES FOR REQUESTING NEW BIRTH CERTIFICATES IN ALL ADOPTIONS; AND TO AMEND PROVISIONS FOR OBTAINING CERTIFICATION OF IDENTIFICATION FOR INDIVIDUALS OF FOREIGN BIRTH AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION; AND TO ALLOW FOR PREBIRTH RIGHT-TO-CONSENT DETERMINATION, CLARIFY WHEN COUNTY DEPARTMENTS OF SOCIAL SERVICES MUST DO PREPLACEMENT ASSESSMENTS, TO ADD CHILDREN TO THE LIST OF PERSONS WHO CAN GET COPIES OF BIRTH CERTIFICATES OF ADOPTEES, TO EXTEND THE EFFECTIVE PERIOD OF PREPLACEMENT ASSESSMENTS TO EIGHTEEN MONTHS, TO PROVIDE THAT EXECUTION OF A RELINQUISHMENT DOES NOT TERMINATE THE DUTY OF SUPPORT, AND TO PERMIT ALL RELINQUISHMENTS TO BE RESCINDED BY MUTUAL AGREEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 48-2-305 reads as rewritten:

"**§ 48-2-305. Petition for adoption; additional documents.**

At the time the petition is filed, the petitioner shall file or cause to be filed the following documents:

(1) Any required affidavit of parentage executed pursuant to G.S. 48-3-206;

(2) Any required consent or relinquishment that has been executed;

(3) A certified copy of any court order terminating the rights and duties of a parent or a guardian of the adoptee;

(4) A certified copy of any court order or pleading in a pending proceeding concerning custody of or visitation with the adoptee;

(5) A copy of any required preplacement assessment certified by the agency that prepared it or an affidavit from the petitioner stating why the assessment is not available;

(6) A ~~certified~~ copy of any document containing the information required under G.S. 48-3-205 concerning the health, social, educational, and genetic history of the adoptee and the adoptee's original family which the petitioner received before the placement or at any later time, certified by the person who prepared it, or if this document is not available, an affidavit stating the reason why it is not available;

(7) Any signed copy of the form required by the Interstate Compact on the Placement of Children, G.S. 110-57.1, et seq., authorizing a minor to come into this State;

(8) A writing that states the name of any individual whose consent is or may be required, but who has not executed a consent or a relinquishment or whose parental rights have not been legally terminated, and any fact or circumstance that may excuse the lack of consent or relinquishment; and

(9) In an adoption pursuant to Article 4 of this Chapter, a copy of any agreement to release past-due child support payments.

The petitioner may also file any other document necessary or helpful to the court's determination."

Section 2. G.S. 48-2-401(d) reads as rewritten:

"(d) In the adoption of an adult, the petitioner shall also serve notice of the filing on any adult children of the prospective adoptive parent and any parent, spouse, or adult child of the adoptee who are listed in the petition to adopt."

Section 3. G.S. 48-2-403 reads as rewritten:

"**§ 48-2-403. Notice of proceedings by clerk.**

No later than five days after a petition is filed, the clerk of the court shall ~~give notice of the adoption proceeding by certified mail, return receipt requested,~~ mail or otherwise deliver notice of the adoption proceeding to any agency that has undertaken but not yet completed a preplacement assessment and any agency ordered to make a report to the court pursuant to Part 5 of this Article."

Section 4. G.S. 48-2-502(b) reads as rewritten:

"(b) The report must be in writing and contain:

(1) An account of the petitioner's marital or family status, physical and mental health, home environment, property, income, and financial obligations; if there has been a preplacement assessment, the account may be limited to any changes since the filing of the preplacement assessment;

(2) All reasonably available nonidentifying information concerning the physical, mental, and emotional condition of the adoptee required by G.S. 48-3-205 which is not already included in the document prepared under that section;

(3) Copies of any court order, judgment, decree, or pending legal proceeding affecting the adoptee, the petitioner, or any child of the petitioner relevant to the welfare of the adoptee;

(4) A list of the expenses, fees, or other charges incurred, paid, or to be paid in connection with

the adoption that can reasonably be ascertained by the agency;

(5) Any fact or circumstance known to the agency that raises a specific concern about whether the proposed adoption is contrary to the best interest of the adoptee because it poses a significant risk of harm to the well-being of the adoptee;

(6) A finding by the agency concerning the suitability of the petitioner and the petitioner's home for the adoptee;

(7) A recommendation concerning the granting of the petition; and

(8) Such other information as may be required by rules adopted pursuant to subsection (c) of this section.

In an agency adoption, the report shall be written in such a way as to exclude all information that could reasonably be expected to lead directly to the identity of the adoptee at birth or any former parent or family member of the adoptee, and any copies of documents included pursuant to subdivision (3) of this subsection shall be redacted to exclude this information."

Section 5. (a) G.S. 48-2-503(a) reads as rewritten:

"(a) The agency shall complete a written report and file it with the court within 60 days after ~~receipt~~ the mailing or delivery of the order under G.S. 48-2-501 unless the court extends the time for filing. The agency shall have three additional days to complete and file the report if the order was mailed."

(b) G.S. 48-2-503(b) reads as rewritten:

"(b) If the agency identifies a specific concern about the suitability of the petitioner or the petitioner's home for the adoptee, the agency must file an interim report immediately, which must contain an account of the specific concern. The agency shall indicate in the final report whether its concerns have been satisfied and in what manner."

(c) G.S. 48-2-503 is amended by adding a new subsection to read:

"(b1) When an agency identifies a specific concern in a final report and the court extends the time for a final hearing or disposition to allow resolution of these concerns, the agency

shall file a supplemental report indicating whether its concerns have been satisfied and in what manner."

(d) Subsection (a) of this section applies to reports to the court prepared in response to a notice under G.S. 48-2-403 mailed or delivered after the effective date of this act.

Section 6. (a) G.S. 48-2-604 reads as rewritten:

"**§ 48-2-604. Denying petition to adopt a minor.**

(a) If at any time between the filing of a petition to adopt a minor and the issuance of the final order completing the adoption it appears to the court that the minor should not be adopted by the petitioners or the petition should be dismissed for some other reason, the court may dismiss the proceeding.

(b) The court, before entering an order to dismiss the proceeding, shall give at least five days' notice of the motion to dismiss to the parties, to the agency that made the report to the court, and to the Department of Human Resources. The parties and agency entitled to notice under this subsection, and the Department, shall be entitled to a hearing on the issue of dismissing the proceeding.

(c) If the court denies ~~a petition to adopt a minor,~~ the petition, the custody of the minor shall revert to any agency or person having custody immediately before the filing of the petition. If the placement of the ~~child~~ minor was a direct placement under Article 3 of this Chapter, the court shall notify the director of social services of the county in which the petition was filed of the dismissal, and the director of social services shall be responsible for taking appropriate action for the protection of the ~~child.~~ minor."

(b) This section becomes effective October 1, 1997.

Section 7. (a) G.S. 48-3-702 reads as rewritten:

"**§ 48-3-702. Procedures for relinquishment.**

(a) A relinquishment executed by a parent or guardian must conform substantially to the requirements in this Part and must be signed and acknowledged under oath before an individual authorized to administer oaths or take acknowledgments.

(b) The provisions of G.S. 48-3-605(b), (c), (e), and (f), also apply to a relinquishment executed under this ~~Part, except that an individual before whom a relinquishment is signed and acknowledged shall also certify that an employee of the agency to which the minor is being relinquished signed a statement~~

~~indicating the agency's willingness to accept the relinquishment.~~ Part.

(c) An agency that accepts a relinquishment shall furnish each parent or guardian who signs the relinquishment a letter or other writing indicating the agency's willingness to accept that person's relinquishment."

(b) This section applies to relinquishments executed on or after the effective date of this act.

Section 8. (a) G.S. 48-3-608(a) reads as rewritten:

"(a) A consent to the adoption of an infant who is in utero or is three months old or less at the time the consent is given may be revoked within 21 days following the day on which it is executed, inclusive of weekends and holidays. A consent to the adoption of any other minor may be revoked within seven days following the day on which it is executed, inclusive of weekends and holidays. If the final day of the revocation period falls on a weekend or North Carolina or federal holiday, then the revocation period extends to the next business day. The individual who gave the consent may revoke by giving written notice to the person specified in the consent. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the person to whom consent was given at the address specified in the consent. If notice is given by overnight delivery service, notice is deemed complete on the date it is deposited with the service as shown by the receipt from the service, with delivery charges paid by the sender, addressed to the person to whom consent was given at the address specified in the consent."

(b) This section applies to notices given on or after the effective date of this act.

Section 9. (a) G.S. 48-9-102(a) reads as rewritten:

"(a) All records created or filed in connection with an adoption, except the decree of ~~adoption,~~ adoption and the entry in the special proceedings index in the office of the clerk of court, and on file with or in the possession of the court, an agency, the State, a county, an attorney, or other provider of professional services, are confidential and may not be disclosed or used except as provided in this Chapter."

(b) G.S. 48-9-102(f) reads as rewritten:

"(f) The Division shall transmit a report of ~~the~~ each adoption ~~of a minor~~ and any name change to the State Registrar if the ~~minor~~ adoptee was born in this ~~State, or~~ State. In the case of an adoptee who was not born in this State, the Division shall transmit the report and any name change to the appropriate official responsible for issuing birth certificates or their ~~equivalent if the minor was not born in this State.~~ equivalent."

(c) G.S. 48-9-102(g) reads as rewritten:

"(g) ~~In the adoption of an adult born in this State in which the name of the adoptee is changed, the clerk of superior court shall, within 10 days after the decree of adoption is entered, send the State Registrar a copy of the final order, any separate order of name change, and a report in a form acceptable to the State Registrar containing sufficient information for a new birth certificate. In the adoption of an adult who was not born in this State, the clerk shall transmit a copy of the final order and any other required information to the adoptee.~~ In any adoption, the State Registrar may, in addition to receiving the report from the Division, request a copy of the final order and any separate order of name change directly from the clerk of court."

(d) G.S. 48-2-303 reads as rewritten:

"**§ 48-2-303. Caption of petition for adoption.**

The caption of the petition shall be substantially as follows:

STATE OF NORTH CAROLINA
IN THE DISTRICT COURT
COUNTY
BEFORE THE CLERK

*(Full name of petitioning father)
and
PETITION FOR ADOPTION
*(Full name of petitioning mother)
and
FOR THE ADOPTION OF

*(Full name ~~of adoptee as used in proceeding).~~ by which the adoptee is to be known if the adoption is granted)."

(e) Subsection (a) of this section is effective on and after July 1, 1996. The remainder of this section becomes

effective October 1, 1997. Subsections (b) and (c) apply to final orders entered on or after the effective date of this act.

Section 10. (a) G.S. 48-2-601(a) reads as rewritten:

"(a) If it appears to the court that ~~the petition~~ a petition to adopt a minor is not contested, the court may dispose of the petition without a formal hearing."

(b) This section applies to petitions filed on or after the effective date.

Section 11. (a) G.S. 48-3-603(a) reads as rewritten:

"(a) Consent to an adoption of a minor is not required of a person or entity whose consent is not required under G.S. 48-3-601, or:

(1) An individual whose parental rights and duties have been terminated under Article 24B of Chapter 7A of the General Statutes or by a court of competent jurisdiction in another state;

(2) A man described in G.S. 48-3-601(2), other than an adoptive father, if (i) the man has been judicially determined not to be the father of the minor to be adopted, or (ii) another man has been judicially determined to be the father of the minor to be adopted;

~~(3) A parent for whose minor child a guardian has been appointed;~~

(4) An individual who has relinquished parental rights or guardianship powers, including the right to consent to adoption, to an agency pursuant to Part 7 of this Article;

(5) A man who is not married to the minor's birth mother and who, after the conception of the minor, has executed a notarized statement denying paternity or disclaiming any interest in the minor;

(6) A deceased parent or the personal representative of a deceased parent's estate; or

(7) An individual listed in G.S. 48-3-601 who has not executed a consent or a relinquishment and who fails to respond to a notice of the adoption proceeding within 30 days after the service of the notice."

(b) G.S. 48-3-201(d) reads as rewritten:

"(d) ~~An agency having legal and physical custody of a minor may place the minor for adoption at any time after a relinquishment is executed, even if only one parent has executed a relinquishment pursuant to Part 7 of this Article or has had parental rights terminated, unless the other parent notifies the agency in writing of the parent's objections before the placement. The agency shall act promptly after accepting a relinquishment from one parent to obtain the consent or relinquishment of the other parent or to terminate the rights between the minor and the other parent pursuant to Article 24B of Chapter 7A of the General Statutes.~~ An agency having legal and physical custody of a minor may place the minor for adoption at any time after a relinquishment is executed by anyone as permitted by G.S. 48-3-701. The agency may place the minor for adoption even if other consents are required before an adoption can be granted, unless an individual whose consent is required notifies the agency in writing of the individual's objections before the placement. The agency shall act promptly after accepting a relinquishment to obtain all other necessary consents, relinquishments, or terminations of any guardian's authority pursuant to Chapter 35A of the General Statutes or parental rights pursuant to Article 24B of Chapter 7A of the General Statutes."

(c) G.S. 48-4-102 reads as rewritten:

"**§ 48-4-102. Consent to adoption of stepchild.**

Except under circumstances described in G.S. 48-3-603, a petition to adopt a minor stepchild may be granted only if consent to the adoption has been executed by the adoptee if 12 or more years of age; and

(1) The adoptee's parents as described in G.S. 48-3-601; ~~or~~ and

(2) Any guardian of the adoptee.

The consent of an incompetent parent may be given pursuant to the procedures in G.S. 48-3-602."

(d) G.S. 48-3-602 reads as rewritten:

"**§ 48-3-602. Consent of incompetent parents.**

If a parent as described in G.S. 48-3-601 has been adjudicated incompetent, then the court shall appoint a guardian ad litem for that parent ~~and~~ and, unless the child already has a guardian, a guardian ad litem for the child to make a full investigation as

to whether the adoption should proceed. The investigation shall include an evaluation of the parent's current condition and any reasonable likelihood that the parent will be restored to competency, the relationship between the child and the incompetent parent, alternatives to adoption, and any other relevant fact or circumstance. If the court determines after a hearing on the matter that it will be in the best interest of the child for the adoption to proceed, the court shall order the guardian ad litem of the parent to execute a consent for that parent."

(e) G.S. 48-1-101(8) reads as rewritten:

"(8) 'Guardian' means an individual, other than a parent, appointed by a clerk of court in North Carolina to exercise all of the powers conferred by ~~G.S. 35A-1241;~~ G.S. 35A-1241, including a standby guardian appointed under Article 21 of Chapter 35A of the General Statutes whose authority has actually commenced; and also means an individual, other than a parent, appointed in another jurisdiction according to the law of that jurisdiction who has the power to consent to adoption under the law of that jurisdiction."

Section 12. (a) G.S. 48-2-501 reads as rewritten:

"**§ 48-2-501. Report to the court during proceeding for adoption of a minor.**

(a) Whenever a petition for adoption of a minor is filed, the court shall order a report to the court made to assist the court to determine if the proposed adoption of the minor by the petitioner is in the minor's best interest.

(b) Consistent with G.S. 48-1-109, the court shall order the report to be prepared:

(1) By the agency that placed the minor;

(2) By the agency that made the preplacement assessment pursuant to Part 3 of Article 3 of this Chapter; or

(3) By another agency.

(c) The court shall provide the individual who prepares the report with copies of: ~~(i) the petition to adopt; and (ii) the documents filed with it.~~

(1) The petition to adopt; and

(2) The documents filed with it.

(d) As an exception to this section, in any stepparent adoption under Article 4 of this Chapter in which the minor has lived with the stepparent for at least the two consecutive years immediately preceding the filing of the petition, the court may order a report, but it is not required to order a report unless the minor's consent is to be waived, the minor has revoked a consent, or both of the minor's parents are dead."

(b) G.S. 48-4-104 is repealed.

(c) This section becomes effective October 1, 1997.

Section 13. G.S. 130A-108 reads as rewritten:

"**§ 130A-108. Certificate of identification for ~~child~~ individual of foreign birth.**

In the case of an adopted ~~child~~ individual born in a foreign country and ~~having legal settlement in this State,~~ residing in this State at the time of application, the State Registrar shall, upon the presentation of a certified copy of the original birth certificate from the country of birth and a certified copy of the final order of adoption signed by the clerk of court or other appropriate official, prepare a certificate of identification for the ~~child.~~ individual. The certificate shall contain the same information required by G.S. 48-9-107(a) for ~~children~~ individuals adopted in this State, except that the country of birth shall be specified in lieu of the state of birth."

Section 14. Part 2 of Article 2 of Chapter 48 is amended by adding a new section to read:

"**§ 48-2-206. Prebirth determination of right to consent.**

(a) Anytime after six months from the date of conception as reasonably determined by a physician, the biological mother, agency, or adoptive parents chosen by the biological mother may file a special proceeding with the clerk requesting the court to determine whether consent of the biological father is required. The biological father shall be served with notice of the intent of the biological mother to place the child for adoption, allowing the biological father 15 days after service to assert a claim that his consent is required.

(b) The notice required under subsection (a) of this section shall contain the special proceeding case caption and file number and shall be substantially similar to the following language:

'[Name of the biological mother], the biological mother, is expected to give birth to a child on or about [birth due

date]. You have been identified as the biological father. It is the intention of the biological mother to place the child for adoption. It is her belief that your consent to the adoption is not required. If you believe your consent to the adoption of this child is required pursuant to G.S. 48-3-601, you must notify the court in writing no later than 15 days from the date you received this notice that you believe your consent is required. A copy of your notice to the court must also be sent to the person or agency that sent you this notice. If you fail to notify the court within 15 days that you believe your consent is required, the court will rule that your consent is not required.'

(c) If the biological father fails to respond within the time required, the court shall enter an order that the biological father's consent is not required for the adoption. A biological father who fails to respond within the time required under this section is not entitled to notice under G.S. 48-2-401(c) of an adoption petition filed within three months of the birth of the minor.

(d) If the biological father notifies the court within 15 days of his receipt of the notice required by subsection (a) of this section that he believes his consent to the adoption is required, on motion of the petitioner, the court shall hold a hearing to determine whether the consent of the biological father is required. Promptly on receipt of the petitioner's motion, the court shall set a date for the hearing no earlier than 60 days nor later than 70 days after the biological father received the notice required by subsection (a) of this section and shall notify the petitioner and the biological father of the date, time, and place of the hearing. The notice of hearing to the biological father shall include a statement substantially similar to the following:

> 'To the biological father named above: You have told the court that you believe your consent is necessary for the adoption of the child described in the notice sent to you earlier. This hearing is being held to decide whether your consent is in fact necessary. Before the date of the hearing, you must have taken steps under G.S. 48-3-601 to establish that your consent is necessary or this

court will decide that your consent is not necessary and the child can be adopted without it.' During the hearing, the court may take such evidence as necessary and enter an order determining whether or not the consent of the biological father is necessary.

(e) The manner of service under this section shall be the same as set forth in G.S. 48-2-402.

(f) The jurisdiction provisions of Article 6A of Chapter 1 of the General Statutes and the venue provisions of Article 7 of Chapter 1 of the General Statutes rather than the provisions of Part 1 of this Article apply to proceedings under this section.

(g) Computation of periods of time provided for in this section shall be calculated as set forth in G.S. 1A-1, Rule 6.

(h) Transfer under G.S. 1-272 and appeal under G.S. 1-279.1 shall be as for an adoption proceeding.

(i) A determination by the court under this section that the consent of the biological father is not required shall only apply to an adoption petition filed within three months of the birth of the minor."

Section 15. G.S. 48-3-302(e) reads as rewritten:

"(e) If an individual requesting a preplacement assessment has identified a prospective adoptive child and has otherwise been unable to obtain a preplacement assessment, the county department of social services must, upon request, prepare or contract for the preparation of the preplacement assessment. As used in this subsection, 'unable to obtain a preplacement assessment' includes the inability to obtain a preplacement assessment at the fee the county department of social services is permitted to charge the individual. Except as provided in this subsection, no agency is required to conduct a preplacement assessment unless it agrees to do so."

Section 16. G.S. 48-3-601(2)b.4. reads as rewritten:

"4. Before the earlier of the filing of the ~~petition,~~ petition or the dats of a hearing under G.S. 48-2-206, has acknowledged his paternity of the minor and

I. Is obligated to support the minor under written agreement or by court order;

II. Has provided, in accordance with his financial means, reasonable and consistent payments for the support of the biological mother during or after the term of pregnancy, or the support of the minor, or both, which may include the payment of medical expenses, living expenses, or other tangible means of support, and has regularly visited or communicated, or attempted to visit or communicate with the biological mother during or after the term of pregnancy, or with the minor, or with both; or

III. After the minor's birth but before the minor's placement for adoption or the mother's relinquishment, has married or attempted to marry the mother of the minor by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid; or".

Section 17. G.S. 48-3-603(a) is amended by adding a new subdivision to read:

"(8) An individual notified under G.S. 48-2-206 who does not respond in a timely manner or whose consent is not required as determined by the court."

Section 18. G.S. 48-9-107(c) reads as rewritten:

"(c) The State Registrar shall seal the original certificate of birth and all records in the possession of that office pertaining to the adoption. These records shall not be unsealed except as provided in this Article. The State Registrar shall provide certified typed copies or abstracts of the new certificate of birth of an adoptee prepared pursuant to subsection (a) of this section to the adoptee, the adoptee's children, the adoptive parents, and the adoptee's spouse, brothers, and sisters. For purposes of this subsection, 'parent', 'brother', and 'sister' shall mean the adoptee's adoptive parent, brother, or sister and shall not mean a former parent, brother, or sister."

Section 19. (a) G.S. 48-3-301(a)(1) reads as rewritten:

"(1) Has been completed or updated within the ~~12~~ 18 months immediately preceding the placement; and".

(b) This section applies to placements made on or after the effective date of this act.

Section 19.1 (a) G.S. 48-3-704 reads as rewritten:

"**§ 48-3-704. Content of relinquishment; optional provisions.**

In addition to the mandatory provisions listed in G.S. 48-3-703, a relinquishment may also state that the relinquishment may be revoked upon notice by the agency that an adoption by a specific prospective adoptive parent, named or described in the relinquishment is not ~~completed, or if the agency and the person relinquishing the minor mutually agree to rescind the relinquishment before placement with a prospective adoptive parent occurs.~~ completed."

(b) G.S. 48-3-705(c) reads as rewritten:

"(c) A relinquishment terminates:

(1) Any right and duty of the individual who executed the relinquishment with respect to the legal and physical custody of the ~~minor;~~ minor.

(2) The right to consent to the minor's ~~adoption; and~~ adoption.

~~(3) The duty to support the minor.~~"

(c) G.S. 48-3-707(a) reads as rewritten:

"(a) A relinquishment shall become void ~~if,~~ if:

(1) Before ~~before~~ the entry of the adoption decree, the individual who executed the relinquishment establishes by clear and convincing evidence that it was obtained by fraud or duress.

(2) Before placement with a prospective adoptive parent occurs, the agency and the person relinquishing the minor agree to rescind the relinquishment."

(d) This section applies to relinquishments executed on or after August 1, 1997.

Section 20. Sections 14, 16, and 17 become effective October 1, 1997. Except as otherwise provided, the remaining sections of this act are effective when the act becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

X Committee Substitute for
S.B. 162 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL, CLARIFYING, AND SIMILAR MINOR CHANGES TO THE ADOPTION LAWS AS FOUND IN CHAPTER 48 OF THE GENERAL STATUTES INVOLVING CERTIFICATION OF DOCUMENTS, NOTICE, PROCEDURES FOR REPORTS TO THE COURT, ACCEPTANCE OF RELINQUISHMENTS BY AGENCIES, INDEXING, CAPTIONS ON ADOPTION PEITITIONS, AND STANDBY GUARDIANS; TO STANDARDIZE PROCEDURES FOR REQUESTING NEW BIRTH CERTIFICATES IN ALL ADOPTIONS; AND TO AMEND PROVISIONS FOR OBTAINING CERTIFICATION OF IDENTIFICATION FOR INDIVIDUALS OF FOREIGN BIRTH AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION; AND TO ALLOW FOR PREBIRTH RIGHT-TO-CONSENT DETERMINATION, CLARIFY WHEN COUNTY DEPARTMENTS OF SOCIAL SERVICES MUST DO PREPLACEMENT ASSESSMENTS, TO ADD CHILDREN TO THE LIST OF PERSONS WHO CAN GET COPIES OF BIRTH CERTIFICATES OF ADOPTEES, AND TO EXTEND THE EFFECTIVE PERIOD OF PREPLACEMENT ASSESSMENTS TO EIGHTEEN MONTHS.

☐ 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. (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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 162*
Judiciary Committee Substitute Adopted 4/22/97
Proposed Committee Substitute S162-PCS1813

Short Title: Adoption Law Technical Amendments. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND SIMILAR MINOR CHANGES TO THE ADOPTION LAWS AS FOUND IN CHAPTER 48 OF THE GENERAL STATUTES INVOLVING CERTIFICATION OF DOCUMENTS, NOTICE, PROCEDURES FOR REPORTS TO THE COURT, ACCEPTANCE OF RELINQUISHMENTS BY AGENCIES, INDEXING, CAPTIONS ON ADOPTION PETITIONS, AND STANDBY GUARDIANS; TO STANDARDIZE PROCEDURES FOR REQUESTING NEW BIRTH CERTIFICATES IN ALL ADOPTIONS; AND TO AMEND PROVISIONS FOR OBTAINING CERTIFICATION OF IDENTIFICATION FOR INDIVIDUALS OF FOREIGN BIRTH AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION; AND TO ALLOW FOR PREBIRTH RIGHT-TO-CONSENT DETERMINATION, CLARIFY WHEN COUNTY DEPARTMENTS OF SOCIAL SERVICES MUST DO PREPLACEMENT ASSESSMENTS, TO ADD CHILDREN TO THE LIST OF PERSONS WHO CAN GET COPIES OF BIRTH CERTIFICATES OF ADOPTEES, TO EXTEND THE EFFECTIVE PERIOD OF PREPLACEMENT ASSESSMENTS TO EIGHTEEN MONTHS, TO PROVIDE THAT EXECUTION OF A RELINQUISHMENT DOES NOT TERMINATE THE DUTY OF SUPPORT, AND TO PERMIT ALL RELINQUISHMENTS TO BE RESCINDED BY MUTUAL AGREEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 48-2-305 reads as rewritten:

"**§ 48-2-305. Petition for adoption; additional documents.**

At the time the petition is filed, the petitioner shall file or cause to be filed the following documents:

(1) Any required affidavit of parentage executed pursuant to G.S. 48-3-206;

(2) Any required consent or relinquishment that has been executed;

(3) A certified copy of any court order terminating the rights and duties of a parent or a guardian of the adoptee;

(4) A certified copy of any court order or pleading in a pending proceeding concerning custody of or visitation with the adoptee;

(5) A copy of any required preplacement assessment certified by the agency that prepared it or an affidavit from the petitioner stating why the assessment is not available;

(6) A ~~certified~~ copy of any document containing the information required under G.S. 48-3-205 concerning the health, social, educational, and genetic history of the adoptee and the adoptee's original family which the petitioner received before the placement or at any later time, certified by the person who prepared it, or if this document is not available, an affidavit stating the reason why it is not available;

(7) Any signed copy of the form required by the Interstate Compact on the Placement of Children, G.S. 110-57.1, et seq., authorizing a minor to come into this State;

(8) A writing that states the name of any individual whose consent is or may be required, but who has not executed a consent or a relinquishment or whose parental rights have not been legally terminated, and any fact or circumstance that may excuse the lack of consent or relinquishment; and

(9) In an adoption pursuant to Article 4 of this Chapter, a copy of any agreement to release past-due child support payments.

The petitioner may also file any other document necessary or helpful to the court's determination."

Section 2. G.S. 48-2-401(d) reads as rewritten:

"(d) In the adoption of an adult, the petitioner shall also serve notice of the filing on any adult children of the prospective adoptive parent and any parent, spouse, or adult child of the adoptee who are listed in the petition to adopt."

Section 3. G.S. 48-2-403 reads as rewritten:

"**§ 48-2-403. Notice of proceedings by clerk.**

No later than five days after a petition is filed, the clerk of the court shall ~~give notice of the adoption proceeding by certified mail, return receipt requested,~~ mail or otherwise deliver notice of the adoption proceeding to any agency that has undertaken but not yet completed a preplacement assessment and any agency ordered to make a report to the court pursuant to Part 5 of this Article."

Section 4. G.S. 48-2-502(b) reads as rewritten:

"(b) The report must be in writing and contain:

(1) An account of the petitioner's marital or family status, physical and mental health, home environment, property, income, and financial obligations; if there has been a preplacement assessment, the account may be limited to any changes since the filing of the preplacement assessment;

(2) All reasonably available nonidentifying information concerning the physical, mental, and emotional condition of the adoptee required by G.S. 48-3-205 which is not already included in the document prepared under that section;

(3) Copies of any court order, judgment, decree, or pending legal proceeding affecting the adoptee, the petitioner, or any child of the petitioner relevant to the welfare of the adoptee;

(4) A list of the expenses, fees, or other charges incurred, paid, or to be paid in connection with the adoption that can reasonably be ascertained by the agency;

(5) Any fact or circumstance known to the agency that raises a specific concern about whether the proposed adoption is contrary to the best interest of the adoptee because it poses a significant risk of harm to the well-being of the adoptee;

(6) A finding by the agency concerning the suitability of the petitioner and the petitioner's home for the adoptee;

(7) A recommendation concerning the granting of the petition; and

(8) Such other information as may be required by rules adopted pursuant to subsection (c) of this section.

In an agency adoption, the report shall be written in such a way as to exclude all information that could reasonably be expected to lead directly to the identity of the adoptee at birth or any former parent or family member of the adoptee, and any copies of documents included pursuant to subdivision (3) of this subsection shall be redacted to exclude this information."

Section 5. (a) G.S. 48-2-503(a) reads as rewritten:

"(a) The agency shall complete a written report and file it with the court within 60 days after ~~receipt~~ the mailing or delivery of the order under G.S. 48-2-501 unless the court extends the time for filing. The agency shall have three additional days to complete and file the report if the order was mailed."

(b) G.S. 48-2-503(b) reads as rewritten:

"(b) If the agency identifies a specific concern about the suitability of the petitioner or the petitioner's home for the adoptee, the agency must file an interim report immediately, which must contain an account of the specific concern. The agency shall indicate in the final report whether its concerns have been satisfied and in what manner."

(c) G.S. 48-2-503 is amended by adding a new subsection to read:

"(b1) When an agency identifies a specific concern in a final report and the court extends the time for a final hearing or disposition to allow resolution of these

concerns, the agency shall file a supplemental report indicating whether its concerns have been satisfied and in what manner."

(d) Subsection (a) of this section applies to reports to the court prepared in response to a notice under G.S. 48-2-403 mailed or delivered after the effective date of this act.

Section 6. (a) G.S. 48-2-604 reads as rewritten:

"**§ 48-2-604. Denying petition to adopt a minor.**

(a) If at any time between the filing of a petition to adopt a minor and the issuance of the final order completing the adoption it appears to the court that the minor should not be adopted by the petitioners or the petition should be dismissed for some other reason, the court may dismiss the proceeding.

(b) The court, before entering an order to dismiss the proceeding, shall give at least five days' notice of the motion to dismiss to the parties, to the agency that made the report to the court, and to the Department of Human Resources. The parties and agency entitled to notice under this subsection, and the Department, shall be entitled to a hearing on the issue of dismissing the proceeding.

(c) If the court denies ~~a petition to adopt a minor,~~ the petition, the custody of the minor shall revert to any agency or person having custody immediately before the filing of the petition. If the placement of the ~~child~~ minor was a direct placement under Article 3 of this Chapter, the court shall notify the director of social services of the county in which the petition was filed of the dismissal, and the director of social services shall be responsible for taking appropriate action for the protection of the ~~child.~~ minor."

(b) This section becomes effective October 1, 1997.

Section 7. (a) G.S. 48-3-702 reads as rewritten:

"**§ 48-3-702. Procedures for relinquishment.**

(a) A relinquishment executed by a parent or guardian must conform substantially to the requirements in this Part and must be signed and acknowledged under oath before an individual authorized to administer oaths or take acknowledgments.

(b) The provisions of G.S. 48-3-605(b), (c), (e), and (f), also apply to a relinquishment executed under this ~~Part, except that an individual before whom a relinquishment is signed and acknowledged shall also certify that an employee of the agency to which the minor is being relinquished signed a statement indicating the agency's willingness to accept the relinquishment.~~ Part.

(c) An agency that accepts a relinquishment shall furnish each parent or guardian who signs the relinquishment a letter or other writing indicating the agency's willingness to accept that person's relinquishment."

(b) This section applies to relinquishments executed on or after the effective date of this act.

Section 8. (a) G.S. 48-3-608(a) reads as rewritten:

"(a) A consent to the adoption of an infant who is in utero or is three months old or less at the time the consent is given may be revoked within 21 days following the day on which it is executed, inclusive of weekends and holidays. A consent to the adoption of any other minor may be revoked within seven days following the day on

which it is executed, inclusive of weekends and holidays. If the final day of the revocation period falls on a weekend or North Carolina or federal holiday, then the revocation period extends to the next business day. The individual who gave the consent may revoke by giving written notice to the person specified in the consent. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the person to whom consent was given at the address specified in the consent. If notice is given by overnight delivery service, notice is deemed complete on the date it is deposited with the service as shown by the receipt from the service, with delivery charges paid by the sender, addressed to the person to whom consent was given at the address specified in the consent."

(b) This section applies to notices given on or after the effective date of this act.

Section 9. (a) G.S. 48-9-102(a) reads as rewritten:

"(a) All records created or filed in connection with an adoption, except the decree of ~~adoption,~~ adoption and the entry in the special proceedings index in the office of the clerk of court, and on file with or in the possession of the court, an agency, the State, a county, an attorney, or other provider of professional services, are confidential and may not be disclosed or used except as provided in this Chapter."

(b) G.S. 48-9-102(f) reads as rewritten:

"(f) The Division shall transmit a report of ~~the~~ each adoption ~~of a minor~~ and any name change to the State Registrar if the ~~minor~~ adoptee was born in this ~~State, or~~ State. In the case of an adoptee who was not born in this State, the Division shall transmit the report and any name change to the appropriate official responsible for issuing birth certificates or their ~~equivalent if the minor was not born in this State.~~ equivalent."

(c) G.S. 48-9-102(g) reads as rewritten:

"(g) ~~In the adoption of an adult born in this State in which the name of the adoptee is changed, the clerk of superior court shall, within 10 days after the decree of adoption is entered, send the State Registrar a copy of the final order, any separate order of name change, and a report in a form acceptable to the State Registrar containing sufficient information for a new birth certificate. In the adoption of an adult who was not born in this State, the clerk shall transmit a copy of the final order and any other required information to the adoptee.~~ In any adoption, the State Registrar may, in addition to receiving the report from the Division, request a copy of the final order and any separate order of name change directly from the clerk of court."

(d) G.S. 48-2-303 reads as rewritten:

"**§ 48-2-303. Caption of petition for adoption.**

The caption of the petition shall be substantially as follows:

STATE OF NORTH CAROLINA

IN THE DISTRICT COURT

COUNTY

(e) The manner of service under this section shall be the same as set forth in G.S. 48-2-402.

(f) The jurisdiction provisions of Article 6A of Chapter 1 of the General Statutes and the venue provisions of Article 7 of Chapter 1 of the General Statutes rather than the provisions of Part 1 of this Article apply to proceedings under this section.

(g) Computation of periods of time provided for in this section shall be calculated as set forth in G.S. 1A-1, Rule 6.

(h) Transfer under G.S. 1-272 and appeal under G.S. 1-279.1 shall be as for an adoption proceeding.

(i) A determination by the court under this section that the consent of the biological father is not required shall only apply to an adoption petition filed within three months of the birth of the minor."

Section 15. G.S. 48-3-302(e) reads as rewritten:

"(e) If an individual requesting a preplacement assessment has identified a prospective adoptive child and has otherwise been unable to obtain a preplacement assessment, the county department of social services must, upon request, prepare or contract for the preparation of the preplacement assessment. As used in this subsection, 'unable to obtain a preplacement assessment' includes the inability to obtain a preplacement assessment at the fee the county department of social services is permitted to charge the individual. Except as provided in this subsection, no agency is required to conduct a preplacement assessment unless it agrees to do so."

Section 16. G.S. 48-3-601(2)b.4. reads as rewritten:

"4. Before the earlier of the filing of the ~~petition,~~ petition or the date of a hearing under G.S. 48-2-206, has acknowledged his paternity of the minor and

I. Is obligated to support the minor under written agreement or by court order;

II. Has provided, in accordance with his financial means, reasonable and consistent payments for the support of the biological mother during or after the term of pregnancy, or the support of the minor, or both, which may include the payment of medical expenses, living expenses, or other tangible means of support, and has regularly visited or communicated, or attempted to visit or communicate with the biological mother during or after the term of pregnancy, or with the minor, or with both; or

III. After the minor's birth but before the minor's placement for adoption or the mother's relinquishment, has married or attempted to marry the mother of the minor by a marriage solemnized in apparent compliance with law,

although the attempted marriage is or could be declared invalid; or".

Section 17. G.S. 48-3-603(a) is amended by adding a new subdivision to read:

"(8) An individual notified under G.S. 48-2-206 who does not respond in a timely manner or whose consent is not required as determined by the court."

Section 18. G.S. 48-9-107(c) reads as rewritten:

"(c) The State Registrar shall seal the original certificate of birth and all records in the possession of that office pertaining to the adoption. These records shall not be unsealed except as provided in this Article. The State Registrar shall provide certified typed copies or abstracts of the new certificate of birth of an adoptee prepared pursuant to subsection (a) of this section to the adoptee, the adoptee's children, the adoptive parents, and the adoptee's spouse, brothers, and sisters. For purposes of this subsection, 'parent', 'brother', and 'sister' shall mean the adoptee's adoptive parent, brother, or sister and shall not mean a former parent, brother, or sister."

Section 19. (a) G.S. 48-3-301(a)(1) reads as rewritten:

"(1) Has been completed or updated within the ~~12~~ 18 months immediately preceding the placement; and".

(b) This section applies to placements made on or after the effective date of this act.

Section 19.1. (a) G.S. 48-3-704 reads as rewritten:

"**§ 48-3-704. Content of relinquishment; optional provisions.**

In addition to the mandatory provisions listed in G.S. 48-3-703, a relinquishment may also state that the relinquishment may be revoked upon notice by the agency that an adoption by a specific prospective adoptive parent, named or described in the relinquishment is not ~~completed, or if the agency and the person relinquishing the minor mutually agree to rescind the relinquishment before placement with a prospective adoptive parent occurs.~~ completed."

(b) G.S. 48-3-705(c) reads as rewritten:

"(c) A relinquishment terminates:

(1) Any right and duty of the individual who executed the relinquishment with respect to the legal and physical custody of the ~~minor;~~ minor.

(2) The right to consent to the minor's ~~adoption; and~~ adoption.

~~(3) The duty to support the minor.~~"

(c) G.S. 48-3-707(a) reads as rewritten:

"(a) A relinquishment shall become void ~~if,~~ if:

(1) Before ~~before~~ the entry of the adoption decree, the individual who executed the relinquishment establishes by clear and convincing evidence that it was obtained by fraud or duress.

(2) Before placement with a prospective adoptive parent occurs, the agency and the person relinquishing the minor agree to rescind the relinquishment."

(d) This section applies to relinquishments executed on or after August 1, 1997.

Section 20. Sections 14, 16, and 17 become effective October 1, 1997. Except as otherwise provided, the remaining sections of this act are effective when the act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 554

Short Title: Paternity/Parental Support. (Public)

Sponsors: Senators Hartsell and Rand.

Referred to: Judiciary.

March 27, 1997

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SUNSET.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 424 of the 1995 Session Laws reads as rewritten:

"Sec. 3. This act becomes effective October 1, 1995, and applies to actions commenced on or after that ~~date, but before October 1, 1998,~~ date without regard to the date of death of the putative father. ~~This act expires on October 1, 1998.~~"

Section 2. This act becomes effective October 1, 1997.

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May 19, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: Senate Bill 554—Paternity/Parental Support (Hartsell and Rand)

Prior to the 1995 Session of the General Assembly, an action to establish paternity could only be commenced, and a judgment entered, prior to the death of the putative father. During the 1995 Session, the General Assembly ratified legislation allowing paternity actions to be commenced after the death of the putative father in the following circumstances:

(1) Within one year of death if a proceeding for administration of the estate of the putative father has not been commenced; or

(2) If a proceeding for administration of the estate has been commenced, within the period allowed under law for presentation of claims against the estate.

A copy of the ratified legislation, Chapter 424 of the 1995 Session Laws, is attached. The legislation contains a sunset clause causing the changes to expire on October 1, 1998.

Senate Bill 554 removes this sunset clause from Chapter 424 of the 1995 Session Laws.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

notations as to where those boundaries do not comply with these standards. If the Executive Secretary-Director of the State Board determines that all precinct boundaries are in compliance with this section, the Executive Secretary-Director of the State Board shall approve the maps and written descriptions as filed and these precincts shall be the official precincts.

(c) If the Executive Secretary-Director of the State Board determines that the proposed precinct boundaries are not in compliance with subsection (a) of this section, he shall not approve those precinct boundaries. He shall notify the county board of elections of his disapproval specifying the reasons. The county board of elections may then resubmit new precinct maps and written descriptions to cure the reasons for their disapproval."

Sec. 4. G.S. 153A-19 reads as rewritten:

"*§ 153A-19. Establishing and naming townships.*

(a) A county may by resolution establish and abolish townships, change their boundaries, and prescribe their names, except that no such resolution may become effective during the period beginning January 1, ~~1988~~ 1998, and ending January 2, ~~1990~~ 2000, and any resolution providing that the boundaries of a township shall change automatically with changes in the boundaries of a city shall not be effective during that period. The current boundaries of each township within a county shall at all times be drawn on a map, or set out in a written description, or shown by a combination of these techniques. This current delineation shall be available for public inspection in the office of the clerk.

(b) Any provision of a city charter or other local act which provides the boundaries of a township shall change automatically upon a change in a city boundary shall not be effective during the period beginning January 1, ~~1988~~ 1998, and ending January 2, ~~1990~~ 2000.

(c) The county manager or, where there is no county manager, the chairman of the board of commissioners, shall report township boundaries and changes in those boundaries to the United States Bureau of the Census in the Boundary and Annexations Survey. In responding to the surveys, each county manager or, if there is no manager, chairman of the board of commissioners shall consult with the county board of elections and other appropriate local agencies as to the location of township boundaries, so that the Census Bureau's mapping of township boundaries does not disagree with any county voting precinct boundaries that may be based on township boundaries."

Sec. 5. Except as specifically otherwise provided in this act, this act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1995.

S.B. 836 CHAPTER 424

AN ACT TO ENHANCE PARENTAL SUPPORT OF CHILDREN BY AMENDING THE LAW PERTAINING TO CIVIL ACTIONS TO ESTABLISH PATERNITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 49-14(c) reads as rewritten:

"(c) No such action shall be commenced nor judgment entered after the death of the putative ~~father,~~ father, unless the action is commenced either:

(1) Prior to the death of the putative father;

(2) Within one year after the date of death of the putative father, if a proceeding for administration of the estate of the putative father has not been commenced within one year of his death; or

(3) Within the period specified in G.S. 28A-19-3(a) for presentation of claims against an estate, if a proceeding for administration of the estate of the putative father has been commenced within one year of his death.

Any judgment under this subsection establishing a decedent to be the father of a child shall be entered nunc pro tunc to the day preceding the date of death of the father."

Sec. 2. G.S. 49-14(d) reads as rewritten:

"(d) If the action to establish paternity is brought more than three years after birth of a ~~child,~~ child or is brought after the death of the putative father, paternity shall not be established in a contested case without evidence from a blood or genetic marker test."

Sec. 3. This act becomes effective October 1, 1995, and applies to actions commenced on or after that date, but before October 1, 1998, without regard to the date of death of the putative father. This act expires on October 1, 1998.

In the General Assembly read three times and ratified this the 12th day of July, 1995.

S.B. 955 CHAPTER 425

AN ACT PROHIBITING THE UNAUTHORIZED USE OF WIRELESS TELECOMMUNICATIONS SERVICES AND ESTABLISHING CIVIL AND CRIMINAL PENALTIES FOR ACTS RELATING TO SUCH USE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-113.5 reads as rewritten:

"*§ 14-113.5. Making, ~~possessing or transferring~~ distributing, possessing, transferring, or programming device for theft of telecommunication service; publication of information regarding schemes, devices, means, or methods for such theft; concealment of existence, origin or destination of any telecommunication.*

(a) It shall be unlawful for any person knowingly to:

(1) ~~Make or possess any instrument, apparatus, equipment, or~~ Make, distribute, possess, use, or assemble an unlawful telecommunications device or modify, alter, program, or reprogram a telecommunication device designed, adapted, or which is ~~used~~ used:

a. For commission of a theft of telecommunication service or to acquire or facilitate the acquisition of telecommunications

§ 49-13. New birth certificate on legitimation.

Cross References. — As to new birth certificate, see also § 49-12.1.

CASE NOTES

Cited in Lewis v. Stitt, 86 N.C. App. 103, 356 S.E.2d 398 (1987).

ARTICLE 3.

Civil Actions Regarding Illegitimate Children.

§ 49-14. Civil action to establish paternity.

(a) The paternity of a child born out of wedlock may be established by civil action at any time prior to such child's eighteenth birthday. A certified copy of a certificate of birth of the child shall be attached to the complaint. Such establishment of paternity shall not have the effect of legitimation.

(b) Proof of paternity pursuant to this section shall be by clear, cogent, and convincing evidence.

(c) **(See editor's note)** No such action shall be commenced nor judgment entered after the death of the putative father, unless the action is commenced either:

(1) Prior to the death of the putative father;

(2) Within one year after the date of death of the putative father, if a proceeding for administration of the estate of the putative father has not been commenced within one year of his death; or

(3) Within the period specified in G.S. 28A-19-3(a) for presentation of claims against an estate, if a proceeding for administration of the estate of the putative father has been commenced within one year of his death.

Any judgment under this subsection establishing a decedent to be the father of a child shall be entered nunc pro tunc to the day preceding the date of death of the father.

(d) **(See editor's note)** If the action to establish paternity is brought more than three years after birth of a child or is brought after the death of the putative father, paternity shall not be established in a contested case without evidence from a blood or genetic marker test.

(e) Either party to an action to establish paternity may request that the case be tried at the first session of the court after the case 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. (1967, c. 993, s. 1; 1973, c. 1062, s. 3; 1977, c. 83, s. 2; 1981, c. 599, s. 14; 1985, c. 208, ss. 1, 2; 1993, c. 333, s. 3; 1995, c. 424, ss. 1, 2.)

Editor's Note. — Session Laws 1993, c. 333, s. 3, amended this section effective October 1, 1993, and applicable to civil paternity actions filed on or after that date.

Session Laws 1995, c. 424, which amended subsections (c) and (d), in s. 3 provides that the 1995 amendments to this section are effective October 1, 1995, and are applicable to actions commenced

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
S.B. 554 A BILL TO BE ENTITLED AN ACT TO REMOVE THE SUNSET.

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. (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

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SENATE BILL 864
Second Edition Engrossed 4/30/97

Short Title: Update and Revise Trademark Act. (Public)

Sponsors: Senators McDaniel and Martin of Guilford.

Referred to: Judiciary.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO CONFORM THE NORTH CAROLINA TRADEMARK REGISTRATION ACT TO THE 1992 MODEL STATE TRADEMARK BILL BY MAKING VARIOUS AMENDMENTS TO THE ACT, INCLUDING REPEALING THE REQUIREMENT THAT APPLICANTS FOR A REGISTRATION INCLUDE PROOF OF USE OF THE TRADEMARK IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 80-1 reads as rewritten:

"**§ 80-1. Definitions.**

(a) The term 'applicant' as used herein means the person filing an application for registration of a trademark under this Article, ~~his~~ the person's legal representatives, successors or assigns.

(b) The term 'mark' as used herein includes any trademark or service mark entitled to registration under this Article whether registered or not.

(c) The term 'person' as used herein means any individual, firm, partnership, corporation, association, union or other organization.

(d) The term 'registrant' as used herein means the person to whom the registration of a trademark under this Article is issued, ~~his~~ the person's legal representatives, successors or assigns.

(d1) The term 'Secretary' as used herein means the Secretary of State or the designee of the Secretary charged with the administration of this Article.

(e) The term 'service mark' as used herein means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others.

(f) The term 'trademark' as used herein means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made, sold, or distributed by him and to distinguish them from goods made, sold, or distributed by others.

(g) The term 'use' means the bona fide use of a mark in the State of North Carolina in the ordinary course of trade, and not merely the reservation of a right to a mark. For the purposes of this Article, a mark shall be deemed to be 'used' in this State (i) on goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes ~~such~~ placement impractical, then on documents associated with the goods, and ~~such~~ the goods are currently sold or otherwise distributed in the State, and (ii) on services when it is used or displayed in the sale or advertising of services and the services are currently being rendered in this State, or are being offered and are available to be rendered in this State.

(h) A mark shall be deemed to be 'abandoned' when either of the following occurs:

(1) When its use has been discontinued with intent not to resume its use. Intent not to resume may be inferred from circumstances. Nonuse for three consecutive years shall constitute prima facie evidence of abandonment.

(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark."

Section 2. Article 1 of Chapter 80 of the General Statutes is amended by adding a new section to read:

"**§ 80-1.1. Purpose.**

The purpose of this Article is to provide a system of State trademark registration and protection substantially consistent with the federal system of trademark registration and protection under the Trademark Act of 1946, 15 U.S.C. § 1051, et seq., as amended. The construction given the federal act should be examined as persuasive authority for interpreting and construing this Article."

Section 3. G.S. 80-2(5) reads as rewritten:

"(5) Consists of a mark which (i) when applied to the goods or services of the applicant, is merely descriptive of them or merely describes one or more of the characteristics, or is deceptively misdescriptive of them, or falsely describes the nature, function, capacity, or characteristics of them, or (ii) when applied to the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them, or (iii) is primarily merely a surname; provided, however, that nothing in this subdivision (5) shall prevent the registration of a mark used in this State by the

applicant which has become distinctive of the applicant's goods or services. The Secretary ~~of State~~ may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this State ~~or elsewhere~~ for the five years preceding the date ~~of the filing of the application for registration;~~ on which the claim of distinctiveness is made; or"

Section 4. G.S. 80-3 reads as rewritten:

"**§ 80-3. Application for registration.**

(a) Subject to the limitations set forth in this Article, any person who uses a mark, or any person who controls the nature and quality of the goods or services in connection with which a mark is used by another, in this State may file in the office of the Secretary ~~of State~~ in a format to be prescribed by the ~~Secretary of State,~~ Secretary, an application for registration of that mark setting forth, but not limited to, the following information:

(1) The name and business address of the person applying for ~~such~~ registration; and, if a corporation, the state of incorporation. If the application for registration relates to a mark used in connection with goods, the applicant shall list either the address of the applicant's principal place of business in North Carolina or a place of distribution and usage of ~~such~~ the goods in this State. If the application for registration relates to a mark used in connection with services, the applicant shall list a physical location at which the services are being rendered or offered in this State;

(2) The goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with ~~such~~ the goods or services and the class in which ~~such~~ the goods or services fall;

(3) The date when the mark was first used anywhere and the date when it was first used in this State by the applicant, ~~his~~ the applicant's predecessor in business or by another under ~~such~~ the control of the applicant; and

(4) A statement that the applicant is the owner of the ~~mark~~ mark, that the mark is in use, and that to the best of ~~his~~ the knowledge of the person verifying the application, no other person has registered in this State, or ~~except as identified by applicant~~ has the right to use ~~such~~ the mark in this State either in the identical form thereof or in such near resemblance thereto as to be ~~likely~~ likely, when applied to the goods or services of the other person, to cause confusion, or to cause mistake, or to deceive.

(b) The application shall be signed and verified by the applicant, by a partner, by a member of the firm, or an officer of the corporation or association applying for registration. In states in which a notary is not required by law to obtain a notary's stamp or seal, an original certificate of authority of the notary issued by the

appropriate State agency shall be submitted with the application. If the application is signed by a person acting pursuant to a power of attorney from the applicant, an original power of attorney or a certified copy of the power of attorney shall accompany the application.

The application shall be accompanied by three specimens of the mark as currently ~~used, and proof of use or distribution in this State.~~

~~The application for registration shall be accompanied~~ used and by a filing fee of fifty dollars ($50.00), payable to the ~~Secretary of State.~~ Secretary.

(c) The Secretary may require a statement as to whether an application to register the mark, or portions or a component of the mark, has been filed by the applicant or a predecessor in interest in the United States Patent and Trademark Office and, if so, the applicant shall provide any relevant information required by the Secretary, including the filing date and serial number of the application and the status of the application. If any application was finally refused registration or has otherwise not resulted in a registration, the Secretary may require the applicant to provide in the statement the reason the application was not registered. The Secretary may also require that a drawing of the mark accompany the application in a form specified by the Secretary."

Section 5. Article 1 of Chapter 80 of the General Statutes is amended by adding a new section to read:

"**§ 80-3.1. Examination of application.**

(a) Upon filing an application for registration and payment of the application fee, the Secretary may cause the application to be examined for conformity with this Article.

(b) The applicant shall provide any additional relevant information requested by the Secretary, including a description of a design mark, and may make, or authorize the Secretary to make, any amendments to the application reasonably requested by the Secretary or deemed by the applicant to be advisable to respond to a rejection or objection.

(c) The Secretary may require the applicant to disclaim an unregisterable component of a mark otherwise registrable, and an applicant may voluntarily disclaim a component of a mark requested to be registered. No disclaimer shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or the applicant's or registrant's rights of registration on another application if the disclaimed matter is distinctive of the applicant's or registrant's goods or services.

(d) The Secretary may (i) amend the application submitted by the applicant, if the applicant consents, or (ii) require a new application be submitted.

(e) If the Secretary finds that the applicant is not entitled to registration, the Secretary shall advise the applicant of the reasons the applicant is not entitled to registration. The applicant shall have a reasonable period of time, specified by the Secretary, in which to reply or to amend the application. If the applicant replies and amends the application, the Secretary shall reexamine the application. This procedure may be repeated until (i) the Secretary finally refuses registration of the

mark, or (ii) the applicant fails to reply or to amend the application within the specified period. If the applicant fails to reply or to amend the application, the application shall be deemed to have been abandoned.

(f) If the Secretary finally refuses registration of the mark, the applicant may seek a writ of mandamus to compel registration. The writ may be granted, without costs to the Secretary, on proof that all the statements in the application are true and that the mark is entitled to registration.

(g) When the Secretary receives more than one application seeking registration of the same or confusingly similar marks for the same or related goods or services and processes those applications concurrently, the Secretary shall grant priority to the applications in order of filing. If a previously filed application is granted a registration, any other application shall then be rejected. A rejected applicant may bring an action for cancellation of the registration on grounds of prior or superior rights to the mark, in accordance with the provisions of this Article."

Section 6. G.S. 80-4 reads as rewritten:

"**§ 80-4. Certificate of registration.**

Upon compliance by the applicant with the requirements of this Article, the Secretary ~~of State~~ shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the Secretary ~~of State~~ and the seal of the State, and it shall show the name and business address and, if a corporation, the state of incorporation, of the person claiming ownership of the mark, the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this State, the class of goods or services and a description of the goods or services on which the mark is used, a reproduction of the mark, the registration date, the registration number and the term of the registration.

Any certificate of registration issued by the Secretary ~~of State~~ under the provisions hereof or a copy thereof duly certified by the Secretary ~~of State~~ shall be admissible in evidence as competent and sufficient proof of the registration of ~~such~~ the mark in any action or judicial proceedings in any court of this State."

Section 7. G.S. 80-5 reads as rewritten:

"**§ 80-5. Duration and renewal.**

Registration of a mark hereunder shall be effective for a term of ~~10~~ five years from the date of registration and shall be renewable for successive terms of ~~10~~ five years upon application filed within six months prior to the expiration of any term. A renewal fee of thirty-five dollars ($35.00), payable to the ~~Secretary of State,~~ Secretary, shall accompany the application for renewal of the registration. ~~Within six months following the expiration of a term of five years from the date of registration, or the last renewal of registration of the mark, the applicant shall submit a specimen showing evidence of current use of the mark and a signed statement verifying the use of such mark on a form to be furnished by the Secretary of State. Use of the form furnished by the Secretary of State is mandatory. Failure to submit this verification and specimen showing evidence of current use shall be grounds for cancellation of the registration of the mark by the Secretary of State.~~

The Secretary of State shall notify registrants of marks hereunder of the necessity of renewal within the year next preceding the expiration of the ~~10~~ five years from the date of registration, by writing to the last known address of the registrants.

~~The Secretary of State shall notify registrants of marks hereunder of the necessity of submitting evidence of current use of the mark after five years from the date of registration or of the last renewal of registration of the mark, by writing to the last known address of the registrants within the year preceding the due date for such submission.~~

Registration of marks ~~obtained~~ applied for under previous acts shall be continued in force for the full 10-year term ~~which is in effect October 1, 1991,~~ without the necessity of submitting evidence of current use of the mark during ~~such~~ the term.

All applications for renewals under this Article, whether of registrations made under this Article or of registrations ~~affected~~ effected under any prior act, shall be filed with the Secretary ~~of State~~ in a format prescribed by the Secretary ~~of State~~ specifying the information called for by G.S. 80-3 and shall include a statement that the mark is still in use in this State, setting forth those goods or services recited in the registration in connection with which the mark is still in use. The registration shall be renewed only as to ~~such~~ the goods and services."

Section 8. G.S. 80-6 reads as rewritten:

"**§ 80-6. Assignment.**

(a) Any mark and its registration hereunder shall be assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and may be recorded with the Secretary ~~of State~~ upon the payment of a fee of twenty-five dollars ($25.00), payable to the Secretary ~~of State~~ who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this Article shall be void as against any subsequent purchaser for valuable consideration without notice, unless it is recorded with the Secretary ~~of State~~ within three months after the date thereof or prior to ~~such~~ subsequent purchase.

(b) Any registrant or applicant effecting a change of the name of the person to whom the mark was issued or for whom an application was filed may record a certificate of change of name of the registrant or applicant with the Secretary upon payment of the recording fee required under G.S. 80-7. The Secretary may issue a certificate of registration of an assigned application in the name of the assignee. The Secretary may issue in the name of the assignee a new certificate for the remainder of the term of the registration or for the last renewal of the registration.

(c) Other instruments that relate to a mark registered or application pending pursuant to this Article, including licenses, security interests, and mortgages, may be recorded in the discretion of the Secretary, upon payment of the recording fee required under G.S. 80-7. Instruments authorized under this subsection shall be in writing and duly executed.

(d) Acknowledgment shall be prima facie evidence of the execution of an assignment or other instrument and, when recorded by the Secretary, the record shall be prima facie evidence of execution.

(e) A photocopy of any instrument referenced in subsection (a), (b), or (c) of this section shall be accepted for recording if it is certified by any party to the instrument, or the party's successor, to be a true and correct copy of the original."

Section 9. G.S. 80-7 reads as rewritten:

"**§ 80-7. Records.**

The Secretary ~~of State~~ shall keep for public examination all assignments recorded under G.S. 80-6 and a record of all marks registered or renewed under this Article. The Secretary ~~of State~~ shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a trademark or service mark:

(1) Five dollars ($5.00) for the certificate, and

(2) One dollar ($1.00) per page for copying or comparing a copy to the original.

The Secretary ~~of State~~ shall collect a recording fee of ten dollars ($10.00) for recording name changes of corporate registrants and for recording transfers of the registration of any mark by merger or consolidation if the articles of merger or consolidation are records not on file in the Corporate Division of the Department of the Secretary of State."

Section 10. G.S. 80-8 reads as rewritten:

"**§ 80-8. Cancellation.**

The Secretary ~~of State~~ shall cancel from the ~~register:~~ register, in whole or in part:

(1) Repealed by Session Laws 1991, c. 626, s. 8.

(2) Any registration concerning which the Secretary ~~of State~~ shall receive a voluntary request for cancellation thereof from the registrant or the assignee of ~~record;~~ record.

(3) All registrations granted under this Article and not renewed in accordance with the provisions ~~hereof;~~ hereof.

(4) Any registration concerning which a court of competent jurisdiction shall ~~find~~ find:

a. That the registered mark has been abandoned or has become incapable of serving as a mark;

b. That the registrant is not the owner of the mark;

c. That the registration was granted improperly;

d. That the registration was obtained fraudulently;

e. That the registration is for a mark that is or has become the generic name for the goods or services for which it has been registered or for a portion of the goods or services for which it has been registered;

f. That the registration was obtained by means of materially false statements in the application for registration; or

g. That the registration is so similar to another mark used in the State as to be likely to cause confusion or mistake or to

deceive if (i) the other mark was registered by another person in the United States Patent and Trademark Office prior to the date of the applicant's first use of the mark that is the subject of the application for registration, and (ii) the other mark has not been abandoned. However, if the registrant proves that the registrant is the owner of a concurrent registration of a mark in the United States Patent and Trademark Office covering an area including the entire State, the registration shall not be cancelled.

(5) Any registration when a court of competent jurisdiction shall order cancellation ~~thereof;~~ thereof.

~~(6) Any registration for which compliance with the five-year evidence of use requirement of G.S. 80-5 has not been effected; or~~

~~(7) Any registration which was obtained by means of false statements in the application for registration.~~"

Section 11. G.S. 80-9 reads as rewritten:

"**§ 80-9. Classification.**

~~The following general classes of goods and services are established~~ The Secretary shall establish a classification of goods and services for convenience of administration of this Article, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services for which, the mark is actually being used ~~comprised in a single class, but in no event shall a single application include goods or services upon or for which the mark is being used which fall within different classes of goods or services.~~ indicating the appropriate class or classes of goods or services. When a single application includes goods or services that fall within multiple classes, the Secretary may require payment of a fee for each class. The Secretary ~~of State shall have the right to~~ may amend the classes herein established to conform ~~the same~~ them to the classification established for the United States Patent and Trademark Office as from time to time amended.

~~The said classes are as follows:~~

~~(a) Goods. —~~

~~1. Raw or partly prepared materials.~~

~~2. Receptacles.~~

~~3. Baggage, animal equipments, portfolios, and pocketbooks.~~

~~4. Abrasives and polishing materials.~~

~~5. Adhesives.~~

~~6. Chemicals and chemical compositions.~~

~~7. Cordage.~~

~~8. Smokers' articles, not including tobacco products.~~

~~9. Explosives, firearms, equipments, and projectiles.~~

~~10. Fertilizers.~~

~~11. Inks and inking materials.~~

~~12. Construction materials.~~

~~13. Hardware and plumbing and steam fitting supplies.~~
~~14. Metals and metal castings and forgings.~~
~~15. Oils and greases.~~
~~16. Protective and decorative coatings.~~
~~17. Tobacco products.~~
~~18. Medicines and pharmaceutical preparations.~~
~~19. Vehicles.~~
~~20. Linoleum and oiled cloth.~~
~~21. Electrical apparatus, machines, computer hardware, video tapes, and supplies.~~
~~22. Games, toys, and sporting goods.~~
~~23. Cutlery, machinery, and tools, and parts thereof.~~
~~24. Laundry appliances and machines.~~
~~25. Locks and safes.~~
~~26. Measuring and scientific appliances and computer software.~~
~~27. Horological instruments.~~
~~28. Jewelry and precious metal ware.~~
~~29. Brooms, brushes, and dusters.~~
~~30. Crockery, earthenware, and porcelain.~~
~~31. Filters and refrigerators.~~
~~32. Furniture and upholstery.~~
~~33. Glassware.~~
~~34. Heating, lighting, and ventilating apparatus.~~
~~35. Belting, hose, machinery packing, and nonmetallic tires.~~
~~36. Musical instruments and supplies.~~
~~37. Paper and stationery.~~
~~38. Prints and publications.~~
~~39. Clothing.~~
~~40. Fancy goods, furnishings, and notions.~~
~~41. Canes, parasols, and umbrellas.~~
~~42. Knitted, netted and textile fabrics, and substitutes therefor.~~
~~43. Thread and yarn.~~
~~44. Dental, medical, and surgical appliances.~~
~~45. Soft drinks and carbonated waters.~~
~~46. Foods and ingredients of foods.~~
~~47. Wines.~~
~~48. Malt beverages and liquors.~~
~~49. Distilled alcoholic liquors.~~
~~50. Merchandise not otherwise classified.~~
~~51. Cosmetics and toilet preparations.~~
~~52. Detergents and soaps.~~

~~(b) Services.—~~

~~100. Miscellaneous.~~
~~101. Advertising and business.~~

~~102. Insurance and financial.~~
~~103. Construction and repair.~~
~~104. Communications.~~
~~105. Transportation and storage.~~
~~106. Material treatment.~~
~~107. Education and entertainment.~~"

Section 12. G.S. 80-10 reads as rewritten:

"**§ 80-10. Fraudulent registration.**

Any person who shall for himself, or on behalf of any other person, procure the filing or registration of any mark in the office of the Secretary ~~of State~~ under the provisions hereof, by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of ~~such~~ filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction."

Section 13. This act takes precedence over all statutes that are inconsistent with this act or that contradict this act, effective October 1, 1997. The Secretary of State shall advise the General Statutes Commission of any statutes that should be amended or repealed to conform to this act.

Section 14. This act becomes effective October 1, 1997, and applies to acts occurring on or after that date. This act shall not affect any suit, proceeding, or appeal pending on October 1, 1997.

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May 12. 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman,
House Judiciary II Committee

FROM: Tim Hovis and O. Walker Reagan, Staff Attorneys

RE: **SENATE BILL 864 - UPDATE AND REVISE TRADEMARK ACT -** Senators McDaniel and Martin of Guilford.

Senate Bill 864 amends the North Carolina Trademark Registration Act, in part to conform North Carolina law to the model State Trademark Act and to eliminate the necessity of showing use of a trademark in North Carolina for registration purposes. The bill is recommended by the North Carolina Bar Association.

Section 1, in addition to making stylistic changes, adds a definition for when a mark is deemed abandoned to include when its use is intended not to be resumed (nonuse for 3 consecutive years prima facie evidence of abandonment) or when the conduct of the owner causes the mark to lose its significance as a mark.

Section 2 adds a purpose to the statute to state the legislature's intent to create a system of registration and protection substantially consistent with federal law, and provides that court interpretations of federal law should be applied when interpreting this state law.

Sections 3, 6, 9, and 12 make technical and stylistic changes.

Section 4 amends the trademark registration application process to require a statement that the mark is in use and not registered to other persons, but eliminates the requirement that the mark be in current use in this state. The Secretary of State may also require the applicant to indicate whether an application to the register the mark has filed with the U.S. Patent and Trademark Office, and if so what the status of the application is. Also the Secretary may require a drawing of the mark accompany the application.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 5 establishes a new requirement for the Secretary to examine the application for registration for conformity with the requirements of the statutes. Under this section the Secretary may request additional information, require the applicant to disclaim a nonregisterable component of the mark, and amend the application with the applicant's permission. If the Secretary finds the application is not entitled to registration, the applicant shall be so notified and allowed to amend the application or submit a new application. If the Secretary gives a final refusal to register, the applicant may seek a writ of mandamus in court. If more than one application to register the same mark is filed, priority is to be granted in the order filed.

Section 7 reduces the period of registration and renewals of registration from 10 years to 5 years. Registration of marks applied for prior to October 1, 1997 will remain valid for up to 10 years.

Section 8 provides for the filing of a certificate of name change for the owner of the registration. This section also allows for the filing of a security interest in the mark. Acknowledgment is prima facie evidence of the execution of the assignment and recordation is prima facie evidence of execution. A certified copy of an assignment, certificate of name change, or security interest shall be acceptable for recording.

Section 10 adds provisions to permit the Secretary to cancel, in whole or part, a trademark registration when a court finds the mark has become a generic name for the goods and services it was registered for, that the registration was obtained by materially false statements in the application, or the mark is so similar as to be likely to cause confusion with another mark registered in the U.S. Patent Office and the other mark has not been abandoned, unless the registrant proves they also are the owner of a mark register in the Patent Office covering an area including the entire State and that registration has not been canceled.

Section 11 eliminates the statutory classification of marks and permits the Secretary to establish classifications by rule. The Secretary may establish classes to conform with federal trademark classifications.

Section 12 provides that this act takes precedence over all other conflicting statutes and directs the Secretary to notify the General Statutes Commission of any statutory changes need to conform to this act.

The bill becomes effective October 1, 1997 and applies to acts on or after that date, but it does not affect any action pending on that date.

Legal Periodicals. — For note on the law of unfair competition in North Carolina, see 46 N.C.L. Rev. 856 (1968).

For article on antitrust and unfair trade practice law in North Carolina, with federal law compared, see 50 N.C.L. Rev. 199 (1972).

CASE NOTES

Editor's Note. — Most of the cases cited under the various sections below were decided under this Article as it existed prior to its revision by Session Laws 1967, c. 1007, s. 1.

Theory Underlying Trademark Law. — The law pertaining to trademarks is based upon the dual purpose of protecting the public from inferior products and protecting the reputation and profits of the inventor for the skill given to the invention of the product. Blackwell v. Wright, 73 N.C. 310 (1875), aff'd on rehearing, 74 N.C. 733 (1876).

Common Law Not Abrogated. — State statutes providing for registration of trademarks are in affirmance of the common law. Allen v. Standard Crankshaft & Hydraulic Co., 210 F. Supp. 844 (W.D.N.C. 1962), aff'd, 323 F.2d 29 (4th Cir. 1963).

Chapter Does Not Deal with Trade Names. — This chapter deals with trademarks and service marks and not trade names. Hot Shoppes, Inc. v. Hot Shoppe, Inc., 203 F. Supp. 777 (M.D.N.C. 1962).

Remedies Are Either Declaratory or Cumulative. — The remedies given by statutes providing for registration of trademarks are either declaratory or are cumulative and additional to those recognized and applied by the common law. Allen v. Standard Crankshaft & Hydraulic Co., 210 F. Supp. 844 (W.D.N.C. 1962), aff'd, 323 F.2d 29 (4th Cir. 1963).

Intangible ideas are not protectable under federal copyright or trademark law or North Carolina's trademark statute. Bank Travel Bank v. McCoy, 802 F. Supp. 1358, E.D.N.C. 1992.

Name of Town or Locality. — It seems that the name of a town or locality cannot be exclusively appropriated as a trademark. Blackwell Durham Tobacco Co. v. McElwee, 94 N.C. 425 (1886).

Use of Surname. — As a rule, a trademark cannot be taken in a surname, and any one named Bingham could start a school called the "Bingham School," in the absence of proof of intent to injure, or fraudulently attract the benefit of the good name and reputation acquired by a previously existing "Bingham School." And certainly there could be no confusion between a Bingham School at Asheville and a school even of the identically same name at Mebane, N.C. Bingham School v. Gray, 122 N.C. 699, 30 S.E. 304, 41 L.R.A. 243 (1898).

It is beyond the scope of the powers of the State legislature to establish a monopoly in a family name or to confer a patent right in its use. Bingham School v. Gray, 122 N.C. 699, 30 S.E. 304, 41 L.R.A. 243 (1898).

But one may, by contract, conclude himself from the use of his own name in a given business, and the agreement will be enforced by the courts. Zagier v. Zagier, 167 N.C. 616, 83 S.E. 913 (1914).

For a case denying a federal injunction staying a state trademark infringement case pending resolution of federal complaint alleging violations of the Sherman Antitrust Act, see W.W. Enter., Inc. v. Charlotte Motor Speedway, Inc., 753 F. Supp. 1326 (W.D.N.C. 1990).

§ 80-2. Registrability.

A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it

(1) Consists of or comprises immoral, deceptive or scandalous matter; or

(2) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or

(3) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or
(4) Consists of or comprises the name, signature or portrait of any living individual, except with his written consent; or
(5) Consists of a mark which (i) when applied to the goods or services of the applicant, is merely descriptive of them or merely describes one or more of the characteristics, or is deceptively misdescriptive of them, or falsely describes the nature, function, capacity, or characteristics of them, or (ii) when applied to the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them, or (iii) is primarily merely a surname; provided, however, that nothing in this subdivision (5) shall prevent the registration of a mark used in this State by the applicant which has become distinctive of the applicant's goods or services. The Secretary of State may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this State or elsewhere for the five years preceding the date of the filing of the application for registration; or
(6) Consists of or comprises a mark which so resembles a mark registered in this State or a mark or trade name previously used in this State by another and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive. (1903, c. 271; Rev., ss. 3012, 3017; C.S., ss. 3971, 3976; 1941, c. 255, s. 1; 1967, c. 1007, s. 1; 1991, c. 626, s. 2.)

§ 80-3. Application for registration.

Subject to the limitations set forth in this Article, any person who uses a mark, or any person who controls the nature and quality of the goods or services in connection with which a mark is used by another, in this State may file in the office of the Secretary of State in a format to be prescribed by the Secretary of State, an application for registration of that mark setting forth, but not limited to, the following information:

(1) The name and business address of the person applying for such registration; and, if a corporation, the state of incorporation. If the application for registration relates to a mark used in connection with goods, the applicant shall list either the address of the applicant's principal place of business in North Carolina or a place of distribution and usage of such goods in this State. If the application for registration relates to a mark used in connection with services, the applicant shall list a physical location at which the services are being rendered or offered in this State;
(2) The goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods or services and the class in which such goods or services fall;
(3) The date when the mark was first used anywhere and the date when it was first used in this State by the applicant, his predecessor in business or by another under such control of applicant; and

(4) A state[illegible] that
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The application shall be
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The application for reg
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c. 271, s. 3; Rev., s. 3014;
1967, c. 1007, s. 1; 198

§ 80-4. Certificate

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§ 80-5. Duratio

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the applicant shall su
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1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
S.B. 864 A BILL TO BE ENTITLED AN ACT TO CONFORM THE NORTH CAROLINA TRADEMARK REGISTRATION ACT TO THE 1992 MODEL STATE TRADEMARK BILL BY MAKING VARIOUS AMENDMENTS TO THE ACT, INCLUDING REPEALING THE REQUIREMENT THAT APPLICANTS FOR A REGISTRATION INCLUDE PROOF OF USE OF THE TRADEMARK IN NORTH CAROLINA.

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. (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 D

SENATE BILL 997
Judiciary Committee Substitute Adopted 4/30/97
Proposed House Committee Substitute S997-CSSA-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Ignore Emergency Warning. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON WHO IGNORES A WARNING REGARDING PERSONAL SAFETY IN A DISASTER SITUATION AND PLACES HIMSELF OR HERSELF OR ANOTHER IN DANGER AND REQUIRES AN EMERGENCY RESCUE IS CIVILLY LIABLE FOR THE COSTS OF THE RESCUE EFFORT.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 166A of the General Statutes is amended by adding a new section to read:

"§ 166A-15.1. Willfully ignore warning in a disaster.

(a) In a disaster as defined by G.S. 166A-4, a person shall comply with warnings regarding personal safety issued by a federal, State, or local law enforcement agency, emergency management agency, or other governmental agency responsible for emergency management under this Article. A person who willfully ignores such warning is civilly liable for the cost of a rescue effort to any governmental agency or nonprofit agency cooperating with a governmental agency conducting a rescue on the endangered person's behalf if:

(1) The person ignores the warning, and: (i) engages in an activity or course of action that a reasonable

person would not pursue, or (ii) fails to take a course of action that a reasonable person would pursue;

(2) As a result of ignoring the warning the person places himself or herself or another in danger; and

(3) A governmental rescue effort is undertaken on the endangered person's behalf."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 997

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

S997-ASA-027

Date_____,1997

Comm. Sub. [yes]
Amends Title []
Second Edition

moves to amend the bill on page 1, lines 10-15,
by

rewriting the lines to read:

"(a) In a disaster as defined by G.S. 166A-4, a person who willingly ignores a warning regarding personal safety issued by a federal, State, or local law enforcement agency, emergency management agency, or other governmental agency responsible for emergency management under this Article is civilly liable for the cost of a rescue".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

X Committee Substitute for
S.B. 997 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PERSON WHO IGNORES A WARNING REGARDING PERSONAL SAFETY IN A DISASTER SITUATION AND PLACES HIMSELF OR HERSELF OR ANOTHER IN DANGER AND REQUIRES AN EMERGENCY RESCUE IS CIVILLY LIABLE FOR THE COSTS OF THE RESCUE EFFORT.

☐ 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, 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 D

SENATE BILL 997
Judiciary Committee Substitute Adopted 4/30/97
Proposed House Committee Substitute S997-PCS2758

Short Title: Ignore Emergency Warning. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON WHO IGNORES A WARNING REGARDING PERSONAL SAFETY IN A DISASTER SITUATION AND PLACES HIMSELF OR HERSELF OR ANOTHER IN DANGER AND REQUIRES AN EMERGENCY RESCUE IS CIVILLY LIABLE FOR THE COSTS OF THE RESCUE EFFORT.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 166A of the General Statutes is amended by adding a new section to read:

"**§ 166A-15.1. Willfully ignore warning in a disaster.**

(a) In a disaster as defined by G.S. 166A-4, a person who willfully ignores a warning regarding personal safety issued by a federal, State, or local law enforcement agency, emergency management agency, or other governmental agency responsible for emergency management under this Article is civilly liable for the cost of a rescue effort to any governmental agency or nonprofit agency cooperating with a governmental agency conducting a rescue on the endangered person's behalf if:

(1) The person ignores the warning, and: (i) engages in an activity or course of action that a reasonable person would not pursue, or (ii) fails to take a course of action that a reasonable person would pursue;

(2) As a result of ignoring the warning the person places himself or herself or another in danger; and

(3) A governmental rescue effort is undertaken on the endangered person's behalf."

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

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **May 20, 1997 1:00 P.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Esther J. High	DSS/DHR
Beth Bayer	Secty of State
Rowell J. Eldewell	Sec of State
Carter H Rogers	Chairman Nobles
Bernard Allen	Secy of State
Floyd Lewis	General Statutes Commission
Rodney Maddox	Sec. of State's Office
Scott Templeton	"

MINUTES
HOUSE JUDICIARY II COMMITTEE

May 22, 1997

The North Carolina House of Representatives Judiciary II Committee met on May 22, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Bowie, Cansler, Decker, Gardner, Goodwin, Hensley, Nesbitt, Redwine, Russell, Saunders, Sutton, and Wilkins. A list of visitors is attached.

The following bills were discussed:

SB-892 DISSENTERS' RIGHTS
SB-896 LEGAL REPRESENTATION CORPORATIONS

Senator Rand was recognized to explain SB-896 and answer questions of committee members. A copy of the bill and bill explanation prepared by Ms. Susan Hayes and Mr. Walker Reagan, Staff Attorneys, are attached.

Mr. Jim Blount, Attorney, answered questions of committee members.

Representative Decker moved for a favorable report; motion passed.

Representative Cansler moved the proposed committee substitute for Senate Bill 892 be adopted for purpose of discussion; motion passed.

Mr. Hovis, Committee Counsel, explained the bill and answered questions of committee members.

Mr. John McArthur, Chief Counsel, Attorney General's Office, answered questions of committee members.

No action was taken on SB-892.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted:

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 896
Judiciary Committee Substitute Adopted 4/29/97

Short Title: Legal Representation of Corporations. (Public)

Sponsors:

Referred to:

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING THE PRACTICE OF LAW BY ATTORNEYS REPRESENTING CORPORATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 84-5 reads as rewritten:

"**§ 84-5. Prohibition as to practice of law by corporation.**

(a) It shall be unlawful for any corporation to practice law or appear as an attorney for any person in any court in this State, or before any judicial body or the North Carolina Industrial Commission, Utilities Commission, or the Employment Security Commission, or hold itself out to the public or advertise as being entitled to practice law; and no corporation shall organize corporations, or draw agreements, or other legal documents, or draw wills, or practice law, or give legal advice, or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through any person orally or by advertisement, letter or circular. The provisions of this section shall be in addition to and not in lieu of any other provisions of Chapter 84. Provided, that nothing in this section shall be construed to prohibit a banking corporation authorized and licensed to act in a fiduciary capacity from performing any clerical, accounting, financial or business acts required of it in the performance of its duties as a fiduciary or from performing ministerial and clerical acts in the preparation and filing of such tax returns as are so required, or from discussing the business and financial aspects of fiduciary relationships. Provided, however, this section shall not apply to corporations authorized to practice law under the provisions of Chapter 55B of the General Statutes of North Carolina.

To further clarify the foregoing provisions of this section as they apply to corporations which are authorized and licensed to act in a fiduciary capacity:

(1) A corporation authorized and licensed to act in a fiduciary capacity shall not:

a. Draw wills or trust instruments; provided that this shall not be construed to prohibit an employee of such corporation from conferring and cooperating with an attorney who is not a salaried employee of the corporation, at the request of such attorney, in connection with the attorney's performance of services for a client who desires to appoint the corporation executor or trustee or otherwise to utilize the fiduciary services of the corporation.

b. Give legal advice or legal counsel, orally or written, to any customer or prospective customer or to any person who is considering renunciation of the right to qualify as executor or administrator or who proposes to resign as guardian or trustee, or to any other person, firm or corporation.

c. Advertise to perform any of the acts prohibited herein; solicit to perform any of the acts prohibited herein; or offer to perform any of the acts prohibited herein.

(2) ~~When~~ Except as provided in subsection (b) of this section, when any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, said acts shall be performed for the corporation by a duly licensed attorney, not a salaried employee of the corporation, retained to perform legal services required in connection with the particular estate, trust or other fiduciary matter:

a. Offering wills for probate.

b. Preparing and publishing notice of administration to creditors.

c. Handling formal court proceedings.

d. Drafting legal papers or giving legal advice to spouses concerning dissent from their spouses' wills.

e. Resolving questions of domicile and residence of a decedent.

f. Handling proceedings involving year's allowances of widows and children.

g. Drafting deeds, notes, deeds of trust, leases, options and other contracts.

h. Drafting instruments releasing deeds of trust.

i. Drafting assignments of rent.

j. Drafting any formal legal document to be used in the discharge of the corporate fiduciary's duty.

k. In matters involving estate and inheritance taxes, gift taxes, and federal and State income taxes:

1. Preparing and filing protests or claims for refund, except requests for a refund based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
2. Conferring with tax authorities regarding protests or claims for refund, except those based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
3. Handling petitions to the tax court.

l. Performing legal services in insolvency proceedings or before a referee in bankruptcy or in court.

m. In connection with the administration of an estate or trust:
1. Making application for letters testamentary or letters of administration.
2. Abstracting or passing upon title to property.
3. Handling litigation relating to claims by or against the estate or trust.
4. Handling foreclosure proceedings of deeds of trust or other security instruments which are in default.

(3) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, the corporation shall comply with the following:

a. The initial opening and inventorying of safe deposit boxes in connection with the administration of an estate for which the corporation is executor or administrator shall be handled by, or with the advice of, an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with that particular estate.

b. The furnishing of a beneficiary with applicable portions of a testator's will relating to such beneficiary shall, if accompanied by any legal advice or opinion, be handled by, or with the advice of, an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with that particular estate or matter.

c. In matters involving estate and inheritance taxes and federal and State income taxes, the corporation shall not execute waivers of statutes of limitations without the advice of an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services in connection with that particular estate or matter.

d. An attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services

required in connection with an estate or trust shall be furnished copies of inventories and accounts proposed for filing with any court and proposed federal estate and North Carolina inheritance tax returns and, on request, copies of proposed income and intangibles tax returns, and shall be afforded an opportunity to advise and counsel the corporate fiduciary concerning them prior to filing.

(b) Nothing in this section shall prohibit an attorney retained by a corporation, whether or not the attorney is also a salaried employee of the corporation, from representing the corporation or an affiliate, or from representing an officer, director, or employee of the corporation or an affiliate in any matter arising in connection with the course and scope of the employment of the officer, director, or employee."

Section 2. This act becomes effective October 1, 1997, and applies to acts from which claims, demands, or actions arise 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

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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

May 22, 1997

MEMORANDUM

TO: Representative Charles B. Neely, Chairman
House Judiciary II Committee

FROM: Susan L. Hayes and O. Walker Reagan, Staff Attorneys

RE: **SENATE BILL 896 - LEGAL REPRESENTATION OF CORPORATIONS -** Senator Rand

Senate Bill 896 clarifies the prohibition against corporations practicing law to make it clear that an attorney retained or employed by a corporation is not prohibited from representing the corporation or any of its officers for claims arising out of the scope and course of their work for the corporation.

The bill amends G.S. 84-5 which prohibits corporations from practicing law and clarifies what types of representation are permitted by corporations. The bill adds a new subsection which clarifies that the prohibition against a corporation practicing law does not apply to an attorney retained or employed by a corporation to represent the corporation or an affiliate, or an officer, director, or employee of the corporation in matters arising in connection with the course and scope of employment of the officer, director, or employee.

The bill becomes effective October 1, 1997 and applies to acts from which claims, demands, or actions arise on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

X Committee Substitute for
S.B. 896 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW GOVERNING THE PRACTICE OF LAW BY ATTORNEYS REPRESENTING CORPORATIONS.

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. (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 892

Short Title: Dissenters' Rights. (Public)

Sponsors: Senator Soles.

Referred to: Commerce.

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE RIGHT OF CERTAIN SHAREHOLDERS TO DISSENT FROM CORPORATE ACTIONS AND TO AMEND THE LAW GOVERNING OFFERS OF PAYMENT TO DISSENTERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55-13-02 is amended by adding a new subsection to read:

"(c) Notwithstanding any other provision of this Article, there shall be no right of dissent in favor of holders of shares of any class or series which, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting at which the plan of merger or share exchange or the sale or exchange of property is to be acted on, were (i) listed on a national securities exchange or (ii) held by at least 2,000 record shareholders, unless in either case:

(1) The articles of incorporation of the corporation issuing the shares provide otherwise;

(2) In the case of a plan of merger or share exchange, the holders of the class or series are required under the plan of merger or share exchange to accept for the shares anything except:

a. Cash;

b. Shares, or shares and cash in lieu of fractional shares of the surviving or acquiring corporation, or of any other corporation which, at the record date fixed to determine the shareholders entitled to receive notice of and vote at the meeting at which the plan of merger or share exchange is to be acted on, were either listed subject to notice of issuance

on a national securities exchange or held of record by at least 2,000 record shareholders; or

c. A combination of cash and shares as set forth in sub-subdivisions a. and b. of this subdivision."

Section 2. G.S. 55-13-25 reads as rewritten:

"**§ 55-13-25. Offer of payment.**

(a) As soon as the proposed corporate action is taken, or ~~upon~~ within 30 days after receipt of a payment demand, the corporation shall offer to pay each dissenter who complied with G.S. 55-13-23 the amount the corporation estimates to be the fair value of his shares, plus interest accrued to the date of ~~payment, and shall pay this amount to each dissenter who agrees in writing to accept it in full satisfaction of his demand.~~ payment.

(b) The ~~offer of~~ payment ~~must~~ shall be accompanied by:

(1) The corporation's most recent available balance sheet as of the end of a fiscal year ending not more than 16 months before the date of offer of payment, an income statement for that year, a statement of cash flows for that year, and the latest available interim financial statements, if any;

(2) ~~A statement of the corporation's estimate of~~ An explanation of how the corporation estimated the fair value of the shares;

(3) An explanation of how the interest was calculated;

(4) A statement of the dissenter's right to demand payment under G.S. 55-13-28; and

(5) A copy of this Article."

Section 3. G.S. 55-13-30 reads as rewritten:

"**§ 55-13-30. Court action.**

(a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter may commence a proceeding within 60 days after the earlier of (i) the date ~~of his~~ payment ~~demand~~ is made under ~~G.S. 55-13-28~~ G.S. 55-13-25, or (ii) the date of the dissenter's payment demand under G.S. 55-13-28 and petition the court to determine the fair value of the shares and accrued interest. ~~Upon service upon it of the petition filed with the court, the corporation shall pay to the dissenter the amount offered by the corporation under G.S. 55-13-25.~~ A dissenter who takes no action within the 60-day period shall be deemed to have withdrawn his dissent and demand for payment.

~~(a1) If the dissenter does not commence the proceeding within the 60-day period, the dissenter shall have an additional 30 days to either (i) accept in writing the amount offered by the corporation under G.S. 55-13-25, upon which the corporation shall pay such amount to the dissenter in full satisfaction of his demand, or (ii) withdraw his demand for payment and resume the status of a nondissenting shareholder. A dissenter who takes no action within such 30-day period shall be deemed to have withdrawn his dissent and demand for payment.~~

(b) Reserved for future codification purposes.

(c) The court shall have the discretion to make all dissenters (whether or not residents of this State) whose demands remain unsettled parties to the proceeding as

in an action against their shares and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The parties are entitled to the same discovery rights as parties in other civil proceedings. However, in a proceeding by a dissenter in a public corporation, there is no right to a trial by jury.

(e) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation."

Section 4. This act becomes effective October 1, 1997, and applies to corporate actions to which shareholders may dissent occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S892-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 892
THIS IS A DRAFT 21-MAY-97 16:12:30
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Dissenters' Rights. (Public)

Sponsors:

Referred to:

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE RIGHT OF CERTAIN SHAREHOLDERS TO DISSENT FROM CORPORATE ACTIONS AND TO AMEND THE LAW GOVERNING OFFERS OF PAYMENT TO DISSENTERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55-13-02 is amended by adding a new subsection to read:

"(c) Notwithstanding any other provision of this Article, there shall be no right of dissent in favor of holders of shares of any class or series which, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting at which the plan of merger or share exchange or the sale or exchange of property is to be acted on, were (i) listed on a national securities exchange or (ii) held by at least 2,000 record shareholders, unless in either case:

(1) The articles of incorporation of the corporation issuing the shares provide otherwise;

(2) In the case of a plan of merger or share exchange, the holders of the class or series are required under the plan of merger or share exchange to accept for the shares anything except:

a. Cash;

b. Shares, or shares and cash in lieu of fractional shares of the surviving or acquiring corporation, or of any other corporation which, at the record date fixed to determine the shareholders entitled to receive notice of and vote at the meeting at which the plan of merger or share exchange is to be acted on, were either listed subject to notice of issuance on a national securities exchange or held of record by at least 2,000 record shareholders; or

c. A combination of cash and shares as set forth in sub-subdivisions a. and b. of this subdivision."

Section 2. G.S. 55-13-25 reads as rewritten:

"§ 55-13-25. ~~Offer of payment.~~ Payment.

(a) As soon as the proposed corporate action is taken, or ~~upon~~ within 30 days after receipt of a payment demand, the corporation shall ~~offer to~~ pay each dissenter who complied with G.S. 55-13-23 the amount the corporation estimates to be the fair value of his shares, plus interest accrued to the date of ~~payment, and shall pay this amount to each dissenter who agrees in writing to accept it in full satisfaction of his demand.~~ payment.

(b) The ~~offer of~~ payment ~~must~~ shall be accompanied by:

(1) The corporation's most recent available balance sheet as of the end of a fiscal year ending not more than 16 months before the date of ~~offer of~~ payment, an income statement for that year, a statement of cash flows for that year, and the latest available interim financial statements, if any;

(2) ~~A statement of the corporation's estimate of~~ An explanation of how the corporation estimated the fair value of the shares;

(3) An explanation of how the interest was calculated;

(4) A statement of the dissenter's right to demand payment under G.S. 55-13-28; and

(5) A copy of this Article."

Section 3. G.S. 55-13-28 reads as rewritten:

"**§ 55-13-28. Procedure if shareholder dissatisfied with corporation's ~~offer~~ payment or failure to perform.**

(a) A dissenter may notify the corporation in writing of his own estimate of the fair value of his shares and amount of interest due, and demand payment of the amount in excess of the payment by the corporation under G.S. 55-13-25 for ~~his estimate or reject the corporation's offer under G.S. 55-13-25 and demand payment of~~ the fair value of his shares and interest due, if:

(1) The dissenter believes that the amount ~~offered~~ paid under G.S. 55-13-25 is less than the fair value of his shares or that the interest due is incorrectly calculated;

(2) The corporation fails to make payment ~~to a dissenter who accepts the corporation's offer~~ under ~~G.S. 55-13-25 within 30 days after the dissenter's acceptance;~~ G.S. 55-13-25; or

(3) The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within 60 days after the date set for demanding payment.

(b) A dissenter waives his right to demand payment under this section unless he notifies the corporation of his demand in writing (i) under subdivision (a)(1) within 30 days after the corporation ~~offered~~ made payment for his shares or (ii) under subdivisions (a)(2) and (a)(3) within 30 days after the corporation has failed to perform timely. A dissenter who fails to notify the corporation of his demand under subsection (a) within such 30-day period shall be deemed to have withdrawn his dissent and demand for payment.

Section 4. G.S. 55-13-30 reads as rewritten:

"**§ 55-13-30. Court action.**

(a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter may commence a proceeding within 60 days after the earlier of (i) the date ~~of his~~ payment ~~demand~~ is made under ~~G.S. 55-13-28~~ G.S. 55-13-25, or (ii) the date of the

dissenter's payment demand under G.S. 55-13-28 and petition the court to determine the fair value of the shares and accrued interest. ~~Upon service upon it of the petition filed with the court, the corporation shall pay to the dissenter the amount offered by the corporation under G.S. 55-13-25.~~ A dissenter who takes no action within the 60-day period shall be deemed to have withdrawn his dissent and demand for payment.

~~(a1) If the dissenter does not commence the proceeding within the 60-day period, the dissenter shall have an additional 30 days to either (i) accept in writing the amount offered by the corporation under G.S. 55-13-25, upon which the corporation shall pay such amount to the dissenter in full satisfaction of his demand, or (ii) withdraw his demand for payment and resume the status of a nondissenting shareholder. A dissenter who takes no action within such 30-day period shall be deemed to have withdrawn his dissent and demand for payment.~~

(b) Reserved for future codification purposes.

(c) The court shall have the discretion to make all dissenters (whether or not residents of this State) whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The parties are entitled to the same discovery rights as parties in other civil proceedings. However, in a proceeding by a dissenter in a public corporation, there is no right to a trial by jury.

(e) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation."

Section 4. This act becomes effective October 1, 1997, and applies to corporate actions to which shareholders may dissent occurring on or after that date.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

May 22, 1997 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michael Thompson	North Carolina Power
Jim Upchurch	CP&L
Jane P. Gray	DOJ
Carl McArthur	DOJ
[illegible]	[illegible]
John McAlister	Duke Power
Brenda Dougherty	Sprint
Alan Miller	Bailey & Dixon LLP
David Simmons	Zeb Alley, PA
Leigha Rollins	ZDA, PA
Will Cherry	Intern Rep. Neely
Brenda Summers	NC Equity
Bernard Allen	SOS
Lyman Cooper	CSX [illegible]
Gloria Ramquist	MCI
Rhett Pasichal	Young Moore
Bill Stobbin	NCBA

MINUTES
HOUSE JUDICIARY II COMMITTEE

May 27, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on May 27, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Baddour, Culpepper, Hackney, Hensley, Nesbitt, Redwine, Russell, Saunders, Shubert, Sutton and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-1084 SELF-SERVE STORAGE LATE FEES
SB-892 DISSENTERS' RIGHTS

Representative Neely asked if there were any further questions concerning the proposed committee substitute for SB-892; there were none.

Representative Saunders moved for a favorable report as to House committee substitute bill, unfavorable as to original bill; motion passed.

Representative Luebke was recognized to explain HB-1084 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Representative Hackney was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

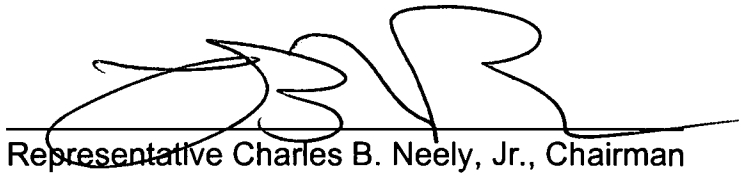
Representative Hackney was recognized to send forth a second amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Hackney was recognized to send forth a third amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

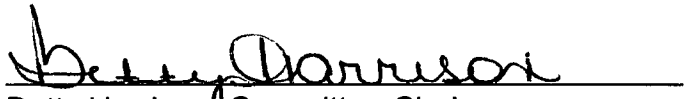
Representative Wilkins moved the amendments be incorporated in a committee substitute bill, with a favorable report as to committee substitute bill, unfavorable as to original bill, and recommendation that the committee substitute bill be re-referred to the Committee on Finance; motion passed.

The meeting was adjourned at 10:30 A.M.

Respectfully submitted,



Representative Charles B. Neely, Jr., Chairman



Betty Harrison, Committee Clerk

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
S.B. 892 A BILL TO BE ENTITLED AN ACT TO LIMIT THE RIGHT OF CERTAIN SHAREHOLDERS TO DISSENT FROM CORPORATE ACTIONS AND TO AMEND THE LAW GOVERNING OFFERS OF PAYMENT TO DISSENTERS.

☐ 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 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 892
Proposed Committee Substitute S892-PCS1821

Short Title: Dissenters' Rights. (Public)

Sponsors:

Referred to:

April 16, 1997

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE RIGHT OF CERTAIN SHAREHOLDERS TO DISSENT FROM CORPORATE ACTIONS AND TO AMEND THE LAW GOVERNING OFFERS OF PAYMENT TO DISSENTERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55-13-02 is amended by adding a new subsection to read:

"(c) Notwithstanding any other provision of this Article, there shall be no right of dissent in favor of holders of shares of any class or series which, at the record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting at which the plan of merger or share exchange or the sale or exchange of property is to be acted on, were (i) listed on a national securities exchange or (ii) held by at least 2,000 record shareholders, unless in either case:

(1) The articles of incorporation of the corporation issuing the shares provide otherwise;

(2) In the case of a plan of merger or share exchange, the holders of the class or series are required under the plan of merger or share exchange to accept for the shares anything except:

a. Cash;

b. Shares, or shares and cash in lieu of fractional shares of the surviving or acquiring corporation, or of any other corporation which, at the record date fixed to determine the shareholders entitled to receive notice of and vote at the meeting at which the plan of merger or share exchange is to

be acted on, were either listed subject to notice of issuance on a national securities exchange or held of record by at least 2,000 record shareholders; or

c. A combination of cash and shares as set forth in sub-subdivisions a. and b. of this subdivision."

Section 2. G.S. 55-13-25 reads as rewritten:

"**§ 55-13-25. ~~Offer of payment.~~ Payment.**

(a) As soon as the proposed corporate action is taken, or ~~upon~~ within 30 days after receipt of a payment demand, the corporation shall ~~offer to~~ pay each dissenter who complied with G.S. 55-13-23 the amount the corporation estimates to be the fair value of his shares, plus interest accrued to the date of ~~payment, and shall pay this amount to each dissenter who agrees in writing to accept it in full satisfaction of his demand.~~ payment.

(b) The ~~offer of~~ payment ~~must~~ shall be accompanied by:

(1) The corporation's most recent available balance sheet as of the end of a fiscal year ending not more than 16 months before the date of ~~offer of~~ payment, an income statement for that year, a statement of cash flows for that year, and the latest available interim financial statements, if any;

(2) ~~A statement of the corporation's estimate of~~ An explanation of how the corporation estimated the fair value of the shares;

(3) An explanation of how the interest was calculated;

(4) A statement of the dissenter's right to demand payment under G.S. 55-13-28; and

(5) A copy of this Article."

Section 3. G.S. 55-13-28 reads as rewritten:

"**§ 55-13-28. Procedure if shareholder dissatisfied with corporation's ~~offer~~ payment or failure to perform.**

(a) A dissenter may notify the corporation in writing of his own estimate of the fair value of his shares and amount of interest due, and demand payment of the amount in excess of the payment by the corporation under G.S. 55-13-25 for ~~his estimate or reject the corporation's offer under G.S. 55-13-25 and demand payment of~~ the fair value of his shares and interest due, if:

(1) The dissenter believes that the amount ~~offered~~ paid under G.S. 55-13-25 is less than the fair value of his shares or that the interest due is incorrectly calculated;

(2) The corporation fails to make payment ~~to a dissenter who accepts the corporation's offer~~ under ~~G.S. 55-13-25 within 30 days after the dissenter's acceptance;~~ G.S. 55-13-25; or

(3) The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within 60 days after the date set for demanding payment.

(b) A dissenter waives his right to demand payment under this section unless he notifies the corporation of his demand in writing (i) under subdivision (a)(1) within 30 days after the corporation ~~offered~~ made payment for his shares or (ii) under subdivisions (a)(2) and (a)(3) within 30 days after the corporation has failed to perform timely. A dissenter who fails to notify the corporation of his demand under subsection (a) within such 30-day period shall be deemed to have withdrawn his dissent and demand for payment."

Section 4. G.S. 55-13-30 reads as rewritten:

"§ 55-13-30. Court action.

(a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter may commence a proceeding within 60 days after the earlier of (i) the date ~~of his~~ payment ~~demand~~ is made under ~~G.S. 55-13-28~~ G.S. 55-13-25, or (ii) the date of the dissenter's payment demand under G.S. 55-13-28 and petition the court to determine the fair value of the shares and accrued interest. ~~Upon service upon it of the petition filed with the court, the corporation shall pay to the dissenter the amount offered by the corporation under G.S. 55-13-25.~~ A dissenter who takes no action within the 60-day period shall be deemed to have withdrawn his dissent and demand for payment.

~~(a1) If the dissenter does not commence the proceeding within the 60-day period, the dissenter shall have an additional 30 days to either (i) accept in writing the amount offered by the corporation under G.S. 55-13-25, upon which the corporation shall pay such amount to the dissenter in full satisfaction of his demand, or (ii) withdraw his demand for payment and resume the status of a nondissenting shareholder. A dissenter who takes no action within such 30-day period shall be deemed to have withdrawn his dissent and demand for payment.~~

(b) Reserved for future codification purposes.

(c) The court shall have the discretion to make all dissenters (whether or not residents of this State) whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The parties are entitled to the same discovery rights as parties in other civil proceedings. However, in a proceeding by a dissenter in a public corporation, there is no right to a trial by jury.

(e) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation."

Section 5. This act becomes effective October 1, 1997, and applies to corporate actions to which shareholders may dissent occurring on or after that date.

HOUSE BILL 1084

Short Title: Self-Serve Storage Late Fees. (Public)

Sponsors: Representatives Luebke; Blue, Boyd-McIntyre, Braswell, Easterling, Hackney, Hensley, H. Hunter, Hurley, McAllister, McCrary, Mosley, Owens, Sutton, Wainwright, Wright, and Yongue.

Referred to: Judiciary II, if favorable, Finance.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS BY REQUIRING CONTRACTS FOR THE RENTAL OF SELF-SERVICE STORAGE TO CLEARLY STATE THE TERMS REGARDING THE IMPOSITION OF LATE FEES AND TO LIMIT THE RATE OF LATE FEES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 32.

"Self-Service Storage Rental Agreements.

"**§ 66-250. Definitions.**

The definitions set forth in Article 4 of Chapter 44A of the General Statutes apply to this Article.

"**§ 66-251. Contract requirements.**

The rental agreement for the storage of personal property in a self-service storage facility shall provide in bold type that is conspicuously placed near the top of the page of the front page of the contract, the terms regarding the imposition of late fees. Any oral or written declaration or instrument that purports to alter these terms is void.

"**§ 66-252. Late fees.**

(a) In all rental agreements in which a definite time for the payment of the rent is fixed, the late fee shall not exceed fifteen dollars ($15.00) or five percent (5%) of the

rental payment, whichever is greater, and shall not be imposed by the owner until the rental payment is 10 days or more late.

(b) A late fee under this section may be imposed only one time for each late rental payment. A late fee for a specific late rental payment shall not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in default.

(c) Any provision of a rental agreement contrary to the provisions of this section is against the public policy of this State and is void and unenforceable."

Section 2. This act is effective when it becomes law and applies to rental agreements for self-service storage entered into on or after that date.

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

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

May 22, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 1084—Self-Serve Storage Late Fees (Leubke)

House Bill 1084 adds a new Article 32 to Chapter 66 of the General Statutes governing Self-Service Storage Rental Agreements.

The Article would require a rental agreement for the storage of personal property in a self-service storage facility to provide in bold type at the top of the agreement the terms regarding the imposition of late fees. An oral or written declaration altering the terms of the late fees is void.

The bill also prohibits late fees from exceeding $15.00 or 5% of the rental payment, whichever is greater, and does not allow the imposition of such fees unless the rental payment is 10 days or more late. A late fee may only be imposed one time for each late payment and may not be deducted from subsequent rental payments causing the subsequent payment to be in default also.

House Bill 1084 is effective when it becomes law and applies to agreements entered into on or after that date.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. 1084 DATE

S. B. No. Amendment No.
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE

Rep.) Hackney
)
Sen.)

moves to amend the bill on page 1, lines 16-17

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"facility shall provide in bold type the terms regarding the imposition of late fees."

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. 1

H. B. No. 1084 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Hackney
)
Sen.)

moves to amend the bill on page 2, line 1

( ) WHICH CHANGES THE TITLE

by deleting the word "greater" and substituting the word "less";

and on page 1, line 22,

by deleting "five percent (5%)" and substituting "fifteen percent (15%)".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1084 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Hackney
)
Sen.)

moves to amend the bill on page 2, line 9

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"Section 2. This act becomes effective October 1, 1991 and applies to rental"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 1084 A BILL TO BE ENTITLED AN ACT TO PROTECT CONSUMERS BY REQUIRING CONTRACTS FOR THE RENTAL OF SELF-SERVICE STORAGE TO CLEARLY STATE THE TERMS REGARDING THE IMPOSITION OF LATE FEES AND TO LIMIT THE RATE OF LATE FEES.

☐ 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. (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

H D

HOUSE BILL 1084
Proposed Committee Substitute H1084-PCS4122

Short Title: Self-Serve Storage Late Fees. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS BY REQUIRING CONTRACTS FOR THE RENTAL OF SELF-SERVICE STORAGE TO CLEARLY STATE THE TERMS REGARDING THE IMPOSITION OF LATE FEES AND TO LIMIT THE RATE OF LATE FEES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 32.

"Self-Service Storage Rental Agreements.

"**§ 66-250. Definitions.**

The definitions set forth in Article 4 of Chapter 44A of the General Statutes apply to this Article.

"**§ 66-251. Contract requirements.**

The rental agreement for the storage of personal property in a self-service storage facility shall provide in bold type the terms regarding the imposition of late fees. Any oral or written declaration or instrument that purports to alter these terms is void.

"**§ 66-252. Late fees.**

(a) In all rental agreements in which a definite time for the payment of the rent is fixed, the late fee shall not exceed fifteen dollars ($15.00) or fifteen percent (15%) of the rental payment, whichever is less, and shall not be imposed by the owner until the rental payment is 10 days or more late.

(b) A late fee under this section may be imposed only one time for each late rental payment. A late fee for a specific late rental payment shall not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in default.

(c) Any provision of a rental agreement contrary to the provisions of this section is against the public policy of this State and is void and unenforceable."

Section 2. This act becomes effective October 1, 1997, and applies to rental agreements for self-service storage entered into on or after that date.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **May 27, 1997 10:00 A.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Deborah Ross	ACLU
Nancy Kissenhofer	DOJ - SBI
George Reed	NC Council of Churches
Curt Williams	Governor's Office
James Ramquist	MCI
Molly Gudrich	Monroe Enquirer Journal
Eddie Caldwell	NC Sheriffs Assn/NC Law Enf Officers
John Hall	ACLU
Mary Tyndall	Hunton & Williams
John Leach	WCSR
Martha Livengood	YATO/DOA

MINUTES
HOUSE JUDICIARY II COMMITTEE

May 27, 1997 1:00 P.M.

The North Carolina House of Representatives Judiciary II Committee met on May 27, 1997, at 1:00 P.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Baddour, Bowie, Culpepper, Decker, Goodwin, Hackney, Nesbitt, Redwine, Russell, Shubert, Sutton and Weatherly. A list of visitors is attached.

The following bills were discussed:

SB-676 SEX OFFENDER LAWS/FEDERAL COMPLIANCE
SB-855 COURT INFORMATION REMOTE ACCESS

Senator Ballance was recognized to explain SB-855 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Representative Culpepper moved for a favorable report; motion passed.

Senator Odom was recognized to present SB-676 and answer questions of committee members. A copy of the bill and bill digest from the Institute of Government Daily Bulletin are attached.

Ms. Susan Hayes, Committee Counsel, explained the differences between House Bill 930 and Senate Bill 676.

Ms. Jane Gray, Attorney General's Office; and Ms. Nancy Kiesenhofer, Department of Justice, Division of Criminal Statistics, answered questions of committee members.

No action was taken on SB-676.

The meeting was adjourned at 1:50 P.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 855*

Short Title: Court Information Remote Access. (Public)

Sponsors: Senator Ballance.

Referred to: Judiciary.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE COURTS TO CONTRACT WITH THIRD PARTIES TO PROVIDE REMOTE ELECTRONIC ACCESS TO COURT INFORMATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-109 reads as rewritten:

"**§ 7A-109. Record-keeping procedures.**

(a) Each clerk shall maintain such records, files, dockets and indexes as are prescribed by rules of the Director of the Administrative Office of the Courts. Except as prohibited by law, these records shall be open to the inspection of the public during regular office hours, and shall include civil actions, special proceedings, estates, criminal actions, juvenile actions, minutes of the court, judgments, liens, lis pendens, and all other records required by law to be maintained. The rules prescribed by the Director shall be designed to accomplish the following purposes:

(1) To provide an accurate record of every determinative legal action, proceeding, or event which may affect the person or property of any individual, firm, corporation, or association;

(2) To provide a record during the pendency of a case that allows for the efficient handling of the matter by the court from its initiation to conclusion and also affords information as to the progress of the case;

(3) To provide security against the loss or destruction of original documents during their useful life and a permanent record for historical uses;

(4) To provide a system of indexing that will afford adequate access to all records maintained by the clerk;
(5) To provide, to the extent possible, for the maintenance of records affecting the same action or proceeding in one rather than several units; and
(6) To provide a reservoir of information useful to those interested in measuring the effectiveness of the laws and the efficiency of the courts in administering them.

(b) The rules shall provide for indexing according to the minimum criteria set out below:
(1) Civil actions -- the names of all parties;
(2) Special proceedings -- the names of all parties;
(3) Administration of estates -- the name of the estate and in the case of testacy the name of each devisee;
(4) Criminal actions -- the names of all defendants;
(5) Juvenile actions -- the names of all juveniles;
(6) Judgments, liens, lis pendens, etc. -- the names of all parties against whom a lien has been created by the docketing of a judgment, notice of lien, transcript, certificate, or similar document and the names of all parties in those cases in which a notice of lis pendens has been filed with the clerk and abstracted on the judgment docket.

(c) The rules shall require that all documents received for docketing shall be immediately indexed either on a permanent or temporary index. The rules may prescribe any technological process deemed appropriate for the economical and efficient indexing, storage and retrieval of information.

(d) In order to facilitate public access to court records, except where public access is prohibited by law, the Director may enter into one or more nonexclusive contracts under reasonable cost recovery terms with third parties to provide remote electronic access to the records by the public."

Section 2. If any contracts entered into under G.S. 7A-109(d) are in effect during any calendar year, the Director of the Administrative Office of the Courts shall submit to the Joint Legislative Commission on Governmental Operations not later than February 1 of the following year a report on all those contracts.

Section 3. This act is effective when it becomes law.

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May 22, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman,
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: Senate Bill 855-Court Information Remote Access (Ballance)

Senate Bill 855 originated as a recommendation of the North Carolina Courts Commission. The Commission, in its report to the 1997 General Assembly, found that public access to court information is cumbersome. For example, statewide criminal record checks are not available from a centralized source to the public and information which is centrally available is often not in user-friendly format.

To alleviate this problem, the bill gives discretion to the Director of the Administrative Office of the Courts to contract with third parties to provide remote electronic access to court records by the public. These contracts could not include records for which public access is prohibited.

Senate Bill 855 is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
S.B. 855 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE COURTS TO CONTRACT WITH THIRD PARTIES TO PROVIDE REMOTE ELECTRONIC ACCESS TO COURT INFORMATION.

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. (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 3

SENATE BILL 676*
Judiciary Committee Substitute Adopted 5/20/97
Third Edition Engrossed 5/21/97

Short Title: Sex Offender Laws/Fed. Compliance. (Public)

Sponsors:

Referred to:

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE SEXUAL OFFENDER REGISTRATION PROGRAM TO COMPLY WITH FEDERAL LAW.

The General Assembly of North Carolina enacts:

Section 1. Article 27A of Chapter 14 of the General Statutes reads as rewritten:

"ARTICLE 27A.

~~"Sexual Offender Registration Program.~~

Sex Offender and Public Protection Registration Programs.

"Part 1. Registration Programs, Purpose, and Definitions Generally.

"§ 14-208.5. Purpose.

The General Assembly recognizes that sex offenders often pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is of paramount governmental interest. The General Assembly also recognizes that persons who commit certain other types of offenses against minors, such as kidnapping, pose significant and unacceptable threats to the public safety and welfare of the State's children and that the protection of those children is of great governmental interest. Further, the General Assembly recognizes that ~~local~~ law enforcement officers' efforts to protect ~~their~~ communities, conduct investigations, and quickly apprehend offenders who commit sex offenses or certain offenses against minors are impaired by the lack of

information available to law enforcement agencies about convicted ~~sex~~ offenders who live within the agency's jurisdiction. Release of information about ~~sex~~ these offenders will further the governmental interests of public safety so long as the information released is rationally related to the furtherance of those goals.

Therefore, it is the purpose of this Article to assist ~~local~~ law enforcement agencies' efforts to protect ~~their~~ communities by requiring ~~sex offenders~~ persons who are convicted of sex offenses or of certain other offenses committed against minors to register with ~~local~~ law enforcement ~~agencies and~~ agencies, to require the exchange of relevant information about ~~sex~~ those offenders among law enforcement ~~agencies~~ agencies, and to authorize the access to necessary and relevant information about ~~sex~~ those offenders to others as provided in this Article.

"**§ 14-208.6. Definitions.**

The following definitions apply in this Article:

(1a) 'County registry' means the information compiled by the sheriff of a county in compliance with this Article.

~~(1)~~(1b) 'Division' means the Division of Criminal Statistics of the Department of Justice.

(1c) 'Mental abnormality' means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of others.

(1d) 'Offense against a minor' means any of the following offenses if the offense is committed against a minor and the person committing the offense is not the minor's parent or legal custodian: G.S. 14-39 (kidnapping), G.S. 14-41 (abduction of children), and G.S. 14-43.3(felonious restraint).

(2) 'Penal institution' means:

a. A detention facility operated under the jurisdiction of the Division of Prisons of the Department of 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.

(2a) 'Personality disorder' means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment.

(3) 'Release' means discharged or paroled.

(4) 'Reportable conviction' means:

a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses. ~~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.~~ an offense against a minor or a sexually violent offense as defined by this section.

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.~~ offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

(5) 'Sexually violent offense' means a 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).

(6) 'Sexually violent predator' means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at strangers or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

~~(4)~~ (7) 'Sheriff' means the sheriff of a county in this State.

(8) 'Statewide registry' means the central registry compiled by the Division in accordance with G.S. 14-208.14.

"**§ 14-208.6A. Registration requirements for criminal offenders and for criminal offenders determined to be sexually violent predators.**

It is the objective of the General Assembly to establish a 10-year registration requirement for persons convicted of certain offenses against minors or sexually violent offenses. It is the further objective of the General Assembly to establish a more stringent set of registration requirements for a subclass of highly dangerous sex offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

To accomplish this objective there are established two registration programs: the Sex Offender and Public Protection Registration Program and the Sexually Violent Predator Registration Program. Any person convicted of an offense against a minor or of a sexually violent offense as defined by this Article shall register as an offender in accordance with Part 2 of this Article. Any person determined to be a sexually violent predator shall register as such in accordance with Part 3 of this Article.

The information obtained under these programs shall be immediately shared with the appropriate local, State, federal, and out-of-state law enforcement officials and penal institutions. In addition, the information designated under G.S. 14-208.10(a) as public record shall be readily available to and accessible by the public. However, the identity of the victim is not public record and shall not be released as a public record.

"Part 2. Sex Offender and Public Protection Registration Program.

"**§ 14-208.7. Registration.**

(a) A person who is a State resident and who has a reportable conviction shall be required to maintain registration with the sheriff of the county where the person resides. If the person moves to North Carolina from outside this State, the person shall register within 10 days of establishing residence in this State. If the person is a current resident of North Carolina, the person shall register:

(1) Within 10 days of release from a penal institution or arrival in a county to live outside a penal institution; or

(2) Immediately upon conviction for a reportable offense where an active term of imprisonment was not imposed.

Registration shall be maintained for a period of 10 years following release from a penal institution. If no active term of imprisonment was imposed, registration shall be maintained for a period of 10 years following each conviction for a reportable offense.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article. The registration form shall require:

(1) The person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, drivers license number, and home address;

(2) The type of offense for which the person was convicted, the date of conviction, and the sentence imposed;

(3) A current photograph; and

(4) The person's fingerprints.

The sheriff shall photograph the individual at the time of registration and take fingerprints from the individual at the time of registration both of which will be kept as part of the registration form. The registrant will not be required to pay any fees for the photograph or fingerprints taken at the time of registration.

(c) ~~Not later than the third day after~~ When a person registers, the sheriff with whom the person registered shall immediately send the registration information to the Division in a manner determined by the Division. The sheriff shall retain the original registration form and other information ~~collected.~~ collected and shall compile the information that is a public record under this Part into a county registry.

"§ 14-208.8. Prerelease notification.

(a) At least 10 days, but not earlier than 30 days, before a person who will be subject to registration under this Article is due to be released from a penal institution, an official of the penal institution shall:

(1) Inform the person of the person's duty to register under this Article and require the person to sign a written statement that the person was so informed or, if the person refuses to sign the statement, certify that the person was so informed;

(2) Obtain the registration information required under G.S. 14-208.7 (b)(1) and (2), as well as the address where the person expects to reside upon the person's release; and

(3) Send the Division and the sheriff of the county in which the person expects to reside the information collected in accordance with subdivision (2) of this subsection.

(b) If a person who is subject to registration under this Article does not receive an active term of imprisonment, the court pronouncing sentence shall conduct, at the time of sentencing, the notification procedures specified in subsection (a) of this section.

"§ 14-208.9. Change of address.

If a person required to register changes address, the person shall provide written notice of the new address not later than the tenth day after the change to the sheriff of the county with whom the person had last registered. ~~Not later than the third day after~~ Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the person moves to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

"§ 14-208.9A. Verification of registration information.

The information in the county registry shall be verified annually for each registrant as follows:

(1) Every year on the anniversary of a person's initial registration date, the Division shall mail a nonforwardable verification form to the last reported address of the person.

(2) The person shall return the verification form to the sheriff within 10 days after the receipt of the form.

(3) The verification form shall be signed by the person and shall indicate whether the person still resides at the address last reported to the sheriff. If the person has a different address, then the person shall indicate that fact and the new address.

(4) If the person fails to return the verification form to the sheriff within 10 days after receipt of the form, the person is subject to the penalties provided in G.S. 14-208.11. If the verification form is returned to the sheriff as undeliverable, the sheriff shall make reasonable attempts to verify that the person is residing at the registered address. If the person cannot be found at the registered address and has failed to report a change of address, the person is subject to the penalties provided in G.S. 14-208.11, unless the person reports in person to the sheriff and proves that the person has not changed his or her residential address.

"**§ 14-208.10. ~~Access~~ Registration information is public record; access to registration information.**

(a) ~~To obtain information concerning an individual's registration status, a requester shall submit to the sheriff the following:~~

~~(1) The individual's name and sex;~~

~~(2) A physical description of the individual; and~~

~~(3) Any other relevant information known to the requester concerning the individual.~~

~~Upon receipt of the information, the sheriff shall verify, in writing, to the requester whether the individual has registered as a sex offender in this State, the date of conviction, and the offenses for which registration was required. The registration information and the corresponding registry is a public record and shall be available for public inspection. The sheriff shall upon request, display any photograph provided in compliance with G.S. 14-208.7(b)(3); however, the sheriff shall not provide or allow a copy to be made of the photograph.~~

The following information regarding a person required to register under this Article is public record and shall be available for public inspection: name, sex, address, physical description, picture, conviction date, offense for which registration was required, the sentence imposed as a result of the conviction, and registration status. The sheriff shall release any other relevant information that is necessary to protect the public concerning a specific person, but shall not release the identity of the victim of the offense that required registration under this Article.

(b) Any person may obtain a copy of an individual's registration form, ~~excluding the photograph, upon payment to the sheriff of a reasonable fee for the costs of duplicating the form.~~ a part of the county registry, or all of the county registry, by submitting a written request for the information to the sheriff. However, the identity of the victim of an offense that requires registration under this Article shall not be released. The sheriff may charge a reasonable fee for duplicating costs and for mailing costs when appropriate.

~~(c) The sheriff of each county is authorized, upon written request, to provide a copy of the entire registry to any group, entity, organization, corporation, or school, that utilizes volunteers or employees in working with, caring for, supervising or protecting children or disabled or elderly persons. The sheriff may charge a reasonable fee for duplicating costs and for mailing costs when appropriate.~~

"§ 14-208.11. Failure to ~~register.~~ register; falsification of verification notice; failure to return verification form; order for arrest.

(a) A person required by this Article to register ~~who, knowingly and with the intent to violate the provisions of this Article, fails to register shall be guilty of a Class 3 misdemeanor for a first conviction of a violation of this Article, and a Class I felony for a subsequent conviction of a violation of this Article.~~ who does any of the following is guilty of a Class F felony:

(1) Fails to register.

(2) Fails to notify the last registering sheriff of a change of address.

(3) Fails to return a verification notice as required under G.S. 14-208.9A.

(4) Forges or submits under false pretenses the information or verification notices required under this Article.

(a1) If a person commits a violation of subsection (a) of this section, the probation officer, parole officer, or any other law enforcement officer who is aware of the violation shall immediately arrest the person in accordance with G.S. 15A-401, or seek an order for the person's arrest in accordance with G.S. 15A-305.

(b) Before a person convicted of a violation of this Article is due to be released from a penal institution, an official of the penal institution shall conduct the prerelease notification procedures specified under G.S. 14-208.8(a)(2) and (3). If upon a conviction for a violation of this Article, no active term of imprisonment is imposed, the court pronouncing sentence shall, at the time of sentencing, conduct the notification procedures specified under G.S. 14-208.8(a)(2) and (3).

~~**"§ 14-208.12. Exemption.**~~

~~(a) A person who has a reportable conviction may petition the superior court in the county where the person resides for an exemption from this Article. The person shall serve a copy of the petition on the district attorney. If the person shows for good cause, by clear and convincing evidence, that registration will not serve any useful purpose, the court shall grant the exemption.~~

~~(b) When a registered person presents the sheriff with a certified copy of the court order showing that an exemption has been granted, the sheriff shall remove any information from his records that was obtained pursuant to this Article. The sheriff shall then notify the Division of the exemption by sending a copy of the exemption to the Division within three days and the Division shall remove any information from its files obtained pursuant to this Article. The Division shall notify the registered person of the exemption by letter telling the registrant that the exemption has been accomplished.~~

"§ 14-208.12A. Termination of registration requirement.

(a) The requirement that a person register under this Part automatically terminates 10 years from the date of initial county registration if the person has not been convicted of a subsequent offense requiring registration under this Article.

(b) If there is a subsequent offense, the county registration records shall be retained until the registration requirement for the subsequent offense is terminated.

"§ 14-208.13. File with Police Information Network.

(a) The Division shall include the registration information in the Police Information Network as set forth in G.S. 114-10.1.

(b) ~~Except as provided in G.S. 14-208.12(b), the~~ The Division shall maintain the registration information permanently even after the registrant's reporting requirement expires.

"§ 14-208.14. Statewide registry; Division of Criminal Statistics designated custodian of statewide registry.

(a) The Division of Criminal Statistics shall compile and keep current a central statewide sex offender registry. The Division is the State agency designated as the custodian of the statewide registry. As custodian the Division has the following responsibilities:

(1) To receive from the sheriff or any other law enforcement agency or penal institution all sex offender registrations, changes of address, and prerelease notifications required under this Article or under federal law. The Division shall also receive notices of any violation of this Article, including a failure to register or a failure to report a change of address.

(2) To provide all need-to-know law enforcement agencies, (local, State, federal, and those located in other states) immediately upon receipt by the Division of any of the following: registration information, a prerelease notification, a change of address, or notice of a violation of the Article.

(3) To coordinate efforts among law enforcement agencies and penal institutions to ensure that the registration information, changes of address, prerelease notifications, and notices of failure to register or to report a change of address are conveyed in an appropriate and timely manner.

(4) To provide public access to the statewide registry in accordance with this Article.

(b) The statewide registry shall include the following:

(1) Registration information obtained by a sheriff or penal institution under this Article or from any other local or State law enforcement agency.

(2) Registration information received from a state or local law enforcement agency or penal institution in another state.

(3) Registration information received from a federal law enforcement agency or penal institution.

"**§ 14-208.15. Certain statewide registry information is public record: access to statewide registry.**

(a) The information in the statewide registry that is public record is the same as in G.S. 14-208.10. The Division shall release any other relevant information that is necessary to protect the public concerning a specific person, but shall not release the identity of the victim of the offense that required registration under this Article.

(b) The Division shall provide free public access to automated data from the statewide registry, including photographs provided by the registering sheriffs, via the Internet. The public will be able to access the statewide registry to view an individual registration record, a part of the statewide registry, or all of the statewide registry. The Division may also provide copies of registry information to the public upon written request, and may charge a reasonable fee for duplicating costs and mailings costs.

"Part 3. Sexually Violent Predator Registration Program.

"**§ 14-208.20. Sexually violent predator determination; notice of intent; presentence investigation.**

(a) When a person is charged by indictment or information with the commission of a sexually violent offense, the district attorney shall decide whether to seek classification of the offender as a sexually violent predator if the person is convicted. If the district attorney intends to seek the classification of a sexually violent predator, the district attorney shall within the time provided for the filing of pretrial motions under G.S. 15A-952 file a notice of the district attorney's intent. The court may for good cause shown allow late filing of the notice, grant additional time to the parties to prepare for trial, or make other appropriate orders.

(b) Prior to sentencing a person as a sexually violent predator, the court shall order a presentence investigation in accordance with G.S. 15A-1332(c). However, the study of the defendant and whether the defendant is a sexually violent predator shall be conducted by a board of experts selected by the Department of Correction. The board of experts shall be composed of at least two people who are experts in the field of the behavior and treatment of sexual offenders, and who are also experts in the diagnosis of mental abnormalities and personality disorders.

(c) When the defendant is returned from the presentence commitment, the court shall hold a sentencing hearing in accordance with G.S. 15A-1334. At the sentencing hearing, the court shall, after taking the presentencing report under advisement, make written findings as to whether the defendant is classified as a sexually violent predator and the basis for the court's findings.

"**§ 14-208.21. Registration procedure for sexually violent predator; application of Part 2 of this Article.**

The provisions of Part 2 of this Article apply to a person classified as a sexual predator unless provided otherwise by this Part. The procedure for registering as a sexually violent predator is the same as under Part 2 of this Article.

"**§ 14-208.22. Additional registration information required.**

(a) In addition to the information required by G.S. 14-208.7, the following information shall also be obtained in the same manner as set out in Part 2 of this Chapter from a person who is classified as a sexually violent predator:

(1) Identifying factors.

(2) Offense history.

(3) Documentation of any treatment received by the person for the person's mental abnormality or personality disorder. Medical records or documentation of treatment obtained pursuant to this section shall not be a part of the public record.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article.

(c) The Department of Correction shall also obtain the additional information set out in subsection (a) of this section and shall include this information in the prerelease notice forwarded to the sheriff or other appropriate law enforcement agency.

"§ 14-208.23. Length of registration.

The requirement that a person who is classified as a sexually violent predator maintain registration shall terminate only upon a determination, made in accordance with this Part, that the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.

"§ 14-208.24. Verification of registration information.

(a) The information in the county registry shall be verified by the sheriff for each registrant who is classified as a sexually violent predator every 90 days after the person's initial registration date.

(b) The procedure for verifying the information in the criminal offender registry is the same as under G.S. 14-208.9A, except that verification shall be every 90 days as provided by subsection (a) of this section.

"§ 14-208.25. Termination of registration requirement.

Ten years from the date of a person's initial registration as a sexually violent predator, a person may petition the superior court to review the person's classification as a sexually violent predator if the person has committed no subsequent reportable convictions. The decision as to whether to grant the review is in the discretion of the court. If the court grants the review, the court shall order a presentence commitment study as provided in G.S. 14-208.20(b). Upon receipt of the study results, the court shall hold a hearing to determine whether the person's classification as a sexually violent predator should be terminated. The procedure for the hearing shall be the same as under G.S 15A-1334 (b) and (c). The court shall make written findings of fact with regard to the court's decision and the basis for that decision."

Section 2. The Department of Justice shall use funds available within its current operations budget for the 1997-98 fiscal year to design and implement a program for electronic access to the statewide sex offender registry. The program shall provide on-line access to the statewide sex offender registry through the

Internet, allowing members of the public to locate and access the public record of sex offender registration information. The Division of Criminal Statistics shall be responsible for the on-line maintenance of current information regarding each registered sex offender.

Section 3. This act becomes effective April 1, 1998.

S 676. SEX OFFENDER LAWS/FED. COMPLIANCE. *TO AMEND THE SEXUAL OFFENDER REGISTRATION PROGRAM TO COMPLY WITH FEDERAL LAW.* Revises Art. 27A of GS Ch. 14 regarding registration of persons convicted of sexually violent crimes to extend law's application to persons who commit offenses of kidnapping of minor child, abduction of minor child, felonious restraint of minor child, or false imprisonment of minor child, to revise registration procedures and requirements, and to impose more stringent registration requirements on highly dangerous sex offenders who are determined by court and experts to be sexually violent predators.

Criminal registration program. Procedures and requirements specified in current law (GS 14-208.7 through 14-208.13) apply to criminal registration program, which applies to persons, other than sexually violent predators, convicted of sexually violent offenses and to persons convicted of specified offenses against minors, with the following changes: (1) requires sheriff to send registration information to Div'n of Criminal Statistics *immediately* upon registration or notice of change of offender's address (now, within three days of registration or notice); (2) adds provisions requiring verification of registration information in county registry; (3) rewrites GS 14-208.10 to provide that name, sex, address, physical description, picture, conviction date, offense for which registration was required, sentence imposed, and registration status of offenders in county registry is a public record and is available for public inspection; (4) authorizes sheriff to release additional information necessary to protect public from specific offender but prohibits release of identity of victim of offense; (5) amends GS 14-208.11 to make failure to register, failure to provide notice of change of address, or other violations of statute a class F felony (now, failure to register is a class 3 misdemeanor or class I felony); (6) requires law enforcement officers to immediately seek order for arrest of persons who violate requirements of statute; (7) repeals GS 14-208.12 (exemptions from registration); (8) adds new GS 14-208.12A to terminate registration requirement 10 years after date of initial registration if offender has not been convicted of subsequent offense requiring registration; (9) adds new GS 14-208.14 requiring Div'n of Criminal Statistics to compile central statewide sex offender registry; and (10) adds new GS 14-208.15 regarding public access to information in statewide sex offender registry.

Sexually violent predator registration program. Adds new GS 14-208.20 through 14-208.25 imposing more stringent registration requirements on sexually violent predators. Defines "sexually violent predator" as a person who has been convicted of sexually violent offense (as specified in act) and who suffers from a mental abnormality or personality disorder (as defined by act) that makes the person likely to engage in predatory sexually violent offenses. Defines "predatory" as an act directed at a stranger or at a person with whom a relationship has been established or promoted for primary purpose of victimization. Requires district attorney, in cases involving sexually violent offenses, to give notice of intent to seek classification of defendant as sexually violent predator. Before sentencing person as sexually violent predator, court must order presentence investigation including study of whether defendant is, in opinion of board of experts selected by Dep't of Correction (at least two of whom are experts in field of behavior and treatment of sexual offenders), a sexually violent predator, and make written findings as to whether defendant should be classified as sexually violent predator. Procedures and provisions for registration of sexually violent predators are the same as those specified for criminal registration program except as otherwise specified. Requires that additional information (identifying features, anticipated future residence, offense history, and documentation of treatment for mental abnormality or personality disorder) be obtained from sexually violent predators. Registration requirement for sexually violent predators continues beyond 10 years until court determines that person no longer suffers from mental abnormality or personality disorder that would make person likely to engage in predatory sexually violent offense.

Effective Dec. 1, 1997.

Intro. by Odom.
Ref. to Judiciary

S 676. SEX OFFENDER LAWS/FED. COMPLIANCE. Intro. 4/2/97. Senate committee substitute makes the following changes to 1st edition. (1) Makes following changes in definition section: (a) , deletes common law false imprisonment from "offense against a minor"; (b) removes definition of term "predatory," and (c) provides that sexually violent predator's offenses must be directed "at strangers or at a person with whom a relationship has been established for the primary purpose of victimization" (quoted language added). (2) Renames Criminal Registration Program as Sex Offender and Public Protection Registration Program and makes following changes in that program: (a) requires Division rather than sheriff to mail verification form annually to registrants; (b) provides that if verification form is returned as undeliverable, sheriff must make reasonable attempts to verify if person still lives at address; (c) provides that registrant guilty of felony if can't be found at address and has not reported change of address unless registrant reports in person to sheriff and proves that he or she has not changed residential address; (d) amends GS 14-208.11 to delete from crime of failure to register the requirement that failure to notify sheriff of change of address or falsifying verification form requirement the conduct be knowing and with the intent to violate the provision; (e) excepts photographs from information in statewide registry that is public; and (f) requires, rather than allows, Division to release relevant information that is necessary to protect public concerning person in statewide registry. (3) With regard to Sexually Violent Predator Registration Program, provides that board of experts to determine whether defendant is sexually violent predator will include two people who are experts in the diagnosis of mental abnormalities and personality disorders and deletes requirement that information regarding registrant's anticipated future residence be obtained. (4) Changes effective date from Dec. 1, 1997 to April 1, 1998.

Daily Bulletin 05/21/97

S 676. SEX OFFENDER LAWS/FED. COMPLIANCE. Intro. 4/2/97. Senate amendment makes the following changes to 2nd edition. Requires Div'n of Criminal Statistics to provide free public access to automated data from statewide registry of sex offenders, including photographs provided by the registering sheriffs, via the Internet. Div'n also may provide copies of registry information to the public on written request and may charge reasonable fee for duplicating and mailing. Requires Dep't of Justice to use funds within its 1997-98 operating budget to design and implement program for electronic access to statewide sex offender registry, with online public access through the Internet. Div'n to be responsible for the maintenance of current information regarding each registered offender.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **May 27, 1997 1:00 P.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ferrell	ADC
Nancy Kirschoffer	DOJ - SBI
Jane B. Gray	DOJ
George Reed	NC Council of Churches
Anne L. Edwards	British Brewers Comm. on Pub. Aff. NC
Molly Underhill	Monroe Enquirer Journal
David Ferrell	Hoyle, McNamara, Caldwell, McElroy & Cutler P.A.
Richard O'Brien	PEFNC
Eddie Caldwell	NC Sheriffs Assn / NC Law Enf Off Assn
Sandy Sands	NCSOA
Joseph Ross	ACLU
Tony Thomas	Clerk of Superior Court
Ken Eudy	Capitol Strategies
Jimmy Jo Bain	Smith Anderson
Butch Gunnells	NC Soft Drink Assoc.
Andy Ellen	NC Farm Bureau
Rob	NCAE
Tommy Harrelson	Hunton & Long
Steve Keene	NC Med. Soc.

MINUTES
HOUSE JUDICIARY II COMMITTEE

June 3, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on June 3, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Bowie Cansler, Culpepper, Decker, Gardner, Goodwin, Hackney, Hensley, McMahan, Redwine, Russell, Sutton, Weatherly, Wilkins, and C. Wilson. A list of visitors is attached.

The following bill was discussed:

SB-676 SEX OFFENDER LAWS/FEDERAL COMPLIANCE

Senator Odom provided members with a Memorandum of Differences Between SB-676 and HB-930 (3rd Committee Substitute). A copy of the handout is attached.

Representative Decker was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment and roll call vote are attached.

Representative Decker was recognized to send forth a second amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Decker was recognized to send forth a third amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

No action was taken on SB-676.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

North Carolina General Assembly
Legislative Services Office

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May 29, 1997

MEMORANDUM OF DIFFERENCES BETWEEN SB676 AND HB930 (3RD COM SUB

SB 676	HB 930	Comments
p. 3, lines 35-40 The definition of "Sexually violent predator contains the definition of what is a predatory act.	p. 3, lines 14-17 Has a separate definition for the term "predatory". The definition of "sexually violent predator" on p. 4, lines 27-31 does not contain the some of the Senate language.	The Senate felt that it was more grammatically correct to include this definition within the definition of "sexually violent predator".
p. 4, line 27 The senate bill does not contain the amendment adopted by this committee.	p. 5, lines 28-29 New underline language added by this committee further defining when a person who moves to this State must register.	The amendment to the House version could easily be inserted into the Senate version with no conflict with other provisions of the Senate Bill and no effect on whether or not the bill complies with Federal Law.
p. 6, lines 5-14 The Senate bill adds language requiring the Sheriff to make reasonable attempts to verify the residence of the registered offender when the address verification form is returned to the Sheriff as undeliverable	p. 7, lines 26-31 The House bill does not have similar language.	The language in the Senate version simply clarifies further the process of address verification and has no effect on whether or not the bill complies with Federal Law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

p. [redacted] 15-43 through p. 7, lines 1-5 C[redacted] existing law regarding who may access the registration information and what information may be copied to allow any citizen to see the name, sex, address, physical description, picture, conviction date, offense for which registration was required, the sentence imposed as a result of the conviction and registration status. Also allows any citizen to obtain a copy of all or part of the county registry by submitting a written request to the Sheriff.	p. 7, lines 32-44 through p. 8, lines 1-19 The house version retains the existing law with the exception of providing that the Sheriff shall release any other relevant information necessary to protect the public concerning a specific person. The existing law allows certain groups, upon written request, to obtain a copy of the entire registry except the photograph which may be viewed only. individuals may obtain certain information regarding an offender's registration status by providing the Sheriff with the name and physical description of the offender and any other relevant information known to the requester.	Both the House and Senate version would comply with Federal Law. The Federal Law only requires that "The designated State law enforcement agency and any local law enforcement agency authorized by the State agency shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released". The Federal Law provides no direction to the States as to how this is to be done, and the various States have chosen different methods of complying.
p. 9, lines 1-13 The Senate bill provides for the release of copies of photographs of the offender as well as access to the directory via the internet.	p. 10, lines 35-44 through p. 11, lines 1-6 The House version does not allow the release of copies of photographs or provide for the placement of the directory on the internet	Either version would comply with Federal Law.
p. [redacted] 25-31 Senate bill provides for the board of experts chosen by DOC to be composed of at least 2 people who are experts in the field of the behavior and treatment of sexual offenders, and who are also experts in the diagnosis of mental abnormalities and personality disorders.	p. 11, lines 21-32 House bill provides for the board to be composed of at least 2 people who are experts in the field of the behavior and treatment of sexual offenders, one of whom is selected from a panel of experts in those fields provided by the NC Medical Society and not employed with DOC or employed on a full-time basis with any other state agency.	Either version would comply with Federal Law.
p. 10, lines 41-44 through p. 11, lines 1-4 This section provides for the development of a program for electronic access to the registry via the internet to be funded by funds currently available in the Department of Justice's budget.	The House version has no corresponding section.	

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 3RD

H. B. No. _____ DATE 6-3-97

S. B. No. 676 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) DECKER
Sen.)

moves to amend the bill on page 3, lines 38-40

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"engage in sexually violent offenses."

SIGNED M Decker

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Decker Amendment pg. 3, lines 38-40

ROLL CALL VOTE

9 YES 6 NO = _____(TOTAL)

HB# _____
SB# 676

HOUSE STANDING COMMITTEE ON F-II

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
✓		BADDOUR		✓	WILKINS
		BERRY	✓		WILSON, C.
✓		BOWIE			NEELY
✓		CANSLER			
		CREECH			
✓		CULPEPPER			
✓		DECKER			
		GARDNER			
	✓	GOODWIN			
	✓	HACKNEY			
	✓	HENSLEY			
✓		KISER			
✓		McMAHAN			
		NESBITT			
	✓	REDWINE			
		RUSSELL			
	✓	SAUNDERS			
		SHUBERT			
		SUTTON			
✓		WEATHERLY			
			Ex officio Members		
		WOOD			Speaker Pro Tem
		DAUGHTRY			Majority Leader
		HOWARD			Majority Whip

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 3RD

H. B. No. _____ DATE _____

S. B. No. 676 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) DECKER
Sen.)

moves to amend the bill on page 4, line 27

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"shall register within 10 days of establishing residence in this ~~State.~~ State, or whenever the person has been present in the State for 15 days, whichever comes first. If the person is a",

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. 3RD

H. B. No. _____ DATE 6-3-97

S. B. No. 676 Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) DECKER
)
Sen.)

1 moves to amend the bill on page 6, line 9

2 ( ) WHICH CHANGES THE TITLE

3 by deleting "reasonable attempts" and inserting

4 "a reasonable attempt".

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SIGNED M. Decker

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **June 3, 1997 10:00 A.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Williamson	NC DOT Raleigh
Grayson Kelley	Atty Gen - DOT
BERRY JONKINS	NC DOT
Stacey Parker	intern - Sen. Odom
Ginger L. Bish	Mothers Against Molestors Morganton, NC
Cynthia French	Mothers Against Molestors Morganton NC
Shannon Bullock	Governor's Highway Safety
Martha Rivergood	YAIO / DOA
LESLIE GERNON	YAIO / DOA
BOB HABEMANN	City of Charlotte
Boyd Cauble	" " "
Randy Jones	" " "
Ken Eudy	Capitol Strategies
Stephen Harris	Carolina Gazette
Don McConnaughey	NCRMA
Andrew Clute	John Locke Foundation
Josh McAlister	Duke Power
Natalie Haskins	Charlotte Chamber
Nancy Kieserhofer	DOJ - SBI
Eddie Caldwell	NC Sheriffs Assn / NC Law Enf Officers Assn
JoAnn Lamm	DHR/DSS
Douglas Blum	United Way of NC / Covenant with NC's Children
Thomas V. Bennett	NCCFTF
Curt Williams	Governor's Office
ELBIS HAWKINS	NCLM
Andy Romanet	NCLM
John Rustin	NCFPC

Katherine Davis	Electricities
Allie Garland	Electricities
Bill Eddleman	NCBA
Jenny Swanson	DMV
Rick Ludwig	Gov Crime Comm'n
David Ferrell	Hefner, McNamara, Caldwell, McElroy + Cutler PA
Peggy Mahan	gpa
Brad Kramer	NCATL
Paul B. Davison	PENC
Lisa Hamill	RCNC
FRED TAYLOR	WRAL-TV
P. Bey Hall	General Statutes Commission

MINUTES
HOUSE JUDICIARY II COMMITTEE

June 3, 1997 1:00 P.M.

The North Carolina House of Representatives Judiciary II Committee met on June 3, 1997, at 1:00 P.M. in Room 421 of the Legislative Office Building. Representative Kiser, Vice-Chairman, called the meeting to order.

Those in attendance were Representatives Kiser, Baddour, Cansler, Culpepper, Decker, Hackney, Hensley, McMahan, Nesbitt, Redwine, Russell, Saunders, Sutton, Weatherly, Wilkins and C. Wilson. A list of visitors is attached.

The following bills were discussed:

HB-1229 DARKER VEHICLE WINDOW FOR LUPUS
SB-741 CHARLOTTE PHOTO ENFORCEMENT

Representative Culpepper was recognized to explain HB-1229 and answer questions of committee members. A copy of the bill and bill explanation prepared by Mr. Tim Hovis, Committee Counsel, are attached.

Representative Hackney was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Redwine moved the amendment be incorporated into a committee substitute, 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; motion passed.

Representative McMahan was recognized to explain SB-741 and answer questions of committee members. A copy of the bill and bill explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Mr. Randy Jones, City of Charlotte, Department of Transportation, answered questions of committee members.

No action was taken on SB-741.

The meeting was adjourned at 1:45 P.M.

Respectfully submitted

Representative Charles B. Neely, Jr., Chairman

Betty Harrison

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 1

HOUSE BILL 1229

Short Title: Darker Vehicle Window For Lupus. (Public)

Sponsors: Representatives Culpepper; and Culp.

Referred to: Judiciary II, if favorable, Finance.

May 15, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW A PERSON WHO SUFFERS FROM LUPUS TO HAVE A DARKER VEHICLE WINDOW THAN IS ALLOWED UNDER THE WINDOW TINTING LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-127 reads as rewritten:

"**§ 20-127. Windows and windshield wipers.**

(a) Windshield Wipers. -- A vehicle that is operated on a highway and has a windshield must have a windshield wiper to clear rain or other substances from the windshield in front of the driver of the vehicle and the windshield wiper must be in good working order. If a vehicle has more than one windshield wiper to clear substances from the windshield, all the windshield wipers must be in good working order.

(b) Window Tinting Restrictions. -- A window of a vehicle that is operated on a highway or a public vehicular area must comply with this subsection. The windshield of the vehicle may be tinted only along the top of the windshield and the tinting may not extend more than five inches below the top of the windshield or below the AS1 line of the windshield, whichever measurement is longer. Any other window of the vehicle may be tinted in accordance with the following restrictions:

(1) The total light transmission of the tinted window must be at least thirty-five percent (35%). A vehicle window that, by use of a light meter approved by the Commissioner, measures a total light transmission of more than thirty-two percent (32%) is conclusively presumed to meet this restriction.

(2) The light reflectance of the tinted window must be twenty percent (20%) or less.

(3) Tinted film or another material used to tint the window must be nonreflective and must be a color other than red, yellow, or amber.

(c) Tinting Exceptions. -- The window tinting restrictions in subsection (b) of this section apply without exception to the windshield of a vehicle. The window tinting restrictions in subdivisions (b)(1) and (b)(2) of this section do not apply to any of the following vehicle windows:

(1) A window of an excursion passenger vehicle, as defined in G.S. 20-4.01(27)a.

(2) A window of a for-hire passenger vehicle, as defined in G.S. 20-4.01(27)b.

(3) A window of a common carrier of passengers, as defined in G.S. 20-4.01(27)c.

(4) A window of a motor home, as defined in G.S. 20-4.01(27)d2.

(5) A window of an ambulance, as defined in G.S. 20-4.01(27)f.

(6) The rear window of a property-hauling vehicle, as defined in G.S. 20-4.01(31).

(7) A window of a limousine.

(8) A window of a law enforcement vehicle.

(9) A window of a multipurpose vehicle that is behind the driver of the vehicle. A multipurpose vehicle is a passenger vehicle that is designed to carry 10 or fewer passengers and either is constructed on a truck chassis or has special features designed for occasional off-road operation. A minivan and a pickup truck are multipurpose vehicles.

(10) A window of a vehicle that is registered in another state and meets the requirements of the state in which it is registered.

(11) A window of a vehicle for which the Division has issued a medical exception permit under subsection (f) of this section.

(d) Violations. -- A person who does any of the following commits a misdemeanor of the class set in G.S. 20-176:

(1) Applies tinting to the window of a vehicle that is subject to a safety inspection in this State and the resulting tinted window does not meet the window tinting restrictions set in this section.

(2) Drives on a highway or a public vehicular area a vehicle that has a window that does not meet the window tinting restrictions set in this section.

(e) Defense. -- It is a defense to a charge of driving a vehicle with an unlawfully tinted window that the tinting was removed within 15 days after the charge and the window now meets the window tinting restrictions. To assert this defense, the person charged must produce in court, or submit to the prosecuting attorney before trial, a certificate from the Division of Motor Vehicles or the Highway Patrol showing that the window complies with the restrictions.

(f) Medical Exception. -- A person who suffers from systemic lupus erythematosus may obtain a medical exception permit. To obtain a permit, an applicant must complete an application form provided by the Division, pay the application fee, and give the Division a statement of the applicant's medical condition that is signed by a physician. The application fee is twenty dollars ($20.00). A permit issued under this subsection must be carried in each vehicle to which it applies when the vehicle is driven on a highway."

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

North Carolina General Assembly
Legislative Services Office

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June 2, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: House Bill 1229—Darker Vehicle Window for Lupus (Culpepper)

House Bill 1229 makes changes to Chapter 20 of the General Statutes to allow persons who suffer from lupus to have darker motor vehicle windows than is currently allowed by law.

The bill amends G.S. 20-127 to add to the list of exceptions from window tinting restrictions vehicles for which a medical exception permit for lupus has been issued. The bill allows persons who suffer from systemic lupus erythematosus to obtain the permit upon completion of of an application form, payment of an application fee of $20.00, and submission of a statement of the applicant's medical condition signed by a physician. The permit must be carried in the vehicle when the vehicle is driven on a highway.

The act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1229 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Hackney
Sen.)

1 moves to amend the bill on page _____, line _____
2 ( ) WHICH CHANGES THE TITLE
3 by adding after the word "erythematosus"
4 the following "or other ~~xxxxxx~~ medical condition
5 requiring tinting"
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SIGNED Hack

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
H.B. 1229 A BILL TO BE ENTITLED AN ACT TO ALLOW A PERSON WHO SUFFERS FROM LUPUS TO HAVE A DARKER VEHICLE WINDOW THAN IS ALLOWED UNDER THE WINDOW TINTING LAWS.

☐ 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, 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. (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

H D

HOUSE BILL 1229
Proposed Committee Substitute H1229-PCS2345

Short Title: Darker Vehicle Window for Lupus. (Public)

Sponsors:

Referred to:

May 15, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW A PERSON WHO SUFFERS FROM LUPUS OR OTHER MEDICAL CONDITIONS REQUIRING TINTING TO HAVE A DARKER VEHICLE WINDOW THAN IS ALLOWED UNDER THE WINDOW TINTING LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-127 reads as rewritten:

"**§ 20-127. Windows and windshield wipers.**

(a) Windshield Wipers. -- A vehicle that is operated on a highway and has a windshield must have a windshield wiper to clear rain or other substances from the windshield in front of the driver of the vehicle and the windshield wiper must be in good working order. If a vehicle has more than one windshield wiper to clear substances from the windshield, all the windshield wipers must be in good working order.

(b) Window Tinting Restrictions. -- A window of a vehicle that is operated on a highway or a public vehicular area must comply with this subsection. The windshield of the vehicle may be tinted only along the top of the windshield and the tinting may not extend more than five inches below the top of the windshield or below the AS1 line of the windshield, whichever measurement is longer. Any other window of the vehicle may be tinted in accordance with the following restrictions:

(1) The total light transmission of the tinted window must be at least thirty-five percent (35%). A vehicle window that, by use of a light meter approved by the Commissioner, measures a total light

transmission of more than thirty-two percent (32%) is conclusively presumed to meet this restriction.

(2) The light reflectance of the tinted window must be twenty percent (20%) or less.

(3) Tinted film or another material used to tint the window must be nonreflective and must be a color other than red, yellow, or amber.

(c) Tinting Exceptions. -- The window tinting restrictions in subsection (b) of this section apply without exception to the windshield of a vehicle. The window tinting restrictions in subdivisions (b)(1) and (b)(2) of this section do not apply to any of the following vehicle windows:

(1) A window of an excursion passenger vehicle, as defined in G.S. 20-4.01(27)a.

(2) A window of a for-hire passenger vehicle, as defined in G.S. 20-4.01(27)b.

(3) A window of a common carrier of passengers, as defined in G.S. 20-4.01(27)c.

(4) A window of a motor home, as defined in G.S. 20-4.01(27)d2.

(5) A window of an ambulance, as defined in G.S. 20-4.01(27)f.

(6) The rear window of a property-hauling vehicle, as defined in G.S. 20-4.01(31).

(7) A window of a limousine.

(8) A window of a law enforcement vehicle.

(9) A window of a multipurpose vehicle that is behind the driver of the vehicle. A multipurpose vehicle is a passenger vehicle that is designed to carry 10 or fewer passengers and either is constructed on a truck chassis or has special features designed for occasional off-road operation. A minivan and a pickup truck are multipurpose vehicles.

(10) A window of a vehicle that is registered in another state and meets the requirements of the state in which it is registered.

(11) A window of a vehicle for which the Division has issued a medical exception permit under subsection (f) of this section.

(d) Violations. -- A person who does any of the following commits a misdemeanor of the class set in G.S. 20-176:

(1) Applies tinting to the window of a vehicle that is subject to a safety inspection in this State and the resulting tinted window does not meet the window tinting restrictions set in this section.

(2) Drives on a highway or a public vehicular area a vehicle that has a window that does not meet the window tinting restrictions set in this section.

(e) Defense. -- It is a defense to a charge of driving a vehicle with an unlawfully tinted window that the tinting was removed within 15 days after the charge and the window now meets the window tinting restrictions. To assert this defense, the person charged must produce in court, or submit to the prosecuting attorney before trial, a

certificate from the Division of Motor Vehicles or the Highway Patrol showing that the window complies with the restrictions.

(f) Medical Exception. -- A person who suffers from systemic lupus erythematosus or other medical conditions requiring tinting may obtain a medical exception permit. To obtain a permit, an applicant must complete an application form provided by the Division, pay the application fee, and give the Division a statement of the applicant's medical condition that is signed by a physician. The application fee is twenty dollars ($20.00). A permit issued under this subsection must be carried in each vehicle to which it applies when the vehicle is driven on a highway."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 741
Judiciary Committee Substitute Adopted 4/28/97

Short Title: Charlotte Photo Enforcement. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE LOCAL GOVERNMENTS TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-300.1. Use of traffic control photographic systems. --**

(a) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(b) Any traffic control photographic system or any device which is a part of that system, as described in subdivision (a) of this section, deployed on a street or highway which is a part of the State highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system deployed on a municipal street shall meet standards established by the municipality and shall be consistent with any standards set by the Department of Transportation.

(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-141, 20-141.1, or 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 21 days after notification of the violation, furnishes the officials or agents of the municipality which issued the citation:

a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or

b. An affidavit stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle.

(3) The owner of the vehicle shall be issued a citation which shall clearly state the manner in which the violation may be challenged, and the owner shall comply with the directions on the citation. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation, and shall be subject to a civil penalty not to exceed one hundred dollars ($100.00). The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(4) The municipality shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section."

Section 2. This act applies to the City of Charlotte only.

Section 3. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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

[redacted]. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
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(919) 733-2578

June 3, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: Senate Bill 741 - Charlotte Photo Enforcement

Senate Bill 741 would allow the City of Charlotte to adopt a local ordinance to enforce traffic offenses such as speeding and running a red light through the use of a "traffic control photographic system". A traffic control photographic system is an electronic system consisting of a photographic, video or electronic camera and a vehicle sensor which works in conjunction with a traffic control device to automatically produce photographs, video or digital images of vehicles violating these types of statutes or ordinances.

The owner of a vehicle photographed would be responsible for the violation, unless they can furnish evidence that at the time of the offense, the vehicle was under the care, custody or control of another person. The violation is noncriminal and a civil penalty of $50 shall be assessed. The citation will be mailed to the owner, with no personal service required. If the owner fails to provide evidence or pay the civil penalty, they waive the right to contest the responsibility and will be subject to a civil penalty not to exceed $100. The City must institute a nonjudicial administrative hearing to review objections to citations or penalties issued.

This act applies only to the City of Charlotte and is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **June 3, 1997 1:00 P.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Myra J. M.	NASW-NC
Jennifer Murray	NASW
Susan Coan	Self
Boyd Caudle	City of Charlotte
Bob Hagemann	"
Randy Jones	"
Martha Livengood	YAIO/DOA
Lucie Grimm	YAIO/DOA
John Rose	NCFPC
Shannon Bullock	GHRP
Stephen Harris	Gaston Gazette
Nancy Kiesewhofer	DOJ - SBI
Natalie Hopkins	Charlotte Chamber
Ann Upchurch	CP&L
Jennie Jones	NCBA
Charles Cromer	NCATL
George Reed	NC Council of Churches
Grayson Kelley	AG-DOT
Berry Jenkins	NC DOT
John Williamson	NC DOT

MINUTES
HOUSE JUDICIARY II COMMITTEE

June 10, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on June 10, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Kiser, Vice-Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Berry, Cansler, Decker, Gardner, Goodwin, Hensley, McMahan, Nesbitt, Redwine, Russell, Saunders, Sutton, Weatherly, Wilkins and C. Wilson. A list of visitors is attached.

The following bills were discussed:

SB-228 CHILD ABUSE REPORT PENALTY
SB-741 CHARLOTTE PHOTO ENFORCEMENT

Senator Winner was recognized to explain SB-228 and answer questions of committee members. A copy of the bill and bill explanation prepared by Susan Hayes and Brenda Carter, Staff Attorneys, are attached.

Representative Kiser appointed the following subcommittee for SB-228

Representative Baddour, Chair
Representative Gardner
Representative Culpepper
Representative Berry
Representative Russell
Representative Goodwin

No action was taken on SB-228.

Representative McMahan was recognized to explain SB-741 and answer questions of committee members. A copy of the bill and bill explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Representative McMahan was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative McMahan was recognized to send forth a second amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Cansler moved the amendments be incorporated into a committee substitute bill, with a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill; motion passed.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 228*
Judiciary Committee Substitute Adopted 4/29/97

Short Title: Child Abuse/No Report Misdem. (Public)

Sponsors:

Referred to:

February 24, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPOSE A CRIMINAL PENALTY FOR THE WILLFUL FAILURE TO REPORT CHILD ABUSE, AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-543 reads as rewritten:

"**§ 7A-543. Duty to report child abuse, neglect, dependency, or death due to maltreatment.**

(a) Any person or institution who has actual knowledge or has cause to suspect that any juvenile is abused, neglected, or dependent, as defined by G.S. 7A-517, or has died as the result of maltreatment, shall report the case of that juvenile to the Director of the Department of Social Services in the county where the juvenile resides or is found. The report may be made orally, by telephone, or in writing. The report shall include information as is known to the person making it including the name and address of the juvenile; the name and address of the juvenile's parent, guardian, or caretaker; the age of the juvenile; the names and ages of other juveniles in the home; the present whereabouts of the juvenile if not at the home address; the nature and extent of any injury or condition resulting from abuse, neglect, or dependency; and any other information which the person making the report believes might be helpful in establishing the need for protective services or court intervention. If the report is made orally or by telephone, the person making the report shall give the person's name, address, and telephone number. Refusal of the person making the

report to give a name shall not preclude the Department's investigation of the alleged abuse, neglect, dependency, or death as a result of maltreatment.

(b) Any person who knowingly and willfully fails to make a report required by subsection (a) of this section shall be guilty of a Class 3 misdemeanor if:

(1) The person has actual knowledge that a juvenile has been physically abused; or

(2) The person has a custodial, caregiving or professional relationship with a juvenile, and has actual knowledge or cause to suspect that the juvenile has been physically abused or has died due to maltreatment.

(c) Any person who knowingly and willfully prevents another from making a report required by subsection (a) of this section shall be guilty of a Class 3 misdemeanor.

(d) Upon receipt of any report of child sexual abuse in a day care facility or day care home, the Director shall notify the State Bureau of Investigation within 24 hours or on the next work day. If child sexual abuse in a day care facility or day care home is not alleged in the initial report, but during the course of the investigation there is reason to suspect that child sexual abuse has occurred, the Director shall immediately notify the State Bureau of Investigation. Upon notification that child sexual abuse may have occurred in a day care facility or day care home, the State Bureau of Investigation may form a task force to investigate the report."

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

North Carolina General Assembly
Legislative Services Office

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(919) 733-2578

May 27, 1997

MEMORANDUM

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes and Brenda J. Carter, Staff Attorneys

RE: **SENATE BILL 228 - CHILD ABUSE/NO REPORT MISDEMEANOR - 2nd Edition**
Senator Winner

Senate Bill 228 is a recommendation of the Child Fatality Task Force.

Under current law, any person or institution who has cause to suspect that any juvenile is abused, not receiving proper care or supervision, or has died as the result of mistreatment, is required to report that fact to the DSS where the juvenile resides. Senate Bill 228 would make it a Class 3 misdemeanor for a person who has actual knowledge that a child has been physically abused to fail to report the abuse. It would also be a Class 3 misdemeanor for a person who has a custodial, caregiving or professional relationship with a juvenile to fail to report actual *or suspected* physical abuse or death due to maltreatment. Any person who knowingly and willfully prevents another person from making a required report would be guilty of a Class 3 misdemeanor.

A Class 3 misdemeanor, assuming no prior convictions, is punishable by a fine up to $200 and/or 1-10 days community punishment.

The bill would become effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 741
Judiciary Committee Substitute Adopted 4/28/97

Short Title: Charlotte Photo Enforcement. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE LOCAL GOVERNMENTS TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-300.1. Use of traffic control photographic systems. --**

(a) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(b) Any traffic control photographic system or any device which is a part of that system, as described in subdivision (a) of this section, deployed on a street or highway which is a part of the State highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system deployed on a municipal street shall meet standards established by the municipality and shall be consistent with any standards set by the Department of Transportation.

(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-141, 20-141.1, or 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 21 days after notification of the violation, furnishes the officials or agents of the municipality which issued the citation:

a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or

b. An affidavit stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle.

(3) The owner of the vehicle shall be issued a citation which shall clearly state the manner in which the violation may be challenged, and the owner shall comply with the directions on the citation. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation, and shall be subject to a civil penalty not to exceed one hundred dollars ($100.00). The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(4) The municipality shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section."

Section 2. This act applies to the City of Charlotte only.

Section 3. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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(919) 733-2578

June 3, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: Senate Bill 741 - Charlotte Photo Enforcement

Senate Bill 741 would allow the City of Charlotte to adopt a local ordinance to enforce traffic offenses such as speeding and running a red light through the use of a "traffic control photographic system". A traffic control photographic system is an electronic system consisting of a photographic, video or electronic camera and a vehicle sensor which works in conjunction with a traffic control device to automatically produce photographs, video or digital images of vehicles violating these types of statutes or ordinances.

The owner of a vehicle photographed would be responsible for the violation, unless they can furnish evidence that at the time of the offense, the vehicle was under the care, custody or control of another person. The violation is noncriminal and a civil penalty of $50 shall be assessed. The citation will be mailed to the owner, with no personal service required. If the owner fails to provide evidence or pay the civil penalty, they waive the right to contest the responsibility and will be subject to a civil penalty not to exceed $100. The City must institute a nonjudicial administrative hearing to review objections to citations or penalties issued.

This act applies only to the City of Charlotte and is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2ND

H. B. No. _____ DATE 6-3-97

S. B. No. 741 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) McMAHAN
Sen.)

moves to amend the bill on page 1, line 22

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"subsection (a) of this section. Notwithstanding the provisions of G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-158 at a location at which a traffic control photographic system is in operation shall not be an infraction. An ordinance authorized by this subsection shall".

SIGNED _____

ADOPTED 6-10-97 FAILED _____ TABLED _____

FORM

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2ND

H. B. No. _____ DATE 6-3-97

S. B. No. 741 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) McMAHAN
Sen.)

moves to amend the bill on page 1, lines 20-21

( ) WHICH CHANGES THE TITLE

by deleting "G.S. 20-141, 20-141.1, or 20-158" and inserting "G.S. 20-158".

and on page 1, line 18

by deleting "deployed" and inserting "installed"

SIGNED _____

ADOPTED 6-10-97 FAILED _____ TABLED _____

FOR DA

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

X Committee Substitute for
S.B. 741 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE LOCAL GOVERNMENTS TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.

☐ 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, 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 D

SENATE BILL 741
Judiciary Committee Substitute Adopted 4/28/97
Proposed House Committee Substitute S741-PCSA759

Short Title: Charlotte Photo Enforcement. (Local)

Sponsors:

Referred to:

April 7, 1997

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE LOCAL GOVERNMENTS TO USE PHOTOGRAPHIC IMAGES AS PRIMA FACIE EVIDENCE OF A TRAFFIC VIOLATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-300.1. Use of traffic control photographic systems.**

(a) A traffic control photographic system is an electronic system consisting of a photographic, video, or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control device to automatically produce photographs, video, or digital images of each vehicle violating a standard traffic control statute or ordinance.

(b) Any traffic control photographic system or any device which is a part of that system, as described in subdivision (a) of this section, installed on a street or highway which is a part of the State highway system shall meet requirements established by the North Carolina Department of Transportation. Any traffic control system installed on a municipal street shall meet standards established by the municipality and shall be consistent with any standards set by the Department of Transportation.

(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. Notwithstanding the provisions of G.S. 20-176, in the event that a

municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-158 at a location at which a traffic control photographic system is in operation shall not be an infraction. An ordinance authorized by this subsection shall provide that:

(1) The owner of a vehicle shall be responsible for a violation unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. The owner of the vehicle shall not be responsible for the violation if the owner of the vehicle, within 21 days after notification of the violation, furnishes the officials or agents of the municipality which issued the citation:

a. The name and address of the person or company who leased, rented, or otherwise had the care, custody, and control of the vehicle; or

b. An affidavit stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person who did not have permission of the owner to use the vehicle.

(2) A violation detected by a traffic control photographic system shall be deemed a noncriminal violation for which a civil penalty of fifty dollars ($50.00) shall be assessed, and for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle.

(3) The owner of the vehicle shall be issued a citation which shall clearly state the manner in which the violation may be challenged, and the owner shall comply with the directions on the citation. The citation shall be processed by officials or agents of the municipality and shall be forwarded by personal service or first-class mail to the address given on the motor vehicle registration. If the owner fails to pay the civil penalty or to respond to the citation within the time period specified on the citation, the owner shall have waived the right to contest responsibility for the violation, and shall be subject to a civil penalty not to exceed one hundred dollars ($100.00). The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(4) The municipality shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section."

Section 2. This act applies to the City of Charlotte only.

Section 3. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

June 10, 1997 10:00 A.M. — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
George Reed	NC Council of Churches
Anne L. Edwards	Christian Science Com. on Publication for N.C.
Thomas V. Bennett	N.C. Child Fatality Task Force
Steve Allison	" " " " "
JoAnn Lamm	NC Div Social Services
Jane O. Gray	DOJ
Mary Kiesenhofer	DOJ - SBI
Alex Carter	Carter & Assoc
Shannon Bullock	GHSP
Leslie Stevens	YAID
Martha Livengood	YAID/DOA
MIKE TAYLOR	PRIVATE CIT.; BURLINGTON, N.C.
Pam Seamans	United Way of NC, Covenant w/NC's Children
Doug Blum	United Way of NC, Covenent
BERRY JONKINN	NCDOT
Grayson Kelley	AG - DOT
John Williamson	NCDOT
John Quincy Adams	Boston
Andy Romanet	N.C.L.M.
John Rust	NCFPC
Paula A. Wolf	Covenant with NC's Children
Katherine Davis	Electricities of NC
Alice Garland	"
Natalie Haskins	Charlotte Chamber
Boyd Cauble	City of Charlotte
Deborah Ross	
Vincent J. McCausland	NBC-17
OBIE VARNADO	NBC-17

Gene Upchurch	CP&L
RW Kaylor	Kaylor Law Firm
Daniel D	PSU student
Jim Bode	Bode, Call & Stroupe

MINUTES
HOUSE JUDICIARY II COMMITTEE

June 12, 1997 10:00 A.M.

The North Carolina House of Representatives Judiciary II Committee met on June 12, 1997, at 10:00 A.M. in Room 421 of the Legislative Office Building. Representative Kiser, Vice-Chairman, called the meeting to order.

Those in attendance were Representatives Kiser, Baddour, Bowie, Cansler, Creech, Culpepper, Decker, Gardner, Goodwin, Hackney, Hensley, McMahan, Redwine, Sounder, Shubert, and Sutton. A list of visitors is attached.

The following bills were discussed:

SB-667 AMEND STALKING LAW
SB-992 NC BOXING COMMISION

Representative Morris was recognized to explain SB-667 and answer questions of committee members. A copy of the bill and bill explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Senator Reeves and Ms. Roz Savitt, NC Coalition Against Domestic Violence, answered questions of committee members.

Representative Hackney was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Bowie moved the amendment be incorporated into a committee substitute bill, with a favorable report as to House committee substitute bill, unfavorable as to original bill; motion passed.

Representative Culpepper was recognized to send forth a proposed committee substitute for SB-992 and answer questions of committee members. Representative Goodwin moved the proposed committee substitute be adopted for purpose of discussion; motion passed. A copy of the bill, bill explanation prepared by Tim Hovis and Linwood Jones, Staff Attorneys, and the proposed committee substitute are attached.

Representative Baddour was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Sutton was recognized to send forth an amendment. No action was taken on this amendment. A copy of the amendment is attached.

No action was taken on SB-992.

The meeting was adjourned at 10:50 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 667

Short Title: Amend Stalking Law. (Public)

Sponsors: Senators Reeves; Ballantine, Conder, Cooper, Foxx, Jordan, Lee, Lucas, McDaniel, Miller, Odom, Soles, Warren, Wellons, and Winner.

Referred to: Judiciary.

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CRIMINAL OFFENSE OF STALKING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-277.3 reads as rewritten:

"**§ 14-277.3. Stalking.**

(a) Offense. -- A person commits the offense of stalking if the person willfully on more than one occasion follows or is in the presence of another person without legal ~~purpose:~~ purpose and

~~(1)~~ ~~With~~ with the intent to cause emotional distress by placing that person in reasonable fear of death or bodily ~~injury;~~ injury.

~~(2) After reasonable warning or request to desist by or on behalf of the other person; and~~

~~(3) The acts constitute a pattern of conduct over a period of time evidencing a continuity of purpose.~~

(b) Classification. -- A violation of this section is a ~~Class 2~~ Class 1 misdemeanor. A person who commits the offense of stalking when there is a court order in effect prohibiting similar behavior is guilty of a ~~Class 1~~ Class A1 misdemeanor. A second or subsequent conviction for stalking occurring within five years of a prior conviction of the same defendant is punishable as a Class I 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

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

E[illegible] W. Robinson, Director
Administrative Division
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16 W. Jones Street
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Gerry F. Cohen, Director
Bill Drafting Division
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Thomas L. Covington, Director
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Raleigh, NC 27603-5925
(919) 733-2578

June 12, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: Senate Bill 667- Amend Stalking Law

Senate Bill 667 amends G.S. 14-277.3 to redefine the criminal offense of stalking as "willfully on more than one occasion following or being in the presence of another person without legal purpose and with the intent to cause emotional distress by placing that person in reasonable fear of death or bodily injury."

The bill removes the current requirements that the actions occur after reasonable warning to desist and that the actions constitute a pattern of conduct over a period of time evidencing a continuity of purpose.

The bill makes the offense a Class 1 misdemeanor (currently Class 2), or if a court order is in effect prohibiting similar behavior, a Class A1 misdemeanor (currently Class 1).

This act is 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

(Please type or use ballpoint pen)

EDITION No. 1ST

H. B. No. _____ DATE 6-12-97

S. B. No. 667 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) HACKNEY
Sen.)

moves to amend the bill on page 1, line 9-10

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"~~With~~ With the intent to cause death or bodily injury or with the intent to cause emotional distress by placing that person in reasonable fear of death or bodily ~~injury;~~ injury.

SIGNED _____

ADOPTED 6-12-97 FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 667
Proposed House Committee Substitute S667-PCS1832

Short Title: Amend Stalking Law. (Public)

Sponsors:

Referred to:

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CRIMINAL OFFENSE OF STALKING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-277.3 reads as rewritten:

"**§ 14-277.3. Stalking.**

(a) Offense. -- A person commits the offense of stalking if the person willfully on more than one occasion follows or is in the presence of another person without legal ~~purpose:~~ purpose and

~~(1)~~ ~~With~~ with the intent to cause death or bodily injury or with the intent to cause emotional distress by placing that person in reasonable fear of death or bodily ~~injury;~~ injury.

~~(2) After reasonable warning or request to desist by or on behalf of the other person; and~~

~~(3) The acts constitute a pattern of conduct over a period of time evidencing a continuity of purpose.~~

(b) Classification. -- A violation of this section is a ~~Class 2~~ Class 1 misdemeanor. A person who commits the offense of stalking when there is a court order in effect prohibiting similar behavior is guilty of a ~~Class 1~~ Class A1 misdemeanor. A second or subsequent conviction for stalking occurring within five years of a prior conviction of the same defendant is punishable as a Class I felony."

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

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

☐ Committee Substitute for
S.B. 667 A BILL TO BE ENTITLED AN ACT TO AMEND THE CRIMINAL OFFENSE OF STALKING.

☐ 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 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 992

Short Title: NC Boxing Commission. (Public)

Sponsors: Senators Conder and Forrester.

Referred to: Commerce.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS RELATED TO THE NORTH CAROLINA BOXING COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-651 reads as rewritten:

"**§ 143-651. Definitions.**

~~As used in this Article:~~ The following definitions apply in this Article:

(1) ~~'Amateur' means a~~ Amateur. -- A person who is not and has never received or competed for any purse or other article or thing of value for participating in a match.

(2) ~~'Announcer' means any~~ Announcer. -- Any person who engages in the act of announcing a boxing match.

(3) ~~'Boxer' means any~~ Boxer. -- Any person who engages as a participant in a boxing match.

(4) ~~'Boxing match' means a~~ Boxing match. -- A match where the participants engage in the use of full contact boxing techniques (using the fist only), and where the object of a match is to win by decision, knockout (KO), or ~~technical knockout (TKO), and shall include kickboxing matches as defined in this section.~~ technical knockout (TKO).

(5) ~~'Commission' means the~~ Commission. -- The North Carolina State Boxing Commission.

(6) ~~'Contest' means a~~ Contest. -- A boxing match in which the participants strive ~~earnestly~~ to win.

(7) ~~'Contestant' means any~~ Contestant. -- Any person who engages as a participant in a boxing match.

(8) ~~'Exhibition' means a~~ Exhibition. -- A boxing match where the participants display their boxing skills and technique without necessarily striving to win.

(9) ~~'Judge' means a~~ Judge. -- A person who has a vote in determining the winner of any match or contest.

(10) ~~'Kickboxer' means any~~ Kickboxer. -- Any person who engages as a participant in a kickboxing match.

(11) ~~'Kickboxing match' means a~~ Kickboxing match. -- A match in which the participants engage in full contact martial arts fighting techniques using the hands and the feet, and where the object of the match is to win by decision, knockout (KO), or technical knockout (TKO).

(12) ~~'Licensee' means any~~ Licensee. -- Any person, club, corporation, organization, or association to whom a license has been issued pursuant to the provisions of this Article.

(13) ~~'Manager' means any person, including an officer of a corporate manager and a managing partner of a partnership manager,~~ Manager. -- Any person who controls or administers the boxing affairs of any contestant, and who:

a. By contract, agreement, or other arrangement with any person undertakes or has undertaken to represent in any way the interest of the contestant in any professional boxing contest in which the boxer is to participate as a contestant, and is entitled under that contract, agreement, or arrangement to receive monetary or other compensation for his services, without regard to the sources of the ~~compensation, except that the~~ compensation. The term 'manager' shall not be construed to mean any attorney licensed to practice in this State whose participation in the activities is restricted solely to ~~his~~ representing the interests of a professional boxer as ~~his client;~~ a client.

b. Directs or controls the professional boxing activities of any professional ~~boxer; or~~ boxer.

c. Receives or is entitled to receive a percentage of the gross purse or gross income of any professional boxing contest.

(14) ~~'Match' means any~~ Match. -- Any boxing or kickboxing contest or exhibition, and includes any event, engagement, sparring or practice session, show or program where the public is admitted and in which there is intended to be physical contact, whether an exhibition or contest. This definition does not include training or practice sessions when no admission is charged.

(15) ~~'Matchmaker' means a~~ Matchmaker. -- A person through whom matches are arranged for participants and who otherwise assists participants in procuring engagement dates for boxing.

(16) ~~'Natural person' means an~~ Natural person. -- An individual.

(17) ~~'Participant' means any~~ Participant. -- Any person who engages in a match or exhibition and performs as a boxer.

(18) ~~'Person' means an~~ Person. -- An individual, group of individuals, business, corporation, limited liability company, partnership, or any other individual or collective entity.

(19) ~~'Physician' means an~~ Physician. -- An individual licensed to practice medicine in this State.

(20) ~~'Professional' means any person who has received or competed for any purse or other article or thing of value for participating in a boxing match.~~ Professional. -- Any person who is licensed as a professional boxer under the Federal Professional Boxing Safety Act of 1996.

(21) ~~'Promoter' means any person, including an officer of a corporate promoter and a managing partner of a partnership promoter;~~ Promoter. -- Any person who produces, arranges, stages, holds, or gives any match in North Carolina involving a professional participant.

(22) ~~'Referee' means the~~ Referee. -- The official who shall enter and remain in the ring for the duration of a match and shall enforce the rules and maintain order in the ring.

(23) ~~'Ring official' means any~~ Ring official. -- Any person who performs an official function for the duration of a match.

(23a) Sanctioned amateur. -- A person who competes in a sanctioned amateur match.

(23b) Sanctioned amateur match. -- Any boxing or kickboxing match regulated by an amateur sports organization that has been recognized and approved by the North Carolina Boxing Commission.

(24) ~~'Second' means any~~ Second. -- Any person who will work or be present in the corner of a participant for the duration of a match.

(25) ~~'Timekeeper' means any~~ Timekeeper. -- Any person who will operate the clock or watch for the duration of a match for the purpose of keeping the official time of the match.

(25a) Toughman contestant. -- Any person who competes in a toughman event.

(25b) Toughman event. -- An elimination program of matches in which (i) the contestants are not professional boxers, (ii) the finalist receives a purse or other article of value, (iii) the participants engage in the use of full contact boxing techniques, and (iv) the

object of each match is to win by decision, knockout (KO), or technical knockout (TKO).

(26) ~~'Ultimate warrior match' means a~~ Ultimate warrior match. -- A match where the participants use any combination of boxing, kicking, wrestling, hitting, punching, or other combative, contact techniques and which combination of techniques is not specifically authorized by and conducted pursuant to this Article."

Section 2. G.S. 143-652 reads as rewritten:

"**§ 143-652. State Boxing Commission.**

(a) Creation. -- The North Carolina State Boxing Commission is created within the Department of the Secretary of State to regulate in North Carolina live boxing and kickboxing matches, whether ~~professional or~~ professional, amateur, sanctioned amateur, or toughman events, ~~in North Carolina.~~ in which admission is charged for viewing, or the contestants compete for a purse or prize of value greater than twenty-five dollars ($25.00). The Commission shall consist of five voting members and two advisory members. All the members shall be residents of North ~~Carolina.~~ Carolina and shall meet requirements for membership under the Professional Boxing Safety Act of 1996. The members shall be appointed as follows:

(1) One voting member shall be appointed by the Governor for an initial term of two years.

(2) One voting member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121.

(3) One voting member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year.

(4) Two voting members shall be appointed by the Secretary of State. One shall serve for an initial term of three years, and the other shall serve for an initial term of two years.

(5) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

(6) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

The two nonvoting advisory members shall advise the Commission on matters concerning the health and physical condition of boxers and health issues relating to

the conduct of exhibitions and boxing matches. They may prepare and submit to the Commission for its consideration and approval any rules that in their judgment will safeguard the physical welfare of all participants engaged in boxing.

Terms for all members of the Commission except for the initial appointments shall be for three years.

The Secretary of State shall designate which member of the Commission is to serve as chair. A member of the Commission may be removed from office by the Secretary of State for cause. Each member before entering upon the duties of a member shall take and subscribe an oath to perform the duties of the office faithfully, impartially, and justly to the best of the member's ability. A record of these oaths shall be filed in the Department of the Secretary of State.

(b) Vacancies. -- Members shall serve until their successors are appointed and have been qualified. Any vacancy in the membership of the Commission shall be filled in the same manner as the original appointment. Vacancies for members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. A vacancy in the membership of the Commission other than by expiration of term shall be filled for the unexpired term only.

(c) Meetings. -- Meetings of the Commission shall be called by the ~~chair~~ Executive Director, chair, or by any two members of the Commission, and meetings shall be held at least quarterly. Any three voting members of the Commission shall constitute a quorum at any meeting. Action may be taken and motions and resolutions adopted by the Commission at any meeting by the affirmative vote of a majority of the members of the Commission present at a meeting at which a quorum exists. Any or all members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in the meeting by this means is deemed to be present in person at the meeting.

(d) Rule-Making Authority of the Commission. -- The Commission shall have the exclusive authority to approve and issue rules submitted by the Executive Director for the regulation of the conduct, promotion, and performances of live ~~boxing~~ boxing, kickboxing, sanctioned amateur, amateur, and toughman matches and exhibitions in this State. The rules shall be issued pursuant to the provisions of Chapter 150B of the General Statutes and may include, without limitation, the following subjects:

(1) Requirements for issuance of licenses and permits required by this Article.
(2) Regulation of ticket sales.
(3) Physical requirements for contestants, including classification by weight and skill.
(4) Supervision of matches and exhibitions by licensed physicians and referees.
(5) Insurance and bonding requirements.
(6) Compensation of participants and licensees.
(7) Contracts and financial arrangements.

(8) Prohibition of dishonest, unethical, and injurious practices.
(9) Facilities.
(10) Approval of sanctioning amateur sports organizations.
(11) Procedures and requirements for compliance with the Professional Boxing Safety Act of 1996.

(e) Compensation. -- None of the members of the Commission shall receive compensation for serving on the Commission. However, members of the Commission may be reimbursed for their expenses in accordance with the provisions of Chapter 138 of the General Statutes.

(f) Staff Assistance. -- The Secretary of State shall hire a person to serve as Executive Director of the Commission and shall provide staff assistance to the ~~Commission.~~ Executive Director. The Executive Director may train and contract with independent contractors for the purpose of regulating and monitoring events, issuing licenses, collecting fees, and enforcing rules of the Commission. The Executive Director may initiate criminal background checks on persons requesting to work as independent contractors for the Commission or persons applying to be licensed by the Commission."

Section 3. G.S. 143-653 reads as rewritten:

"§ 143-653. Ultimate warrior matches prohibited.

Ultimate warrior matches, whether the participants are professionals or amateurs, are prohibited. No person shall promote, conduct, or engage in ultimate warrior matches. This section shall not preclude ~~boxing and kickboxing as regulated in this Article or~~ professional wrestling."

Section 4. G.S. 143-654 reads as rewritten:

"§ 143-654. Licensing and permitting.

(a) License and Permit Required. -- It is unlawful for any person to act in this State as an announcer, contestant, judge, manager, matchmaker, promoter, referee, timekeeper, or second unless the person is licensed to do so under this Article. It is unlawful for a promoter to present a match in this State unless the promoter has a permit issued under this Article to do so. The Commission has the exclusive authority to issue, deny, suspend, or revoke any license or permit provided for in this Article.

(b) License. -- ~~A license issued under this Article must be renewed annually on or before January 1.~~ All licenses issued under this Article shall be valid only during the calendar year in which they are issued, except contestant licenses shall be valid for one year from the date of issuance. A license for an announcer, contestant, judge, matchmaker, referee, timekeeper, or second shall be issued only to a natural person. A natural person shall not transfer or assign a license or change it into another name. A license for a manager or promoter may be issued to a corporation or partnership; provided, however, that all officers or partners shall submit an application for individual licensure, and only those officers or partners who are licensed shall be entitled to negotiate or sign contracts. The addition of a new officer or partner during the license period shall necessitate the filing of an application for individual licensure by the new officer or partner.

An applicant for a license shall file with the Commission the appropriate nonrefundable fee and any forms, documents, medical examinations, or exhibits the Commission may require in order to properly administer this Article. The information requested shall include the date of birth and social security number of each applicant as well as any other personal data necessary to positively identify the applicant and may include the requirement of verification of any documents the Commission deems appropriate. A person may not participate under a fictitious or assumed name in any match unless the person has first registered the name with the Commission.

(c) Surety Bond. -- An applicant for a promoter's license must submit, in addition to any other forms, documents, or ~~exhibits,~~ exhibits requested by the Commission, a surety bond payable to the Commission for the benefit of any person injured or damaged by (i) the promoter's failure to comply with any provision of this Article or any rules adopted by the Commission or (ii) the promoter's failure to fulfill the obligations of any contract between or among licensees related to the holding of a boxing event. The surety bond shall be issued in an amount to be no less than five thousand dollars ($5,000). The amount of the surety bond shall be negotiable upon the sole discretion of the Commission. All surety bonds shall be upon forms approved by the Secretary of State and supplied by the Commission.

(d) Permit. -- A permit issued to a promoter under this Article is valid for a single match. An applicant for a permit shall file with the Commission the appropriate nonrefundable fee and any forms or documents the Commission may require."

Section 5. G.S. 143-655 reads as rewritten:

"**§ 143-655. Fees; State Boxing Commission Revenue Account.**

(a) License Fees. -- The Commission shall collect the following license fees:

Announcer	$50.00
Contestant	$25.00
Judge	$50.00
Manager	$100.00
Matchmaker	$200.00
Promoter	$300.00
Referee	$50.00
Timekeeper	$50.00
Second	$25.00.

The annual license renewal fees shall ~~not exceed~~ be the same as the initial license fees.

(b) Permit Fees. -- The Commission ~~may establish a fee schedule for permits issued under this Article. The fees may vary depending on the seating capacity of the facility to be used to present a match. The fee may not exceed the following amounts:~~ shall collect the following permit fees:

Seating Capacity	Fee Amount
Less than 2,000	$100.00
2,000 -- 5,000	$200.00
Over 5,000	$300.00.

(c) State Boxing Commission Revenue Account. -- There is created the State Boxing Commission Revenue Account within the Department of the Secretary of State. Monies collected pursuant to the provisions of this Article shall be credited to the Account and applied to the administration of the Article."

Section 6. G.S. 143-656 reads as rewritten:

"§ 143-656. Contracts and financial arrangements.

Any contract between ~~a boxer and any other licensee~~ licensees and ~~any contract involving~~ related to a boxing match or exhibition held or to be held in this State must meet the requirements of administrative rules as set forth by the Commission. Any contract which does not satisfy the requirements of the administrative rules shall be void and unenforceable. All contracts shall be in writing."

Section 7. G.S. 143-657 is repealed.

Section 8. Article 68 of Chapter 143 of the General Statutes is amended by adding the following new section:

"§ 143-657.1. Sanctioned amateur matches.

In addition to the other applicable provisions of this Article, a sanctioned amateur match shall be conducted pursuant to the rules of the sports organization sanctioning the boxing match or exhibition."

Section 9. G.S. 143-658 reads as rewritten:

"§ 143-658. Violations.

(a) Civil Penalties. -- The ~~Commission~~ Executive Director may issue an order against a licensee or other person who willfully violates any provision of this Article, imposing a civil penalty of up to five thousand dollars ($5,000) for a single violation or of up to twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings. No order under this subsection may be entered without giving the licensee or other person 15 days' prior notice and an opportunity for a contested case hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes.

(b) Criminal Penalties. -- A willful violation of any provision of this Article shall constitute a Class 2 misdemeanor. The Secretary of State may refer any available evidence concerning violations of this Article to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings.

The attorneys employed by the Secretary of State shall be available to prosecute or assist in the prosecution of criminal cases when requested to do so by a district attorney and the Secretary of State approves.

(c) Injunction. -- Whenever it appears to the ~~Commission~~ Executive Director that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of this Article or any rule or order hereunder, the ~~Commission~~ Executive Director may ~~in its discretion~~ bring an action in any court of competent jurisdiction to enjoin those acts or practices and to enforce compliance with this Article or any rule or order issued pursuant to this Article.

(d) Enforcement. -- For purposes of enforcing this Article, the Department of the Secretary of State's law enforcement agents have statewide jurisdiction. These law enforcement agents may assist local law enforcement agencies in their investigations

and may initiate and carry out, in coordination with local law enforcement agencies, investigations of violations of this Article. These law enforcement agents have all the powers and authority of law enforcement officers when executing arrest warrants."

Section 10. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Office

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(919) 733-2578

June 10, 1997

MEMORANDUM

TO: House Judiciary II Committee

FROM: Tim Hovis and Linwood Jones, Staff Attorneys

RE: Senate Bill 992 (NC Boxing Commission)

Senate Bill 992 amends the laws governing the North Carolina Boxing Commission and the regulation of boxing in this State.

The bill gives the Boxing Commission the authority to regulate amateur matches and "toughman" events and provides that the Commission's jurisdiction over boxing and boxing-related activities applies to events where admission is charged of spectators or a purse of $25.00 or more is involved. The bill redefines a "professional" boxer as a boxer licensed under the Federal Professional Boxing Safety Act of 1996. The bill also defines sanctioned amateurs, sanctioned amateur matches, toughman events, and toughman contestants.

All of the Boxing Commission members must meet the requirements for membership under the Professional Boxing Safety Act of 1996. The Commission is also authorized to adopt rules that include procedures and requirements for compliance with the federal Boxing Safety Act. The bill authorizes the Executive Director to contract for carrying out monitoring of events and certain other duties. The bill also clarifies that the bond required to be filed by an applicant for a boxing promotor's license is issued for the benefit of any person damaged by the promoter's failure to comply with the boxing laws or by the promoter's failure to fulfill its contractual obligations relating to holding a boxing event.

The bill also authorizes the Executive Director (currently, the Commission) to issue orders for civil penalties and to apply for injunctive relief against those violating the boxing laws.

The bill takes effect upon becoming law.

S992-SMRN-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

North Carolina General Assembly
Legislative Services Office

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June 10, 1997

MEMORANDUM

TO: House Judiciary II Committee

FROM: Tim Hovis and Linwood Jones, Staff Attorneys

RE: Senate Bill 992 (NC Boxing Commission)

Senate Bill 992 amends the laws governing the North Carolina Boxing Commission and the regulation of boxing in this State.

The bill gives the Boxing Commission the authority to regulate amateur matches and "toughman" events and provides that the Commission's jurisdiction over boxing and boxing-related activities applies to events where admission is charged of spectators or a purse of $25.00 or more is involved. The bill redefines a "professional" boxer as a boxer licensed under the Federal Professional Boxing Safety Act of 1996. The bill also defines sanctioned amateurs, sanctioned amateur matches, toughman events, and toughman contestants.

All of the Boxing Commission members must meet the requirements for membership under the Professional Boxing Safety Act of 1996. The Commission is also authorized to adopt rules that include procedures and requirements for compliance with the federal Boxing Safety Act. The bill authorizes the Executive Director to contract for carrying out monitoring of events and certain other duties. The bill also clarifies that the bond required to be filed by an applicant for a boxing promotor's license is issued for the benefit of any person damaged by the promoter's failure to comply with the boxing laws or by the promoter's failure to fulfill its contractual obligations relating to holding a boxing event.

The bill also authorizes the Executive Director (currently, the Commission) to issue orders for civil penalties and to apply for injunctive relief against those violating the boxing laws.

The bill takes effect upon becoming law.

S992-SMRN-001

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S992-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 992
THIS IS A DRAFT 11-JUN-97 18:15:40
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: NC Boxing Commission. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS RELATED TO THE NORTH CAROLINA BOXING COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-651 reads as rewritten:

"§ 143-651. Definitions.

~~As used in this Article:~~ The following definitions apply in this Article:

(1) ~~'Amateur' means a~~ Amateur. -- A person who is not and has never received or competed for any purse or other article or thing of value for participating in a match.

(2) ~~'Announcer' means any~~ Announcer. -- Any person who engages in the act of announcing a boxing match.

(3) ~~'Boxer' means any~~ Boxer. -- Any person who engages as a participant in a boxing match.

(4) ~~'Boxing match' means a~~ Boxing match. -- A match where the participants engage in the use of full

contact boxing techniques (using the fist only), and where the object of a match is to win by decision, knockout (KO), or ~~technical knockout (TKO), and shall include kickboxing matches as defined in this section.~~ technical knockout (TKO).

(5) ~~'Commission' means the~~ Commission. -- The North Carolina State Boxing Commission.

(6) ~~'Contest' means a~~ Contest. -- A boxing match in which the participants strive ~~earnestly~~ to win.

(7) ~~'Contestant' means any~~ Contestant. -- Any person who engages as a participant in a boxing match.

(8) ~~'Exhibition' means a~~ Exhibition. -- A boxing match where the participants display their boxing skills and technique without necessarily striving to win.

(9) ~~'Judge' means a~~ Judge. -- A person who has a vote in determining the winner of any match or contest.

(10) ~~'Kickboxer' means any~~ Kickboxer. -- Any person who engages as a participant in a kickboxing match.

(11) ~~'Kickboxing match' means a~~ Kickboxing match. -- A match in which the participants engage in full contact martial arts fighting techniques using the hands and the feet, and where the object of the match is to win by decision, knockout (KO), or technical knockout (TKO).

(12) ~~'Licensee' means any~~ Licensee. -- Any person, club, corporation, organization, or association to whom a license has been issued pursuant to the provisions of this Article.

(13) ~~'Manager' means any person, including an officer of a corporate manager and a managing partner of a partnership manager,~~ Manager. -- Any person who controls or administers the boxing affairs of any contestant, and who:

a. By contract, agreement, or other arrangement with any person undertakes or has undertaken to represent in any way the interest of the contestant in any professional boxing contest in which the boxer is to participate as a contestant, and is entitled under that contract, agreement, or arrangement to receive

monetary or other compensation for his services, without regard to the sources of the ~~compensation, except that the~~ compensation. The term 'manager' shall not be construed to mean any attorney licensed to practice in this State whose participation in the activities is restricted solely to ~~his~~ representing the interests of a professional boxer as ~~his client;~~ a client.

b. Directs or controls the professional boxing activities of any professional ~~boxer; or~~ boxer.

c. Receives or is entitled to receive a percentage of the gross purse or gross income of any professional boxing contest.

(14) ~~'Match' means any~~ Match. -- Any boxing or kickboxing contest or exhibition, and includes any event, engagement, sparring or practice session, show or program where the public is admitted and in which there is intended to be physical contact, whether an exhibition or contest. This definition does not include training or practice sessions when no admission is charged.

(15) ~~'Matchmaker' means a~~ Matchmaker. -- A person through whom matches are arranged for participants and who otherwise assists participants in procuring engagement dates for boxing.

(16) ~~'Natural person' means an~~ Natural person. -- An individual.

(17) ~~'Participant' means any~~ Participant. -- Any person who engages in a match or exhibition and performs as a boxer.

(18) ~~'Person' means an~~ Person. -- An individual, group of individuals, business, corporation, limited liability company, partnership, or any other individual or collective entity.

(19) ~~'Physician' means an~~ Physician. -- An individual licensed to practice medicine in this State.

(20) ~~'Professional' means any person who has received or competed for any purse or other article or thing of~~

~~value for participating in a boxing match.~~ Professional. -- Any person who is licensed as a professional boxer under the Federal Professional Boxing Safety Act of 1996.

(21) ~~'Promoter' means any person, including an officer of a corporate promoter and a managing partner of a partnership promoter,~~ Promoter. -- Any person who produces, arranges, stages, holds, or gives any match in North Carolina involving a professional participant.

(22) ~~'Referee' means the~~ Referee. -- The official who shall enter and remain in the ring for the duration of a match and shall enforce the rules and maintain order in the ring.

(23) ~~'Ring official' means any~~ Ring official. -- Any person who performs an official function for the duration of a match.

(23a) Sanctioned amateur. -- A person who competes in a sanctioned amateur match.

(23b) Sanctioned amateur match. -- Any boxing or kickboxing match regulated by an amateur sports organization that has been recognized and approved by the North Carolina Boxing Commission.

(24) ~~'Second' means any~~ Second. -- Any person who will work or be present in the corner of a participant for the duration of a match.

(25) ~~'Timekeeper' means any~~ Timekeeper. -- Any person who will operate the clock or watch for the duration of a match for the purpose of keeping the official time of the match.

(25a) Toughman contestant. -- Any person who competes in a toughman event.

(25b) Toughman event. -- An elimination program of matches in which (i) the contestants are not professional boxers, (ii) the finalist receives a purse or other article of value, (iii) the participants engage in the use of full contact boxing techniques, and (iv) the

object of each match is to win by decision, knockout (KO), or technical knockout (TKO).

(26) ~~'Ultimate warrior match' means a~~ Ultimate warrior match. -- A match where the participants use any combination of boxing, kicking, wrestling, hitting, punching, or other combative, contact techniques and which combination of techniques is not specifically authorized by and conducted pursuant to this Article."

Section 2. G.S. 143-652 reads as rewritten:

"**§ 143-652. State Boxing Commission.**

(a) Creation. -- The North Carolina State Boxing Commission is created within the Department of the Secretary of State to regulate in North Carolina live boxing and kickboxing matches, whether ~~professional or~~ professional, amateur, sanctioned amateur, or toughman events, ~~in North Carolina.~~ in which admission is charged for viewing, or the contestants compete for a purse or prize of value greater than twenty-five dollars ($25.00). The Commission shall consist of five voting ~~members~~ members, one nonvoting member, and two nonvoting advisory members. All the members shall be residents of North ~~Carolina.~~ Carolina and shall meet requirements for membership under the Professional Boxing Safety Act of 1996. The members shall be appointed as follows:

(1) One voting member shall be appointed by the Governor for an initial term of two years.

(2) One voting member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121.

(3) One voting member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year.

(4) Two voting members shall be appointed by the Secretary of State. One shall serve for an initial term of three years, and the other shall serve for an initial term of two years.

(5) One nonvoting member shall be apppointed by the Tribal Council of the Eastern Band of the Cherokee for an initial term of three years.

~~(5)~~ (6) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

~~(6)~~ (7) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

The nonvoting member appointed pursuant to subdivision (5) of subsection (a) of this section may serve on the Commission only if an agreement exists and remains in effect between the Tribal Council of the Eastern Band of the Cherokee and the Commission authorizing the Commission to regulate professional boxing matches within the Cherokee Indian Reservation as provided by the Professional Boxing Safety Act of 1996.

The two nonvoting advisory members appointed pursuant to subdivisions (6) and (7) of subsection (a) of this section shall advise the Commission on matters concerning the health and physical condition of boxers and health issues relating to the conduct of exhibitions and boxing matches. They may prepare and submit to the Commission for its consideration and approval any rules that in their judgment will safeguard the physical welfare of all participants engaged in boxing.

Terms for all members of the Commission except for the initial appointments shall be for three years.

The Secretary of State shall designate which member of the Commission is to serve as chair. A member of the Commission may be removed from office by the Secretary of State for cause. Each member before entering upon the duties of a member shall take and

subscribe an oath to perform the duties of the office faithfully, impartially, and justly to the best of the member's ability. A record of these oaths shall be filed in the Department of the Secretary of State.

(b) Vacancies. -- Members shall serve until their successors are appointed and have been qualified. Any vacancy in the membership of the Commission shall be filled in the same manner as the original appointment. Vacancies for members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. A vacancy in the membership of the Commission other than by expiration of term shall be filled for the unexpired term only.

(c) Meetings. -- Meetings of the Commission shall be called by the ~~chair~~ Executive Director, chair, or by any two members of the Commission, and meetings shall be held at least quarterly. Any three voting members of the Commission shall constitute a quorum at any meeting. Action may be taken and motions and resolutions adopted by the Commission at any meeting by the affirmative vote of a majority of the members of the Commission present at a meeting at which a quorum exists. Any or all members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in the meeting by this means is deemed to be present in person at the meeting.

(d) Rule-Making Authority of the Commission. -- The Commission shall have the exclusive authority to approve and issue rules submitted by the Executive Director for the regulation of the conduct, promotion, and performances of live ~~boxing~~ boxing, kickboxing, sanctioned amateur, amateur, and toughman matches and exhibitions in this State. The rules shall be issued pursuant to the provisions of Chapter 150B of the General Statutes and may include, without limitation, the following subjects:

(1) Requirements for issuance of licenses and permits required by this Article.
(2) Regulation of ticket sales.
(3) Physical requirements for contestants, including classification by weight and skill.
(4) Supervision of matches and exhibitions by licensed physicians and referees.
(5) Insurance and bonding requirements.

(6) Compensation of participants and licensees.
(7) Contracts and financial arrangements.
(8) Prohibition of dishonest, unethical, and injurious practices.
(9) Facilities.
(10) Approval of sanctioning amateur sports organizations.
(11) Procedures and requirements for compliance with the Professional Boxing Safety Act of 1996.

(e) Compensation. -- None of the members of the Commission shall receive compensation for serving on the Commission. However, members of the Commission may be reimbursed for their expenses in accordance with the provisions of Chapter 138 of the General Statutes.

(f) Staff Assistance. -- The Secretary of State shall hire a person to serve as Executive Director of the Commission and shall provide staff assistance to the ~~Commission.~~ Executive Director. The Executive Director may train and contract with independent contractors for the purpose of regulating and monitoring events, issuing licenses, collecting fees, and enforcing rules of the Commission. The Executive Director may initiate criminal background checks on persons requesting to work as independent contractors for the Commission or persons applying to be licensed by the Commission."

Section 3. G.S. 143-653 reads as rewritten:

"**§ 143-653. Ultimate warrior matches prohibited.**

Ultimate warrior matches, whether the participants are professionals or amateurs, are prohibited. No person shall promote, conduct, or engage in ultimate warrior matches. This section shall not preclude ~~boxing and kickboxing as regulated in this Article or~~ professional wrestling."

Section 4. G.S. 143-654 reads as rewritten:

"**§ 143-654. Licensing and permitting.**

(a) License and Permit Required. -- It is unlawful for any person to act in this State as an announcer, contestant, judge, manager, matchmaker, promoter, referee, timekeeper, or second unless the person is licensed to do so under this Article. It is unlawful for a promoter to present a match in this State unless the promoter has a permit issued under this Article to do so. The

Commission has the exclusive authority to issue, deny, suspend, or revoke any license or permit provided for in this Article.

(b) License. -- ~~A license issued under this Article must be renewed annually on or before January 1.~~ All licenses issued under this Article shall be valid only during the calendar year in which they are issued, except contestant licenses shall be valid for one year from the date of issuance. A license for an announcer, contestant, judge, matchmaker, referee, timekeeper, or second shall be issued only to a natural person. A natural person shall not transfer or assign a license or change it into another name. A license for a manager or promoter may be issued to a corporation or partnership; provided, however, that all officers or partners shall submit an application for individual licensure, and only those officers or partners who are licensed shall be entitled to negotiate or sign contracts. The addition of a new officer or partner during the license period shall necessitate the filing of an application for individual licensure by the new officer or partner.

An applicant for a license shall file with the Commission the appropriate nonrefundable fee and any forms, documents, medical examinations, or exhibits the Commission may require in order to properly administer this Article. The information requested shall include the date of birth and social security number of each applicant as well as any other personal data necessary to positively identify the applicant and may include the requirement of verification of any documents the Commission deems appropriate. A person may not participate under a fictitious or assumed name in any match unless the person has first registered the name with the Commission.

(c) Surety Bond. -- An applicant for a promoter's license must submit, in addition to any other forms, documents, or ~~exhibits,~~ exhibits requested by the Commission, a surety bond payable to the Commission for the benefit of any person injured or damaged by (i) the promoter's failure to comply with any provision of this Article or any rules adopted by the Commission or (ii) the promoter's failure to fulfill the obligations of any contract between or among licensees related to the holding of a boxing event. The surety bond shall be issued in an amount to be no less than five thousand dollars ($5,000). The amount of the surety bond shall be negotiable upon the sole discretion of the

Commission. All surety bonds shall be upon forms approved by the Secretary of State and supplied by the Commission.

(d) Permit. -- A permit issued to a promoter under this Article is valid for a single match. An applicant for a permit shall file with the Commission the appropriate nonrefundable fee and any forms or documents the Commission may require."

Section 5. G.S. 143-655 reads as rewritten:

"**§ 143-655. Fees; State Boxing Commission Revenue Account.**

(a) License Fees. -- The Commission shall collect the following license fees:

Announcer	$50.00
Contestant	$25.00
Judge	$50.00
Manager	$100.00
Matchmaker	$200.00
Promoter	$300.00
Referee	$50.00
Timekeeper	$50.00
Second	$25.00.

The annual license renewal fees shall ~~not exceed~~ be the same as the initial license fees.

(b) Permit Fees. -- The Commission ~~may establish a fee schedule for permits issued under this Article. The fees may vary depending on the seating capacity of the facility to be used to present a match. The fee may not exceed the following amounts:~~ shall collect the following permit fees:

Seating Capacity	Fee Amount
Less than 2,000	$100.00
2,000 -- 5,000	$200.00
Over 5,000	$300.00.

(c) State Boxing Commission Revenue Account. -- There is created the State Boxing Commission Revenue Account within the Department of the Secretary of State. Monies collected pursuant to the provisions of this Article shall be credited to the Account and applied to the administration of the Article."

Section 6. G.S. 143-656 reads as rewritten:

"**§ 143-656. Contracts and financial arrangements.**

Any contract between ~~a boxer and any other licensee~~ licensees and ~~any contract involving~~ related to a boxing match or exhibition held or to be held in this State must meet the

requirements of administrative rules as set forth by the Commission. Any contract which does not satisfy the requirements of the administrative rules shall be void and unenforceable. All contracts shall be in writing."

Section 7. G.S. 143-657 is repealed.

Section 8. Article 68 of Chapter 143 of the General Statutes is amended by adding the following new section:

"**§ 143-657.1. Sanctioned amateur matches.**

In addition to the other applicable provisions of this Article, a sanctioned amateur match shall be conducted pursuant to the rules of the sports organization sanctioning the boxing match or exhibition."

Section 9. G.S. 143-658 reads as rewritten:

"**§ 143-658. Violations.**

(a) Civil Penalties. -- The ~~Commission~~ Executive Director may issue an order against a licensee or other person who willfully violates any provision of this Article, imposing a civil penalty of up to five thousand dollars ($5,000) for a single violation or of up to twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings. No order under this subsection may be entered without giving the licensee or other person 15 days' prior notice and an opportunity for a contested case hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes.

(b) Criminal Penalties. -- A willful violation of any provision of this Article shall constitute a Class 2 misdemeanor. The Secretary of State may refer any available evidence concerning violations of this Article to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings.

The attorneys employed by the Secretary of State shall be available to prosecute or assist in the prosecution of criminal cases when requested to do so by a district attorney and the Secretary of State approves.

(c) Injunction. -- Whenever it appears to the ~~Commission~~ Executive Director that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of this Article or any rule or order hereunder, the ~~Commission~~ Executive Director may ~~in its discretion~~ bring an action in any court of competent jurisdiction to enjoin those

acts or practices and to enforce compliance with this Article or any rule or order issued pursuant to this Article.

(d) Enforcement. -- For purposes of enforcing this Article, the Department of the Secretary of State's law enforcement agents have statewide jurisdiction. These law enforcement agents may assist local law enforcement agencies in their investigations and may initiate and carry out, in coordination with local law enforcement agencies, investigations of violations of this Article. These law enforcement agents have all the powers and authority of law enforcement officers when executing arrest warrants."

Section 10. Notwithstanding any other statute to the contrary, the North Carolina Boxing Commission may adopt temporary rules to implement the provisions of Article 68 of Chapter 143 of the General Statutes within six months of the effective date of this act. Any temporary rules shall be adopted in accordance with the provisions of Chapter 150B of the General Statutes.

Section 11. This act is effective when it becomes law.

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.)
) Baddour
Sen.)

moves to amend the bill on page 7, line 27

( ) WHICH CHANGES THE TITLE

by deleting the words

"submitted by the Executive Director"

SIGNED Phil A Baddour

ADOPTED 6-12-97 FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 992

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

S992-ARG-001

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]
Proposed Committee Substitute

moves to amend the bill on page 5, lines 19-20,
by rewriting the lines to read:
"($25.00). The Commission shall consist of ~~five~~ six voting members and two nonvoting advisory";

and on page 6, line 1,
by deleting the word "nonvoting";

and on page 6, line 20,
by deleting the word "nonvoting";

and on page 7, line 15,
by deleting the word "three" and substituting "~~three~~ four".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

June 12, 1997 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Cramer	NCATL
Jan Boggs	UNC-TV (leg. wkin rvw.)
B Simmons	NC Equity
Rob Schofield	NCSJCDC
Jennifer Mac	WCBT
Roslyn Savitt	NC Coalition Against Domest. Violence
Bryce Watts	Senator Reeves
FRED TAYLOR	WRAL-TV
Shawn Lemmond	SEC. OF STATE
David Simmons	ZOE OSA
Barnard Allen	SOS
Jan Bacon & crew	UNC-TV
Dennis Patterson	AP
Jane Upchurch	CP&L
Catherine Davis	ElectriCities
EP Dalesio	Associated Press
Heather Fahl	OSA
Susan Salami	Nationwide

MINUTES
HOUSE JUDICIARY II COMMITTEE

June 17, 1997

The North Carolina House of Representatives Judiciary II Committee met on June 17, 1997, at 11:45 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Baddour, Bowie, Cansler, Creech, Culpepper, Goodwin, Hackney, Hensley, McMahan, Redwine, Saunders, Shubert, Sutton, Weatherly and Wilkins. A list of visitors is attached.

The following bills were discussed:

SB-676 SEX OFFENDER LAWS/FEDERAL COMPLIANCE
SB-992 NC BOXING COMMISSION

Senator Odom was recognized to continue the discussion of SB-676 and to answer questions of committee members.

Ms. Emily Johnson, Staff Attorney, answered questions of committee members.

Representative Culpepper was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Goodwin was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Shubert was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Ms. Susan Hayes, Staff Counsel, advised the committee that Representative Decker's amendment dated June 3, 1997, amending the bill on page 3, lines 38-40, needed to be reconsidered. Representative Bowie moved the amendment be brought back on the table for reconsideration; motion passed. Representative Neely called for a vote on the amendment; the amendment failed.

Representative Bowie moved the amendments be incorporated into a committee substitute bill, with a favorable report as to House committee substitute bill, and recommendation that the House committee substitute bill be re-referred to the Committee on Finance; motion passed.

Representative Culpepper was recognized to send forth a proposed committee substitute for SB-992. Representative Sutton moved the proposed committee substitute be adopted for purpose of discussion; motion passed.

Representative Culpepper explained the proposed committee substitute and answer questions of committee members.

Mr. Shawn Lemmond, Executive Director, North Carolina Boxing Commission, answered questions of committee members.

Representative Sutton was recognized to send forth an amendment and moved it be adopted; motion passed.

No action was taken on SB-992.

The meeting was adjourned at 12:55 P.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT

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

S676-ALH-5 Page 1 of __

Date_____,1997

Comm. Sub. [YES]
Amends Title [ ]
Third Edition

moves to amend the bill on page 7, lines 29-42,
by rewriting those lines to read:
"**§ 14-208.12. ~~Exemption.~~ Public record exemption.**
(a) ~~A~~ If a person ~~who~~ has a reportable conviction and the reportable conviction is for any of the offenses listed in subsection (a1) of this section, then the person may petition the superior court ~~in the county where the person resides for an exemption from this Article.~~ to enter an order that the information obtained from the person in accordance with this Article shall not be included in the county or statewide registry as a public record. The petition may be filed at any time, including at the time of the person's trial. A petition filed during a trial shall be filed with the trial court. A petition filed afterward shall be filed with the superior court in the county where the person resides.
The person shall serve a copy of the petition on the district attorney. If the person shows for good cause, by clear and convincing evidence, that the registration information will not serve any useful ~~purpose,~~ purpose as a public record, the court shall ~~grant the exemption.~~ enter the order to allow the exemption from the county registry and the statewide registry.
(a1) The reportable convictions that the court may rule are not public records and that court may order excluded from the county and statewide registries are as follows:

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT

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

S676-ALH-5

(1) 14-178 (incest between near relatives)
(2) 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency)
(3) 14-190.16 (first degree sexual exploitation of a minor)
(4) 14-190.17 (second degree sexual exploitation of a minor)
(5) 14-190.17A (third degree sexual exploitation of a minor)
(6) 14-190.19 (participating in prostitution of a minor)
(7) 14-202.1 (taking indecent liberties with children).

(b) When a registered person presents the sheriff with a certified copy of the court order showing that ~~an~~ a public record exemption has been granted, the sheriff shall remove any information from ~~his records~~ the county register that was obtained pursuant to this Article. The sheriff shall then notify the Division of the public record exemption by sending a copy of the ~~exemption~~ court order to the Division within three days and the Division shall remove any information from ~~its files~~ the statewide register obtained pursuant to this Article. The Division shall notify the registered person of the public record exemption by letter telling the registrant that the public record exemption ~~has~~ been accomplished."

SIGNED Bill Culpepper
Amendment Sponsor

SIGNED _____
Committee Chair if **Senate** Committee Amendment

ADOPTED 6-17-97 FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 676

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

S676-ASA-034 Page 1 of __

Date 6-17 ,1997

Comm. Sub. [ ]
Amends Title [ ]
Third Edition

moves to amend the bill on page 9, lines 29-31,
by

rewriting the lines to read:
"The board of experts shall be composed of at least two people who are experts in the field of the behavior and treatment of sexual offenders, one of whom is selected from a panel of experts in those fields provided by the North Carolina Medical Society and not employed with the Department of Correction or employed on a full-time basis with any other state agency."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED 6-17-97 FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 676

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

S676-ALH-1

Page 1 of __

Date 6-17 ,1997

Comm. Sub. [YES]
Amends Title []
Third Edition

moves to amend the bill on page 6, lines 34-36,
by rewriting those lines to read:
"status. The information obtained under G.S. 14-208.22 regarding a person's medical records or documentation of treatment for the person's mental abnormality or personality disorder shall not be a part of the public record.

The sheriff shall release any other relevant information that is necessary to protect the public concerning a specific person, but shall not release the identity of the victim of the offense that required registration under this Article."; and

on page 10, line 7,
by deleting "Medical" and by deleting lines 8-9.

SIGNED Carolyn Russell / Fern H Shubert
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. 3RD

H. B. No. _____ DATE 6-3-97

S. B. No. 676 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) DECKER
Sen.)

moves to amend the bill on page 3, lines 38-40

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"engage in sexually violent offenses."

SIGNED M Decker

ADOPTED _____ FAILED _____ TABLED _____

GA-22-A

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

X Committee Substitute for
S.B. 676 A BILL TO BE ENTITLED AN ACT TO AMEND THE SEXUAL OFFENDER REGISTRATION PROGRAM TO COMPLY 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 .)

X **With a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill, and recommendation that House committee substitute bill be re-referred to the Committee on Finance.**

☐ 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 D

SENATE BILL 676*
Judiciary Committee Substitute Adopted 5/20/97
Third Edition Engrossed 5/21/97
Proposed House Committee Substitute S676-PCS2774

Short Title: Sex Offender Laws/Fed. Compliance. (Public)

Sponsors:

Referred to:

April 2, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE SEXUAL OFFENDER REGISTRATION PROGRAM TO COMPLY WITH FEDERAL LAW.

The General Assembly of North Carolina enacts:

Section 1. Article 27A of Chapter 14 of the General Statutes reads as rewritten:

"ARTICLE 27A.

~~"Sexual Offender Registration Program.~~

"Sex Offender and Public Protection Registration Programs.

"Part 1. Registration Programs, Purpose, and Definitions Generally.

"§ 14-208.5. Purpose.

The General Assembly recognizes that sex offenders often pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is of paramount governmental interest.

The General Assembly also recognizes that persons who commit certain other types of offenses against minors, such as kidnapping, pose significant and unacceptable threats to the public safety and welfare of the State's children and that the protection of those children is of great governmental interest. Further, the General Assembly recognizes that ~~local~~ law enforcement officers' efforts to protect ~~their~~ communities, conduct investigations, and quickly apprehend offenders who

commit sex offenses or certain offenses against minors are impaired by the lack of information available to law enforcement agencies about convicted ~~sex~~ offenders who live within the agency's jurisdiction. Release of information about ~~sex~~ these offenders will further the governmental interests of public safety so long as the information released is rationally related to the furtherance of those goals.

Therefore, it is the purpose of this Article to assist ~~local~~ law enforcement agencies' efforts to protect ~~their~~ communities by requiring ~~sex offenders~~ persons who are convicted of sex offenses or of certain other offenses committed against minors to register with ~~local~~ law enforcement ~~agencies and~~ agencies, to require the exchange of relevant information about ~~sex~~ those offenders among law enforcement ~~agencies~~ agencies, and to authorize the access to necessary and relevant information about ~~sex~~ those offenders to others as provided in this Article.

"§ 14-208.6. Definitions.

The following definitions apply in this Article:

(1a) 'County registry' means the information compiled by the sheriff of a county in compliance with this Article.

~~(1)~~(1b) 'Division' means the Division of Criminal Statistics of the Department of Justice.

(1c) 'Mental abnormality' means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of others.

(1d) 'Offense against a minor' means any of the following offenses if the offense is committed against a minor, and the person committing the offense is not the minor's parent or legal custodian: G.S. 14-39 (kidnapping), G.S. 14-41 (abduction of children), and G.S. 14-43.3 (felonious restraint).

(2) 'Penal institution' means:

a. A detention facility operated under the jurisdiction of the Division of Prisons of the Department of 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.

(2a) 'Personality disorder' means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment.

(3) 'Release' means discharged or paroled.

(4) 'Reportable conviction' means:

a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those

offenses. ~~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.~~ an offense against a minor or a sexually violent offense as defined by this section.

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.~~ offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

(5) 'Sexually violent offense' means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), 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. 14-190.17A (third 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).

(6) 'Sexually violent predator' means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at strangers or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

~~(4)~~ (7) 'Sheriff' means the sheriff of a county in this State.

(8) 'Statewide registry' means the central registry compiled by the Division in accordance with G.S. 14-208.14.

"§ 14-208.6A. Registration requirements for criminal offenders and for criminal offenders determined to be sexually violent predators.

It is the objective of the General Assembly to establish a 10-year registration requirement for persons convicted of certain offenses against minors or sexually violent offenses. It is the further objective of the General Assembly to establish a more stringent set of registration requirements for a subclass of highly dangerous sex offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

To accomplish this objective, there are established two registration programs: the Sex Offender and Public Protection Registration Program and the Sexually Violent Predator Registration Program. Any person convicted of an offense against a minor or of a sexually violent offense as defined by this Article shall register as an offender in accordance with Part 2 of this Article. Any person determined to be a sexually violent predator shall register as such in accordance with Part 3 of this Article.

The information obtained under these programs shall be immediately shared with the appropriate local, State, federal, and out-of-state law enforcement officials and penal institutions. In addition, the information designated under G.S. 14-208.10(a) as public record shall be readily available to and accessible by the public. However, the identity of the victim is not public record and shall not be released as a public record.

"Part 2. Sex Offender and Public Protection Registration Program.

"§ 14-208.7. Registration.

(a) A person who is a State resident and who has a reportable conviction shall be required to maintain registration with the sheriff of the county where the person resides. If the person moves to North Carolina from outside this State, the person shall register within 10 days of establishing residence in this ~~State.~~ State, or whenever the person has been present in the State for 15 days, whichever comes first. If the person is a current resident of North Carolina, the person shall register:

(1) Within 10 days of release from a penal institution or arrival in a county to live outside a penal institution; or

(2) Immediately upon conviction for a reportable offense where an active term of imprisonment was not imposed.

Registration shall be maintained for a period of 10 years following release from a penal institution. If no active term of imprisonment was imposed, registration shall be maintained for a period of 10 years following each conviction for a reportable offense.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article. The registration form shall require:

(1) The person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, drivers license number, and home address;

(2) The type of offense for which the person was convicted, the date of conviction, and the sentence imposed;
(3) A current photograph; and
(4) The person's fingerprints.

The sheriff shall photograph the individual at the time of registration and take fingerprints from the individual at the time of registration both of which will be kept as part of the registration form. The registrant will not be required to pay any fees for the photograph or fingerprints taken at the time of registration.

(c) ~~Not later than the third day after~~ When a person registers, the sheriff with whom the person registered shall immediately send the registration information to the Division in a manner determined by the Division. The sheriff shall retain the original registration form and other information ~~collected.~~ collected and shall compile the information that is a public record under this Part into a county registry.

"§ 14-208.8. Prerelease notification.

(a) At least 10 days, but not earlier than 30 days, before a person who will be subject to registration under this Article is due to be released from a penal institution, an official of the penal institution shall:

(1) Inform the person of the person's duty to register under this Article and require the person to sign a written statement that the person was so informed or, if the person refuses to sign the statement, certify that the person was so informed;
(2) Obtain the registration information required under G.S. 14-208.7 (b)(1) and (2), as well as the address where the person expects to reside upon the person's release; and
(3) Send the Division and the sheriff of the county in which the person expects to reside the information collected in accordance with subdivision (2) of this subsection.

(b) If a person who is subject to registration under this Article does not receive an active term of imprisonment, the court pronouncing sentence shall conduct, at the time of sentencing, the notification procedures specified in subsection (a) of this section.

"§ 14-208.9. Change of address.

If a person required to register changes address, the person shall provide written notice of the new address not later than the tenth day after the change to the sheriff of the county with whom the person had last registered. ~~Not later than the third day after~~ Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the person moves to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

"§ 14-208.9A. Verification of registration information.

The information in the county registry shall be verified annually for each registrant as follows:

(1) Every year on the anniversary of a person's initial registration date, the Division shall mail a nonforwardable verification form to the last reported address of the person.

(2) The person shall return the verification form to the sheriff within 10 days after the receipt of the form.

(3) The verification form shall be signed by the person and shall indicate whether the person still resides at the address last reported to the sheriff. If the person has a different address, then the person shall indicate that fact and the new address.

(4) If the person fails to return the verification form to the sheriff within 10 days after receipt of the form, the person is subject to the penalties provided in G.S. 14-208.11. If the verification form is returned to the sheriff as undeliverable, the sheriff shall make a reasonable attempt to verify that the person is residing at the registered address. If the person cannot be found at the registered address and has failed to report a change of address, the person is subject to the penalties provided in G.S. 14-208.11, unless the person reports in person to the sheriff and proves that the person has not changed his or her residential address.

"§ 14-208.10. ~~Access~~ Registration information is public record; access to registration information.

(a) ~~To obtain information concerning an individual's registration status, a requester shall submit to the sheriff the following:~~

~~(1) The individual's name and sex;~~

~~(2) A physical description of the individual; and~~

~~(3) Any other relevant information known to the requester concerning the individual.~~

~~Upon receipt of the information, the sheriff shall verify, in writing, to the requester whether the individual has registered as a sex offender in this State, the date of conviction, and the offenses for which registration was required. The registration information and the corresponding registry is a public record and shall be available for public inspection. The sheriff shall upon request, display any photograph provided in compliance with G.S. 14-208.7(b)(3); however, the sheriff shall not provide or allow a copy to be made of the photograph.~~

The following information regarding a person required to register under this Article is public record and shall be available for public inspection: name, sex, address, physical description, picture, conviction date, offense for which registration was required, the sentence imposed as a result of the conviction, and registration status. The information obtained under G.S. 14-208.22 regarding a person's medical records or documentation of treatment for the person's mental abnormality or personality disorder shall not be a part of the public record.

The sheriff shall release any other relevant information that is necessary to protect the public concerning a specific person, but shall not release the identity of the victim of the offense that required registration under this Article.

(b) Any person may obtain a copy of an individual's registration form, ~~excluding the photograph, upon payment to the sheriff of a reasonable fee for the costs of duplicating the form.~~ a part of the county registry, or all of the county registry, by

submitting a written request for the information to the sheriff. However, the identity of the victim of an offense that requires registration under this Article shall not be released. The sheriff may charge a reasonable fee for duplicating costs and for mailing costs when appropriate.

~~(c) The sheriff of each county is authorized, upon written request, to provide a copy of the entire registry to any group, entity, organization, corporation, or school, that utilizes volunteers or employees in working with, caring for, supervising or protecting children or disabled or elderly persons. The sheriff may charge a reasonable fee for duplicating costs and for mailing costs when appropriate.~~

"§ 14-208.11. Failure to ~~register.~~ register; falsification of verification notice; failure to return verification form; order for arrest.

(a) A person required by this Article to register ~~who, knowingly and with the intent to violate the provisions of this Article, fails to register shall be guilty of a Class 3 misdemeanor for a first conviction of a violation of this Article, and a Class I felony for a subsequent conviction of a violation of this Article.~~ who does any of the following is guilty of a Class F felony:

(1) Fails to register.

(2) Fails to notify the last registering sheriff of a change of address.

(3) Fails to return a verification notice as required under G.S. 14-208.9A.

(4) Forges or submits under false pretenses the information or verification notices required under this Article.

(a1) If a person commits a violation of subsection (a) of this section, the probation officer, parole officer, or any other law enforcement officer who is aware of the violation shall immediately arrest the person in accordance with G.S. 15A-401, or seek an order for the person's arrest in accordance with G.S. 15A-305.

(b) Before a person convicted of a violation of this Article is due to be released from a penal institution, an official of the penal institution shall conduct the prerelease notification procedures specified under G.S. 14-208.8(a)(2) and (3). If upon a conviction for a violation of this Article, no active term of imprisonment is imposed, the court pronouncing sentence shall, at the time of sentencing, conduct the notification procedures specified under G.S. 14-208.8(a)(2) and (3).

"§ 14-208.12. ~~Exemption.~~ Public record exemption.

(a) ~~A~~ If a person ~~who~~ has a reportable conviction and the reportable conviction is for any of the offenses listed in subsection (a1) of this section, then the person may petition the superior court ~~in the county where the person resides for an exemption from this Article.~~ to enter an order that the information obtained from the person in accordance with this Article shall not be included in the county or statewide registry as a public record. The petition may be filed at any time, including at the time of the person's trial. A petition filed during a trial shall be filed with the trial court. A petition filed afterward shall be filed with the superior court in the county where the person resides.

The person shall serve a copy of the petition on the district attorney. If the person shows for good cause, by clear and convincing evidence, that the registration

information will not serve any useful ~~purpose,~~ purpose as a public record, the court shall ~~grant the exemption.~~ enter the order to allow the exemption from the county registry and the statewide registry.

(a1) The reportable convictions that the court may rule are not public records and that the court may order excluded from the county and statewide registries are as follows:

(1) G.S. 14-178 (incest between near relatives).
(2) G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency).
(3) G.S. 14-190.16 (first degree sexual exploitation of a minor).
(4) G.S. 14-190.17 (second degree sexual exploitation of a minor).
(5) G.S. 14-190.17A (third degree sexual exploitation of a minor).
(6) G.S. 14-190.19 (participating in prostitution of a minor).
(7) G.S. 14-202.1 (taking indecent liberties with children).

(b) When a registered person presents the sheriff with a certified copy of the court order showing that ~~an~~ a public record exemption has been granted, the sheriff shall remove any information from ~~his records~~ the county register that was obtained pursuant to this Article. The sheriff shall then notify the Division of the public record exemption by sending a copy of the ~~exemption~~ court order to the Division within three days and the Division shall remove any information from ~~its files~~ the statewide register obtained pursuant to this Article. The Division shall notify the registered person of the public record exemption by letter telling the registrant that the public record exemption has been accomplished.

"§ 14-208.12A. Termination of registration requirement.

(a) The requirement that a person register under this Part automatically terminates 10 years from the date of initial county registration if the person has not been convicted of a subsequent offense requiring registration under this Article.

(b) If there is a subsequent offense, the county registration records shall be retained until the registration requirement for the subsequent offense is terminated.

"§ 14-208.13. File with Police Information Network.

(a) The Division shall include the registration information in the Police Information Network as set forth in G.S. 114-10.1.

(b) ~~Except as provided in G.S. 14-208.12(b), the~~ The Division shall maintain the registration information permanently even after the registrant's reporting requirement expires.

"§ 14-208.14. Statewide registry; Division of Criminal Statistics designated custodian of statewide registry.

(a) The Division of Criminal Statistics shall compile and keep current a central statewide sex offender registry. The Division is the State agency designated as the custodian of the statewide registry. As custodian the Division has the following responsibilities:

(1) To receive from the sheriff or any other law enforcement agency or penal institution all sex offender registrations, changes of address, and prerelease notifications required under this Article or

under federal law. The Division shall also receive notices of any violation of this Article, including a failure to register or a failure to report a change of address.

(2) To provide all need-to-know law enforcement agencies (local, State, federal, and those located in other states) immediately upon receipt by the Division of any of the following: registration information, a prerelease notification, a change of address, or notice of a violation of this Article.

(3) To coordinate efforts among law enforcement agencies and penal institutions to ensure that the registration information, changes of address, prerelease notifications, and notices of failure to register or to report a change of address are conveyed in an appropriate and timely manner.

(4) To provide public access to the statewide registry in accordance with this Article.

(b) The statewide registry shall include the following:

(1) Registration information obtained by a sheriff or penal institution under this Article or from any other local or State law enforcement agency.

(2) Registration information received from a state or local law enforcement agency or penal institution in another state.

(3) Registration information received from a federal law enforcement agency or penal institution.

"§ 14-208.15. Certain statewide registry information is public record; access to statewide registry.

(a) The information in the statewide registry that is public record is the same as in G.S. 14-208.10. The Division shall release any other relevant information that is necessary to protect the public concerning a specific person, but shall not release the identity of the victim of the offense that required registration under this Article.

(b) The Division shall provide free public access to automated data from the statewide registry, including photographs provided by the registering sheriffs, via the Internet. The public will be able to access the statewide registry to view an individual registration record, a part of the statewide registry, or all of the statewide registry. The Division may also provide copies of registry information to the public upon written request and may charge a reasonable fee for duplicating costs and mailings costs.

"Part 3. Sexually Violent Predator Registration Program.

"§ 14-208.20. Sexually violent predator determination; notice of intent; presentence investigation.

(a) When a person is charged by indictment or information with the commission of a sexually violent offense, the district attorney shall decide whether to seek classification of the offender as a sexually violent predator if the person is convicted. If the district attorney intends to seek the classification of a sexually violent predator, the district attorney shall within the time provided for the filing of pretrial motions

under G.S. 15A-952 file a notice of the district attorney's intent. The court may for good cause shown allow late filing of the notice, grant additional time to the parties to prepare for trial, or make other appropriate orders.

(b) Prior to sentencing a person as a sexually violent predator, the court shall order a presentence investigation in accordance with G.S. 15A-1332(c). However, the study of the defendant and whether the defendant is a sexually violent predator shall be conducted by a board of experts selected by the Department of Correction. The board of experts shall be composed of at least two people who are experts in the field of the behavior and treatment of sexual offenders, one of whom is selected from a panel of experts in those fields provided by the North Carolina Medical Society and not employed with the Department of Correction or employed on a full-time basis with any other State agency.

(c) When the defendant is returned from the presentence commitment, the court shall hold a sentencing hearing in accordance with G.S. 15A-1334. At the sentencing hearing, the court shall, after taking the presentencing report under advisement, make written findings as to whether the defendant is classified as a sexually violent predator and the basis for the court's findings.

"§ 14-208.21. Registration procedure for sexually violent predator; application of Part 2 of this Article.

The provisions of Part 2 of this Article apply to a person classified as a sexually violent predator unless provided otherwise by this Part. The procedure for registering as a sexually violent predator is the same as under Part 2 of this Article.

"§ 14-208.22. Additional registration information required.

(a) In addition to the information required by G.S. 14-208.7, the following information shall also be obtained in the same manner as set out in Part 2 of this Article from a person who is classified as a sexually violent predator:

(1) Identifying factors.

(2) Offense history.

(3) Documentation of any treatment received by the person for the person's mental abnormality or personality disorder.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article.

(c) The Department of Correction shall also obtain the additional information set out in subsection (a) of this section and shall include this information in the prerelease notice forwarded to the sheriff or other appropriate law enforcement agency.

"§ 14-208.23. Length of registration.

The requirement that a person who is classified as a sexually violent predator maintain registration shall terminate only upon a determination, made in accordance with this Part, that the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.

"§ 14-208.24. Verification of registration information.

(a) The information in the county registry shall be verified by the sheriff for each registrant who is classified as a sexually violent predator every 90 days after the person's initial registration date.

(b) The procedure for verifying the information in the criminal offender registry is the same as under G.S. 14-208.9A, except that verification shall be every 90 days as provided by subsection (a) of this section.

"**§ 14-208.25. Termination of registration requirement.**

Ten years from the date of a person's initial registration as a sexually violent predator, a person may petition the superior court to review the person's classification as a sexually violent predator if the person has committed no subsequent reportable convictions. The decision as to whether to grant the review is in the discretion of the court. If the court grants the review, the court shall order a presentence commitment study as provided in G.S. 14-208.20(b). Upon receipt of the study results, the court shall hold a hearing to determine whether the person's classification as a sexually violent predator should be terminated. The procedure for the hearing shall be the same as under G.S 15A-1334(b) and (c). The court shall make written findings of fact with regard to the court's decision and the basis for that decision."

Section 2. The Department of Justice shall use funds available within its current operations budget for the 1997-98 fiscal year to design and implement a program for electronic access to the statewide sex offender registry. The program shall provide on-line access to the statewide sex offender registry through the Internet, allowing members of the public to locate and access the public record of sex offender registration information. The Division of Criminal Statistics shall be responsible for the on-line maintenance of current information regarding each registered sex offender.

Section 3. This act becomes effective April 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S992-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 992
THIS IS A DRAFT 11-JUN-97 18:15:40
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: NC Boxing Commission. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS RELATED TO THE NORTH CAROLINA BOXING COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-651 reads as rewritten:

"§ 143-651. Definitions.

~~As used in this Article:~~ The following definitions apply in this Article:

(1) ~~'Amateur' means a~~ Amateur. -- A person who is not and has never received or competed for any purse or other article or thing of value for participating in a match.

(2) ~~'Announcer' means any~~ Announcer. -- Any person who engages in the act of announcing a boxing match.

(3) ~~'Boxer' means any~~ Boxer. -- Any person who engages as a participant in a boxing match.

(4) ~~'Boxing match' means a~~ Boxing match. -- A match where the participants engage in the use of full

contact boxing techniques (using the fist only), and where the object of a match is to win by decision, knockout (KO), or ~~technical knockout (TKO), and shall include kickboxing matches as defined in this section.~~ technical knockout (TKO).

(5) ~~'Commission' means the~~ Commission. -- The North Carolina State Boxing Commission.

(6) ~~'Contest' means a~~ Contest. -- A boxing match in which the participants strive ~~earnestly~~ to win.

(7) ~~'Contestant' means any~~ Contestant. -- Any person who engages as a participant in a boxing match.

(8) ~~'Exhibition' means a~~ Exhibition. -- A boxing match where the participants display their boxing skills and technique without necessarily striving to win.

(9) ~~'Judge' means a~~ Judge. -- A person who has a vote in determining the winner of any match or contest.

(10) ~~'Kickboxer' means any~~ Kickboxer. -- Any person who engages as a participant in a kickboxing match.

(11) ~~'Kickboxing match' means a~~ Kickboxing match. -- A match in which the participants engage in full contact martial arts fighting techniques using the hands and the feet, and where the object of the match is to win by decision, knockout (KO), or technical knockout (TKO).

(12) ~~'Licensee' means any~~ Licensee. -- Any person, club, corporation, organization, or association to whom a license has been issued pursuant to the provisions of this Article.

(13) ~~'Manager' means any person, including an officer of a corporate manager and a managing partner of a partnership manager,~~ Manager. -- Any person who controls or administers the boxing affairs of any contestant, and who:

a. By contract, agreement, or other arrangement with any person undertakes or has undertaken to represent in any way the interest of the contestant in any professional boxing contest in which the boxer is to participate as a contestant, and is entitled under that contract, agreement, or arrangement to receive

monetary or other compensation for his services, without regard to the sources of the ~~compensation, except that the~~ compensation. The term 'manager' shall not be construed to mean any attorney licensed to practice in this State whose participation in the activities is restricted solely to ~~his~~ representing the interests of a professional boxer as ~~his client;~~ a client.

b. Directs or controls the professional boxing activities of any professional ~~boxer; or~~ boxer.

c. Receives or is entitled to receive a percentage of the gross purse or gross income of any professional boxing contest.

(14) ~~'Match' means any~~ Match. -- Any boxing or kickboxing contest or exhibition, and includes any event, engagement, sparring or practice session, show or program where the public is admitted and in which there is intended to be physical contact, whether an exhibition or contest. This definition does not include training or practice sessions when no admission is charged.

(15) ~~'Matchmaker' means a~~ Matchmaker. -- A person through whom matches are arranged for participants and who otherwise assists participants in procuring engagement dates for boxing.

(16) ~~'Natural person' means an~~ Natural person. -- An individual.

(17) ~~'Participant' means any~~ Participant. -- Any person who engages in a match or exhibition and performs as a boxer.

(18) ~~'Person' means an~~ Person. -- An individual, group of individuals, business, corporation, limited liability company, partnership, or any other individual or collective entity.

(19) ~~'Physician' means an~~ Physician. -- An individual licensed to practice medicine in this State.

(20) ~~'Professional' means any person who has received or competed for any purse or other article or thing of~~

~~value for participating in a boxing match.~~ Professional. -- Any person who is licensed as a professional boxer under the Federal Professional Boxing Safety Act of 1996.

(21) ~~'Promoter' means any person, including an officer of a corporate promoter and a managing partner of a partnership promoter,~~ Promoter. -- Any person who produces, arranges, stages, holds, or gives any match in North Carolina involving a professional participant.

(22) ~~'Referee' means the~~ Referee. -- The official who shall enter and remain in the ring for the duration of a match and shall enforce the rules and maintain order in the ring.

(23) ~~'Ring official' means any~~ Ring official. -- Any person who performs an official function for the duration of a match.

(23a) Sanctioned amateur. -- A person who competes in a sanctioned amateur match.

(23b) Sanctioned amateur match. -- Any boxing or kickboxing match regulated by an amateur sports organization that has been recognized and approved by the North Carolina Boxing Commission.

(24) ~~'Second' means any~~ Second. -- Any person who will work or be present in the corner of a participant for the duration of a match.

(25) ~~'Timekeeper' means any~~ Timekeeper. -- Any person who will operate the clock or watch for the duration of a match for the purpose of keeping the official time of the match.

(25a) Toughman contestant. -- Any person who competes in a toughman event.

(25b) Toughman event. -- An elimination program of matches in which (i) the contestants are not professional boxers, (ii) the finalist receives a purse or other article of value, (iii) the participants engage in the use of full contact boxing techniques, and (iv) the

object of each match is to win by decision, knockout (KO), or technical knockout (TKO).

(26) ~~'Ultimate warrior match' means a~~ Ultimate warrior match. -- A match where the participants use any combination of boxing, kicking, wrestling, hitting, punching, or other combative, contact techniques and which combination of techniques is not specifically authorized by and conducted pursuant to this Article."

Section 2. G.S. 143-652 reads as rewritten:

"**§ 143-652. State Boxing Commission.**

(a) Creation. -- The North Carolina State Boxing Commission is created within the Department of the Secretary of State to regulate in North Carolina live boxing and kickboxing matches, whether ~~professional or~~ professional, amateur, sanctioned amateur, or toughman events, ~~in North Carolina.~~ in which admission is charged for viewing, or the contestants compete for a purse or prize of value greater than twenty-five dollars ($25.00). The Commission shall consist of five voting ~~members~~ members, one nonvoting member, and two nonvoting advisory members. All the members shall be residents of North ~~Carolina.~~ Carolina and shall meet requirements for membership under the Professional Boxing Safety Act of 1996. The members shall be appointed as follows:

(1) One voting member shall be appointed by the Governor for an initial term of two years.

(2) One voting member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121.

(3) One voting member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year.

(4) Two voting members shall be appointed by the Secretary of State. One shall serve for an initial term of three years, and the other shall serve for an initial term of two years.

(5) One nonvoting member shall be apppointed by the Tribal Council of the Eastern Band of the Cherokee for an initial term of three years.

~~(5)~~ (6) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

~~(6)~~ (7) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

The nonvoting member appointed pursuant to subdivision (5) of subsection (a) of this section may serve on the Commission only if an agreement exists and remains in effect between the Tribal Council of the Eastern Band of the Cherokee and the Commission authorizing the Commission to regulate professional boxing matches within the Cherokee Indian Reservation as provided by the Professional Boxing Safety Act of 1996.

The two nonvoting advisory members appointed pursuant to subdivisions (6) and (7) of subsection (a) of this section shall advise the Commission on matters concerning the health and physical condition of boxers and health issues relating to the conduct of exhibitions and boxing matches. They may prepare and submit to the Commission for its consideration and approval any rules that in their judgment will safeguard the physical welfare of all participants engaged in boxing.

Terms for all members of the Commission except for the initial appointments shall be for three years.

The Secretary of State shall designate which member of the Commission is to serve as chair. A member of the Commission may be removed from office by the Secretary of State for cause. Each member before entering upon the duties of a member shall take and

subscribe an oath to perform the duties of the office faithfully, impartially, and justly to the best of the member's ability. A record of these oaths shall be filed in the Department of the Secretary of State.

(b) Vacancies. -- Members shall serve until their successors are appointed and have been qualified. Any vacancy in the membership of the Commission shall be filled in the same manner as the original appointment. Vacancies for members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. A vacancy in the membership of the Commission other than by expiration of term shall be filled for the unexpired term only.

(c) Meetings. -- Meetings of the Commission shall be called by the ~~chair~~ Executive Director, chair, or by any two members of the Commission, and meetings shall be held at least quarterly. Any three voting members of the Commission shall constitute a quorum at any meeting. Action may be taken and motions and resolutions adopted by the Commission at any meeting by the affirmative vote of a majority of the members of the Commission present at a meeting at which a quorum exists. Any or all members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in the meeting by this means is deemed to be present in person at the meeting.

(d) Rule-Making Authority of the Commission. -- The Commission shall have the exclusive authority to approve and issue rules submitted by the Executive Director for the regulation of the conduct, promotion, and performances of live ~~boxing~~ boxing, kickboxing, sanctioned amateur, amateur, and toughman matches and exhibitions in this State. The rules shall be issued pursuant to the provisions of Chapter 150B of the General Statutes and may include, without limitation, the following subjects:

(1) Requirements for issuance of licenses and permits required by this Article.
(2) Regulation of ticket sales.
(3) Physical requirements for contestants, including classification by weight and skill.
(4) Supervision of matches and exhibitions by licensed physicians and referees.
(5) Insurance and bonding requirements.

(6) Compensation of participants and licensees.
(7) Contracts and financial arrangements.
(8) Prohibition of dishonest, unethical, and injurious practices.
(9) Facilities.
(10) Approval of sanctioning amateur sports organizations.
(11) Procedures and requirements for compliance with the Professional Boxing Safety Act of 1996.

(e) Compensation. -- None of the members of the Commission shall receive compensation for serving on the Commission. However, members of the Commission may be reimbursed for their expenses in accordance with the provisions of Chapter 138 of the General Statutes.

(f) Staff Assistance. -- The Secretary of State shall hire a person to serve as Executive Director of the Commission and shall provide staff assistance to the ~~Commission.~~ Executive Director. The Executive Director may train and contract with independent contractors for the purpose of regulating and monitoring events, issuing licenses, collecting fees, and enforcing rules of the Commission. The Executive Director may initiate criminal background checks on persons requesting to work as independent contractors for the Commission or persons applying to be licensed by the Commission."

Section 3. G.S. 143-653 reads as rewritten:

"**§ 143-653. Ultimate warrior matches prohibited.**

Ultimate warrior matches, whether the participants are professionals or amateurs, are prohibited. No person shall promote, conduct, or engage in ultimate warrior matches. This section shall not preclude ~~boxing and kickboxing as regulated in this Article or~~ professional wrestling."

Section 4. G.S. 143-654 reads as rewritten:

"**§ 143-654. Licensing and permitting.**

(a) License and Permit Required. -- It is unlawful for any person to act in this State as an announcer, contestant, judge, manager, matchmaker, promoter, referee, timekeeper, or second unless the person is licensed to do so under this Article. It is unlawful for a promoter to present a match in this State unless the promoter has a permit issued under this Article to do so. The

Commission has the exclusive authority to issue, deny, suspend, or revoke any license or permit provided for in this Article.

(b) License. -- ~~A license issued under this Article must be renewed annually on or before January 1.~~ All licenses issued under this Article shall be valid only during the calendar year in which they are issued, except contestant licenses shall be valid for one year from the date of issuance. A license for an announcer, contestant, judge, matchmaker, referee, timekeeper, or second shall be issued only to a natural person. A natural person shall not transfer or assign a license or change it into another name. A license for a manager or promoter may be issued to a corporation or partnership; provided, however, that all officers or partners shall submit an application for individual licensure, and only those officers or partners who are licensed shall be entitled to negotiate or sign contracts. The addition of a new officer or partner during the license period shall necessitate the filing of an application for individual licensure by the new officer or partner.

An applicant for a license shall file with the Commission the appropriate nonrefundable fee and any forms, documents, medical examinations, or exhibits the Commission may require in order to properly administer this Article. The information requested shall include the date of birth and social security number of each applicant as well as any other personal data necessary to positively identify the applicant and may include the requirement of verification of any documents the Commission deems appropriate. A person may not participate under a fictitious or assumed name in any match unless the person has first registered the name with the Commission.

(c) Surety Bond. -- An applicant for a promoter's license must submit, in addition to any other forms, documents, or ~~exhibits,~~ exhibits requested by the Commission, a surety bond payable to the Commission for the benefit of any person injured or damaged by (i) the promoter's failure to comply with any provision of this Article or any rules adopted by the Commission or (ii) the promoter's failure to fulfill the obligations of any contract between or among licensees related to the holding of a boxing event. The surety bond shall be issued in an amount to be no less than five thousand dollars ($5,000). The amount of the surety bond shall be negotiable upon the sole discretion of the

Commission. All surety bonds shall be upon forms approved by the Secretary of State and supplied by the Commission.

(d) Permit. -- A permit issued to a promoter under this Article is valid for a single match. An applicant for a permit shall file with the Commission the appropriate nonrefundable fee and any forms or documents the Commission may require."

Section 5. G.S. 143-655 reads as rewritten:

"**§ 143-655. Fees; State Boxing Commission Revenue Account.**

(a) License Fees. -- The Commission shall collect the following license fees:

Announcer	$50.00
Contestant	$25.00
Judge	$50.00
Manager	$100.00
Matchmaker	$200.00
Promoter	$300.00
Referee	$50.00
Timekeeper	$50.00
Second	$25.00.

The annual license renewal fees shall ~~not exceed~~ be the same as the initial license fees.

(b) Permit Fees. -- The Commission ~~may establish a fee schedule for permits issued under this Article. The fees may vary depending on the seating capacity of the facility to be used to present a match. The fee may not exceed the following amounts:~~ shall collect the following permit fees:

Seating Capacity	Fee Amount
Less than 2,000	$100.00
2,000 -- 5,000	$200.00
Over 5,000	$300.00.

(c) State Boxing Commission Revenue Account. -- There is created the State Boxing Commission Revenue Account within the Department of the Secretary of State. Monies collected pursuant to the provisions of this Article shall be credited to the Account and applied to the administration of the Article."

Section 6. G.S. 143-656 reads as rewritten:

"**§ 143-656. Contracts and financial arrangements.**

Any contract between ~~a boxer and any other licensee~~ licensees and ~~any contract involving~~ related to a boxing match or exhibition held or to be held in this State must meet the

requirements of administrative rules as set forth by the Commission. Any contract which does not satisfy the requirements of the administrative rules shall be void and unenforceable. All contracts shall be in writing."

Section 7. G.S. 143-657 is repealed.

Section 8. Article 68 of Chapter 143 of the General Statutes is amended by adding the following new section:

"**§ 143-657.1. Sanctioned amateur matches.**

In addition to the other applicable provisions of this Article, a sanctioned amateur match shall be conducted pursuant to the rules of the sports organization sanctioning the boxing match or exhibition."

Section 9. G.S. 143-658 reads as rewritten:

"**§ 143-658. Violations.**

(a) Civil Penalties. -- The ~~Commission~~ Executive Director may issue an order against a licensee or other person who willfully violates any provision of this Article, imposing a civil penalty of up to five thousand dollars ($5,000) for a single violation or of up to twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings. No order under this subsection may be entered without giving the licensee or other person 15 days' prior notice and an opportunity for a contested case hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes.

(b) Criminal Penalties. -- A willful violation of any provision of this Article shall constitute a Class 2 misdemeanor. The Secretary of State may refer any available evidence concerning violations of this Article to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings.

The attorneys employed by the Secretary of State shall be available to prosecute or assist in the prosecution of criminal cases when requested to do so by a district attorney and the Secretary of State approves.

(c) Injunction. -- Whenever it appears to the ~~Commission~~ Executive Director that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of this Article or any rule or order hereunder, the ~~Commission~~ Executive Director may ~~in its discretion~~ bring an action in any court of competent jurisdiction to enjoin those

acts or practices and to enforce compliance with this Article or any rule or order issued pursuant to this Article.

(d) Enforcement. -- For purposes of enforcing this Article, the Department of the Secretary of State's law enforcement agents have statewide jurisdiction. These law enforcement agents may assist local law enforcement agencies in their investigations and may initiate and carry out, in coordination with local law enforcement agencies, investigations of violations of this Article. These law enforcement agents have all the powers and authority of law enforcement officers when executing arrest warrants."

Section 10. Notwithstanding any other statute to the contrary, the North Carolina Boxing Commission may adopt temporary rules to implement the provisions of Article 68 of Chapter 143 of the General Statutes within six months of the effective date of this act. Any temporary rules shall be adopted in accordance with the provisions of Chapter 150B of the General Statutes.

Section 11. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 992

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

S992-ARG-002 Page 1 of __

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]
Proposed Committee Substitute

moves to amend the bill on page 5, lines 19-20,
by rewriting the lines to read:
"($25.00). The Commission shall consist of ~~five~~ six voting members and two nonvoting advisory";

and on page 6, line 1,
by deleting the word "nonvoting";

and on page 6, line 20,
by deleting the word "nonvoting";

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED 6-19-97 FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

June 17, 1997 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Aaron Spence	Charles Neely
Dan Tower	Charles Neely
Bernard Allen	SOS
Nancy Kirschhofer	DOJ - SBI
John Aldridge	DOJ
Jane B. Gray	DOJ
Eddie Caldwell	NC Sheriffs Assn / NC Law Enf Off Assn
David Ferrell	Hofer, McNamara, Caldwell, McElroy & Witte
Karen Adams	Beryl Wade
Angela Murphy	Speakers' Office
Deborah Ross	ACLU

MINUTES
HOUSE JUDICIARY II COMMITTEE

June 19, 1997

The North Carolina House of Representatives Judiciary II Committee met on June 19, 1997, at 7:30 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Baddour, Bowie, Cansler, Culpepper, Gardner, Goodwin, Hackney, Redwine, Russell, Saunders, Shubert, Weatherly and Wilkins. A list of visitors is attached.

The following bill was discussed:

HB-448 GOVERNOR'S D.W.I. INITIATIVE/AB

Representative Hackney was recognized to explain the changes made by the Senate to HB-448 and to answer questions of committee members. A copy of HB-448, 5th edition, is attached.

Ms. Ruth Sappie, DOT Legislative Liaison, and Mr. John Madler, North Carolina Sentencing Commission, answered questions of committee members.

No action was taken on HB-448.

The meeting was adjourned at 8:20 A.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 5

HOUSE BILL 448*
Committee Substitute Favorable 4/23/97
Third Edition Engrossed 4/28/97
Senate Judiciary Committee Substitute Adopted 5/26/97
Fifth Edition Engrossed 6/5/97

Short Title: Governor's D.W.I. Initiative/AB. (Public)

Sponsors:

Referred to:

March 10, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE GOVERNOR'S RECOMMENDATIONS ON DRIVING WHILE IMPAIRED.

The General Assembly of North Carolina enacts:

PART I. SEIZURE OF VEHICLES USED IN DRIVING WHILE IMPAIRED OFFENSES.

Section 1.1. G.S. 20-28.2 reads as rewritten:

"**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.**

(a) Meaning of 'Impaired Driving License Revocation'. -- The revocation of a person's driver's license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, ~~20-17(2),~~ 20-17(a)(2), or 20-17.2; or

(2) G.S. 20-16(a)(7), 20-17(1), or 20-17(9), if the offense involves impaired driving.

(a1) As used in this section and in G.S. 20-28.3, 20-28.4, 20-28.5, and 20-28.6, the following terms mean:

(1) Acknowledgment. -- A written document acknowledging that:

a. The vehicle was operated by a person charged with an offense involving impaired driving while that person's

drivers license was revoked as a result of a prior impaired drivers license revocation;

b. If the vehicle is again operated by this particular person, at any time while that person's drivers license is revoked, and the person is charged with an offense involving impaired driving, the vehicle is subject to impoundment and forfeiture; and

c. A lack of knowledge or consent to the operation will not be a defense in the future, unless the vehicle owner has taken all reasonable precautions to prevent the use of the vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.

(2) Innocent Party. -- A vehicle owner who:

a. Did not know and had no reason to know that the defendant's drivers license was revoked; or

b. Knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without the person's expressed or implied permission.

(3) Lienholder. -- A person who holds a perfected security interest in a motor vehicle at the time of seizure.

(4) Order of Forfeiture. -- An order by the court which terminates the rights and ownership interest of a vehicle owner in a motor vehicle in accordance with G.S. 20-28.2.

(5) Possessory Lien. -- A lien for all costs and fees associated with the towing, storage, or sale of a vehicle pursuant to this section. This lien shall have priority over perfected and unperfected security interests. Storage fees subject to this lien shall not exceed five dollars ($5.00) per day.

(6) Registered Owner. -- A person in whose name a registration card for a motor vehicle is issued.

(7) Vehicle Owner. -- A person in whose name a registration card or certificate of title for a motor vehicle is issued.

(b) When Motor Vehicle Becomes Property Subject to Forfeiture. -- If at a sentencing hearing conducted pursuant to G.S. 20-179 or 20-138.5 the judge determines that the grossly aggravating factor described in G.S. 20-179(c)(2) applies, the motor vehicle that was driven by the defendant at the time ~~he~~ the defendant committed the offense of impaired driving becomes property subject to forfeiture.

(c) Duty of Prosecutor to Notify Possible Innocent Parties. -- In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture under this section, the prosecutor ~~must~~ shall determine the identity of ~~the vehicle owner as shown on the certificate of title for the vehicle and he must~~ every vehicle owner. The prosecutor shall also determine if there are any ~~security interests~~ lienholders noted on the vehicle's certificate of title. The State ~~must~~ shall notify ~~the~~

~~holder of each security interest~~ the defendant, each vehicle owner, and each lienholder that the vehicle may be subject to forfeiture and that ~~he~~ the defendant, vehicle owner, or the lienholder may intervene to protect ~~his~~ that person's interest. ~~If the defendant is not the owner, a similar notice must be served on the owner.~~ The notice may be served by any means reasonably likely to provide actual notice, and ~~must~~ shall be served at least fourteen days before the ~~forfeiture hearing.~~ hearing at which an order of forfeiture may be entered.

(d) Duty of Judge. -- ~~The judge at sentencing must hold a hearing to determine if the vehicle should be forfeited. At the hearing the judge may order the forfeiture if he finds that:~~

~~(1) The vehicle is subject to forfeiture;~~

~~(2) The vehicle is not primarily used by a member of the defendant's family or household for a business purpose or for driving to and from work or school;~~

~~(3) All potential innocent parties have been notified as required in subsection (e); and~~

~~(4) No party has shown that he is an innocent party as described in subsection (f).~~

~~If the owner or the holder of a security interest has not been notified, the judge may continue the hearing to allow the State to serve the notice or he may decline to order forfeiture. In any case in which a judge does not order the forfeiture of a vehicle subject to forfeiture, he must enter into the record detailed, written reasons for his decision.~~ The trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the vehicle is subject to forfeiture under this section. If at the sentencing hearing, or at a subsequent hearing, the judge determines that the requirements of subsections (a) through (c) of this section exist and the defendant was the only vehicle owner at the time of the offense, the judge shall order the vehicle forfeited. If at the sentencing hearing or at a subsequent hearing, the judge determines that the requirements of subsections (a) through (c) of this section exist and the defendant was not the only vehicle owner at the time of the offense, the judge shall order the vehicle forfeited unless another vehicle owner establishes, by the greater weight of the evidence, that such vehicle owner is an innocent party as defined by subdivision (a1)(2) of this section, in which case the trial judge shall order the vehicle released to the innocent party vehicle owner pursuant to the provisions of subsection (e) of this section. In any case where the vehicle is ordered forfeited, the judge shall either:

(1) Authorize the school board to sell the vehicle at public sale or retain the vehicle for its own use pursuant to G.S. 20-28.5; or

(2) Release the vehicle to an intervening lienholder pursuant to the provisions of subsection (g) of this section.

If the judge determines that the requirements of subsection (a) and (b) of this section exist but that notice as required by subsection (c) has not been given, the judge shall continue the forfeiture proceeding until adequate notice has been given. In no

circumstance shall the sentencing of the defendant be delayed as a result of the failure of the prosecutor to give adequate notice.

~~(e) Sale of Forfeited Vehicle Required. -- If the judge orders forfeiture of the vehicle pursuant to this section, he must order the sale of the vehicle. Proceeds of the sale must be paid to the school fund of the county in which the property was seized.~~

~~(f) Innocent Party May Intervene. -- At any time before the forfeiture is ordered, the property owner or holder of a security interest, other than the defendant, may apply to protect his interest in the motor vehicle. The application may be made to a judge who has jurisdiction to try the impaired driving offense with which the motor vehicle is associated. The judge must order the vehicle returned to the owner if he finds that either the owner or the holder of a security interest is an innocent party. An owner or holder of a security interest is an innocent party if he:~~

~~(1) Did not know and had no reason to know that the defendant's driver's license was revoked; or~~

~~(2) Knew that the defendant's driver's license was revoked, but the defendant drove the vehicle without his consent.~~

~~If an innocent party applies after the forfeited motor vehicle has been sold and the judge finds no laches in the innocent party's delay, the judge may order a payment to the innocent party from the net proceeds of the sale equal to his equity or security interest in the vehicle.~~

(e) Return of Vehicle to Innocent Vehicle Owner. -- If a nondefendant vehicle owner establishes by the greater weight of the evidence that: (i) the vehicle was being driven by a person who was not the only vehicle owner at the time of the underlying offense and (ii) that vehicle owner requesting release is an 'innocent party', a judge shall order the vehicle returned to the owner.

This release shall only be ordered upon satisfactory proof of:

(1) The identity of the person as a vehicle owner;

(2) The existence of financial responsibility to the extent required by Article 13 of this Chapter;

(3) The payment of towing and storage fees; and

(4) The execution of an acknowledgment as defined in subdivision (a1)(1) of this section.

No vehicle subject to forfeiture under this section shall be released to a vehicle owner if the records of the Division indicate the vehicle owner had previously signed an acknowledgment, as required by this section, and the same person was operating the vehicle while that person's license was revoked unless the innocent vehicle owner shows by the greater weight of the evidence that the vehicle owner has taken all reasonable precautions to prevent the use of the vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.

(f) Release to Lienholder. -- The trial judge shall order a forfeited vehicle released to the lienholder if the judge determines, by the greater weight of the evidence, that:

(1) The lienholder's interest is equal to or greater than the fair market value of the vehicle;

(2) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited vehicle to the vehicle owner who owned the vehicle immediately prior to forfeiture, or any person acting on the vehicle owner's behalf;

(3) The forfeited vehicle had not previously been released to the lienholder; and

(4) The lienholder pays, in full, any towing and storage costs incurred as a result of the seizure of the vehicle.

(g) Possessory Lien. -- The entity that tows or stores the motor vehicle, other than the county school board, shall be entitled to a possessory lien as defined in G.S. 28.2(a1)(5)."

Section 1.2. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.3. Seizure, impoundment, forfeiture of vehicles for offenses involving impaired driving while license revoked.**

(a) A motor vehicle that is driven by a person in violation of G.S. 20-138.1 or G.S. 20-138.5 is subject to seizure if at the time of the violation the drivers license of the person driving the motor vehicle was revoked as a result of a prior impaired drivers license revocation. The revocation of a person's drivers license is an impaired drivers license revocation for purposes of this section if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), or 20-17.2; or

(2) G.S. 20-16(a)(7), 20-17(a)(1), or 20-17(a)(9) if the offense involved impaired driving.

(b) Duty of Officer. -- If the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the vehicle and have it impounded. Probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable source. The officer shall cause to be issued written notification of impoundment to any vehicle owner who was not operating or present in the vehicle at the time of the offense. This notice shall be sent by first-class mail to the most recent address contained in the Division records. This written notification shall inform the vehicle owner(s) that the vehicle has been impounded, shall state the reason for the impoundment and the procedure for requesting release of the vehicle. The seizing officer shall notify the Division of the seizure in accordance with procedures established by the Division. Within 72 hours of the seizure of the vehicle the officer shall also cause notice of the impoundment and intent to forfeit the vehicle to be given to any lienholder of record with the Division.

(c) Review by Magistrate. -- Upon seizing a vehicle, the seizing officer shall present to a magistrate within the county where the vehicle was seized an affidavit of impoundment setting forth the basis upon which the motor vehicle has been seized for forfeiture. The magistrate shall review the affidavit of impoundment and if the magistrate determines the requirements of this section have been met, shall order the

vehicle held. The magistrate may request additional information and may hear from the operator if the operator is present.

(d) Custody of Vehicle. -- The seized vehicle shall be towed to a location designated by the county school board for the county in which the operator of the vehicle is charged and placed under the constructive possession of the school board pending release or sale. Each county school board may elect to have seized vehicles stored on property owned or leased by the school board and charge no fee for storage. In the alternative, the county school board may contract with a commercial storage facility for the storage of seized vehicles, and a storage fee of not more than five dollars ($5.00) per day may be charged.

(e) Release of Vehicle Pending Trial. -- A vehicle owner, or a lienholder of a vehicle, other than the driver at the time of the underlying offense resulting in the seizure, may apply to the clerk of superior court in the county where the charges are pending for pretrial release of the vehicle.

The clerk shall release the vehicle to a qualified vehicle owner or a lienholder under the following conditions:

(1) The vehicle has been stored for not less than 24 hours;

(2) All towing and storage charges have been paid;

(3) Execution of a good and valid bond with sufficient sureties in an amount equal to twice the value of the seized vehicle, as determined in accordance with the schedule of values adopted by the Commissioner of Motor Vehicles pursuant to G.S. 105-187.3, payable to the county school fund and conditioned on return of the vehicle, without any new or additional liens or encumbrances, on the day of trial of the operator;

(4) If a qualified vehicle owner, execution of an acknowledgment as described in G.S. 20-28.2(a1); and

(5) A check of the records of the Division indicates that the requesting vehicle owner has not previously executed an acknowledgment naming the operator of the seized vehicle.

(f) Duty of Trial Judge. -- The trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the vehicle is subject to forfeiture pursuant to the provisions of G.S. 20-28.2.

(g) Possessory Lien. -- The entity that tows and stores the vehicle, other than the county school board, shall be entitled to a possessory lien as defined in G.S. 28.2(a1)(5)."

Section 1.3. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.4. Release of impounded vehicles by judge.**

(a) Release to Innocent Vehicle Owner. -- A vehicle owner who was not the operator of the vehicle at the time of the offense may petition the court for return of the vehicle pursuant to the provisions of G.S. 20-28.2(e).

(b) Acknowledgment Required. -- The vehicle owner seeking release under this section or pretrial release under G.S. 20-28.3 shall sign an acknowledgment as described in G.S. 20-28.2(a1)(1).

(c) Release to Lienholder. -- A district court judge may order a forfeited vehicle released to a lienholder if the judge determines, by the greater weight of the evidence, that the lienholder satisfies the criteria as set out in G.S. 20-28.2(f).

(d) Release Upon Conclusion of Trial. -- If the driver of a motor vehicle seized pursuant to G.S. 20-28.3:

(1) Is subsequently not convicted of either G.S. 20-138.1 or G.S. 20-138.5 due to dismissal or a finding of not guilty; or

(2) The judge at the sentencing hearing fails to find the grossly aggravating factor described in G.S. 20-179(c)(2),

the seized vehicle shall be returned to the vehicle owner.

If the court finds that probable cause did not exist to seize the motor vehicle, the court shall order the vehicle released.

A determination which results in the return or release of the seized vehicle under this section authorizes the driver, vehicle owner, or lienholder to recover towing or storage fees paid in order to obtain pretrial release of the motor vehicle. Towing or storage fees recovered pursuant to this subsection shall be paid by the county school board from forfeitures paid into the county school fund."

Section 1.4. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.5. Forfeiture of impounded vehicle.**

(a) Sale. -- Unless a judge orders the vehicle returned to an innocent party or a lienholder pursuant to G.S. 20-28.2 or G.S. 20-28.4, the vehicle shall be ordered forfeited and sold or transferred to the school board in the county where the charges were filed. The sale of the vehicle shall be a judicial sale conducted in accordance with the provisions of Parts 1 and 2 of Article 29A of Chapter 1 of the General Statutes and shall be conducted by the county school board or a person acting on its behalf. In addition to the notice requirements of Part 2 of Article 29A of Chapter 1 of the General Statutes, notice of sale shall also be given by certified mail, return receipt requested, to all vehicle owners at the address shown by the Division's records and at any other address of the vehicle owner as may be found in the criminal file in which the forfeiture was ordered. Notice of sale shall also be by certified mail, return receipt requested, to all lienholders on file with the Division. Notice of sale shall be given to the Division in accordance with the procedures established by the Division.

(b) Proceeds of Sale. -- Proceeds of any sale conducted under this section shall first be applied to satisfy towing and storage liens and the cost of sale. The balance of the proceeds of sale, if any, shall be used to satisfy any other existing liens of record that were properly recorded with the Division prior to the date of initial seizure of the vehicle. Any remaining balance shall be paid to the county school fund in the county in which the vehicle was ordered forfeited. Vehicles sold pursuant to this section shall be transferred free and clear of any liens.

(c) Retention of Vehicle. -- The county board may, at its option, retain any forfeited vehicle for its use. If the vehicle is retained, any valid lien of record at the time of the initial seizure of the vehicle shall be satisfied by the school board relieving the vehicle owner of all liability for the obligation secured by the motor vehicle.

(d) If there is more than one school board in the county, then the fair market value of the vehicle shall be used to determine the share due each of the school boards in the same manner as fines and other forfeitures.

(e) Order of Forfeiture - Appeals. -- An order of forfeiture is stayed pending appeal of a conviction for an offense that is the basis for the order. When the conviction of an offense that is the basis for an order of forfeiture is appealed from district court, the issue of forfeiture shall be heard in superior court de novo. Appeal from a final order of forfeiture shall be to the Court of Appeals."

Section 1.5. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.6. Forfeiture of right of registration.**

(a) A person convicted of violating G.S. 20-138.1 or G.S. 20-138.5 while the person's drivers license is revoked as a result of a prior impaired drivers license revocation as defined in G.S. 20-28.3 forfeits the right to register or have registered a motor vehicle in the person's name until the person's drivers license is restored. The trial judge at the sentencing hearing on the person's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall order the defendant's rights of registration forfeited for the period the defendant's drivers license is revoked. The defendant shall be ordered to surrender the registration on all motor vehicles registered in the defendant's name to the Division within 10 days of the date of the order. Information in the order pertaining to the registration of motor vehicles shall be transmitted electronically or otherwise by the clerk of superior court to the Division. The Division shall not thereafter register a motor vehicle in the defendant's name until the defendant's drivers license has been restored.

(b) A registered owner other than the operator of the vehicle that is seized pursuant to G.S. 20-28.3 who is not an innocent party pursuant to G.S. 20-28.2 forfeits the right to register or have registered in the person's name the motor vehicle seized, until the drivers license of the person whose driving violation resulted in the motor vehicle being seized is restored. The trial judge on the person's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall order the registered owner's rights of registration for the seized motor vehicle forfeited for the period the defendant's drivers license is revoked after an opportunity for a hearing and a determination that the requirements of subsections (a) through (c) of G.S. 20-28.2 exist. The registered owner shall be ordered to surrender the registration on the motor vehicle seized to the Division within 10 days of the date of the order. Information in the order pertaining to the registration of motor vehicles shall be transmitted electronically or otherwise by the clerk of superior court to the Division. The Division shall not thereafter register the motor vehicle seized in the registered owner's name until the defendant's drivers license has been restored."

Section 1.6. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-28.7. Responsibility of Division of Motor Vehicles.**

The Division shall establish procedures by rule to provide for the orderly seizure, forfeiture, sale, and transfer of motor vehicles pursuant to the provisions of G.S. 20-28.2, 20-28.3, 20-28.4, 20-28.5, and 20-28.6."

Section 1.7. G.S. 20-219.10(a) reads as rewritten:

"(a) This Article applies to each towing of a vehicle that is carried out pursuant to G.S. 115C-46(d) or G.S. 143-340(19), or pursuant to the direction of a law-enforcement officer except:

(1) This Article applies to towings pursuant to G.S. 115D-21, 116-44.4, 116-229, 153A-132, 153A-132.2, 160A-303, and 160A-303.2 only insofar as specifically provided;

(2) This Article does not apply to a seizure of a vehicle under G.S. 14-86.1, 18B-504, 90-112, 113-137, 20-28.2, 20-28.3, or to any other seizure of a vehicle for evidence in a criminal proceeding or pursuant to any other statute providing for the forfeiture of a vehicle;

(3) This Article does not apply to a seizure of a vehicle pursuant to a levy under execution."

Section 1.8. G.S. 1-339.4 reads as rewritten:

"**§ 1-339.4. Who may hold sale.**

An order of sale may authorize the persons designated below to hold the sale:

(1) In any proceeding, a commissioner specially appointed therefor; or

(2) In a proceeding to sell property of a decedent, the administrator, executor or collector of such decedent's estate;

(3) In a proceeding to sell property of a minor, the guardian of such minor's estate;

(4) In a proceeding to sell property of an incompetent, the guardian or trustee of such incompetent's estate;

(5) In a proceeding to sell property of an absent or missing person, the administrator, collector, conservator, or guardian of the estate of such absent or missing person;

(6) In a proceeding to foreclose a deed of trust, the trustee named in the deed of trust;

(7) In a receivership proceeding, the receiver;

(8) In a proceeding to sell property of a trust, the ~~trustee.~~ trustee;

(9) In a motor vehicle forfeiture proceeding pursuant to G.S. 20-28.5, the county school board or a person acting on its behalf."

PART II. INCREASE PENALTY FOR DRIVING WHILE IMPAIRED OFFENDERS.

Section 2.1. G.S. 20-179(g) reads as rewritten:

"(g) Level One Punishment. -- A defendant subject to Level One punishment may be fined up to two thousand dollars ($2,000) and ~~must~~ shall be sentenced to a term of

imprisonment that includes a minimum term of not less than ~~14~~ 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed ~~(i)~~ to require the defendant to serve a term of imprisonment of at least ~~14 days, or (ii) to require the defendant to serve a term of imprisonment of at least four consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above.~~ 30 days. If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 2.2. G.S. 20-179(h) reads as rewritten:

"(h) Level Two Punishment. -- A defendant subject to Level Two punishment may be fined up to one thousand dollars ($1,000) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed ~~(i)~~ to require the defendant to serve a term of imprisonment of at least seven ~~days or, (ii) to require the defendant to serve a term of imprisonment of at least two consecutive days and then be placed under house arrest for twice the length of time remaining in the minimum term prescribed in (i) above.~~ days. If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 2.3. G.S. 20-179(i) reads as rewritten:

"(i) Level Three Punishment. -- A defendant subject to Level Three punishment may be fined up to five hundred dollars ($500.00) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment ~~must~~ may be ~~suspended, on~~ suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or
(2) Perform community service for a term of at least 72 hours; or
(3) Not operate a motor vehicle for a term of at least 90 days; or
(4) Any combination of these conditions.

If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation. ~~This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(e).~~"

Section 2.4. G.S. 20-179(j) reads as rewritten:

"(j) Level Four Punishment. -- A defendant subject to Level Four punishment may be fined up to two hundred fifty dollars ($250.00) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment ~~must~~ may be ~~suspended, on~~ suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or

(2) Perform community service for a term of 48 hours; or

(3) Not operate a motor vehicle for a term of 60 days; or

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation. ~~This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(e).~~"

Section 2.5. G.S. 20-179(k) reads as rewritten:

"(k) Level Five Punishment. -- A defendant subject to Level Five punishment may be fined up to one hundred dollars ($100.00) and ~~must~~ shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment ~~must~~ may be ~~suspended, on~~ suspended. However, the suspended sentence shall include the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or

(2) Perform community service for a term of 24 hours; or

(3) Not operate a motor vehicle for a term of 30 days; or

(4) Any combination of these conditions.

If the defendant is placed on probation, the judge ~~may~~ shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers ~~license.~~ license and as a condition of probation. The judge may impose any other lawful condition of probation. ~~This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(e).~~"

Section 2.6. G.S. 20-179(k1) reads as rewritten:

"(k1) Credit for Inpatient Treatment. -- Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any ~~treatment.~~ treatment unless the trial judge orders that the costs be absorbed by the State. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that

the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. ~~The credit may not be used more than once during the seven-year period immediately preceding the date of the offense.~~ This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law."

Section 2.7. G.S. 20-179(p) reads as rewritten:

"(p) Limit on Amelioration of Punishment. -- For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(2) The defendant ~~must~~ shall serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.

(3) The defendant may not be released on parole unless he is otherwise ~~eligible and~~ eligible, has served the mandatory minimum period of ~~imprisonment.~~ imprisonment, and has obtained a substance abuse assessment and completed any recommended treatment or training program or is paroled into a residential treatment program.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial."

Section 2.8. G.S. 20-179(r) reads as rewritten:

"(r) Supervised Probation Terminated. -- Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets ~~two~~ three conditions. These conditions are that he has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is ~~sentenced and~~ sentenced, that the defendant is sentenced under subsections (i), (j), and (k) of this ~~section.~~ section, and has obtained any necessary substance abuse assessment and completed any recommended treatment or training program.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or

(2) Repealed by Session Laws 1995 c. 496, s. 2.

(3) Payment of any fines, court costs, and fees; or

(4) Any combination of these conditions."

PART III. INCREASE ADMINISTRATIVE LICENSE REVOCATION PERIOD.

Section 3.1. G.S. 20-16.2(a) reads as rewritten:

"(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer ~~must~~ shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged ~~must~~ shall be taken before a chemical analyst authorized to administer a test of a person's breath, who ~~must~~ shall inform the person orally and also give the person a notice in writing that:

(1) The person has a right to refuse to be tested.

(2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least ~~10~~ 30 days and an additional 12-month revocation by the Division of Motor Vehicles.

(3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.

(4) The person's driving privilege will be revoked immediately for at least ~~10~~ 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more.

(5) The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.

(6) The person has the right to call an attorney and select a witness to view for him or her the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time when the person is notified of his or her rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated."

Section 3.2. G.S. 20-16.2(e1) reads as rewritten:

"(e1) Limited Driving Privilege after Six Months in Certain Instances. -- A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal the person held either a valid ~~driver's~~ drivers license or a license that had been expired for less than one year;

(2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied-consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;

(6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving; ~~and~~

(7) The person's license has been revoked for at least six months for the ~~refusal.~~ refusal; and

(8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing ~~must~~ shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing ~~must~~ shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid."

Section 3.3. G.S. 20-16.2(i) reads as rewritten:

"(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer ~~must~~ shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures

required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person ~~must~~ shall confirm the request in writing and ~~must~~ shall be notified:

(1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;

(2) That the person's license will be revoked for at least ~~10~~ 30 days if:

a. The test reveals an alcohol concentration of 0.08 or more; or

b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.

(3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 3.4. G.S. 20-16.5 is amended by adding a new subsection to read:

"(p) Limited Driving Privilege. -- A person whose drivers license has been revoked under this section may apply for a limited driving privilege if:

(1) At the time of the alleged offense the person held either a valid drivers license or a license that had been expired for less than one year;

(2) Does not have an unresolved pending charge involving impaired driving except the charge for which the license is currently revoked under this section or additional convictions of an offense involving impaired driving since being charged for the violation for which the license is currently revoked under this section;

(3) The person's license has been revoked for at least 10 days if the revocation is for 30 days or 30 days if the revocation is for 45 days; and

(4) The person has obtained a substance abuse assessment from a mental health facility and registers for and agrees to participate in any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. Any district court judge authorized to hold court in the judicial district is authorized to issue such a limited driving privilege. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section. If the person's license is revoked for any other reason, the limited driving privilege is invalid."

Section 3.5. G.S. 20-16.5(e) reads as rewritten:

"(e) Procedure if Report Filed with Judicial Official When Person Is Present. -- If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official ~~must,~~ shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he ~~must~~ shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official ~~must~~ shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official ~~must~~ shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official ~~must~~ shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. Unless the person is not currently licensed, the revocation under this subsection begins at the time the revocation order is issued and continues until the person's license has been surrendered for ~~10~~ 30 days and the person has paid the applicable costs. If the person is not currently licensed, the revocation continues until ~~10~~ 30 days from the date the revocation order is issued and the person has paid the applicable costs. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk ~~must~~ shall immediately issue a pick-up order. The pick-up order ~~must~~ shall be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order ~~must~~ shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division."

Section 3.6. G.S. 20-16.5(f) reads as rewritten:

"(f) Procedure if Report Filed with Clerk of Court When Person Not Present. -- When a clerk receives a properly executed report under subdivision (d)(3) and the person named in the revocation report is not present before the clerk, the clerk ~~must~~ shall determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he ~~must~~ shall mail to the person a revocation order by first-class mail. The order ~~must~~ shall direct that the person on or before the effective date of the order either surrender his license to the clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order ~~must~~ shall inform the person of the time and effective date of the revocation and of its duration, of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. Revocation orders mailed under this subsection become effective on the fourth day after the order is deposited in the United States mail. If within five working days of the effective date of the order, the person does not surrender his license to the clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk ~~must~~ shall immediately issue a pick-up order. The pick-up order

~~must~~ shall be issued and served in the same manner as specified in subsection (e) for pick-up orders issued pursuant to that subsection. A revocation under this subsection begins at the date specified in the order and continues until the person's license has been revoked for the period specified in this subsection and the person has paid the applicable costs. The period of revocation under this subsection is:

(1) ~~Ten~~ Thirty days from the time the person surrenders his license to the court, if the surrender occurs within five working days of the effective date of the order; or

(2) ~~Ten~~ Thirty days after the person appears before the clerk and demonstrates that he is not currently licensed to drive, if the appearance occurs within five working days of the effective date of the revocation order; or

(3) ~~Thirty~~ Forty-five days from the time:

a. The person's ~~driver's~~ drivers license is picked up by a law-enforcement officer following service of a pick-up order; or

b. The person demonstrates to a law-enforcement officer who has a pick-up order for his license that he is not currently licensed; or

c. The person's ~~driver's~~ drivers license is surrendered to the court if the surrender occurs more than five working days after the effective date of the revocation order; or

d. The person appears before the clerk to demonstrate that he is not currently licensed, if he appears more than five working days after the effective date of the revocation order.

When a pick-up order is issued, it ~~must~~ shall inform the person of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. An officer serving a pick-up order under this subsection ~~must~~ shall return the order to the court indicating the date it was served or that he was unable to serve the order. If the license was surrendered, the officer serving the order ~~must~~ shall deposit it with the clerk within three days of the surrender."

Section 3.7. G.S. 20-16.5(i) reads as rewritten:

"(i) Effect of Revocations. -- A revocation under this section revokes a person's privilege to drive in North Carolina whatever the source of his authorization to drive. Revocations under this section are independent of and run concurrently with any other revocations. No court imposing a period of revocation following conviction of an offense involving impaired driving may give credit for any period of revocation imposed under this section. ~~A person is not eligible for a limited driving privilege under any statute while his license is revoked under this section.~~ A person whose license is revoked pursuant to this section is not eligible to receive a limited driving privilege except as specifically authorized by G.S. 20-16.5(p)."

Section 3.8. G.S. 20-16.5(k) reads as rewritten:

"(k) Report to Division. -- Except as provided below, the clerk ~~must~~ shall mail a report to the Division within 10 working days of the return of a license under this

section or of the termination of a revocation of the driving privilege of a person not currently licensed. The report ~~must~~ shall identify the person whose license has been revoked and specify the dates on which his license was revoked. No report need be made to the Division, however, if there was a surrender of the driver's license issued by the Division, a ~~ten-day~~ 30-day minimum revocation was imposed, and the license was properly returned to the person under subsection (h) within five working days after the ~~10-day~~ 30-day period had elapsed."

PART IV. MAKE ALCOHOL SCREENING TEST ADMISSIBLE TO PROVE OFFENSE OF DRIVING AFTER DRINKING BY A PERSON UNDER 21.

Section 4. G.S. 20-138.3 reads as rewritten:

"**§ 20-138.3. Driving by person less than 21 years old after consuming alcohol or drugs.**

(a) Offense. -- It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his blood which was lawfully obtained and taken in therapeutically appropriate amounts.

(b) Subject to Implied-Consent Law. -- An offense under this section is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.

(c) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(d) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

~~(c)~~ (e) Punishment; effect when impaired driving offense also charged. -- The offense in this section is a Class 2 misdemeanor. It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable ~~must~~ shall be imposed.

~~(d)~~ (f) Limited driving privilege. -- A person who is convicted of violating subsection (a) of this section and whose drivers license is revoked solely based on that conviction may apply for a limited driving privilege as provided in G.S. 20-179.3.

This subsection shall apply only if the person meets both of the following requirements:

(1) Is 18, 19, or 20 years old on the date of the offense.

(2) Has not previously been convicted of a violation of this section.

The judge may issue the limited driving privilege only if the person meets the eligibility requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a limited driving privilege to a person who is convicted of violating subsection (a) of this section and of driving while impaired as a result of the same transaction."

PART V. ALLOW DRUG TESTING FOR DRIVING WHILE IMPAIRED.

Section 5.1. G.S. 20-4.01(3a) reads as rewritten:

"(3a) Chemical Analysis. -- A test or tests of the ~~breath or blood~~ breath, blood, or other bodily fluid or substance of a person to determine ~~his~~ the person's alcohol ~~concentration,~~ concentration or presence of an impairing substance, performed in accordance with ~~G.S. 20-139.1.~~ G.S. 20-139.1, including duplicate or sequential analyses. ~~The term "chemical analysis" includes duplicate or sequential analyses when necessary or desirable to insure the integrity of test results.~~"

Section 5.2. G.S. 20-138.3(a) reads as rewritten:

"(a) Offense. -- It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or ~~in his blood a~~ controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his ~~blood~~ body which was lawfully obtained and taken in therapeutically appropriate amounts."

Section 5.3. G.S. 20-139.1(a) reads as rewritten:

"(a) Chemical Analysis Admissible. -- In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration or the presence of any other impairing substance in the person's body as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to ~~a defendant's~~ a person's alcohol ~~concentration,~~ concentration or results of other tests showing the presence of an impairing substance, including other chemical tests."

Section 5.4. G.S. 20-139.1 is amended by adding a new subsection to read:

"(b5) Subsequent Tests Allowed. -- A person may be requested, pursuant to G.S. 20-16.2, to submit to a chemical analysis of the person's blood or other bodily fluid or substance in addition to or in lieu of a chemical analysis of the breath, in the discretion of the charging officer. A person's willful refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful refusal under G.S. 20-16.2."

Section 5.5. G.S. 20-139.1(e1) reads as rewritten:

"(e1) Use of Chemical Analyst's Affidavit in District Court. -- An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any hearing or trial in the District Court Division of the General Court of Justice with respect to the following matters:

(1) The alcohol concentration or concentrations or the presence or absence of an impairing substance of a person given a chemical analysis and who is involved in the hearing or trial.

(2) The time of the collection of the ~~blood or breath~~ blood, breath, or other bodily fluid or substance sample or samples for the chemical analysis.

(3) The type of chemical analysis administered and the procedures followed.

(4) The type and status of any permit issued by the Department of Environment, Health, and Natural Resources that he held on the date he performed the chemical analysis in question.

(5) If the chemical analysis is performed on a breath-testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Environment, Health, and Natural Resources ~~must~~ shall develop a form for use by chemical analysts in making this affidavit. If any person who submitted to a chemical analysis desires that a chemical analyst personally testify in the hearing or trial in the District Court Division, he may subpoena the chemical analyst and examine him as if he were an adverse witness."

Section 5.6. G.S. 20-179.3(h) reads as rewritten:

"(h) Other Mandatory and Permissive Conditions or Restrictions. -- In all limited driving privileges the judge ~~must~~ shall also include a restriction that the applicant not consume alcohol while driving or drive at any time while he has remaining in his body any alcohol or ~~in his blood a~~ controlled substance previously consumed, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts. The judge may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section."

PART VI. HABITUAL IMPAIRED DRIVING.

Section 6. G.S. 20-138.5(b) reads as rewritten:

"(b) A person convicted of violating this section shall be punished as a ~~Class G~~ Class F ~~felon.~~ felon and shall be sentenced to a minimum active term of not less than 12 months of imprisonment, which shall not be suspended. Sentences imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence being served."

PART VII. EFFECTIVE DATES.

Section 7. This act becomes effective December 1, 1997, and applies to offenses committed on or after that date. Sentencing for an offense committed before the effective date of this act is governed by the laws in effect at the time of the commission of the offense.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

June 19, 1997 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Hannah Cogwater	SBI (D.A.R.E)
Bernard Allen	SOS
Alice Garland	Electricities
JDC Pam Rice	GHSP
BERRY JENKINS	NCDOT
John Williamson	NCDOT
Joe Stewart	CCPS
Andy Romanet	N.C.L.M.
John Madler	Sentencing Commission
Danielle Dardashti	NBC-17
John McAlister	Duke Power
Amy JO Bain	Smith Anderson
MIKE TAYLOR	PRIVATE CITIZEN, BURLINGTON, N.C.
Curt Williams	Governor's Office
Ruth Sappie	NCDOT
Roslyn Savitt	NC Coalition Against Domestic Violence
Ssycret Jackson	OFFICE OF LT. GOV.
Chris Vaglenos	N.C. Beer & Wine Wholesalers
Mary Annie	NAS & Bar

MINUTES
HOUSE JUDICIARY II COMMITTEE

June 19, 1997

The North Carolina House of Representatives Judiciary II Committee met on June 19, 1997, at 11:15 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Bowie, Cansler, Culpepper, Decker, Gardner, Goodwin, Hackeny, Redwine, Russell, Sutton, Weatherly and Wilkins. A list of visitors is attached.

The following bills were discussed:

HB-448 GOVERNOR'S D.W.I. INITIATIVE/AB.
HB-1081 CONDEMNDATION AWARDS/EVIDENCE

Representative Hackney was recognized to continue his discussion of HB-448 and answer questions of committee members.

Mr. Handy Gunter, Special Agent in Charge of D.A.R.E. Unit, Mr. John Madler, North Carolina Sentencing Commission, and Mr. Joe Dougdale, General Counsel, Crime Control and Public Safety, answered questions of committee members.

Representative Hackney moved recommendation that the House concur with the Senate Committee Substitute for HB-448; motion passed.

Representative Allred was recognized to present a proposed committee substitute for HB-1081. Representative Goodwin moved the proposed committee substitute be adopted for purpose of discussion; motion passed. A copy of the committee substitute is attached.

Mr. Tim Hovis, Staff Counsel, explained the bill and answered questions of committee members.

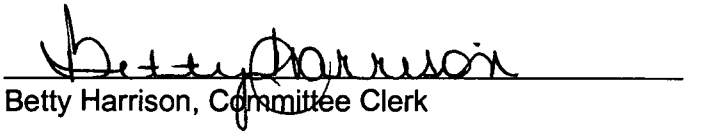
A copy of a handout CONDEMNATION AND ATTORNEY FEE AWARDS ARE UNRELATED, by Michael A. Taylor, is attached.

No action was taken on HB-1081

The meeting was adjourned at 12:00 P.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman



Betty Harrison, Committee Clerk

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

X Senate Committee Substitute for
H.B. 448 A BILL TO BE ENTITLED AN ACT TO IMPLEMENT THE GOVERNOR'S RECOMMENDATIONS ON DRIVING WHILE IMPAIRED.

☐ 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.

X 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

H D

H1081-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 1081
THIS IS A DRAFT 18-JUN-97 09:08:48
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Condemnation Awards/Evidence. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND LAWS GOVERNING CONDEMNATION TO AUTHORIZE AWARD OF ATTORNEYS' FEES AND INTRODUCTION OF ADDITIONAL EVIDENCE OF PROPERTY VALUE IN CERTAIN CONDEMNATION ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-8 is amended by adding a new subsection to read:

"(d) In addition to the other costs allowed under this Chapter, in any action brought under Article 3 of this Chapter in which the judgment, including a consent judgment, awarded to the owner is an amount greater than the amount of the deposit under G.S. 40A-41, the court with jurisdiction over the action may, in it discretion, after making appropriate findings of fact, award each owner of the property sought to be condemned a sum that, in the opinion of the court based upon its findings of fact, will reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable attorneys', appraisal, and engineering fees."

Section 2. Article 4 of Chapter 40A of the General Statutes is amended by adding a new section to read:

"§ 40A-71. Evidence of value.

In any proceeding to determine the value of property condemned under Article 3 of this Chapter, the amount deposited pursuant to G.S. 40A-41 shall be admissible into evidence."

Section 3. G.S. 40A-48(d) reads as rewritten:

"(d) A copy of the report shall at the time of filing be mailed certified or registered mail by the clerk to each of the parties or to their counsel of record. Within 30 days after the mailing of the report, either the condemnor or the owner, may except thereto and demand a trial de novo by a jury as to the issue of compensation. Upon the receipt of such demand the action shall be placed on the civil issue docket of the superior court for trial de novo by a jury as to the issue of compensation, provided, that upon agreement of both parties trial by jury may be waived and the issue determined by the judge. The report of commissioners shall not be competent as evidence upon the trial of the issue of compensation in the superior ~~court, nor shall evidence of the deposit by the condemnor into the court be competent upon the trial of the issue of compensation.~~ court. If no exception to the report of commissioners is filed within the time prescribed, final judgment shall be entered by the judge upon a determination and finding by him that the report of commissioners plus interest computed in accordance with G.S. 40A-53 of this Chapter, awards to the property owners just compensation. In the event that the judge is of the opinion and, in his discretion, determines that the award does not provide just compensation, he shall set aside the award and order the case placed on the civil issue docket for determination of the issue of compensation by a jury."

Section 4. G.S. 136-119 reads as rewritten:

"§ 136-119. Costs and appeal.

(a) The Department of Transportation shall pay all court costs taxed by the court. Either party shall have a right of appeal to the Supreme Court for errors of law committed in any proceedings provided for in this Article in the same manner as in any other civil actions and it shall not be necessary that an appeal bond be posted.

The court having jurisdiction of the condemnation actio instituted by the Department of Transportation to acquire real

property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable cost, disbursements, and expenses, including reasonable attorney fees, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if (i) the final judgment is that the Department of Transportation cannot acquire real property by condemnation; or (ii) the proceeding is abandoned by the Department of Transportation.

The judge rendering a judgment for the plaintiff in a proceeding brought under G.S. 136-111 awarding compensation for the taking of property, shall determine and award or allow to such plaintiff, as a part of such judgment, such sum as will in the opinion of the judge reimburse such plaintiff for his reasonable cost, disbursements and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

(b) In addition to the other costs allowed under this Article, in any action brought under this Article in which the judgment, including a consent judgment, awarded to the owner is an amount greater than the amount of the deposit under G.S. 136-103, the court with jurisdiction over the action may, in its discretion, after making appropriate findings of fact, award each owner of the property sought to be condemned a sum that, in the opinion of the court based upon its findings of fact, will reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable attorneys', appraisal, and engineering fees."

Section 5. Article 9 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-121.2. Evidence of value.**

In any proceeding to determine the value of property condemned under Article 3 of this Chapter, the amount deposited pursuant to G.S. 136-103 shall be admissible into evidence."

Section 6. G.S. 136-109(d) reads as rewritten:

"(d) A copy of the report shall at the time of filing be mailed to each of the parties.Within 30 days after the filing of the report, either the Department of Transportation or the owner, may except thereto and demand a trial de novo by a jury as to the issue of damages. Whereupon the action shall be placed on the

civil issue docket of the superior court for trial de novo by a jury as to the issue of damages, provided, that upon agreement of both parties trial by jury may be waived and the issue determined by the judge. The report of commissioners shall not be competent as evidence upon the trial of the issue of damages in the superior ~~court, nor shall evidence of the deposit by the Department of Transportation into the court be competent upon the trial of the issue of damages.~~ court. If no exception to the report of commissioners is filed within the time prescribed final judgment shall be entered by the judge upon a determination and finding by him that the report of commissioners, plus interest computed in accordance with G.S. 136-113 of this Chapter, awards to the property owners just compensation. In the event that the judge is of the opinion and, in his discretion, determines that such award does not provide just compensation he shall set aside said award and order the case placed on the civil issue docket for determination of the issue of damages by a jury."

Section 7. This act becomes effective October 1, 1997 and applies to pending litigation.

CONDEMNATIONS AND ATTORNEY FEE AWARDS ARE UNRELATED
(South Carolina Right of Way Statistics)

According to Mr. Rucker -- the Head of Right of Way at the Department of Transportation (DOT) in Colombia, South Carolina -- the percent of DOT condemnations were not compiled until 1992-1993. The percentages are as follows:

Years	**Percent of Condemnations is South Carolina**
- 1992-93	15%
- 1994-95	24%
- 1995-96	11%

Mr. Rucker said that the percentage of condemnations in South Carolina was **not a function of the 1987 attorney fee legislation**, but that it was a function of the **type of improvement** and perhaps more importantly the **location of the improvement** under consideration.

Type of improvement: interstates are highly controversial and contested improvements; the paving of a country dirt road is rarely contested.

Location: urban environments involve much more condemnation than non-urban environments. The widening of a street through a business area often displaces businesses and their amenities and are highly controversial and contested improvements.

Please support HB 1081.

Michael A. Taylor
3849 Rural Retreat Road
Burlington, N.C., 27215
(910) 584-8023

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

June 19, 1997 AFTER SESSION — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Will Cherry	Intern Rep. Neely
MIKE TAYLOR	PRIVATE CITIZEN, BURLINGTON, N.C.
John McAlister	Duke Power
John Williamson	NC DOT
BERRY JENKINS	NC DOT
Handy Lowton	SBI
Kay Eastman	SBI
Secret JACKSON	LT. GOV.
Eric Zogry	NC Sentencing Commission
John Madler	Sentencing Commission
Andy Romanet	N.C.A.O.M.
Ron Aycock	Assn Co. Comm.
Catherine Daiss	Electricities of NC
Joe Parker	GHSP
Taylor Batten	The Charlotte Observer
Thom Kellum	Moore - Van Allen
LYMAN COOPER	CSX CORP
Alice Garland	Electricities

MINUTES
HOUSE JUDICIARY II COMMITTEE

June 24, 1997

The North Carolina House of Representatives Judiciary II Committee met on June 24, 1997, at 11:40 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Baddour, Bowie, Cansler, Goodwin, Hackney, McMahan, Redwine, Russell, Saunders, Shubert, Sutton and Weatherly. A list of visitors is attached.

The following bill was discussed:

HB-1081 CONDEMNATION AWARDS/EVIDENCE

Representative Allred was recognized to present a proposed committee substitute for HB-1081. Representative Cansler moved the proposed committee substitute be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute is attached.

Mr. Tim Hovis, Committee Counsel, explained the proposed committee substitute and answered questions of committee members.

Representative Hackney requested to be excused from discussion and voting on HB-1081; request was approved.

Representative Cansler was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative McMahan was recognized to send forth an amendment; the amendment was displaced. A copy of the amendment is attached.

Mr. Barry Jenkins, Deputy Highway Administrator, Department of Transportation, spoke in opposition to the bill as presented.

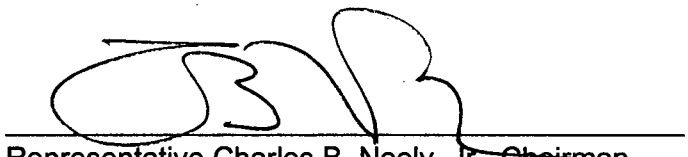
Mr. Grayson Kelly, AG-DOT, Mr. Bob Kaylor, Duke Power and Carolina Power and Light Company, Mr. John Williamson, NC DOT, Mr. Andy Romenet, North Carolina League of Municipalities, Mr. John McMillan, Attorney, Manning Fulton and Skinner, and Ms. Alice Garland, Electricities, answered questions of committee members.

Representative Baddour was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

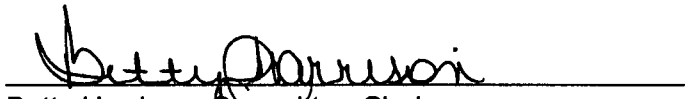
No action was taken on HB-1081.

The meeting was adjourned at 12:50 P.M.

Respectfully submitted,



Representative Charles B. Neely, Jr., Chairman



Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H1081-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 1081
THIS IS A DRAFT 24-JUN-97 10:08:39
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Condemnation Awards/Evidence. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND LAWS GOVERNING CONDEMNATION TO AUTHORIZE AWARD OF ATTORNEYS' FEES AND INTRODUCTION OF ADDITIONAL EVIDENCE OF PROPERTY VALUE IN CERTAIN CONDEMNATION ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-8 is amended by adding a new subsection to read:

"(d) In addition to the other costs allowed under this Chapter, in any action brought under Article 2 or Article 3 of this Chapter in which the judgment, including a consent judgment, awarded to the owner is an amount greater than the amount of the deposit under G.S. 40A-28 or G.S. 40A-41, the court with jurisdiction over the action may, in its discretion, after making appropriate findings of fact, award each owner of the property sought to be condemned a sum that, in the opinion of the court based upon its findings of fact, will reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable attorneys', appraisal, and engineering fees."

Section 2. Article 4 of Chapter 40A of the General Statutes is amended by adding a new section to read:

"§ 40A-71. Evidence of value.

In any proceeding to determine the value of property condemned under Article 3 of this Chapter, the amount deposited pursuant to G.S. 40A-41 shall be admissible into evidence."

Section 3. G.S. 40A-48(d) reads as rewritten:

"(d) A copy of the report shall at the time of filing be mailed certified or registered mail by the clerk to each of the parties or to their counsel of record. Within 30 days after the mailing of the report, either the condemnor or the owner, may except thereto and demand a trial de novo by a jury as to the issue of compensation. Upon the receipt of such demand the action shall be placed on the civil issue docket of the superior court for trial de novo by a jury as to the issue of compensation, provided, that upon agreement of both parties trial by jury may be waived and the issue determined by the judge. The report of commissioners shall not be competent as evidence upon the trial of the issue of compensation in the superior ~~court, nor shall evidence of the deposit by the condemnor into the court be competent upon the trial of the issue of compensation.~~ court. If no exception to the report of commissioners is filed within the time prescribed, final judgment shall be entered by the judge upon a determination and finding by him that the report of commissioners plus interest computed in accordance with G.S. 40A-53 of this Chapter, awards to the property owners just compensation. In the event that the judge is of the opinion and, in his discretion, determines that the award does not provide just compensation, he shall set aside the award and order the case placed on the civil issue docket for determination of the issue of compensation by a jury."

Section 4. G.S. 136-119 reads as rewritten:

"**§ 136-119. Costs and appeal.**

(a) The Department of Transportation shall pay all court costs taxed by the court. Either party shall have a right of appeal to the Supreme Court for errors of law committed in any proceedings provided for in this Article in the same manner as in any other civil actions and it shall not be necessary that an appeal bond be posted.

The court having jurisdiction of the condemnation action instituted by the Department of Transportation to acquire real

property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable cost, disbursements, and expenses, including reasonable attorney fees, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if (i) the final judgment is that the Department of Transportation cannot acquire real property by condemnation; or (ii) the proceeding is abandoned by the Department of Transportation.

The judge rendering a judgment for the plaintiff in a proceeding brought under G.S. 136-111 awarding compensation for the taking of property, shall determine and award or allow to such plaintiff, as a part of such judgment, such sum as will in the opinion of the judge reimburse such plaintiff for his reasonable cost, disbursements and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

(b) In addition to the other costs allowed under this Article, in any action brought under this Article in which the judgment, including a consent judgment, awarded to the owner is an amount greater than the amount of the deposit under G.S. 136-103, the court with jurisdiction over the action may, in its discretion, after making appropriate findings of fact, award each owner of the property sought to be condemned a sum that, in the opinion of the court based upon its findings of fact, will reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable attorneys', appraisal, and engineering fees."

Section 5. Article 9 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-121.2. Evidence of value.**

In any proceeding to determine the value of property condemned under Article 3 of this Chapter, the amount deposited pursuant to G.S. 136-103 shall be admissible into evidence."

Section 6. G.S. 136-109(d) reads as rewritten:

"(d) A copy of the report shall at the time of filing be mailed to each of the parties.Within 30 days after the filing of the report, either the Department of Transportation or the owner, may except thereto and demand a trial de novo by a jury as to the issue of damages. Whereupon the action shall be placed on the

civil issue docket of the superior court for trial de novo by a jury as to the issue of damages, provided, that upon agreement of both parties trial by jury may be waived and the issue determined by the judge. The report of commissioners shall not be competent as evidence upon the trial of the issue of damages in the superior ~~court, nor shall evidence of the deposit by the Department of Transportation into the court be competent upon the trial of the issue of damages.~~ court. If no exception to the report of commissioners is filed within the time prescribed final judgment shall be entered by the judge upon a determination and finding by him that the report of commissioners, plus interest computed in accordance with G.S. 136-113 of this Chapter, awards to the property owners just compensation. In the event that the judge is of the opinion and, in his discretion, determines that such award does not provide just compensation he shall set aside said award and order the case placed on the civil issue docket for determination of the issue of damages by a jury."

Section 7. This act becomes effective October 1, 1997, and applies to pending litigation.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1081 DATE _____

S. B. No. _____ Amendment No. _____

Proposed Comm. Sub. (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Cansler
)
Sen.)

moves to amend the bill on page 2, line 5

( ) WHICH CHANGES THE TITLE

by inserting before the words "Article 3" the words "Article 2 or";

and on page 2, line 6

by inserting before the citation "G.S. 40A-41" the citation "G.S. 40A-28".

SIGNED _____

ADOPTED 4-24-97 FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1081

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

H1081-ARG-001 Page 1 of __

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

moves to amend the bill on page 1, lines 11-12, commissioners' report under G.S. 40A-27 or the
by rewriting the lines to read:
"awarded to the owner exceeds the amount of the deposit under G.S. 40A-41 by at least seven hundred dollars ($700.00) and at least twenty percent (20%), the court with";

and on page 3, lines 20-21,
by rewriting the lines to read:
"including a consent judgement, awarded to the owner exceeds the amount of the deposit under G.S. 136-103 by at least seven hundred ($700.00) and at least twenty percent (20%), the".

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. 1081 DATE _____

S. B. No. _____ Amendment No. _____

Proposed Comm Sub. (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Baddour

Sen.)

moves to amend the bill on page 2, line s 1-30

( ) WHICH CHANGES THE TITLE

by deleting Sections 2 and 3 of the bill;

and on pages 3 and 4,

by deleting Sections 5 and 6 of the bill;

and by renumbering the remaining sections accordingly;

and on page 1, lines 3-4 by rewriting the lines to read:

"ATTORNEYS' FEES IN CERTAIN CONDEMNATION ACTIONS."

SIGNED Phyllis Baddour

ADOPTED 4-24-97 FAILED _____ TABLED _____

PORTA

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

June 24, 1997 AFTER SESSION — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
MIKE TAYLOR	BURLINGTON, N.C.
Jim Upchurch	CP&L
RW Kaylor	Kaylor Law Firm
John McAlister	Duke Power
Andy Romanet	N.C.L.M.
Alice Garland	Electricities
Catherine Lewis	"
John McMillan	Manning, Fulton + Skinner P.A.
Jayne Ramsey	MCI
Jane Winer	NCBA
Ruth Sappie	NCDOT
Grayson Kelley	AG-DOT
John Williamson	DOT
BERRY JENKINS	NCDOT
Will Cherry	Intern Rep. Neely
Don Beam	The Capitol Group
Thomas Davis	Womble Carlyle
Natalie Hawkins	Charlotte Chamber
Jeff Lyon	DOR
Floyd M. Lewis	General Statutes Commission
P. Bay Hall	d:to
Jane B Gray	DOJ
Joyce Peters	JTA Assoc

MINUTES
HOUSE JUDICIARY II COMMITTEE

June 25, 1997

The North Carolina House of Representatives Judiciary II Committee met on June 25, 1997, at 12:40 P.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Berry, Culpepper, Goodwin, McMahan, Russell, Saunders, Shubert and Sutton. A list of visitors is attached.

The following bill was discussed:

HB-1081 CONDEMNATION AWARDS/EVIDENCE

Representative Allred was recognized to send forth a proposed committee substitute for HB-1081. Representative Berry moved the proposed committee substitute be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute is attached.

Representative Wilkins was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Culpepper was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Sutton was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Goodwin moved the amendment be incorporated into a committee substitute bill, 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 Transportation; motion passed.

The meeting was adjourned at 1:40 P.M.

Respectfully submitted

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

H1081-PCSRG-002
PROPOSED COMMITTEE SUBSTITUTE
HOUSE BILL 1081
THIS IS A DRAFT 24-JUN-97 17:30:42
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Condemnation Awards/Evidence. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND LAWS GOVERNING CONDEMNATION TO AUTHORIZE AWARD OF ATTORNEYS' FEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-8 is amended by adding a new subsection to read:

"(d) In addition to the other costs allowed under this Chapter, in any action brought under Article 2 or Article 3 of this Chapter in which the judgment, including a consent judgment, awarded to the owner is an amount greater than the amount of the commissioners' report under G.S. 40A-27 or the deposit under G.S. 40A-41, the court with jurisdiction over the action may, in its discretion, after making appropriate findings of fact, award each owner of the property sought to be condemned a sum that, in the opinion of the court based upon its findings of fact, will reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable attorneys', appraisal, and engineering fees."

Section 2. G.S. 136-119 reads as rewritten:

"§ 136-119. Costs and appeal.

(a) The Department of Transportation shall pay all court costs taxed by the court. Either party shall have a right of appeal to the Supreme Court for errors of law committed in any proceedings provided for in this Article in the same manner as in any other civil actions and it shall not be necessary that an appeal bond be posted.

The court having jurisdiction of the condemnation action instituted by the Department of Transportation to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable cost, disbursements, and expenses, including reasonable attorney fees, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if (i) the final judgment is that the Department of Transportation cannot acquire real property by condemnation; or (ii) the proceeding is abandoned by the Department of Transportation.

The judge rendering a judgment for the plaintiff in a proceeding brought under G.S. 136-111 awarding compensation for the taking of property, shall determine and award or allow to such plaintiff, as a part of such judgment, such sum as will in the opinion of the judge reimburse such plaintiff for his reasonable cost, disbursements and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

(b) In addition to the other costs allowed under this Article, in any action brought under this Article in which the judgment, including a consent judgment, awarded to the owner is an amount greater than the amount of the deposit under G.S. 136-103, the court with jurisdiction over the action may, in its discretion, after making appropriate findings of fact, award each owner of the property sought to be condemned a sum that, in the opinion of the court based upon its findings of fact, will reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable attorneys', appraisal, and engineering fees."

Section 3. This act becomes effective October 1, 1997, and applies to pending litigation.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1081

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

H1081-ARG-002 Page 1 of __

Date_____,1997

Comm. Sub. [ ]
Amends Title [ ]

moves to amend the bill on page 1, lines 10-12,
by rewriting the lines to read:
"awarded to the owner exceeds the amount of the commissioners' report under G.S. 40A-27 or the deposit under G.S. 40A-41 by at least seven hundred dollars ($700.00) and at least twenty percent (20%), the court with jurisdiction over the action may, in its";

and on page 2, lines 30-31,
by rewriting the lines to read:
"including a consent judgment, awarded to the owner exceeds the amount of the deposit under G.S. 136-103 by at least seven hundred ($700.00) and at least twenty percent (20%), the".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED 6-25-97 FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1081 DATE _____

S. B. No. _____ Amendment No. _____

Proposed Comm. Sub. (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Culpepper

Sen.)

moves to amend the bill on page 1, line 12-13

( ) WHICH CHANGES THE TITLE

by deleting the language "may, in its discretion," and substituting "may";

and on page 1, line 18 by deleting the word "fees," and substituting "fees, in such amounts as the court shall in its discretion determine and allow.";

and on page 2, lines 32-33 deleting the language "may, in its discretion," and substituting "may";

and on page 2, line 38, by deleting the word "fees." and substituting "fees, in such amounts as the court shall in its discretion determine and allow.";

SIGNED Gail Culpepper

ADOPTED 6-25-97 FAILED _____ TABLED _____

rory.

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. 1681 DATE _____

S. B. No. _____ Amendment No. _____

Proposed Comm. Sub. (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Culpepper

Sen.)

moves to amend the bill on page 1, line 14

( ) WHICH CHANGES THE TITLE

by deleting the language "sought to be";

and on page 2, line 34

by deleting the language "sought to be".

SIGNED Bill Culpepper

ADOPTED Co. 25-97 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. 1081 DATE _____

S. B. No. _____ Amendment No. _____

Proposed Comm. Sub. (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

1 moves to amend the bill on page 2, line 40

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the words "pending litigation."

4 and substituting "actions commenced on or after

5 that date."

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SIGNED _____

ADOPTED 6-25-97 FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
H.B. 1081 A BILL TO BE ENTITLED AN ACT TO AMEND LAWS GOVERNING CONDEMNATION TO AUTHORIZE AWARD OF ATTORNEYS' FEES AND INTRODUCTION OF ADDITIONAL EVIDENCE OF PROPERTY VALUE IN CERTAIN CONDEMNATION ACTIONS.

☐ 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, which changes the title, unfavorable as to original bill, and recommendation that the committee substitute bill be re-referred to the Committee on Transportation.**

☐ 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

H D

HOUSE BILL 1081
Proposed Committee Substitute H1081-PCS1417

Short Title: Condemnation Awards. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND LAWS GOVERNING CONDEMNATION TO AUTHORIZE AWARD OF ATTORNEYS' FEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-8 is amended by adding a new subsection to read:

"(d) In addition to the other costs allowed under this Chapter, in any action brought under Article 2 or Article 3 of this Chapter in which the judgment, including a consent judgment, awarded to the owner exceeds the amount of the commissioners' report under G.S. 40A-27 or the deposit under G.S. 40A-41 by at least seven hundred dollars ($700.00) and at least twenty percent (20%), the court with jurisdiction over the action may, after making appropriate findings of fact, award each owner of the condemned property a sum that, in the opinion of the court based upon its findings of fact, will reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable attorneys', appraisal, and engineering fees, in such amounts as the court shall in its discretion determine and allow."

Section 2. G.S. 136-119 reads as rewritten:

"**§ 136-119. Costs and appeal.**

(a) The Department of Transportation shall pay all court costs taxed by the court. Either party shall have a right of appeal to the Supreme Court for errors of law committed in any proceedings provided for in this Article in the same manner as in any other civil actions and it shall not be necessary that an appeal bond be posted.

The court having jurisdiction of the condemnation action instituted by the Department of Transportation to acquire real property by condemnation shall award

the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable cost, disbursements, and expenses, including reasonable attorney fees, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if (i) the final judgment is that the Department of Transportation cannot acquire real property by condemnation; or (ii) the proceeding is abandoned by the Department of Transportation.

The judge rendering a judgment for the plaintiff in a proceeding brought under G.S. 136-111 awarding compensation for the taking of property, shall determine and award or allow to such plaintiff, as a part of such judgment, such sum as will in the opinion of the judge reimburse such plaintiff for his reasonable cost, disbursements and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

(b) In addition to the other costs allowed under this Article, in any action brought under this Article in which the judgment, including a consent judgment, awarded to the owner exceeds the amount of the deposit under G.S. 136-103 by at least seven hundred dollars ($700.00) and at least twenty percent (20%), the court with jurisdiction over the action may, after making appropriate findings of fact, award each owner of the condemned property a sum that, in the opinion of the court based upon its findings of fact, will reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable attorneys', appraisal, and engineering fees, in such amounts as the court shall in its discretion determine and allow."

Section 3. This act becomes effective October 1, 1997, and applies to actions commenced on or after that date.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II **June 25, 1997 IMMEDIATELY AFTER SESSION**

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dale McNeal	SCENIC NC
MIKE TAYLOR	BURLINGTON, N.C.
LEIGHTON POPER	EDA, PA
Jane Upchurch	CP&L
RW Kaylor	Kaylor Law Firm
John McAlister	Duke Power
Brenda Dougherty	Sprint
Jim Blackburn	Assoc. County Commissioners
ELLIS HANKINS	NCLM
Catherine Dukes	Electricities
Alice Garland	"
Sam D. Livingston	"
Ruth Sappie	NCDOT.
Amy Hendrix	Hunton & Williams
F.A. WEST	NCDOT
BERRY JENKINS	NCDOT
Grayson Kelley	AG - DOT
Andy Romanet	N.C.L.M.
Floyd Lewis	General Statutes Commission
P. Ray Hall	(ditto)
Jane Peters	Electricities
Walter Huntsell Jr.	N.C. SENATE
BOB SHAW	NCBA
Bill [illegible]	
George Reed	NC Council of Churches
Amy Jo Bain	Smith Anderson

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 4

HOUSE BILL 533
Committee Substitute Favorable 4/10/97
Third Edition Engrossed 4/16/97
Senate Judiciary Committee Substitute Adopted 6/12/97

Short Title: Equit. Distr./Divisible Prop. (Public)

Sponsors:

Referred to:

March 18, 1997

A BILL TO BE ENTITLED

AN ACT TO ADD "DIVISIBLE PROPERTY" AS A CATEGORY OF PROPERTY SUBJECT TO EQUITABLE DISTRIBUTION, TO CREATE A REBUTTABLE PRESUMPTION THAT AN IN-KIND DISTRIBUTION OF PROPERTY IS EQUITABLE, TO ENCOURAGE INTERIM DISTRIBUTION OF PROPERTY OR DEBT, AND TO ALLOW CERTAIN EVIDENCE OF THE VALUE OF MARITAL PROPERTY, AS RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-20 reads as rewritten:

"**§ 50-20. Distribution by court of marital property upon divorce.**

(a) Upon application of a party, the court shall determine what is the marital property and divisible property and shall provide for an equitable distribution of the marital property and divisible property between the parties in accordance with the provisions of this section.

(b) For purposes of this section:

(1) 'Marital property' means all real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the parties, and presently owned, except property determined to be separate property or divisible property in accordance with subdivision (2) or (4) of this

subsection. Marital property includes all vested pension, retirement, and other deferred compensation rights, including military pensions eligible under the federal Uniformed Services Former Spouses' Protection Act. It is presumed that all property acquired after the date of marriage and before the date of separation is marital property except property which is separate property under subdivision (2) of this subsection. This presumption may be rebutted by the greater weight of the evidence.

(2) 'Separate property' means all real and personal property acquired by a spouse before marriage or acquired by a spouse by bequest, devise, descent, or gift during the course of the marriage. However, property acquired by gift from the other spouse during the course of the marriage shall be considered separate property only if such an intention is stated in the conveyance. Property acquired in exchange for separate property shall remain separate property regardless of whether the title is in the name of the husband or wife or both and shall not be considered to be marital property unless a contrary intention is expressly stated in the conveyance. The increase in value of separate property and the income derived from separate property shall be considered separate property. All professional licenses and business licenses which would terminate on transfer shall be considered separate property. The expectation of nonvested pension, retirement, or other deferred compensation rights shall be considered separate property.

(3) 'Distributive award' means payments that are payable either in a lump sum or over a period of time in fixed amounts, but shall not include alimony payments or other similar payments for support and maintenance which are treated as ordinary income to the recipient under the Internal Revenue Code.

The distributive award of vested pension, retirement, and other deferred compensation benefits may be made payable:

a. As a lump sum by agreement;

b. Over a period of time in fixed amounts by agreement;

c. As a prorated portion of the benefits made to the designated recipient at the time the party against whom the award is made actually begins to receive the benefits; or

d. By awarding a larger portion of other assets to the party not receiving the benefits, and a smaller share of other assets to the party entitled to receive the benefits.

Notwithstanding the foregoing, the court shall not require the administrator of the fund or plan involved to make any payments until the party against whom the award is made actually begins to

receive the benefits unless a plan under the Employee Retirement Income Security Act (ERISA) permits earlier distribution. The award shall be determined using the proportion of time the marriage existed, (up to the date of separation of the parties), simultaneously with the employment which earned the vested pension, retirement, or deferred compensation benefit, to the total amount of time of employment. The award shall be based on the vested accrued benefit, as provided by the plan or fund, calculated as of the date of separation, and shall not include contributions, years of service or compensation which may accrue after the date of separation. The award shall include gains and losses on the prorated portion of the benefit vested at the date of separation. No award shall exceed fifty percent (50%) of the benefits the person against whom the award is made is entitled to receive as vested pension, retirement, or other deferred compensation benefits, except that an award may exceed fifty percent (50%) if (i) other assets subject to equitable distribution are insufficient; or (ii) there is difficulty in distributing any asset or any interest in a business, corporation, or profession; or (iii) it is economically desirable for one party to retain an asset or interest that is intact and free from any claim or interference by the other party; or (iv) more than one pension or retirement system or deferred compensation plan or fund is involved, but the benefits awarded may not exceed fifty percent (50%) of the total benefits of all the plans added together; or (v) both parties consent. In no event shall an award exceed fifty percent (50%) if a plan prohibits an award in excess of fifty percent (50%).

In the event the person receiving the award dies, the unpaid balance, if any, of the award shall pass to the beneficiaries of the recipient by will, if any, or by intestate succession, or by beneficiary designation with the plan consistent with the terms of the plan unless the plan prohibits such a designation. In the event the person against whom the award is made dies, the award to the recipient shall remain payable to the extent permitted by the pension or retirement system or deferred compensation plan or fund involved.

The Court may require distribution of the award by means of a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code of 1986. To facilitate the calculation and payment of distributive awards, the administrator of the system, plan or fund may be ordered to certify the total contributions, years of service, and pension, retirement, or other deferred compensation benefits payable.

The provisions of this section and G.S. 50-21 shall apply to all pension, retirement, and other deferred compensation plans and funds, including military pensions eligible under the Federal Uniform Services Former Spouses Protection Act, and including funds administered by the State pursuant to Articles 84 through 88 of Chapter 58 and Chapters 120, 127A, 128, 135, 143, 143B, and 147 of the General Statutes, to the extent of a member's accrued benefit at the date of separation, as determined by the court.

(4) 'Divisible property' means all real and personal property as set forth below:

a. All appreciation and diminution in value of marital property and divisible property of the parties occurring after the date of separation and prior to the date of distribution, except that appreciation or diminution in value which is the result of postseparation actions or activities of a spouse shall not be treated as divisible property.

b. All property, property rights, or any portion thereof received after the date of separation but before the date of distribution that was acquired as a result of the efforts of either spouse during the marriage and before the date of separation, including, but not limited to, commissions, bonuses, and contractual rights.

c. Passive income from marital property received after the date of separation, including, but not limited to, interest and dividends.

d. Increases in marital debt and financing charges and interest related to marital debt.

(c) There shall be an equal division by using net value of marital property and net value of divisible property unless the court determines that an equal division is not equitable. If the court determines that an equal division is not equitable, the court shall divide the marital property and divisible property equitably. Factors the court shall consider under this subsection are as follows:

(1) The income, property, and liabilities of each party at the time the division of property is to become effective;

(2) Any obligation for support arising out of a prior marriage;

(3) The duration of the marriage and the age and physical and mental health of both parties;

(4) The need of a parent with custody of a child or children of the marriage to occupy or own the marital residence and to use or own its household effects;

(5) The expectation of pension, retirement, or other deferred compensation rights, which is separate property;

(6) Any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by

the party not having title, including joint efforts or expenditures and contributions and services, or lack thereof, as a spouse, parent, wage earner or homemaker;

(7) Any direct or indirect contribution made by one spouse to help educate or develop the career potential of the other spouse;

(8) Any direct contribution to an increase in value of separate property which occurs during the course of the marriage;

(9) The liquid or nonliquid character of all marital property;

(10) The difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest, intact and free from any claim or interference by the other party;

(11) The tax consequences to each party;

(11a) Acts of either party to maintain, preserve, develop, or expand; or to waste, neglect, devalue or convert such marital property, during the period after separation of the parties and before the time of distribution; and

(12) Any other factor which the court finds to be just and proper.

(c1) Notwithstanding any other provision of law, a second or subsequent spouse acquires no interest in the marital property of his or her spouse from a former marriage until a final determination of equitable distribution is made in the marital property of the spouse's former marriage.

(d) Before, during or after marriage the parties may by written agreement, duly executed and acknowledged in accordance with the provisions of G.S. 52-10 and 52-10.1, or by a written agreement valid in the jurisdiction where executed, provide for distribution of the marital property in a manner deemed by the parties to be equitable and the agreement shall be binding on the parties.

(e) Subject to the presumption of subsection (c) of this section that an equal division is equitable, it shall be presumed in every action that an in-kind distribution of marital or divisible property is equitable. This presumption may be rebutted by the greater weight of the evidence, or by evidence that the property is a closely held business entity or is otherwise not susceptible of division in-kind. In any action in which the ~~court determines that an equitable distribution of all or portions of the marital property in kind would be impractical,~~ presumption is rebutted, the court in lieu of ~~such~~ in-kind distribution shall provide for a distributive award in order to achieve equity between the parties. The court may provide for a distributive award to facilitate, effectuate or supplement a distribution of marital or divisible property. The court may provide that any distributive award payable over a period of time be secured by a lien on specific property.

(f) The court shall provide for an equitable distribution without regard to alimony for either party or support of the children of both parties. After the determination of an equitable distribution, the court, upon request of either party, shall consider whether an order for alimony or child support should be modified or vacated pursuant to G.S. 50-16.9 or 50-13.7.

(g) If the court orders the transfer of real or personal property or an interest therein, the court may also enter an order which shall transfer title, as provided in G.S. 1A-1, Rule 70 and G.S. 1-228.

(h) If either party claims that any real property is marital property, that party may cause a notice of lis pendens to be recorded pursuant to Article 11 of Chapter 1 of the General Statutes. Any person whose conveyance or encumbrance is recorded or whose interest is obtained by descent, prior to the filing of the lis pendens, shall take the real property free of any claim resulting from the equitable distribution proceeding. The court may cancel the notice of lis pendens upon substitution of a bond with surety in an amount determined by the court to be sufficient provided the court finds that the claim of the spouse against property subject to the notice of lis pendens can be satisfied by money damages.

(i) Upon filing an action or motion in the cause requesting an equitable distribution or alleging that an equitable distribution will be requested when it is timely to do so, a party may seek injunctive relief pursuant to G.S. 1A-1, Rule 65 and Chapter 1, Article 37, to prevent the disappearance, waste or conversion of property alleged to be marital property or separate property of the party seeking relief. The court, in lieu of granting an injunction, may require a bond or other assurance of sufficient amount to protect the interest of the other spouse in the marital or separate property. Upon application by the owner of separate property which was removed from the marital home or possession of its owner by the other spouse, the court may enter an order for reasonable counsel fees and costs of court incurred to regain its possession, but such fees shall not exceed the fair market value of the separate property at the time it was removed.

(i1) ~~For good cause shown, including, but not limited to, providing for the subsistence of a spouse while an action is pending,~~ Unless good cause is shown that there should not be an interim distribution, the ~~Court~~ court may, at any time after an action for equitable distribution has been filed and prior to the final judgment of equitable distribution, enter orders declaring what is separate property and may also enter orders dividing part of the marital ~~property~~ property, divisible property or debt, or marital debt between the parties. The partial distribution may provide for a distributive ~~award.~~ award and may also provide for a distribution of marital property, marital debt, divisible property, or divisible debt. Any such orders entered shall be taken into consideration at trial and proper credit given.

Hearings held pursuant to this subsection may be held at sessions arranged by the chief district court judge pursuant to G.S. 7A-146 and, if held at such sessions, shall not be subject to the reporting requirements of G.S. 7A-198.

(j) In any order for the distribution of property made pursuant to this section, the court shall make written findings of fact that support the determination that the marital property has been equitably divided.

(k) The rights of the parties to an equitable distribution of marital property are a species of common ownership, the rights of the respective parties vesting at the time of the parties' separation."

Section 2. G.S. 50-21(b) reads as rewritten:

"(b) For purposes of equitable distribution, marital property shall be valued as of the date of the separation of the ~~parties.~~ parties, and evidence of preseparation and postseparation occurrences or values is competent as corroborative evidence of the value of marital property as of the date of the separation of the parties. Divisible property and divisible debt shall be valued as of the date of distribution."

Section 3. The amendments to G.S. 50-20(i1) made by this act become effective October 1, 1997, and apply to motions for interim distribution filed on or after that date but shall apply to divisible property and divisible debt only in actions for equitable distribution filed on or after October 1, 1997. The remainder of this act becomes effective October 1, 1997, and applies to actions for equitable distribution filed on or after that date.

H 533. EQUIT. DISTR./DIVISIBLE PROP. *TO ADD "DIVISIBLE PROPERTY" AS A CATEGORY OF PROPERTY SUBJECT TO EQUITABLE DISTRIBUTION, TO CREATE A REBUTTABLE PRESUMPTION THAT AN IN KIND DISTRIBUTION OF PROPERTY IS EQUITABLE, TO ENCOURAGE INTERIM DISTRIBUTION OF PROPERTY OR DEBT, AND TO ALLOW CERTAIN EVIDENCE OF THE VALUE OF MARTIAL PROPERTY, AS RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH CAROLINA BAR ASSOCIATION.* Amends GS 50-20 to make "divisible property" subject to the equitable distribution procedure when spouses divorce. Defines divisible property as (1) all appreciation and diminution in value of marital property occurring after separation and before distribution (except appreciation or diminution resulting from post separation activities of spouse); (2) property rights, commissions, bonuses, and contractual rights received after separation but before date of distribution and acquired as result of efforts of either spouse during the marriage and before separation; (3) passive income, interest, and dividends from marital property received after separation; and (4) increases in marital debt and financing charges and interest related to marital debt. Creates rebuttable presumption that in-kind distribution of marital or divisible property is equitable. Divisible property and divisible debt are valued as of date of distribution. Amends GS 50-20 (i1) to provide that court may order interim distribution of marital property, divisible property or debt, or marital debt unless there is good cause for not making an interim distribution. Amends GS 50-21(b) to provide that post separation occurrences or values are competent as corroborative evidence of value of marital property as of date of separation. Effective Oct. 1, 1997. Applies to equitable distribution actions filed on or after that date.

Intro. by Hackney.

Ref. to Judiciary II GS 50

DailyBulletin 04/10/97

H 533. EQUIT. DISTR./DIVISIBLE PROP. Intro. 3/18/97. House committee substitute replaces 1st edition. Provides that equal division of divisible property must be based on net value of the property and that changes regarding interim distributions apply to motions filed on or after Oct. 1, 1997.

Daily Bulletin 04/16/97

H 533. EQUIT. DISTR./DIVISIBLE PROP. Intro. 3/18/97. House action amends 2nd edition. Provides in GS 50-20(e), as amended by bill, that presumption that an in-kind distribution of marital or divisible property is equitable may be rebutted by greater weight of evidence *or by evidence that the property is a closely held business entity or is otherwise not susceptible of division in kind* (words in italics added by amendment).

Daily Bulletin 06/12/97

H 533. EQUIT. DISTR./DIVISIBLE PROP. Intro. 3/17/97. Senate committee substitute makes the following changes to 3rd edition. Provides that amendment to GS 50-20(i1) (interim distribution of

property) as it relates to "divisible property" and "divisible debt" applies only in actions for equitable distribution filed on or after Oct. 1, 1997; remaining provisions of GS 50-20(i1) apply to motions for interim distribution filed on or after Oct. 1, 1997.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

X Senate Committee Substitute for
H.B. 533 A BILL TO BE ENTITLED AN ACT TO ADD "DIVISABLE PROPERTY" AS A CATEGORY OF PROPERTY SUBJECT TO EQUITABLE DISTRIBUTION, TO CREATE A REBUTTABLE PRESUMPTION THAT AN IN-KIND DISTRIBUTION OF PROPERTY IS EQUITABLE, TO ENCOURAGE INTERIM DISTRIBUTION OF PROPERTY OR DEBT, AND TO ALLOW CERTAIN EVIDENCE OF THE VALUE OF MARITAL PROPERTY, AS RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH CAROLINA BAR ASSOCIATION.

☐ 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.

X 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

RECEIVED
JUN 30 1997
RESEARCH DIVISION

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
P.O. BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 733-6026

MEMORANDUM:

To: House Judiciary II Committee

From: General Statutes Commission

Date: June 20, 1997

Re: Supplemental Memorandum on Senate Bill 157 (Corporate Amendments)

As a result of a request by the House Finance Committee, the General Statutes Commission reviewed an amendment to G.S. 55-11-04 that was made to SB 157 in that Committee. The amendment was added as Section 29 of the bill and was a recommendation of the Commission on Business Laws and the Economy. The General Statutes Commission concluded that there was no substantive problem with the amendment. The Commission, however, was of the opinion that G.S. 55-11-04 should be further amended in light of the ratification of SB 892 (Dissenters' Rights) to clarify that the limitation on dissenters' rights in public corporations made in Section 1 of that bill does not apply to the minority shareholders of a subsidiary corporation in a merger under G.S. 55-11-04.

In the General Statutes Commission's review, the Commission noted first that it is not clear from the text of Section 1 of SB 892 whether or not it applies to mergers under G.S. 55-11-04 ("short form mergers"). The Commission concluded that shareholders of subsidiaries in short form mergers should have dissenters' rights, even if the subsidiary is a public corporation, because these shareholders do not receive as much information as shareholders in standard mergers and because of the vastly superior position of the 90% or greater shareholder. Noting that SB 892 was also a recommendation of the Commission on Business Laws and the Economy, the Commission contacted two individuals on this body, including the individual who originally proposed SB 892 to it, and both agreed that it was appropriate to have dissenters' rights for minority shareholders of the subsidiary in a short form merger, even if the subsidiary is a public corporation.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 4

SENATE BILL 157*
Finance Committee Substitute Adopted 4/7/97
House Committee Substitute Favorable 5/14/97
House Committee Substitute #2 Favorable 5/28/97

Short Title: Corporate Amendments. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE TIME CORPORATIONS AND LIMITED LIABILITY COMPANIES MAY APPLY FOR REINSTATEMENT FROM ADMINISTRATIVE DISSOLUTION, TO AMEND THE LAW GOVERNING DISSENTERS' RIGHTS PROCEDURES AND THE FILING OF DOCUMENTS BY LIMITED LIABILITY COMPANIES, TO ALLOW FACSIMILE SIGNATURES AND ADVISORY REVIEW OF DOCUMENTS BY THE SECRETARY OF STATE, AND TO CLARIFY CORRECTIONS PROCEDURES, LIMITED LIABILITY NAME AVAILABILITY, AND THE DEFINITION OF FOREIGN PROFESSIONAL CORPORATIONS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION AND OTHERS, AND TO AUTHORIZE THE CREATION OF SINGLE MEMBER LIMITED LIABILITY COMPANIES, TO ALLOW A PARENT CORPORATION TO BE MERGED INTO ITS SUBSIDIARY CORPORATION IN CERTAIN CIRCUMSTANCES, AND TO REMOVE THE REQUIREMENT THAT A PUBLIC CORPORATION MUST WAIT 30 DAYS BEFORE IT CAN FILE ITS ARTICLES OF MERGER WITH THE SECRETARY OF STATE.

The General Assembly of North Carolina enacts:

PART I. ADMINISTRATIVE DISSOLUTIONS.

Section 1. G.S. 55-14-22(a) reads as rewritten:

"(a) A corporation administratively dissolved under G.S. 55-14-21 may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of dissolution. The application must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution; and

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated.

(3) Reserved.

(4) Repealed by Session Laws 1995, c. 539, s. 6."

Section 2. G.S. 55A-14-22(a) reads as rewritten:

"(a) A corporation administratively dissolved under G.S. 55A-14-21 may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of dissolution. The application shall:

(1) Recite the name of the corporation and the effective date of its administrative dissolution; and

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated."

Section 3. G.S. 57C-6-03(c) reads as rewritten:

"(c) A limited liability company administratively dissolved under this section may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of the administrative dissolution. The procedures for reinstatement and for the appeal of any denial of the limited liability company's application for reinstatement shall be the same procedures applicable to business corporations under G.S. 55-14-22, 55-14-23, and 55-14-24."

PART II. AMENDMENT OF DISSENTERS' RIGHTS PROCEDURES.

Section 4. G.S. 55-13-22(b) reads as rewritten:

"(b) The dissenters' notice must be sent no later than 10 days after ~~the corporate action was taken,~~ shareholder approval, or if no shareholder approval is required, after the approval of the board of directors, of the corporate action creating dissenters' rights under G.S. 55-13-02, and must:

(1) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(2) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(3) Supply a form for demanding payment;

(4) Set a date by which the corporation must receive the payment demand, which date may not be fewer than 30 nor more than 60 days after the date the subsection (a) notice is mailed; and

(5) Be accompanied by a copy of this Article."

Section 5. G.S. 55-13-30 reads as rewritten:

"**§ 55-13-30. Court action.**

(a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter may commence a proceeding within 60 days after the date of his payment demand under G.S. 55-13-28 ~~and petition the court~~ by filing a complaint with the Superior

Court Division of the General Court of Justice to determine the fair value of the shares and accrued interest. ~~Upon~~ Within 10 days after service upon it of the ~~petition filed with the court,~~ complaint, the corporation shall pay to the dissenter the amount offered by the corporation under G.S. 55-13-25.

(a1) If the dissenter does not commence the proceeding within the 60-day period, the dissenter shall have an additional 30 days to either (i) accept in writing the amount offered by the corporation under G.S. 55-13-25, upon which the corporation shall pay such amount to the dissenter in full satisfaction of his demand, or (ii) withdraw his demand for payment and resume the status of a nondissenting shareholder. A dissenter who takes no action within such 30-day period shall be deemed to have withdrawn his dissent and demand for payment.

(b) Reserved for future codification purposes.

(c) The court shall have the discretion to make all dissenters (whether or not residents of this State) whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the ~~petition.~~ complaint. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the superior court in which the proceeding is commenced under ~~subsection (b)~~ subsection (a) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The parties are entitled to the same discovery rights as parties in other civil proceedings. The proceeding shall be tried as in other civil actions. However, in a proceeding by a dissenter in a ~~public corporation,~~ corporation that was a public corporation immediately prior to consummation of the corporate action giving rise to the right of dissent under G.S. 55-13-02, there is no right to a trial by jury.

(e) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation."

PART III. ADVISORY REVIEW OF PRELIMINARY DRAFTS OF DOCUMENTS.

Section 6. Article 1 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"**§ 55-1-22.2. Advisory review of documents.**

The Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 55-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify

the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 7. Article 1 of Chapter 55A of the General Statutes is amended by adding a new section to read:

"**§ 55A-1-22.2. Advisory review of documents.**

The Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. At the time of the advisory review, the Secretary of State shall notify the State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 55A-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 8. Article 1 of Chapter 57C of the General Statutes is amended by adding a new section to read:

"**§ 57C-1-22.2. Advisory review of documents.**

The Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 57C-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 9. Article 5 of Chapter 59 of the General Statutes is amended by adding a new section to read:

"**§ 59-206.2. Advisory review of documents.**

The Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Article. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and expedited filings as authorized by G.S. 59-1106. Upon completion of the advisory review, the Secretary

of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 10. G.S. 55-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Corporation's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected corporation	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of incorporation	50.00
(11)	Restated articles of incorporation	10.00
	with amendment of articles	50.00
(12)	Articles of merger or share exchange	50.00
(13)	Articles of dissolution	30.00
(14)	Articles of revocation of dissolution	10.00
(15)	Certificate of administrative dissolution	No fee
(16)	Application for reinstatement following administrative dissolution	25.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Annual report	10.00

(24)	Articles of correction	10.00
(25)	Application for certificate of existence or authorization	5.00
(26)	Any other document required or permitted to be filed by this Chapter	~~10.00.~~ 10.00
(27)	Advisory review of a document	200.00."

Section 11. G.S. 55A-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	$50.00
(2)	Application for reserved name	$10.00
(3)	Notice of transfer of reserved name	$10.00
(4)	Application for registered name	$10.00
(5)	Application for renewal of registered name	$10.00
(6)	Corporation's statement of change of registered agent or registered office or both	$ 5.00
(7)	Agent's statement of change of registered office for each affected corporation	$ 5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	$ 5.00
(10)	Amendment of articles of incorporation	$25.00
(11)	Restated articles of incorporation without amendment of articles	$10.00
(12)	Restated articles of incorporation with amendment of articles	$25.00
(13)	Articles of merger	$25.00
(14)	Articles of dissolution	$15.00
(15)	Articles of revocation of dissolution	$10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Application for reinstatement following administrative dissolution	$25.00
(18)	Certificate of reinstatement	No fee
(19)	Certificate of judicial dissolution	No fee
(20)	Application for certificate of authority	$100.00
(21)	Application for amended certificate of authority	$25.00
(22)	Application for certificate of withdrawal	$10.00
(23)	Certificate of revocation of authority to conduct affairs	No fee

(24)	Corporation's Statement of Change of Principal Office	$5.00
(24a)	Designation of Principal Office Address	$5.00
(25)	Articles of correction	$10.00
(26)	Application for certificate of existence or authorization	$ 5.00
(27)	Any other document required or permitted to be filed by this Chapter	~~$10.00.~~ $10.00
(28)	Advisory review of a document	$200.00."

Section 12. G.S. 57C-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

Document		Fee
(1)	Articles of organization	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited liability company	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(13)	Articles of merger	50.00
(14)	Articles of dissolution	30.00
(15)	Articles of revocation of dissolution	10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority	

	to transact business	No fee
(23)	Articles of correction	10.00
(24)	Application for certificate of existence or authorization	5.00
(25)	Annual report	200.00
(26)	Any other document required or permitted to be filed by this Chapter	~~10.00.~~ 10.00
(27)	Advisory review of a document	200.00."

Section 13. G.S. 59-1106 reads as rewritten:

"**§ 59-1106. Fees.**

The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

(1)	For filing a certificate of limited partnership (G.S. 59-201)	$50.00
(2)	For filing a certificate of amendment (G.S. 59-202; 59-905)	25.00
(3)	For filing a certificate of cancellation (G.S. 59-203; 59-906)	25.00
(4)	For filing an application for reservation of name (G.S. 59-104(a))	10.00
(5)	For filing a transfer of name (G.S. 59-104(d))	10.00
(6)	For filing an application for registration as foreign limited partnership (G.S. 59-502)	50.00
(7)	For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a limited partnership (G.S. 59-206(c)) For each page	1.00
	For affixing ~~his~~ the certificate and official seal thereto.	5.00
(8)	For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a limited partnership For each page	1.00
(9)	For filing any other document not herein specifically provided for	10.00
(10)	For the expedited filing by the end of the same business day of a document received in good order by 12:00 noon Eastern Standard Time	200.00 additional fee
(11)	For the expedited filing of a document received in good order within 24 hours after receipt, excluding weekends and holidays	100.00

~~additional fee.~~
additional fee

(12) Advisory review of a document 200.00.

The Secretary of State shall not collect the fees allowed in subdivisions (10) and (11) of this section unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document. Upon receipt of a document in proper form and payment of the required filing fee, the Secretary of State shall guarantee the expedited filing of the document."

PART IV. CLARIFICATION OF ARTICLES OF CORRECTION PROCEDURES.

Section 14. G.S. 55-1-24(a) reads as rewritten:

"(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (1) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (2) was defectively executed, attested, sealed, verified, or acknowledged."

Section 15. G.S. 55A-1-24(a) reads as rewritten:

"(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (i) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged."

Section 16. G.S. 57C-1-24(a) reads as rewritten:

"(a) A domestic or foreign limited liability company may correct a document filed by the Secretary of State if the document (i) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively ~~executed.~~ executed, attested, sealed, verified, or acknowledged."

Section 17. G.S. 59-206(a) is amended by adding a new subdivision to read:

"(2b) A domestic or foreign limited partnership may correct a document filed by the Secretary of State if the document (i) contains a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged."

PART V. RESTATEMENT OF LIMITED LIABILITY COMPANY ARTICLES OF ORGANIZATION.

Section 18. Article 2 of Chapter 57C of the General Statutes is amended by adding a new section to read:

"**§ 57C-2-22.1. Restated articles of organization.**

(a) A limited liability company may restate its articles of organization at any time with or without member action.

(b) The restated articles of organization may include one or more amendments to the articles. Unless otherwise provided in the articles of organization or a written operating agreement, any amendment requires the unanimous vote of the members. The restated articles of organization may include a statement of the address of the

current registered office and the name of the current registered agent of the limited liability company.

(c) A limited liability company restating its articles of organization shall deliver to the Secretary of State for filing articles of restatement that:

(1) Set forth the name of the limited liability company.

(2) Attach as an exhibit thereto the text of the restated articles of organization.

(3) State that the restated articles of organization do not contain an amendment or, if the articles do contain an amendment, that there is an amendment that was approved as required by this Chapter.

(d) Duly adopted restated articles of organization supersede the original articles of organization and all amendments to them.

(e) The Secretary of State may certify restated articles of organization as the articles of organization currently in effect, without including the other information required by subsection (c) of this section."

PART VI. CANCELLATION OF ARTICLES OF DISSOLUTION OF LIMITED LIABILITY COMPANY.

Section 19. Article 6 of Chapter 57C is amended by adding a new section to read:

"**§ 57C-6-06.1. Cancellation of articles of dissolution.**

After the filing of articles of dissolution by a limited liability company dissolved pursuant to G.S. 57C-6-01(4) because of the happening of an event of withdrawal, the articles of dissolution may be cancelled if, within 90 days after the event of withdrawal, all remaining members agree in writing that the business of the limited liability company should be continued and the limited liability company files articles of cancellation with the Secretary of State. The articles of cancellation shall set forth:

(1) The name of the limited liability company;

(2) The date of the event of withdrawal described in the articles of dissolution;

(3) The date of filing of the company's articles of dissolution;

(4) A statement that within 90 days after the event of withdrawal all remaining members have agreed in writing that the business of the limited liability company may be continued; and

(5) Any other information the members or managers filing the articles of cancellation determine."

Section 20. G.S. 57C-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

Document		Fee
(1)	Articles of organization	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00

(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited liability company	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(13)	Articles of merger	50.00
(14)	Articles of dissolution	30.00
(15)	~~Articles~~ Cancellation of articles of ~~revocation of~~ dissolution	10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Articles of correction	10.00
(24)	Application for certificate of existence or authorization	5.00
(25)	Annual report	200.00
(26)	Any other document required or permitted to be filed by this Chapter	10.00."

PART VII. AVAILABILITY OF LIMITED LIABILITY COMPANY NAME.

Section 21. G.S. 57C-2-30(f) reads as rewritten:

"(f) The name of a limited liability company dissolved under ~~G.S. 57C-6-03~~ Article 6 of this Chapter may not be used by another limited liability ~~company~~ company, business corporation, nonprofit corporation, or limited partnership ~~until the expiration of two years after the effective date of the dissolution~~ until:

(1) In the case of a dissolution pursuant to G.S. 57C-6-01, the later of (i) the date of filing of articles of dissolution pursuant to G.S. 57C-6-06 or (ii) the expiration of the time within which articles of

dissolution of the limited liability company may be canceled pursuant to G.S. 57C-6-06.1; or

(2) In the case of an administrative dissolution pursuant to G.S. 57C-6-03, the expiration of the period within which the limited liability company may be reinstated pursuant to G.S. 57C-6-03, if the limited liability company's period of duration stated in its articles of organization or written operating agreement has not expired,

unless the dissolved limited liability company changes its name to a name distinguishable upon the records of the Secretary of State from the names of other limited liability companies, business corporations, nonprofit corporations, or limited partnerships organized or transacting business in this State."

PART VIII. AUTHORIZATION OF FACSIMILE SIGNATURES FOR LIMITED PARTNERSHIP DOCUMENTS.

Section 22. G.S. 59-204 is amended by adding a new subsection to read:

"(b1) Any signature on any document authorized to be filed with the Secretary of State under any provision of this Article may be a facsimile."

PART IX. MODIFICATION OF DEFINITION OF FOREIGN PROFESSIONAL CORPORATION.

Section 23. G.S. 55B-16(b) reads as rewritten:

"(b) For purposes of this section, 'foreign professional corporation' means a corporation for profit ~~that is~~ that:

(1) Is incorporated under a law other than the law of this ~~State~~ State;

(2) Is incorporated for the sole and specific purpose of rendering professional services of the type that if rendered in this State would require the obtaining of a license from a licensing board pursuant to the statutory provisions referred to in ~~G.S. 55B-2(6)~~ G.S. 55B-2(6); and ~~that (i) has as its shareholders only individuals who are duly licensed, in this State or some other state, to render the same professional services as the corporation, or (ii) is organized for the purpose of rendering professional services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, and has as its shareholders only individuals who are duly licensed, in this State or in another state, to render the same professional services as the corporation or who are nonlicensed employees of the corporation, provided that nonlicensed employees own not more than one-third of the total issued and outstanding shares of the corporation, or (iii) is described in G.S. 55B-15.~~

(3) Has as its shareholders only individuals who:

a. Qualify to hold shares of a corporation organized under this Chapter;

b. Are licensed to provide professional services as defined in G.S. 55B-2(6) in a state in which the corporation is incorporated or is authorized to transact business, provided

that such professional services are the same as the professional service rendered by the corporation; or

c. Are nonlicensed employees of a corporation rendering services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, provided that all such nonlicensed employees own no more than one-third of the total issued and outstanding shares of such corporation in the aggregate."

PART X. CORRECTION OF DELAYED EFFECTIVE DATE STATUTES FOR LIMITED PARTNERSHIP DOCUMENTS.

Section 24. G.S. 59-201(b) reads as rewritten:

"(b) ~~A~~ Unless a delayed effective date is specified in the certificate of limited partnership, a limited partnership is formed at the ~~time~~ effective time and date of the filing of the certificate of limited partnership in the office of the Secretary of State ~~or at any later time not more than 20 days subsequent to the endorsement of the Secretary of State specified in the certificate of limited partnership if, in either case,~~ if there has been substantial compliance with the requirements of this section."

Section 25. G.S. 59-203 reads as rewritten:

"**§ 59-203. Cancellation of certificate.**

A certificate of limited partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership or at any other time that there are no limited partners. A certificate of cancellation shall be filed in the office of the Secretary of State and set forth:

(1) The name of the limited partnership;

(2) The date of filing of its certificate of limited partnership;

(3) The reason for filing the certificate of cancellation;

(4) The effective date ~~(which shall be a date certain not more than 20 days from the date of filing)~~ of cancellation if it is not to be effective upon the filing of the certificate; and

(5) Any other information the partners filing the certificate determine."

PART XI. REMOVAL OF "CONFORMING TO LAW" LANGUAGE IN REVISED UNIFORM LIMITED PARTNERSHIP ACT.

Section 26. G.S. 59-206(a)(2) reads as rewritten:

"(2) The original document so signed, together with the conformed copy, shall be delivered to the Secretary of State. ~~Unless~~ If the Secretary finds that it ~~does not conform to law,~~ satisfies the requirements of this Article, the Secretary shall, when the proper fees have been tendered, endorse upon the original the word 'filed' and the hour, day, month and year of the filing thereof and shall file the same in the Secretary's office. The Secretary of State shall thereupon immediately compare the copy with the original and if the Secretary finds that they are identical the Secretary shall make upon the conformed copy the same endorsement which appears on

the original and shall attach to the copy a certificate stating that attached thereto is a true copy of the document, designated by an appropriate title, filed in the Secretary's office and showing the date of the filing. The Secretary shall thereupon return the copy so certified to the limited partnership or its representatives. Any documents filed with the Secretary of State pursuant to this Chapter may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Chapter, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of the documents reproduced. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. The authorization to make the corrections shall be confirmed, according to procedures adopted by rule, by the Secretary prior to making the correction."

Section 27. G.S. 59-903(a) reads as rewritten:

"(a) If the Secretary of State finds that an application ~~conforms to law he~~ satisfies the requirements of this Article, the Secretary shall, when all requisite fees have been tendered as in this Article prescribed:

(1) Endorse on the application the word 'filed', and the hour, day, month and year of the filing thereof;

(2) File in ~~his~~ the office the application;

(3) Issue a certificate of authority to transact business in this State to which ~~he~~ the Secretary shall affix the conformed copy of the application; and

(4) Send to the foreign limited partnership or its representative the certificate of authority, together with the conformed copy of the application affixed thereto."

PART XII. SINGLE MEMBER LIMITED LIABILITY COMPANIES.

Section 28. G.S. 57C-2-20(a) reads as rewritten:

"(a) ~~Two~~ One or more persons may organize a limited liability company by delivering executed articles of organization to the Secretary of State for filing."

PART XIII. CORPORATE MERGERS.

Section 29. G.S. 55-11-04 reads as rewritten:

"**§ 55-11-04. Merger ~~of~~ with subsidiary.**

(a) Subject to Article 9, a parent corporation owning at least 90 percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary. Subject to Article 9, a parent corporation owning at least 90 percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge itself into the subsidiary without approval of the shareholders of the subsidiary if the merger is

approved by the directors and shareholders of the parent corporation in accordance with G.S. 55-11-01 and 55-11-03.

(b) The board of directors of the parent shall adopt a plan of merger that sets forth:

(1) The names of the parent and subsidiary; and

(2) The manner and basis of converting the shares of ~~the subsidiary~~ each corporation into shares, obligations, or other securities of the ~~parent~~ surviving or any other corporation or into cash or other property in whole or part.

(c) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(d) The parent may not deliver articles of merger to the Secretary of State for filing until at least 30 days after the date it mailed a copy or summary of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement. This subsection does not apply to a merger in which the subsidiary was a public corporation before becoming a subsidiary qualifying for a merger under this section and is still a public corporation on the effective date of the merger.

(e) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation (except for amendments enumerated in G.S. 55-10-02)."

PART XIV. EFFECTIVE DATES.

Section 30. Sections 1 through 3 of this act become effective July 1, 1997. Sections 14 through 17, 23, 26, 27, and 30 of this act are effective when the act becomes law. The remainder of this act becomes effective October 1, 1997. Section 4 of this act applies to dissenters' rights created pursuant to G.S. 55-13-02 on or after October 1, 1997, and Section 5 of this act applies to proceedings commenced on or after October 1, 1997. Sections 6 through 13 of this act apply to requests for review of documents on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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S157-PCSRG-002
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 157
THIS IS A DRAFT 24-JUN-97 09:36:28
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Corporate Amendments. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE TIME CORPORATIONS AND LIMITED LIABILITY COMPANIES MAY APPLY FOR REINSTATEMENT FROM ADMINISTRATIVE DISSOLUTION, TO AMEND THE LAW GOVERNING DISSENTERS' RIGHTS PROCEDURES AND THE FILING OF DOCUMENTS BY LIMITED LIABILITY COMPANIES, TO ALLOW FACSIMILE SIGNATURES AND ADVISORY REVIEW OF DOCUMENTS BY THE SECRETARY OF STATE, AND TO CLARIFY CORRECTIONS PROCEDURES, LIMITED LIABILITY NAME AVAILABILITY, AND THE DEFINITION OF FOREIGN PROFESSIONAL CORPORATIONS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION AND OTHERS, AND TO AUTHORIZE THE CREATION OF SINGLE MEMBER LIMITED LIABILITY COMPANIES, TO ALLOW A PARENT CORPORATION TO BE MERGED INTO ITS SUBSIDIARY CORPORATION IN CERTAIN CIRCUMSTANCES, TO REMOVE THE REQUIREMENT THAT A PUBLIC CORPORATION MUST WAIT 30 DAYS BEFORE IT CAN FILE ITS ARTICLES OF MERGER WITH THE SECRETARY OF STATE, AND TO PROVIDE THAT ANNUAL

REPORTS OF MOST BUSINESS CORPORATIONS AND LIMITED LIABILITY COMPANIES SHALL BE FILED WITH THE DEPARTMENT OF REVENUE RATHER THAN THE SECRETARY OF STATE.

The General Assembly of North Carolina enacts:

PART I. ADMINISTRATIVE DISSOLUTIONS.

Section 1. G.S. 55-14-22(a) reads as rewritten:

"(a) A corporation administratively dissolved under G.S. 55-14-21 may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of dissolution. The application must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution; and

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated.

(3) Reserved.

(4) Repealed by Session Laws 1995, c. 539, s. 6."

Section 2. G.S. 55A-14-22(a) reads as rewritten:

"(a) A corporation administratively dissolved under G.S. 55A-14-21 may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of dissolution. The application shall:

(1) Recite the name of the corporation and the effective date of its administrative dissolution; and

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated."

Section 3. G.S. 57C-6-03(c) reads as rewritten:

"(c) A limited liability company administratively dissolved under this section may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of the administrative dissolution. The procedures for reinstatement and for the appeal of any denial of the limited liability company's application for reinstatement shall be the same procedures applicable to business corporations under G.S. 55-14-22, 55-14-23, and 55-14-24."

PART II. AMENDMENT OF DISSENTERS' RIGHTS PROCEDURES.

Section 4. G.S. 55-13-22(b) reads as rewritten:

"(b) The dissenters' notice must be sent no later than 10 days after ~~the corporate action was taken,~~ shareholder approval, or if

no shareholder approval is required, after the approval of the board of directors, of the corporate action creating dissenters' rights under G.S. 55-13-02, and must:

(1) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(2) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(3) Supply a form for demanding payment;

(4) Set a date by which the corporation must receive the payment demand, which date may not be fewer than 30 nor more than 60 days after the date the subsection (a) notice is mailed; and

(5) Be accompanied by a copy of this Article."

Section 5. G.S. 55-13-30 reads as rewritten:

"**§ 55-13-30. Court action.**

(a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter may commence a proceeding within 60 days after the date of his payment demand under G.S. 55-13-28 ~~and petition the court~~ by filing a complaint with the Superior Court Division of the General Court of Justice to determine the fair value of the shares and accrued interest. Upon service upon it of the petition filed with the court, the corporation shall pay to the dissenter the amount offered by the corporation under G.S. 55-13-25.

(a1) If the dissenter does not commence the proceeding within the 60-day period, the dissenter shall have an additional 30 days to either (i) accept in writing the amount offered by the corporation under G.S. 55-13-25, upon which the corporation shall pay such amount to the dissenter in full satisfaction of his demand, or (ii) withdraw his demand for payment and resume the status of a nondissenting shareholder. A dissenter who takes no action within such 30-day period shall be deemed to have withdrawn his dissent and demand for payment.

(b) Reserved for future codification purposes.

(c) The court shall have the discretion to make all dissenters (whether or not residents of this State) whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the

~~petition.~~ complaint. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the superior court in which the proceeding is commenced under ~~subsection (b)~~ subsection (a) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The parties are entitled to the same discovery rights as parties in other civil proceedings. The proceeding shall be tried as in other civil actions. However, in a proceeding by a dissenter in a ~~public corporation,~~ corporation that was a public corporation immediately prior to consummation of the corporate action giving rise to the right of dissent under G.S. 55-13-02, there is no right to a trial by jury.

(e) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation."

Section 5.1. G.S. 55-13-30(a), as amended by Section 5 of this act, reads as rewritten:

"(a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter may commence a proceeding within 60 days after the date of his payment demand under G.S. 55-13-28 by filing a complaint with the Superior Court Division of the General Court of Justice to determine the fair value of the shares and accrued interest. ~~Upon~~ Within 10 days after service upon it of ~~the petition filed with the court,~~ complaint, the corporation shall pay to the dissenter the amount offered by the corporation under G.S. 55-13-25.

PART III. ADVISORY REVIEW OF PRELIMINARY DRAFTS OF DOCUMENTS.

Section 6. Article 1 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"**§ 55-1-22.2. Advisory review of documents.**

The Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed

within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 55-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 7. Article 1 of Chapter 55A of the General Statutes is amended by adding a new section to read:

"**§ 55A-1-22.2. Advisory review of documents.**

The Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. At the time of the advisory review, the Secretary of State shall notify the State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 55A-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 8. Article 1 of Chapter 57C of the General Statutes is amended by adding a new section to read:

"**§ 57C-1-22.2. Advisory review of documents.**

The Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 57C-1-22.1. Upon completion of

the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 9. Article 5 of Chapter 59 of the General Statutes is amended by adding a new section to read:

"§ 59-206.2. Advisory review of documents.

The Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Article. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and expedited filings as authorized by G.S. 59-1106. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 10. G.S. 55-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

Document		Fee
(1)	Articles of incorporation	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Corporation's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected corporation	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00

(10) Amendment of articles of incorporation 50.00
(11) Restated articles of incorporation 10.00 with amendment of articles 50.00
(12) Articles of merger or share exchange 50.00
(13) Articles of dissolution 30.00
(14) Articles of revocation of dissolution 10.00
(15) Certificate of administrative dissolution No fee
(16) Application for reinstatement following administrative dissolution 25.00
(17) Certificate of reinstatement No fee
(18) Certificate of judicial dissolution No fee
(19) Application for certificate of authority 200.00
(20) Application for amended certificate of authority 50.00
(21) Application for certificate of withdrawal 10.00
(22) Certificate of revocation of authority to transact business No fee
(23) Annual report 10.00
(24) Articles of correction 10.00
(25) Application for certificate of existence or authorization 5.00
(26) Any other document required or permitted to be filed by this Chapter ~~10.00.~~ 10.00
(27) Advisory review of a document 200.00."

Section 11. G.S. 55A-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

Document		Fee
(1)	Articles of incorporation	$50.00
(2)	Application for reserved name	$10.00
(3)	Notice of transfer of reserved name	$10.00
(4)	Application for registered name	$10.00
(5)	Application for renewal of registered	

name $10.00

(6) Corporation's statement of change of registered agent or registered office or both $ 5.00

(7) Agent's statement of change of registered office for each affected corporation $ 5.00

(8) Agent's statement of resignation No fee

(9) Designation of registered agent or registered office or both $ 5.00

(10) Amendment of articles of incorporation $25.00

(11) Restated articles of incorporation without amendment of articles $10.00

(12) Restated articles of incorporation with amendment of articles $25.00

(13) Articles of merger $25.00

(14) Articles of dissolution $15.00

(15) Articles of revocation of dissolution $10.00

(16) Certificate of administrative dissolution No fee

(17) Application for reinstatement following administrative dissolution $25.00

(18) Certificate of reinstatement No fee

(19) Certificate of judicial dissolution No fee

(20) Application for certificate of authority $100.00

(21) Application for amended certificate of authority $25.00

(22) Application for certificate of withdrawal $10.00

(23) Certificate of revocation of authority to conduct affairs No fee

(24) Corporation's Statement of Change of Principal Office $5.00

(24a) Designation of Principal Office Address $5.00

(25) Articles of correction $10.00

(26) Application for certificate of existence or authorization $ 5.00

(27) Any other document required or permitted to be filed by this Chapter ~~$10.00.~~ $10.00

(28) Advisory review of a document $200.00."

Section 12. G.S. 57C-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

Document		Fee
	(1)	Articles of organization $100.00
	(2)	Application for reserved name 10.00
	(3)	Notice of transfer of reserved name 10.00
	(4)	Application for registered name 10.00
	(5)	Application for renewal of registered name 10.00
	(6)	Limited liability company's statement of change of registered agent or registered office or both 5.00
	(7)	Agent's statement of change of registered office for each affected limited liability company 5.00
	(8)	Agent's statement of resignation No fee
	(9)	Designation of registered agent or registered office or both 5.00
	(10)	Amendment of articles of organization 50.00
	(11)	Restated articles of organization without amendment of articles 10.00
	(12)	Restated articles of organization with amendment of articles 50.00
	(13)	Articles of merger 50.00
	(14)	Articles of dissolution 30.00
	(15)	Articles of revocation of dissolution 10.00
	(16)	Certificate of administrative dissolution No fee
	(17)	Certificate of reinstatement No fee
	(18)	Certificate of judicial dissolution No fee
	(19)	Application for certificate of authority 200.00
	(20)	Application for amended certificate of authority 50.00
	(21)	Application for certificate of withdrawal 10.00
	(22)	Certificate of revocation of authority to transact business No fee
	(23)	Articles of correction 10.00
	(24)	Application for certificate of existence or authorization 5.00
	(25)	Annual report 200.00
	(26)	Any other document required or permitted

to be filed by this Chapter ~~10.00.~~
10.00
(27) Advisory review of a document 200.00."

Section 13. G.S. 59-1106 reads as rewritten:

"**§ 59-1106. Fees.**

The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

(1) For filing a certificate of limited partnership (G.S. 59-201) $50.00

(2) For filing a certificate of amendment (G.S. 59-202; 59-905) 25.00

(3) For filing a certificate of cancellation (G.S. 59-203; 59-906) 25.00

(4) For filing an application for reservation of name (G.S. 59-104(a)) 10.00

(5) For filing a transfer of name (G.S. 59-104(d)) 10.00

(6) For filing an application for registration as foreign limited partnership (G.S. 59-502) 50.00

(7) For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a limited partnership (G.S. 59-206(c)) For each page 1.00
For affixing ~~his~~ the certificate and official seal thereto 5.00

(8) For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a limited partnership
For each page 1.00

(9) For filing any other document not herein specifically provided for 10.00

(10) For the expedited filing by the end of the same business day of a document received in good order by 12:00 noon Eastern Standard Time
200.00
additional fee

(11) For the expedited filing of a document received in good order within 24 hours after receipt, excluding

weekends and holidays 100.00
~~additional fee.~~
additional fee

(12) Advisory review of a document 200.00.

The Secretary of State shall not collect the fees allowed in subdivisions (10) and (11) of this section unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document. Upon receipt of a document in proper form and payment of the required filing fee, the Secretary of State shall guarantee the expedited filing of the document."

PART IV. CLARIFICATION OF ARTICLES OF CORRECTION PROCEDURES.

Section 14. G.S. 55-1-24(a) reads as rewritten:

"(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (1) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (2) was defectively executed, attested, sealed, verified, or acknowledged."

Section 15. G.S. 55A-1-24(a) reads as rewritten:

"(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (i) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged."

Section 16. G.S. 57C-1-24(a) reads as rewritten:

"(a) A domestic or foreign limited liability company may correct a document filed by the Secretary of State if the document (i) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively ~~executed.~~ executed, attested, sealed, verified, or acknowledged."

Section 17. G.S. 59-206(a) is amended by adding a new subdivision to read:

"(2b) A domestic or foreign limited partnership may correct a document filed by the Secretary of State if the document (i) contains a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged."

PART V. RESTATEMENT OF LIMITED LIABILITY COMPANY ARTICLES OF ORGANIZATION.

Section 18. Article 2 of Chapter 57C of the General Statutes is amended by adding a new section to read:

"§ 57C-2-22.1. Restated articles of organization.

(a) A limited liability company may restate its articles of organization at any time with or without member action.

(b) The restated articles of organization may include one or more amendments to the articles. Unless otherwise provided in the articles of organization or a written operating agreement, any amendment requires the unanimous vote of the members. The restated articles of organization may include a statement of the address of the current registered office and the name of the current registered agent of the limited liability company.

(c) A limited liability company restating its articles of organization shall deliver to the Secretary of State for filing articles of restatement that:

(1) Set forth the name of the limited liability company.

(2) Attach as an exhibit thereto the text of the restated articles of organization.

(3) State that the restated articles of organization do not contain an amendment or, if the articles do contain an amendment, that there is an amendment that was approved as required by this Chapter.

(d) Duly adopted restated articles of organization supersede the original articles of organization and all amendments to them.

(e) The Secretary of State may certify restated articles of organization as the articles of organization currently in effect, without including the other information required by subsection (c) of this section."

PART VI. CANCELLATION OF ARTICLES OF DISSOLUTION OF LIMITED LIABILITY COMPANY.

Section 19. Article 6 of Chapter 57C is amended by adding a new section to read:

"§ 57C-6-06.1. Cancellation of articles of dissolution.

After the filing of articles of dissolution by a limited liability company dissolved pursuant to G.S. 57C-6-01(4) because of the happening of an event of withdrawal, the articles of dissolution may be cancelled if, within 90 days after the event

of withdrawal, all remaining members agree in writing that the business of the limited liability company should be continued and the limited liability company files articles of cancellation with the Secretary of State. The articles of cancellation shall set forth:

(1) The name of the limited liability company;
(2) The date of the event of withdrawal described in the articles of dissolution;
(3) The date of filing of the company's articles of dissolution;
(4) A statement that within 90 days after the event of withdrawal all remaining members have agreed in writing that the business of the limited liability company may be continued; and
(5) Any other information the members or managers filing the articles of cancellation determine."

Section 20. G.S. 57C-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

Document	Fee
(1)	Articles of organization $100.00
(2)	Application for reserved name 10.00
(3)	Notice of transfer of reserved name 10.00
(4)	Application for registered name 10.00
(5)	Application for renewal of registered name 10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both 5.00
(7)	Agent's statement of change of registered office for each affected limited liability company 5.00
(8)	Agent's statement of resignation No fee
(9)	Designation of registered agent or registered office or both 5.00
(10)	Amendment of articles of organization 50.00
(11)	Restated articles of organization without amendment of articles 10.00
(12)	Restated articles of organization with amendment of articles 50.00

(13) Articles of merger 50.00
(14) Articles of dissolution 30.00
(15) ~~Articles~~ Cancellation of articles of ~~revocation of~~ dissolution 10.00
(16) Certificate of administrative dissolution No fee
(17) Certificate of reinstatement No fee
(18) Certificate of judicial dissolution No fee
(19) Application for certificate of authority 200.00
(20) Application for amended certificate of authority 50.00
(21) Application for certificate of withdrawal 10.00
(22) Certificate of revocation of authority to transact business No fee
(23) Articles of correction 10.00
(24) Application for certificate of existence or authorization 5.00
(25) Annual report 200.00
(26) Any other document required or permitted to be filed by this Chapter 10.00."

PART VII. AVAILABILITY OF LIMITED LIABILITY COMPANY NAME.

Section 21. G.S. 57C-2-30(f) reads as rewritten:

"(f) The name of a limited liability company dissolved under ~~G.S. 57C-6-03~~ Article 6 of this Chapter may not be used by another limited liability ~~company~~ company, business corporation, nonprofit corporation, or limited partnership ~~until the expiration of two years after the effective date of the dissolution~~ until:

(1) In the case of a dissolution pursuant to G.S. 57C-6-01, the later of (i) the date of filing of articles of dissolution pursuant to G.S. 57C-6-06 or (ii) the expiration of the time within which articles of dissolution of the limited liability company may be canceled pursuant to G.S. 57C-6-06.1; or

(2) In the case of an administrative dissolution pursuant to G.S. 57C-6-03, the expiration of the period within which the limited liability company may be reinstated pursuant to G.S. 57C-6-03, if the limited liability company's period of duration

stated in its articles of organization or written operating agreement has not expired,

unless the dissolved limited liability company changes its name to a name distinguishable upon the records of the Secretary of State from the names of other limited liability companies, business corporations, nonprofit corporations, or limited partnerships organized or transacting business in this State."

PART VIII. AUTHORIZATION OF FACSIMILE SIGNATURES FOR LIMITED PARTNERSHIP DOCUMENTS.

Section 22. G.S. 59-204 is amended by adding a new subsection to read:

"(b1) Any signature on any document authorized to be filed with the Secretary of State under any provision of this Article may be a facsimile."

PART IX. MODIFICATION OF DEFINITION OF FOREIGN PROFESSIONAL CORPORATION.

Section 23. G.S. 55B-16(b) reads as rewritten:

"(b) For purposes of this section, 'foreign professional corporation' means a corporation for profit ~~that is~~ that:

(1) Is incorporated under a law other than the law of this ~~State~~ State;

(2) Is incorporated for the sole and specific purpose of rendering professional services of the type that if rendered in this State would require the obtaining of a license from a licensing board pursuant to the statutory provisions referred to in ~~G.S. 55B-2(6)~~ G.S. 55B-2(6); and ~~that (i) has as its shareholders only individuals who are duly licensed, in this State or some other state, to render the same professional services as the corporation, or (ii) is organized for the purpose of rendering professional services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, and has as its shareholders only individuals who are duly licensed, in this State or in another state, to render the same professional services as the corporation or who are nonlicensed employees of the corporation, provided that nonlicensed employees own not more than one-third~~

~~of the total issued and outstanding shares of the corporation, or (iii) is described in G.S. 55B-15.~~

(3) Has as its shareholders only individuals who:

a. Qualify to hold shares of a corporation organized under this Chapter;

b. Are licensed to provide professional services as defined in G.S. 55B-2(6) in a state in which the corporation is incorporated or is authorized to transact business, provided that such professional services are the same as the professional service rendered by the corporation; or

c. Are nonlicensed employees of a corporation rendering services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, provided that all such nonlicensed employees own no more than one-third of the total issued and outstanding shares of such corporation in the aggregate."

PART X. CORRECTION OF DELAYED EFFECTIVE DATE STATUTES FOR LIMITED PARTNERSHIP DOCUMENTS.

Section 24. G.S. 59-201(b) reads as rewritten:

"(b) ~~A~~ Unless a delayed effective date is specified in the certificate of limited partnership, a limited partnership is formed at the ~~time~~ effective time and date of the filing of the certificate of limited partnership in the office of the Secretary of State ~~or at any later time not more than 20 days subsequent to the endorsement of the Secretary of State specified in the certificate of limited partnership if, in either case,~~ if there has been substantial compliance with the requirements of this section."

Section 25. G.S. 59-203 reads as rewritten:

"**§ 59-203. Cancellation of certificate.**

A certificate of limited partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership or at any other time that there are no limited partners. A certificate of cancellation shall be filed in the office of the Secretary of State and set forth:

(1) The name of the limited partnership;

(2) The date of filing of its certificate of limited partnership;
(3) The reason for filing the certificate of cancellation;
(4) The effective date ~~(which shall be a date certain not more than 20 days from the date of filing)~~ of cancellation if it is not to be effective upon the filing of the certificate; and
(5) Any other information the partners filing the certificate determine."

PART XI. REMOVAL OF "CONFORMING TO LAW" LANGUAGE IN REVISED UNIFORM LIMITED PARTNERSHIP ACT.

Section 26. G.S. 59-206(a)(2) reads as rewritten:

"(2) The original document so signed, together with the conformed copy, shall be delivered to the Secretary of State. ~~Unless~~ If the Secretary finds that it ~~does not conform to law,~~ satisfies the requirements of this Article, the Secretary shall, when the proper fees have been tendered, endorse upon the original the word 'filed' and the hour, day, month and year of the filing thereof and shall file the same in the Secretary's office. The Secretary of State shall thereupon immediately compare the copy with the original and if the Secretary finds that they are identical the Secretary shall make upon the conformed copy the same endorsement which appears on the original and shall attach to the copy a certificate stating that attached thereto is a true copy of the document, designated by an appropriate title, filed in the Secretary's office and showing the date of the filing. The Secretary shall thereupon return the copy so certified to the limited partnership or its representatives. Any documents filed with the Secretary of State pursuant to this Chapter may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Chapter, or under any predecessor act, by

photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of the documents reproduced. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. The authorization to make the corrections shall be confirmed, according to procedures adopted by rule, by the Secretary prior to making the correction."

Section 27. G.S. 59-903(a) reads as rewritten:

"(a) If the Secretary of State finds that an application ~~conforms to law he~~ satisfies the requirements of this Article, the Secretary shall, when all requisite fees have been tendered as in this Article prescribed:

(1) Endorse on the application the word 'filed', and the hour, day, month and year of the filing thereof;

(2) File in ~~his~~ the office the application;

(3) Issue a certificate of authority to transact business in this State to which ~~he~~ the Secretary shall affix the conformed copy of the application; and

(4) Send to the foreign limited partnership or its representative the certificate of authority, together with the conformed copy of the application affixed thereto."

PART XII. SINGLE MEMBER LIMITED LIABILITY COMPANIES.

Section 28. G.S. 57C-2-20(a) reads as rewritten:

"(a) ~~Two~~ One or more persons may organize a limited liability company by delivering executed articles of organization to the Secretary of State for filing."

PART XIII. CORPORATE MERGERS.

Section 29. G.S. 55-11-04 reads as rewritten:

"**§ 55-11-04. Merger ~~of~~ with subsidiary.**

(a) Subject to Article 9, a parent corporation owning at least 90 percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary. Subject to Article 9, a parent corporation owning at least 90

percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge itself into the subsidiary without approval of the shareholders of the subsidiary if the merger is approved by the directors and shareholders of the parent corporation in accordance with G.S. 55-11-01 and 55-11-03.

(b) The board of directors of the parent shall adopt a plan of merger that sets forth:

(1) The names of the parent and subsidiary; and

(2) The manner and basis of converting the shares of ~~the subsidiary~~ each corporation into shares, obligations, or other securities of the ~~parent~~ surviving or any other corporation or into cash or other property in whole or part.

(c) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(d) The parent may not deliver articles of merger to the Secretary of State for filing until at least 30 days after the date it mailed a copy or summary of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement. This subsection does not apply to a merger in which the subsidiary was a public corporation before becoming a subsidiary qualifying for a merger under this section and is still a public corporation on the effective date of the merger.

(e) Articles of merger under this section may not contain amendments to the articles of incorporation of the ~~parent~~ surviving corporation (except for amendments enumerated in G.S. 55-10-02).

(f) The provisions of G.S. 55-13-02(c)(2) do not apply to subsidiary corporations that are parties to mergers consummated under this section."

PART XIV. CORPORATE ANNUAL REPORTS TO BE FILED WITH THE DEPARTMENT OF REVENUE

Section 30.1. G.S. 55-16-22 reads as rewritten:

"**§ 55-16-22. Annual ~~report for Secretary of State.~~ report.**

(a) ~~Each~~ Except as provided in subsections (a1) and (a2) of this section, each domestic corporation ~~except those governed by Chapter 55B,~~ and each foreign corporation authorized to transact business in this ~~State,~~ State shall deliver ~~to the Secretary of~~

~~State for filing an annual report that sets forth:~~ an annual report to the Secretary of Revenue.

(a1) Each insurance company subject to the provisions of Chapter 58 of the General Statutes shall deliver an annual report to the Secretary of State.

(a2) A domestic corporation governed by Chapter 55B of the General Statutes is exempt from this section.

(a3) The annual report required by this section shall be in a form jointly prescribed by the Secretary of Revenue and the Secretary of State. The Secretary of Revenue shall provide the form needed to file an annual report. The annual report shall set forth all of the following:

(1) The name of the corporation and the state or country under whose law it is ~~incorporated;~~ incorporated.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which its registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of such registered office or registered agent, or ~~both;~~ both.

(3) The address and telephone number of its principal ~~office;~~ office.

(4) The names, titles, and business addresses of its principal ~~officers;~~ officers.

~~(4a) The names and business addresses of its directors; and~~

(5) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(c) ~~The annual report shall be delivered to the Secretary of State each year within 60 days immediately following the last day of the month in which the domestic corporation was incorporated or the foreign corporation received a certificate of authority in this State. Forms required for the filing of the annual report~~

~~shall be mailed by the Secretary of State to the domestic or foreign corporation at its registered office for the first annual report, then to its principal office for subsequent annual reports.~~ An annual report required to be delivered to the Secretary of Revenue is due by the due date for filing the corporation's income and franchise tax returns. An extension of time to file a return is an extension of time to file an annual report. An annual report required to be delivered to the Secretary of State is due by the fifteenth day of the third month following the close of the corporation's fiscal year.

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in ~~such~~ the annual report.

(f) Expired.

(g) When a statement of change of registered office or registered agent is filed in the annual report, the change shall become effective when the statement is received by the Secretary of State.

(h) If the Secretary of State does not receive an annual report within 120 days of the date the return is due, the Secretary of State may presume that the annual report is delinquent. This presumption may be rebutted by receipt of the annual report from the Secretary of Revenue or by evidence of delivery presented by the filing corporation."

Section 30.2. G.S. 55-1-21(a) reads as rewritten:

"(a) The Secretary of State may promulgate and furnish on request forms ~~for:~~ for the following:

(1) An application for a certificate of ~~existence;~~ existence.

(2) A foreign corporation's application for a certificate of authority to transact business in this ~~State;~~ State.

(3) A foreign corporation's application for a certificate of ~~withdrawal; and~~ withdrawal.

~~(4) The annual report.~~

If the Secretary of State so requires, use of these forms is mandatory."

Section 30.3. G.S. 55-1-28(b)(4) reads as rewritten:

"(4) That its most recent annual report required by G.S. 55-16-22 either has been delivered to the Secretary of ~~State;~~ State or is not delinquent;".

Section 30.4. G.S. 55-14-20(2) reads as rewritten:

"(2) The corporation ~~does not deliver its annual report to the Secretary of State within 60 days after it is due;~~ is delinquent in delivering its annual report;".

Section 30.5. G.S. 55-15-30(a)(1) reads as rewritten:

"(1) The foreign corporation ~~does not deliver its annual report to the Secretary of State within 60 days after it is due;~~ is delinquent in delivering its annual report;".

Section 30.6. G.S. 55-16-01(e)(7) reads as rewritten:

"(7) Its most recent annual report delivered ~~to the Secretary of State under~~ as required by G.S. 55-16-22."

Section 30.7. G.S. 57C-2-23 reads as rewritten:

"**§ 57C-2-23. Annual report for Secretary of State.**

(a) Each domestic limited liability company and each foreign limited liability company authorized to transact business in this State, shall deliver to the Secretary of State for filing an annual ~~report~~ report, in a form jointly prescribed by the Secretary of Revenue and Secretary of State, that sets ~~forth:~~ forth all of the following:

(1) The name of the limited liability or foreign limited liability company and the state or country under whose law it is ~~organized;~~ organized.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at that office in this State, and

a statement of any change of the registered office or registered agent, or ~~both;~~ both.

(3) The address and telephone number of its principal ~~office;~~ office.

(4) The names and business addresses of its ~~managers; and~~ managers.

(5) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection. The Secretary of State shall make available the form required to file an annual report.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company or the foreign limited liability company.

(c) The annual report shall be delivered to the Secretary of State ~~each year within 60 days immediately following the last day of the month in which the domestic limited liability company was organized or the foreign limited liability company received a certificate of authority in this State. Forms required for the filing of the annual report shall be mailed by the Secretary of State to the domestic or foreign limited liability company at its registered office for the first annual report, and then to its principal office for subsequent annual reports.~~ by the fifteenth day of the fourth month following the close of the limited liability company's fiscal year.

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report."

Section 30.8. G.S. 57C-3-25(a) reads as rewritten:

"(a) Any person dealing with a limited liability company or a foreign limited liability company may rely conclusively upon its most recent annual report and any amendments ~~thereto filed with~~ to it on file with the Secretary of State ~~pursuant to G.S. 57C-2-23~~ as to the identity of its managers, except to the extent the person has actual knowledge that a person identified therein as a manager is not a manager."

Section 30.9. G.S. 105-228.90(a) reads as rewritten:

"(a) Scope. -- This Article applies to Subchapters I, V, and VIII of this ~~Chapter~~ Chapter, to the annual report filing requirements of G.S. 55-16-22, and to inspection taxes levied under Article 3 of Chapter 119 of the General Statutes."

Section 30.10. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-256.1. Corporate annual report.**

A corporation that files its annual report with the Secretary must pay the amount provided in G.S. 55-1-22 when it files the report. Amounts collected under this section shall be credited to the General Fund as tax revenue. The Secretary must transmit an annual report filed with the Secretary in accordance with G.S. 55-16-22 to the Secretary of State."

Section 30.11. G.S. 105-259 reads as rewritten:

"**§ 105-259. Secrecy required of officials; penalty for violation.**

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

(1) Employee or officer. -- The term includes a former employee, a former officer, and a current or former member of a State board or commission.

(2) Tax information. -- Any information from any source concerning the liability of a taxpayer for a tax, as defined in G.S. 105-228.90. The term includes the following:

a. Information contained on a tax return, a tax report, or an application for a license for which a tax is imposed.

b. Information obtained through an audit of a taxpayer or by correspondence with a taxpayer.

c. Information on whether a taxpayer has filed a tax return or a tax report.

d. A list or other compilation of the names, addresses, social security numbers, or similar information concerning taxpayers.

The term does not include (i) statistics classified so that information about specific taxpayers cannot be ~~identified or (ii)~~ identified, (ii) an annual report required to be filed under G.S. 55-16-22 or (iii) information submitted to the Business License Information Office of the Department of Secretary of State on a master application form for various business licenses.

(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(1) To comply with a court order or a law.

(2) Review by the Attorney General or a representative of the Attorney General.

(3) Review by a tax official of another state or the Internal Revenue Commissioner of the United States to aid the state or the Commissioner in collecting a tax imposed by this State, the other state, or the United States if the laws of the other state or the United States allow the state or the United States to provide similar tax information to a representative of this State.

(4) To provide a governmental agency or an officer of an organized association of taxpayers with a list of taxpayers who have paid a privilege license tax under Article 2 of this Chapter.

(5) To furnish to the chair of a board of county commissioners information on the county sales and use tax.

(6) To sort, process, or deliver tax information on behalf of the Department of Revenue.

(6a) To furnish the chair of a board of county commissioners a list of claimants that have received a refund of the county sales or use tax to the extent authorized in G.S. 105- 164.14(f).

(7) To exchange information with the Division of Motor Vehicles of the Department of Transportation when the information is needed to fulfill a duty imposed on the Department of Revenue or the Division of Motor Vehicles.

(8) To furnish to the Department of State Treasurer, upon request, the name, address, and account and identification numbers of a taxpayer who may be entitled to property held in the Escheat Fund.

(9) To furnish to the Employment Security Commission the name, address, and account and identification numbers of a taxpayer when the information is requested by the Commission in order to fulfill a duty imposed under Article 2 of Chapter 96 of the General Statutes.

(10) Review by the State Auditor to the extent authorized in G.S. 147-64.7.

(11) To give a spouse who elects to file a joint tax return a copy of the return or information contained on the return.

(11a) To provide a copy of a return to the taxpayer who filed the return.

(11b) In the case of a return filed by a corporation, a partnership, a trust, or an estate, to provide a copy of the return or information on the return to a person who has a material interest in the return if, under the circumstances, section 6103(e)(1) of the Code would require disclosure to that person of any corresponding federal return or information.

(11c) In the case of a return of an individual who is legally incompetent or deceased, to provide a copy of the return to the legal representative of the estate of the incompetent individual or decedent.

(12) To contract with a financial institution for the receipt of withheld income tax payments under G.S. 105-163.6 or for the transmittal of payments by electronic funds transfer.

(13) To furnish the Fiscal Research Division of the General Assembly, upon request, a sample, suitable in character, composition, and size for statistical analyses, of tax returns or other tax information from which taxpayers' names and identification numbers have been removed.

(14) To exchange information concerning a tax imposed by Subchapter V of this Chapter with the Standards Division of the Department of Agriculture when the information is needed to administer the Gasoline and Oil Inspection Act, Article 3 of Chapter 119 of the General Statutes.

(15) To exchange information concerning a tax imposed by Articles 2A, 2B, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the agency:

a. The North Carolina Alcoholic Beverage Control Commission.

b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.

c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department.

(16) To furnish to the Department of Secretary of State the name, address, tax year end, and account and identification numbers of a corporation liable for corporate income or franchise taxes or of a limited liability company liable for a corporate or a partnership tax return to enable the Secretary of State to notify the corporation or the limited liability company of the annual report filing requirement or that its articles of incorporation or articles of organization or its certificate of authority has been suspended.

(17) To inform the Business License Information Office of the Department of Secretary of State of the status of an application for a license for which a tax is imposed and of any information needed to process the application.

(18) To furnish to the Office of the State Controller the name, address, and account and identification

numbers of a taxpayer upon request to enable the State Controller to verify statewide vendor files or track debtors of the State.

(19) To furnish to the North Carolina Industrial Commission information concerning workers' compensation reported to the Secretary under G.S. 105-163.7.

(c) Punishment. -- A person who violates this section is guilty of a Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation."

Section 30.12. Section 30.11 of this act becomes effective July 1, 1997. The remainder of this Part becomes effective January 1, 1998, and applies to tax years ending on or after December 31, 1997, in the case of corporations required to file annual reports with the Secretary of Revenue and to fiscal years ending on or after December 31, 1997, in the case of corporations and limited liability companies required to file annual reports with the Secretary of State.

Annual reports delivered to either the Secretary of State or the Secretary of Revenue after December 31, 1997, but before January 1, 1999, shall nevertheless be deemed filed with the correct State agency. The Secretary of State shall notify the Secretary of Revenue of reports erroneously filed with the Secretary of State, and the Secretary of Revenue shall notify the Secretary of State of reports erroneously filed with the Secretary of Revenue.

PART XV. EFFECTIVE DATES.

Section 31. Section 1 of this act becomes effective July 1, 1997. Sections 2 and 3 of this act become effective July 1, 1997. Sections 14 through 17, 23, 26, 27, and 31 of this act are effective when the act becomes law. Except as otherwise provided, the remainder of this act becomes effective October 1, 1997. Section 4 of this act applies to dissenters' rights created pursuant to G.S. 55-13-02 on or after October 1, 1997. Section 5 of this act applies to proceedings commenced on or after October 1, 1997. Section 5.1 of this act applies to proceedings commenced on or after October 1, 1997, by dissenters to corporate actions

that occurred before October 1, 1997. Sections 6 through 13 of this act apply to requests for review of documents on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 157

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

S157-ARG-001

Date_____,1997

Comm. Sub. [Yes]
Amends Title []
Fourth Edition

moves to amend the bill on page 19, line 29, by deleting "G.S. 55-13-02(c)(2)" and substituting "G.S. 55-13-02(c)".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 157

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

S157-ARG-002

Date_____,1997

Comm. Sub. [Yes]
Amends Title []
Fourth Edition

moves to amend the bill on page 5, line ~~15-16~~ 17-18,
by rewriting the lines to read:
"Secretary of State. The advisory review".

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. 157 4th Edition

Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Culpepper
)
Sen.)

moves to amend the bill on page 28, line 32

( ) WHICH CHANGES THE TITLE

by deleting "July 1, 1997." and substituting "July 1, 1998."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 157

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

S157-ARG-003

Date_____,1997

Comm. Sub. [YES]
Amends Title []
Fourth Edition

moves to amend the bill on page 7, line 23,
by rewriting the line to read:
"(23) Annual report ~~10.00~~ 20.00";

and on page 7, line 12,
by rewriting the line to read:
"following administrative dissolution ~~25.00~~ 100.00"

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. 157 Fourth Edition

Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Shubert
)
Sen.)

moves to amend the bill on page 4, line 35

( ) WHICH CHANGES THE TITLE

by deleting the word "The" and substituting "Upon request, the";

and on page 5, line 12, by deleting "The" and substituting "Upon request, the";

and on page 5, line 30, by deleting "The" and substituting "Upon request, the";

and on page 6, line 7, by deleting "The" and substituting "Upon request, the".

SIGNED Frank Shubert

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

MINUTES
HOUSE JUDICIARY II COMMITTEE

July 3, 1997

The North Carolina House of Representatives Judiciary II Committee met on July 3, 1997, at 7:30 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Berry, Bowie, Cansler, Culpepper, Decker, Gardner, Goodwin, Hackney, Hensley, Russell, Saunders, Shubert, Weatherly, Wilkins and Wilson. A list of visitors is attached.

The following bills were discussed:

SB-157 CORPORATE AMENDMENTS
SB-264 LIABILITY FOR JOB REFERENCES

Representative Cansler moved SB-157 be reconsidered; motion passed.

Mr. Tim Hovis, Committee Counsel, submitted a proposed committee substitute for SB-157. Representative Cansler moved the proposed committee substitute be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute is attached.

Mr. Hovis explained the proposed committee substitute and answered questions of committee members.

Representative Cansler moved for a favorable report as to House committee substitute #3, unfavorable as to House committee substitute #2; motion passed.

Representative Cansler chaired the meeting during the discussion of SB-264.

Senator Horton was recognized to present a proposed committee substitute for SB-264. Representative Russell moved the proposed committee substitute be adopted for purpose of discussion; motion passed. A copy of the bill, proposed committee substitute and committee substitute explanation, prepared by Mr. Hovis, are attached.

Mr. Winston Robert, President, Triangle Resource Management; Ms. Pat Janke, Human Resource Manager, Henley Paper Company, Greensboro; spoke in support of the bill.

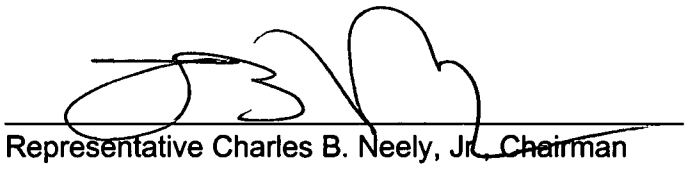
Representative Hackney was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Shubert was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

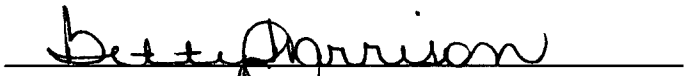
Representative Neely moved the amendments be incorporated into to a committee substitute bill, with a favorable report as to House committee substitute bill, unfavorable as to original bill; motion passed.

The meeting was adjourned at 8:25 A.M.

Respectfully submitted,



Representative Charles B. Neely, Jr., Chairman



Betty Harrison, Committee Clerk

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **July 1, 1997**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rumquist	MCI
Bill Scoggin	NCBA
ANNE WINNER	NCBA
Bernard Allen	SOS
Sharon Ranson	DSS
Kristen Guillory	DSS
Charlene Dyorkins	SOS
David Thasen	SOS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S157-PCSRG-003
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 157
THIS IS A DRAFT 2-JUL-97 17:50:10
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Corporate Amendments. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE TIME CORPORATIONS AND LIMITED LIABILITY COMPANIES MAY APPLY FOR REINSTATEMENT FROM ADMINISTRATIVE DISSOLUTION, TO AMEND THE LAW GOVERNING DISSENTERS' RIGHTS PROCEDURES AND THE FILING OF DOCUMENTS BY LIMITED LIABILITY COMPANIES, TO ALLOW FACSIMILE SIGNATURES AND ADVISORY REVIEW OF DOCUMENTS BY THE SECRETARY OF STATE, AND TO CLARIFY CORRECTIONS PROCEDURES, LIMITED LIABILITY NAME AVAILABILITY, AND THE DEFINITION OF FOREIGN PROFESSIONAL CORPORATIONS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION AND OTHERS, AND TO AUTHORIZE THE CREATION OF SINGLE MEMBER LIMITED LIABILITY COMPANIES, TO ALLOW A PARENT CORPORATION TO BE MERGED INTO ITS SUBSIDIARY CORPORATION IN CERTAIN CIRCUMSTANCES, TO REMOVE THE REQUIREMENT THAT A PUBLIC CORPORATION MUST WAIT 30 DAYS BEFORE IT CAN FILE ITS ARTICLES OF MERGER WITH THE SECRETARY OF STATE, TO INCREASE THE FEES FOR THE

FILING OF CERTAIN DOCUMENTS, AND TO PROVIDE THAT ANNUAL REPORTS OF MOST BUSINESS CORPORATIONS AND LIMITED LIABILITY COMPANIES SHALL BE FILED WITH THE DEPARTMENT OF REVENUE RATHER THAN THE SECRETARY OF STATE.

The General Assembly of North Carolina enacts:

PART I. ADMINISTRATIVE DISSOLUTIONS.

Section 1. G.S. 55-14-22(a) reads as rewritten:

"(a) A corporation administratively dissolved under G.S. 55-14-21 may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of dissolution. The application must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution; and

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated.

(3) Reserved.

(4) Repealed by Session Laws 1995, c. 539, s. 6."

Section 2. G.S. 55A-14-22(a) reads as rewritten:

"(a) A corporation administratively dissolved under G.S. 55A-14-21 may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of dissolution. The application shall:

(1) Recite the name of the corporation and the effective date of its administrative dissolution; and

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated."

Section 3. G.S. 57C-6-03(c) reads as rewritten:

"(c) A limited liability company administratively dissolved under this section may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of the administrative dissolution. The procedures for reinstatement and for the appeal of any denial of the limited liability company's application for reinstatement shall be the same procedures applicable to business corporations under G.S. 55-14-22, 55-14-23, and 55-14-24."

PART II. AMENDMENT OF DISSENTERS' RIGHTS PROCEDURES.

Section 4. G.S. 55-13-22(b) reads as rewritten:

"(b) The dissenters' notice must be sent no later than 10 days after ~~the corporate action was taken,~~ shareholder approval, or if no shareholder approval is required, after the approval of the board of directors, of the corporate action creating dissenters' rights under G.S. 55-13-02, and must:

(1) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(2) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(3) Supply a form for demanding payment;

(4) Set a date by which the corporation must receive the payment demand, which date may not be fewer than 30 nor more than 60 days after the date the subsection (a) notice is mailed; and

(5) Be accompanied by a copy of this Article."

Section 5. G.S. 55-13-30 reads as rewritten:

"**§ 55-13-30. Court action.**

(a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter may commence a proceeding within 60 days after the date of his payment demand under G.S. 55-13-28 ~~and petition the court~~ by filing a complaint with the Superior Court Division of the General Court of Justice to determine the fair value of the shares and accrued interest. Upon service upon it of the petition filed with the court, the corporation shall pay to the dissenter the amount offered by the corporation under G.S. 55-13-25.

(a1) If the dissenter does not commence the proceeding within the 60-day period, the dissenter shall have an additional 30 days to either (i) accept in writing the amount offered by the corporation under G.S. 55-13-25, upon which the corporation shall pay such amount to the dissenter in full satisfaction of his demand, or (ii) withdraw his demand for payment and resume the status of a nondissenting shareholder. A dissenter who takes no action within such 30-day period shall be deemed to have withdrawn his dissent and demand for payment.

(b) Reserved for future codification purposes.

(c) The court shall have the discretion to make all dissenters (whether or not residents of this State) whose demands remain

unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the ~~petition.~~ complaint. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the superior court in which the proceeding is commenced under ~~subsection (b)~~ subsection (a) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The parties are entitled to the same discovery rights as parties in other civil proceedings. The proceeding shall be tried as in other civil actions. However, in a proceeding by a dissenter in a ~~public corporation,~~ corporation that was a public corporation immediately prior to consummation of the corporate action giving rise to the right of dissent under G.S. 55-13-02, there is no right to a trial by jury.

(e) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation."

Section 5.1. G.S. 55-13-30(a), as amended by Section 5 of this act, reads as rewritten:

"(a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter may commence a proceeding within 60 days after the date of his payment demand under G.S. 55-13-28 by filing a complaint with the Superior Court Division of the General Court of Justice to determine the fair value of the shares and accrued interest. ~~Upon~~ Within 10 days after service upon it of ~~the petition filed with the court,~~ complaint, the corporation shall pay to the dissenter the amount offered by the corporation under G.S. 55-13-25.

PART III. ADVISORY REVIEW OF PRELIMINARY DRAFTS OF DOCUMENTS.

Section 6. Article 1 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"§ 55-1-22.2. Advisory review of documents.

Upon request, the Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the

proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 55-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 7. Article 1 of Chapter 55A of the General Statutes is amended by adding a new section to read:

"**§ 55A-1-22.2. Advisory review of documents.**

Upon request, the Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 55A-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 8. Article 1 of Chapter 57C of the General Statutes is amended by adding a new section to read:

"**§ 57C-1-22.2. Advisory review of documents.**

Upon request, the Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions

under this section and filings under G.S. 57C-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 9. Article 5 of Chapter 59 of the General Statutes is amended by adding a new section to read:

"§ 59-206.2. Advisory review of documents.

Upon request, the Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Article. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and expedited filings as authorized by G.S. 59-1106. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 10. G.S. 55-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

Document		Fee
(1)	Articles of incorporation	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Corporation's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected corporation	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or	

registered office or both 5.00
(10) Amendment of articles of incorporation 50.00
(11) Restated articles of incorporation with amendment of articles 10.00 50.00
(12) Articles of merger or share exchange 50.00
(13) Articles of dissolution 30.00
(14) Articles of revocation of dissolution 10.00
(15) Certificate of administrative dissolution No fee
(16) Application for reinstatement following administrative dissolution ~~25.00~~ 100.00
(17) Certificate of reinstatement No fee
(18) Certificate of judicial dissolution No fee
(19) Application for certificate of authority 200.00
(20) Application for amended certificate of authority 50.00
(21) Application for certificate of withdrawal 10.00
(22) Certificate of revocation of authority to transact business No fee
(23) Annual report ~~10.00~~ 20.00
(24) Articles of correction 10.00
(25) Application for certificate of existence or authorization 5.00
(26) Any other document required or permitted to be filed by this Chapter ~~10.00.~~ 10.00
(27) Advisory review of a document 200.00."

Section 11. G.S. 55A-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

Document		Fee
(1)	Articles of incorporation	$50.00
(2)	Application for reserved name	$10.00
(3)	Notice of transfer of reserved name	$10.00
(4)	Application for registered name	$10.00

(5) Application for renewal of registered name $10.00
(6) Corporation's statement of change of registered agent or registered office or both $ 5.00
(7) Agent's statement of change of registered office for each affected corporation $ 5.00
(8) Agent's statement of resignation No fee
(9) Designation of registered agent or registered office or both $ 5.00
(10) Amendment of articles of incorporation $25.00
(11) Restated articles of incorporation without amendment of articles $10.00
(12) Restated articles of incorporation with amendment of articles $25.00
(13) Articles of merger $25.00
(14) Articles of dissolution $15.00
(15) Articles of revocation of dissolution $10.00
(16) Certificate of administrative dissolution No fee
(17) Application for reinstatement following administrative dissolution ~~$25.00~~ $100.00
(18) Certificate of reinstatement No fee
(19) Certificate of judicial dissolution No fee
(20) Application for certificate of authority $100.00
(21) Application for amended certificate of authority $25.00
(22) Application for certificate of withdrawal $10.00
(23) Certificate of revocation of authority to conduct affairs No fee
(24) Corporation's Statement of Change of Principal Office $5.00
(24a) Designation of Principal Office Address $5.00
(25) Articles of correction $10.00
(26) Application for certificate of existence or authorization $ 5.00
(27) Any other document required or permitted to be filed by this Chapter ~~$10.00.~~ $10.00
(28) Advisory review of a document $200.00."

Section 12. G.S. 57C-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

Document	Fee
(1)	Articles of organization $100.00
(2)	Application for reserved name 10.00
(3)	Notice of transfer of reserved name 10.00
(4)	Application for registered name 10.00
(5)	Application for renewal of registered name 10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both 5.00
(7)	Agent's statement of change of registered office for each affected limited liability company 5.00
(8)	Agent's statement of resignation No fee
(9)	Designation of registered agent or registered office or both 5.00
(10)	Amendment of articles of organization 50.00
(11)	Restated articles of organization without amendment of articles 10.00
(12)	Restated articles of organization with amendment of articles 50.00
(13)	Articles of merger 50.00
(14)	Articles of dissolution 30.00
(15)	Articles of revocation of dissolution 10.00
(16)	Certificate of administrative dissolution No fee
(16a)	Application for reinstatement following administrative dissolution 100.00
(17)	Certificate of reinstatement No fee
(18)	Certificate of judicial dissolution No fee
(19)	Application for certificate of authority 200.00
(20)	Application for amended certificate of authority 50.00
(21)	Application for certificate of withdrawal 10.00
(22)	Certificate of revocation of authority to transact business No fee
(23)	Articles of correction 10.00
(24)	Application for certificate of existence or authorization 5.00

(25) Annual report 200.00
(26) Any other document required or permitted to be filed by this Chapter ~~10.00.~~ 10.00
(27) Advisory review of a document 200.00."

Section 13. G.S. 59-1106 reads as rewritten:

"§ 59-1106. Fees.

The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

(1) For filing a certificate of limited partnership (G.S. 59-201) $50.00
(2) For filing a certificate of amendment (G.S. 59-202; 59-905) 25.00
(3) For filing a certificate of cancellation (G.S. 59-203; 59-906) 25.00
(4) For filing an application for reservation of name (G.S. 59-104(a)) 10.00
(5) For filing a transfer of name (G.S. 59-104(d)) 10.00
(6) For filing an application for registration as foreign limited partnership (G.S. 59-502) 50.00
(7) For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a limited partnership (G.S. 59-206(c)) For each page 1.00
For affixing ~~his~~ the certificate and official seal thereto 5.00
(8) For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a limited partnership
For each page 1.00
(9) For filing any other document not herein specifically provided for 10.00
(10) For the expedited filing by the end of the same business day of a document received in good order by 12:00 noon Eastern Standard Time 200.00 additional fee

(11) For the expedited filing of a document received in good order within 24 hours after receipt, excluding weekends and holidays 100.00
~~additional fee.~~
additional fee

(12) Advisory review of a document 200.00.

The Secretary of State shall not collect the fees allowed in subdivisions (10) and (11) of this section unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document. Upon receipt of a document in proper form and payment of the required filing fee, the Secretary of State shall guarantee the expedited filing of the document."

PART IV. CLARIFICATION OF ARTICLES OF CORRECTION PROCEDURES.

Section 14. G.S. 55-1-24(a) reads as rewritten:

"(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (1) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (2) was defectively executed, attested, sealed, verified, or acknowledged."

Section 15. G.S. 55A-1-24(a) reads as rewritten:

"(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (i) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged."

Section 16. G.S. 57C-1-24(a) reads as rewritten:

"(a) A domestic or foreign limited liability company may correct a document filed by the Secretary of State if the document (i) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively ~~executed.~~ executed, attested, sealed, verified, or acknowledged."

Section 17. G.S. 59-206(a) is amended by adding a new subdivision to read:

"(2b) A domestic or foreign limited partnership may correct a document filed by the Secretary of State if the document (i) contains a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively

executed, attested, sealed, verified, or acknowledged."

PART V. RESTATEMENT OF LIMITED LIABILITY COMPANY ARTICLES OF ORGANIZATION.

Section 18. Article 2 of Chapter 57C of the General Statutes is amended by adding a new section to read:

"§ 57C-2-22.1. Restated articles of organization.

(a) A limited liability company may restate its articles of organization at any time with or without member action.

(b) The restated articles of organization may include one or more amendments to the articles. Unless otherwise provided in the articles of organization or a written operating agreement, any amendment requires the unanimous vote of the members. The restated articles of organization may include a statement of the address of the current registered office and the name of the current registered agent of the limited liability company.

(c) A limited liability company restating its articles of organization shall deliver to the Secretary of State for filing articles of restatement that:

(1) Set forth the name of the limited liability company.

(2) Attach as an exhibit thereto the text of the restated articles of organization.

(3) State that the restated articles of organization do not contain an amendment or, if the articles do contain an amendment, that there is an amendment that was approved as required by this Chapter.

(d) Duly adopted restated articles of organization supersede the original articles of organization and all amendments to them.

(e) The Secretary of State may certify restated articles of organization as the articles of organization currently in effect, without including the other information required by subsection (c) of this section."

PART VI. CANCELLATION OF ARTICLES OF DISSOLUTION OF LIMITED LIABILITY COMPANY.

Section 19. Article 6 of Chapter 57C is amended by adding a new section to read:

"§ 57C-6-06.1. Cancellation of articles of dissolution.

After the filing of articles of dissolution by a limited liability company dissolved pursuant to G.S. 57C-6-01(4) because

of the happening of an event of withdrawal, the articles of dissolution may be cancelled if, within 90 days after the event of withdrawal, all remaining members agree in writing that the business of the limited liability company should be continued and the limited liability company files articles of cancellation with the Secretary of State. The articles of cancellation shall set forth:

(1) The name of the limited liability company;

(2) The date of the event of withdrawal described in the articles of dissolution;

(3) The date of filing of the company's articles of dissolution;

(4) A statement that within 90 days after the event of withdrawal all remaining members have agreed in writing that the business of the limited liability company may be continued; and

(5) Any other information the members or managers filing the articles of cancellation determine."

Section 20. G.S. 57C-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

Document	Fee
(1)	Articles of organization $100.00
(2)	Application for reserved name 10.00
(3)	Notice of transfer of reserved name 10.00
(4)	Application for registered name 10.00
(5)	Application for renewal of registered name 10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both 5.00
(7)	Agent's statement of change of registered office for each affected limited liability company 5.00
(8)	Agent's statement of resignation No fee
(9)	Designation of registered agent or registered office or both 5.00
(10)	Amendment of articles of organization 50.00
(11)	Restated articles of organization without amendment of articles 10.00

(12) Restated articles of organization with amendment of articles 50.00
(13) Articles of merger 50.00
(14) Articles of dissolution 30.00
(15) ~~Articles~~ Cancellation of articles of ~~revocation of~~ dissolution 10.00
(16) Certificate of administrative dissolution No fee
(17) Certificate of reinstatement No fee
(18) Certificate of judicial dissolution No fee
(19) Application for certificate of authority 200.00
(20) Application for amended certificate of authority 50.00
(21) Application for certificate of withdrawal 10.00
(22) Certificate of revocation of authority to transact business No fee
(23) Articles of correction 10.00
(24) Application for certificate of existence or authorization 5.00
(25) Annual report 200.00
(26) Any other document required or permitted to be filed by this Chapter 10.00."

PART VII. AVAILABILITY OF LIMITED LIABILITY COMPANY NAME.

Section 21. G.S. 57C-2-30(f) reads as rewritten:

"(f) The name of a limited liability company dissolved under ~~G.S. 57C-6-03~~ Article 6 of this Chapter may not be used by another limited liability ~~company~~ company, business corporation, nonprofit corporation, or limited partnership ~~until the expiration of two years after the effective date of the dissolution~~ until:

(1) In the case of a dissolution pursuant to G.S. 57C-6-01, the later of (i) the date of filing of articles of dissolution pursuant to G.S. 57C-6-06 or (ii) the expiration of the time within which articles of dissolution of the limited liability company may be canceled pursuant to G.S. 57C-6-06.1; or

(2) In the case of an administrative dissolution pursuant to G.S. 57C-6-03, the expiration of the period within which the limited liability company may be reinstated pursuant to G.S. 57C-6-03, if the

limited liability company's period of duration stated in its articles of organization or written operating agreement has not expired,

unless the dissolved limited liability company changes its name to a name distinguishable upon the records of the Secretary of State from the names of other limited liability companies, business corporations, nonprofit corporations, or limited partnerships organized or transacting business in this State."

PART VIII. AUTHORIZATION OF FACSIMILE SIGNATURES FOR LIMITED PARTNERSHIP DOCUMENTS.

Section 22. G.S. 59-204 is amended by adding a new subsection to read:

"(b1) Any signature on any document authorized to be filed with the Secretary of State under any provision of this Article may be a facsimile."

PART IX. MODIFICATION OF DEFINITION OF FOREIGN PROFESSIONAL CORPORATION.

Section 23. G.S. 55B-16(b) reads as rewritten:

"(b) For purposes of this section, 'foreign professional corporation' means a corporation for profit ~~that is~~ that:

(1) Is incorporated under a law other than the law of this ~~State~~ State;

(2) Is incorporated for the sole and specific purpose of rendering professional services of the type that if rendered in this State would require the obtaining of a license from a licensing board pursuant to the statutory provisions referred to in ~~G.S. 55B-2(6)~~ G.S. 55B-2(6); and ~~that (i) has as its shareholders only individuals who are duly licensed, in this State or some other state, to render the same professional services as the corporation, or (ii) is organized for the purpose of rendering professional services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, and has as its shareholders only individuals who are duly licensed, in this State or in another state, to render the same professional services as the corporation or who are nonlicensed employees of the corporation, provided that nonlicensed employees own not more than one-third~~

~~of the total issued and outstanding shares of the corporation, or (iii) is described in G.S. 55B-15.~~

(3) Has as its shareholders only individuals who:

a. Qualify to hold shares of a corporation organized under this Chapter;

b. Are licensed to provide professional services as defined in G.S. 55B-2(6) in a state in which the corporation is incorporated or is authorized to transact business, provided that such professional services are the same as the professional service rendered by the corporation; or

c. Are nonlicensed employees of a corporation rendering services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, provided that all such nonlicensed employees own no more than one-third of the total issued and outstanding shares of such corporation in the aggregate."

PART X. CORRECTION OF DELAYED EFFECTIVE DATE STATUTES FOR LIMITED PARTNERSHIP DOCUMENTS.

Section 24. G.S. 59-201(b) reads as rewritten:

"(b) ~~A~~ Unless a delayed effective date is specified in the certificate of limited partnership, a limited partnership is formed at the ~~time~~ effective time and date of the filing of the certificate of limited partnership in the office of the Secretary of State ~~or at any later time not more than 20 days subsequent to the endorsement of the Secretary of State specified in the certificate of limited partnership if, in either case,~~ if there has been substantial compliance with the requirements of this section."

Section 25. G.S. 59-203 reads as rewritten:

"**§ 59-203. Cancellation of certificate.**

A certificate of limited partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership or at any other time that there are no limited partners. A certificate of cancellation shall be filed in the office of the Secretary of State and set forth:

(1) The name of the limited partnership;

(2) The date of filing of its certificate of limited partnership;
(3) The reason for filing the certificate of cancellation;
(4) The effective date ~~(which shall be a date certain not more than 20 days from the date of filing)~~ of cancellation if it is not to be effective upon the filing of the certificate; and
(5) Any other information the partners filing the certificate determine."

PART XI. REMOVAL OF "CONFORMING TO LAW" LANGUAGE IN REVISED UNIFORM LIMITED PARTNERSHIP ACT.

Section 26. G.S. 59-206(a)(2) reads as rewritten:

"(2) The original document so signed, together with the conformed copy, shall be delivered to the Secretary of State. ~~Unless~~ If the Secretary finds that it ~~does not conform to law,~~ satisfies the requirements of this Article, the Secretary shall, when the proper fees have been tendered, endorse upon the original the word 'filed' and the hour, day, month and year of the filing thereof and shall file the same in the Secretary's office. The Secretary of State shall thereupon immediately compare the copy with the original and if the Secretary finds that they are identical the Secretary shall make upon the conformed copy the same endorsement which appears on the original and shall attach to the copy a certificate stating that attached thereto is a true copy of the document, designated by an appropriate title, filed in the Secretary's office and showing the date of the filing. The Secretary shall thereupon return the copy so certified to the limited partnership or its representatives. Any documents filed with the Secretary of State pursuant to this Chapter may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Chapter, or under any predecessor act, by

photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of the documents reproduced. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. The authorization to make the corrections shall be confirmed, according to procedures adopted by rule, by the Secretary prior to making the correction."

Section 27. G.S. 59-903(a) reads as rewritten:

"(a) If the Secretary of State finds that an application ~~conforms to law he~~ satisfies the requirements of this Article, the Secretary shall, when all requisite fees have been tendered as in this Article prescribed:

(1) Endorse on the application the word 'filed', and the hour, day, month and year of the filing thereof;

(2) File in ~~his~~ the office the application;

(3) Issue a certificate of authority to transact business in this State to which ~~he~~ the Secretary shall affix the conformed copy of the application; and

(4) Send to the foreign limited partnership or its representative the certificate of authority, together with the conformed copy of the application affixed thereto."

PART XII. SINGLE MEMBER LIMITED LIABILITY COMPANIES.

Section 28. G.S. 57C-2-20(a) reads as rewritten:

"(a) ~~Two~~ One or more persons may organize a limited liability company by delivering executed articles of organization to the Secretary of State for filing."

PART XIII. CORPORATE MERGERS.

Section 29. G.S. 55-11-04 reads as rewritten:

"**§ 55-11-04. Merger ~~of~~ with subsidiary.**

(a) Subject to Article 9, a parent corporation owning at least 90 percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary. Subject to Article 9, a parent corporation owning at least 90

percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge itself into the subsidiary without approval of the shareholders of the subsidiary if the merger is approved by the directors and shareholders of the parent corporation in accordance with G.S. 55-11-01 and 55-11-03.

(b) The board of directors of the parent shall adopt a plan of merger that sets forth:

(1) The names of the parent and subsidiary; and

(2) The manner and basis of converting the shares of ~~the subsidiary~~ each corporation into shares, obligations, or other securities of the ~~parent~~ surviving or any other corporation or into cash or other property in whole or part.

(c) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(d) The parent may not deliver articles of merger to the Secretary of State for filing until at least 30 days after the date it mailed a copy or summary of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement. This subsection does not apply to a merger in which the subsidiary was a public corporation before becoming a subsidiary qualifying for a merger under this section and is still a public corporation on the effective date of the merger.

(e) Articles of merger under this section may not contain amendments to the articles of incorporation of the ~~parent~~ surviving corporation (except for amendments enumerated in G.S. 55-10-02).

(f) The provisions of G.S. 55-13-02(c) do not apply to subsidiary corporations that are parties to mergers consummated under this section."

PART XIV. CORPORATE ANNUAL REPORTS TO BE FILED WITH THE DEPARTMENT OF REVENUE

Section 30.1. G.S. 55-16-22 reads as rewritten:

"**§ 55-16-22. Annual ~~report for Secretary of State.~~ report.**

(a) ~~Each~~ Except as provided in subsections (a1) and (a2) of this section, each domestic corporation ~~except those governed by Chapter 55B,~~ and each foreign corporation authorized to transact business in this ~~State,~~ State shall deliver ~~to the Secretary of~~

~~State for filing an annual report that sets forth:~~ an annual report to the Secretary of Revenue.

(a1) Each insurance company subject to the provisions of Chapter 58 of the General Statutes shall deliver an annual report to the Secretary of State.

(a2) A domestic corporation governed by Chapter 55B of the General Statutes is exempt from this section.

(a3) The annual report required by this section shall be in a form jointly prescribed by the Secretary of Revenue and the Secretary of State. The Secretary of Revenue shall provide the form needed to file an annual report. The annual report shall set forth all of the following:

(1) The name of the corporation and the state or country under whose law it is ~~incorporated;~~ incorporated.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which its registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of such registered office or registered agent, or ~~both;~~ both.

(3) The address and telephone number of its principal ~~office;~~ office.

(4) The names, titles, and business addresses of its principal ~~officers;~~ officers.

~~(4a) The names and business addresses of its directors; and~~

(5) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(c) ~~The annual report shall be delivered to the Secretary of State each year within 60 days immediately following the last day of the month in which the domestic corporation was incorporated or the foreign corporation received a certificate of authority in this State. Forms required for the filing of the annual report~~

~~shall be mailed by the Secretary of State to the domestic or foreign corporation at its registered office for the first annual report, then to its principal office for subsequent annual reports.~~ An annual report required to be delivered to the Secretary of Revenue is due by the due date for filing the corporation's income and franchise tax returns. An extension of time to file a return is an extension of time to file an annual report. An annual report required to be delivered to the Secretary of State is due by the fifteenth day of the third month following the close of the corporation's fiscal year.

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in ~~such~~ the annual report.

(f) Expired.

(g) When a statement of change of registered office or registered agent is filed in the annual report, the change shall become effective when the statement is received by the Secretary of State.

(h) If the Secretary of State does not receive an annual report within 120 days of the date the return is due, the Secretary of State may presume that the annual report is delinquent. This presumption may be rebutted by receipt of the annual report from the Secretary of Revenue or by evidence of delivery presented by the filing corporation."

Section 30.2. G.S. 55-1-21(a) reads as rewritten:

"(a) The Secretary of State may promulgate and furnish on request forms ~~for:~~ for the following:

(1) An application for a certificate of ~~existence;~~ existence.

(2) A foreign corporation's application for a certificate of authority to transact business in this ~~State;~~ State.

(3) A foreign corporation's application for a certificate of ~~withdrawal; and~~ withdrawal.

~~(4) The annual report.~~

If the Secretary of State so requires, use of these forms is mandatory."

Section 30.3. G.S. 55-1-28(b)(4) reads as rewritten:

"(4) That its most recent annual report required by G.S. 55-16-22 either has been delivered to the Secretary of ~~State;~~ State or is not delinquent;".

Section 30.4. G.S. 55-14-20(2) reads as rewritten:

"(2) The corporation ~~does not deliver its annual report to the Secretary of State within 60 days after it is due;~~ is delinquent in delivering its annual report;".

Section 30.5. G.S. 55-15-30(a)(1) reads as rewritten:

"(1) The foreign corporation ~~does not deliver its annual report to the Secretary of State within 60 days after it is due;~~ is delinquent in delivering its annual report;".

Section 30.6. G.S. 55-16-01(e)(7) reads as rewritten:

"(7) Its most recent annual report delivered ~~to the Secretary of State under~~ as required by G.S. 55-16-22."

Section 30.7. G.S. 57C-2-23 reads as rewritten:

"§ 57C-2-23. Annual report for Secretary of State.

(a) Each domestic limited liability company and each foreign limited liability company authorized to transact business in this State, shall deliver to the Secretary of State for filing an annual ~~report~~ report, in a form jointly prescribed by the Secretary of Revenue and Secretary of State, that sets ~~forth:~~ forth all of the following:

(1) The name of the limited liability or foreign limited liability company and the state or country under whose law it is ~~organized;~~ organized.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at that office in this State, and

a statement of any change of the registered office or registered agent, or ~~both;~~ both.

(3) The address and telephone number of its principal ~~office;~~ office.

(4) The names and business addresses of its ~~managers; and~~ managers.

(5) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection. The Secretary of State shall make available the form required to file an annual report.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company or the foreign limited liability company.

(c) The annual report shall be delivered to the Secretary of State ~~each year within 60 days immediately following the last day of the month in which the domestic limited liability company was organized or the foreign limited liability company received a certificate of authority in this State. Forms required for the filing of the annual report shall be mailed by the Secretary of State to the domestic or foreign limited liability company at its registered office for the first annual report, and then to its principal office for subsequent annual reports.~~ by the fifteenth day of the fourth month following the close of the limited liability company's fiscal year.

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report."

Section 30.8. G.S. 57C-3-25(a) reads as rewritten:

"(a) Any person dealing with a limited liability company or a foreign limited liability company may rely conclusively upon its most recent annual report and any amendments ~~thereto filed with~~ to it on file with the Secretary of State ~~pursuant to G.S. 57C-2-23~~ as to the identity of its managers, except to the extent the person has actual knowledge that a person identified therein as a manager is not a manager."

Section 30.9. G.S. 105-228.90(a) reads as rewritten:

"(a) Scope. -- This Article applies to Subchapters I, V, and VIII of this ~~Chapter~~ Chapter, to the annual report filing requirements of G.S. 55-16-22, and to inspection taxes levied under Article 3 of Chapter 119 of the General Statutes."

Section 30.10. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-256.1. Corporate annual report.

A corporation that files its annual report with the Secretary must pay the amount provided in G.S. 55-1-22 when it files the report. Amounts collected under this section shall be credited to the General Fund as tax revenue. The Secretary must transmit an annual report filed with the Secretary in accordance with G.S. 55-16-22 to the Secretary of State."

Section 30.11. G.S. 105-259 reads as rewritten:

"**§ 105-259. Secrecy required of officials; penalty for violation.**

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

(1) Employee or officer. -- The term includes a former employee, a former officer, and a current or former member of a State board or commission.

(2) Tax information. -- Any information from any source concerning the liability of a taxpayer for a tax, as defined in G.S. 105-228.90. The term includes the following:

a. Information contained on a tax return, a tax report, or an application for a license for which a tax is imposed.

b. Information obtained through an audit of a taxpayer or by correspondence with a taxpayer.

c. Information on whether a taxpayer has filed a tax return or a tax report.

d. A list or other compilation of the names, addresses, social security numbers, or similar information concerning taxpayers.

The term does not include (i) statistics classified so that information about specific taxpayers cannot be ~~identified or (ii)~~ identified, (ii) an annual report required to be filed under G.S. 55-16-22 or (iii) information submitted to the Business License Information Office of the Department of Secretary of State on a master application form for various business licenses.

(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(1) To comply with a court order or a law.

(2) Review by the Attorney General or a representative of the Attorney General.

(3) Review by a tax official of another state or the Internal Revenue Commissioner of the United States to aid the state or the Commissioner in collecting a tax imposed by this State, the other state, or the United States if the laws of the other state or the United States allow the state or the United States to provide similar tax information to a representative of this State.

(4) To provide a governmental agency or an officer of an organized association of taxpayers with a list of taxpayers who have paid a privilege license tax under Article 2 of this Chapter.

(5) To furnish to the chair of a board of county commissioners information on the county sales and use tax.

(6) To sort, process, or deliver tax information on behalf of the Department of Revenue.

(6a) To furnish the chair of a board of county commissioners a list of claimants that have received a refund of the county sales or use tax to the extent authorized in G.S. 105- 164.14(f).

(7) To exchange information with the Division of Motor Vehicles of the Department of Transportation when the information is needed to fulfill a duty imposed on the Department of Revenue or the Division of Motor Vehicles.

(8) To furnish to the Department of State Treasurer, upon request, the name, address, and account and identification numbers of a taxpayer who may be entitled to property held in the Escheat Fund.

(9) To furnish to the Employment Security Commission the name, address, and account and identification numbers of a taxpayer when the information is requested by the Commission in order to fulfill a duty imposed under Article 2 of Chapter 96 of the General Statutes.

(10) Review by the State Auditor to the extent authorized in G.S. 147-64.7.

(11) To give a spouse who elects to file a joint tax return a copy of the return or information contained on the return.

(11a) To provide a copy of a return to the taxpayer who filed the return.

(11b) In the case of a return filed by a corporation, a partnership, a trust, or an estate, to provide a copy of the return or information on the return to a person who has a material interest in the return if, under the circumstances, section 6103(e)(1) of the Code would require disclosure to that person of any corresponding federal return or information.

(11c) In the case of a return of an individual who is legally incompetent or deceased, to provide a copy of the return to the legal representative of the estate of the incompetent individual or decedent.

(12) To contract with a financial institution for the receipt of withheld income tax payments under G.S. 105-163.6 or for the transmittal of payments by electronic funds transfer.

(13) To furnish the Fiscal Research Division of the General Assembly, upon request, a sample, suitable in character, composition, and size for statistical analyses, of tax returns or other tax information from which taxpayers' names and identification numbers have been removed.

(14) To exchange information concerning a tax imposed by Subchapter V of this Chapter with the Standards Division of the Department of Agriculture when the information is needed to administer the Gasoline and Oil Inspection Act, Article 3 of Chapter 119 of the General Statutes.

(15) To exchange information concerning a tax imposed by Articles 2A, 2B, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the agency:

a. The North Carolina Alcoholic Beverage Control Commission.

b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.

c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department.

(16) To furnish to the Department of Secretary of State the name, address, tax year end, and account and identification numbers of a corporation liable for corporate income or franchise taxes or of a limited liability company liable for a corporate or a partnership tax return to enable the Secretary of State to notify the corporation or the limited liability company of the annual report filing requirement or that its articles of incorporation or articles of organization or its certificate of authority has been suspended.

(17) To inform the Business License Information Office of the Department of Secretary of State of the status of an application for a license for which a tax is imposed and of any information needed to process the application.

(18) To furnish to the Office of the State Controller the name, address, and account and identification

numbers of a taxpayer upon request to enable the State Controller to verify statewide vendor files or track debtors of the State.

(19) To furnish to the North Carolina Industrial Commission information concerning workers' compensation reported to the Secretary under G.S. 105-163.7.

(c) Punishment. -- A person who violates this section is guilty of a Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation."

Section 30.12. Section 30.11 of this act becomes effective September 1, 1997. The remainder of this Part becomes effective January 1, 1998, and applies to tax years ending on or after December 31, 1997, in the case of corporations required to file annual reports with the Secretary of Revenue and to fiscal years ending on or after December 31, 1997, in the case of corporations and limited liability companies required to file annual reports with the Secretary of State.

Annual reports delivered to either the Secretary of State or the Secretary of Revenue after December 31, 1997, but before January 1, 1999, shall nevertheless be deemed filed with the correct State agency. The Secretary of State shall notify the Secretary of Revenue of reports erroneously filed with the Secretary of State, and the Secretary of Revenue shall notify the Secretary of State of reports erroneously filed with the Secretary of Revenue.

PART XV. EFFECTIVE DATES.

Section 31. Section 1 of this act becomes effective July 1, 1998. Sections 2 and 3 of this act become effective July 1, 1997. Sections 14 through 17, 23, 26, 27, and 31 of this act are effective when the act becomes law. The amendments to G.S. 55-1-22(a)(16) and G.S. 55A-1-22(a)(17), made by Sections 10 and 11 of this act, become effective September 1, 1997. G.S. 57C-1-22(a)(16a), as enacted by Section 12 of this act, becomes effective September 1, 1997. The amendment to G.S. 55-1-22(a)(23), made by Section 10 of this act, becomes effective January 1, 1998 and applies to tax years ending on or after

December 31, 1997. Except as otherwise provided, the remainder of this act becomes effective October 1, 1997. Section 4 of this act applies to dissenters' rights created pursuant to G.S. 55-13-02 on or after October 1, 1997. Section 5 of this act applies to proceedings commenced on or after October 1, 1997. Section 5.1 of this act applies to proceedings commenced on or after October 1, 1997, by dissenters to corporate actions that occurred before October 1, 1997. Sections 6 through 13 of this act apply to requests for review of documents on or after October 1, 1997.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II**.

X House Committee Substitute #2 for
S.B. 157 A BILL TO BE ENTITLED AN ACT TO EXPAND THE TIME CORPORATIONS AND LIMITED LIABILITY COMPANIES MAY APPLY FOR REINSTATEMENT FROM ADMINISTRATIVE DISSOLUTION, TO AMEND THE LAW GOVERNING DISSENTERS' RIGHTS PROCEDURES AND THE FILING OF DOCUMENTS BY LIMITED LIABILITY COMPANIES, TO ALLOW FACSIMILE SIGNATURES AND ADVISORY REVIEW OF DOCUMENTS BY THE SECRETARY OF STATE, AND TO CLARIFY CORRECTIONS PROCEDURES, LIMITED LIABILITY NAME AVAILABILITY, AND THE DEFINITION OF FOREIGN PROFESSIONAL CORPORATIONS AS RECOMMENDED BY THE GENERAL STATUES COMMISSION AND OTHERS, AND TO AUTHORIZE THE CREATION OF SINGLE MEMBER LIMITED LIABILITY COMPANIES, TO ALLOW A PARENT CORPORATION TO BE MERGED INTO ITS SUBSIDIARY CORPORATION IN CERTAIN CIRCUMSTANCES, AND TO REMOVE THE REQUIREMENT THAT A PUBLIC CORPORATION MUST WAIT 30 DAYS BEFORE IT CAN FILE ITS ARTICLES OF MERGER WITH THE SECRETARY OF STATE.

☐ 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 House committee substitute bill #3, which changes the title, unfavorable as to House committee substitute bill #2.**

☐ 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.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 157*
Finance Committee Substitute Adopted 4/7/97
House Committee Substitute Favorable 5/14/97
House Committee Substitute #2 Favorable 5/28/97
Proposed Committee Substitute S157-PCS6697

Short Title: Corporate Amendments. (Public)

Sponsors:

Referred to:

February 17, 1997

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE TIME CORPORATIONS AND LIMITED LIABILITY COMPANIES MAY APPLY FOR REINSTATEMENT FROM ADMINISTRATIVE DISSOLUTION, TO AMEND THE LAW GOVERNING DISSENTERS' RIGHTS PROCEDURES AND THE FILING OF DOCUMENTS BY LIMITED LIABILITY COMPANIES, TO ALLOW FACSIMILE SIGNATURES AND ADVISORY REVIEW OF DOCUMENTS BY THE SECRETARY OF STATE, AND TO CLARIFY CORRECTIONS PROCEDURES, LIMITED LIABILITY NAME AVAILABILITY, AND THE DEFINITION OF FOREIGN PROFESSIONAL CORPORATIONS AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION AND OTHERS, AND TO AUTHORIZE THE CREATION OF SINGLE MEMBER LIMITED LIABILITY COMPANIES, TO ALLOW A PARENT CORPORATION TO BE MERGED INTO ITS SUBSIDIARY CORPORATION IN CERTAIN CIRCUMSTANCES, TO REMOVE THE REQUIREMENT THAT A PUBLIC CORPORATION MUST WAIT THIRTY DAYS BEFORE IT CAN FILE ITS ARTICLES OF MERGER WITH THE SECRETARY OF STATE, TO INCREASE THE FEES FOR THE FILING OF CERTAIN DOCUMENTS, AND TO PROVIDE THAT ANNUAL REPORTS OF MOST BUSINESS CORPORATIONS AND LIMITED LIABILITY COMPANIES SHALL BE

FILED WITH THE DEPARTMENT OF REVENUE RATHER THAN THE SECRETARY OF STATE.

The General Assembly of North Carolina enacts:

PART I. ADMINISTRATIVE DISSOLUTIONS.

Section 1. G.S. 55-14-22(a) reads as rewritten:

"(a) A corporation administratively dissolved under G.S. 55-14-21 may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of dissolution. The application must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution; and

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated.

(3) Reserved.

(4) Repealed by Session Laws 1995, c. 539, s. 6."

Section 2. G.S. 55A-14-22(a) reads as rewritten:

"(a) A corporation administratively dissolved under G.S. 55A-14-21 may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of dissolution. The application shall:

(1) Recite the name of the corporation and the effective date of its administrative dissolution; and

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated."

Section 3. G.S. 57C-6-03(c) reads as rewritten:

"(c) A limited liability company administratively dissolved under this section may apply to the Secretary of State for reinstatement ~~within two years~~ not later than five years after the effective date of the administrative dissolution. The procedures for reinstatement and for the appeal of any denial of the limited liability company's application for reinstatement shall be the same procedures applicable to business corporations under G.S. 55-14-22, 55-14-23, and 55-14-24."

PART II. AMENDMENT OF DISSENTERS' RIGHTS PROCEDURES.

Section 4. G.S. 55-13-22(b) reads as rewritten:

"(b) The dissenters' notice must be sent no later than 10 days after ~~the corporate action was taken,~~ shareholder approval, or if no shareholder approval is required, after the approval of the board of directors, of the corporate action creating dissenters' rights under G.S. 55-13-02, and must:

(1) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(2) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(3) Supply a form for demanding payment;

(4) Set a date by which the corporation must receive the payment demand, which date may not be fewer than 30 nor more than 60 days after the date the subsection (a) notice is mailed; and

(5) Be accompanied by a copy of this Article."

Section 5. G.S. 55-13-30 reads as rewritten:

"**§ 55-13-30. Court action.**

(a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter may commence a proceeding within 60 days after the date of his payment demand under G.S. 55-13-28 ~~and petition the court~~ by filing a complaint with the Superior Court Division of the General Court of Justice to determine the fair value of the shares and accrued interest. Upon service upon it of the petition filed with the court, the corporation shall pay to the dissenter the amount offered by the corporation under G.S. 55-13-25.

(a1) If the dissenter does not commence the proceeding within the 60-day period, the dissenter shall have an additional 30 days to either (i) accept in writing the amount offered by the corporation under G.S. 55-13-25, upon which the corporation shall pay such amount to the dissenter in full satisfaction of his demand, or (ii) withdraw his demand for payment and resume the status of a nondissenting shareholder. A dissenter who takes no action within such 30-day period shall be deemed to have withdrawn his dissent and demand for payment.

(b) Reserved for future codification purposes.

(c) The court shall have the discretion to make all dissenters (whether or not residents of this State) whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the ~~petition.~~ complaint. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the superior court in which the proceeding is commenced under ~~subsection (b)~~ subsection (a) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The parties are entitled to the same discovery rights as parties in other civil proceedings. The proceeding shall be tried as in other civil actions. However, in a proceeding by a dissenter in a ~~public corporation,~~ corporation that was a public corporation immediately prior to consummation of the corporate action giving rise to the right of dissent under G.S. 55-13-02, there is no right to a trial by jury.

(e) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of his shares, plus interest, exceeds the amount paid by the corporation."

Section 5.1. G.S. 55-13-30(a), as amended by Section 5 of this act, reads as rewritten:

"(a) If a demand for payment under G.S. 55-13-28 remains unsettled, the dissenter may commence a proceeding within 60 days after the date of his payment demand under G.S. 55-13-28 by filing a complaint with the Superior Court Division of the General Court of Justice to determine the fair value of the shares and accrued interest. ~~Upon~~ Within 10 days after service upon it of ~~the petition filed with the court,~~ complaint, the corporation shall pay to the dissenter the amount offered by the corporation under G.S. 55-13-25."

PART III. ADVISORY REVIEW OF PRELIMINARY DRAFTS OF DOCUMENTS.

Section 6. Article 1 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"**§ 55-1-22.2. Advisory review of documents.**

Upon request, the Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 55-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 7. Article 1 of Chapter 55A of the General Statutes is amended by adding a new section to read:

"**§ 55A-1-22.2. Advisory review of documents.**

Upon request, the Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 55A-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 8. Article 1 of Chapter 57C of the General Statutes is amended by adding a new section to read:

"**§ 57C-1-22.2. Advisory review of documents.**

Upon request, the Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Chapter. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and filings under G.S. 57C-1-22.1. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 9. Article 5 of Chapter 59 of the General Statutes is amended by adding a new section to read:

"**§ 59-206.2. Advisory review of documents.**

Upon request, the Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Article. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this section and expedited filings as authorized by G.S. 59-1106. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing."

Section 10. G.S. 55-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Corporation's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected corporation	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of incorporation	50.00
(11)	Restated articles of incorporation	10.00
	with amendment of articles	50.00
(12)	Articles of merger or share exchange	50.00
(13)	Articles of dissolution	30.00
(14)	Articles of revocation of dissolution	10.00
(15)	Certificate of administrative dissolution	No fee
(16)	Application for reinstatement	

	following administrative dissolution	~~25.00~~ 100.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Annual report	~~10.00~~ 20.00
(24)	Articles of correction	10.00
(25)	Application for certificate of existence or authorization	5.00
(26)	Any other document required or permitted to be filed by this Chapter	~~10.00.~~ 10.00
(27)	Advisory review of a document	200.00."

Section 11. G.S. 55A-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	$50.00
(2)	Application for reserved name	$10.00
(3)	Notice of transfer of reserved name	$10.00
(4)	Application for registered name	$10.00
(5)	Application for renewal of registered name	$10.00
(6)	Corporation's statement of change of registered agent or registered office or both	$ 5.00
(7)	Agent's statement of change of registered office for each affected corporation	$ 5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	$ 5.00
(10)	Amendment of articles of incorporation	$25.00
(11)	Restated articles of incorporation without amendment of articles	$10.00
(12)	Restated articles of incorporation with amendment of articles	$25.00
(13)	Articles of merger	$25.00
(14)	Articles of dissolution	$15.00
(15)	Articles of revocation of dissolution	$10.00

(16)	Certificate of administrative dissolution	No fee
(17)	Application for reinstatement following administrative dissolution	~~$25.00~~ $100.00
(18)	Certificate of reinstatement	No fee
(19)	Certificate of judicial dissolution	No fee
(20)	Application for certificate of authority	$100.00
(21)	Application for amended certificate of authority	$25.00
(22)	Application for certificate of withdrawal	$10.00
(23)	Certificate of revocation of authority to conduct affairs	No fee
(24)	Corporation's Statement of Change of Principal Office	$5.00
(24a)	Designation of Principal Office Address	$5.00
(25)	Articles of correction	$10.00
(26)	Application for certificate of existence or authorization	$ 5.00
(27)	Any other document required or permitted to be filed by this Chapter	~~$10.00.~~ $10.00
(28)	Advisory review of a document	$200.00."

Section 12. G.S. 57C-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	Document	Fee
(1)	Articles of organization	$100.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited liability company	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(13)	Articles of merger	50.00

(14)	Articles of dissolution	30.00
(15)	Articles of revocation of dissolution	10.00
(16)	Certificate of administrative dissolution	No fee
(16a)	Application for reinstatement following administrative dissolution	100.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	200.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Articles of correction	10.00
(24)	Application for certificate of existence or authorization	5.00
(25)	Annual report	200.00
(26)	Any other document required or permitted to be filed by this Chapter	~~10.00.~~ 10.00
(27)	Advisory review of a document	200.00."

Section 13. G.S. 59-1106 reads as rewritten:

"**§ 59-1106. Fees.**

The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

(1)	For filing a certificate of limited partnership (G.S. 59-201)	$50.00
(2)	For filing a certificate of amendment (G.S. 59-202; 59-905)	25.00
(3)	For filing a certificate of cancellation (G.S. 59-203; 59-906)	25.00
(4)	For filing an application for reservation of name (G.S. 59-104(a))	10.00
(5)	For filing a transfer of name (G.S. 59-104(d))	10.00
(6)	For filing an application for registration as foreign limited partnership (G.S. 59-502)	50.00
(7)	For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a limited partnership (G.S. 59-206(c))	
	For each page	1.00
	For affixing ~~his~~ the certificate and official seal thereto	5.00
(8)	For comparing a copy furnished to him of any document, instrument or paper filed or recorded	

relating to a limited partnership
For each page 1.00
(9) For filing any other document not herein specifically provided for 10.00
(10) For the expedited filing by the end of the same business day of a document received in good order by 12:00 noon Eastern Standard Time 200.00
additional fee
(11) For the expedited filing of a document received in good order within 24 hours after receipt, excluding weekends and holidays 100.00
~~additional fee.~~
additional fee
(12) Advisory review of a document 200.00.

The Secretary of State shall not collect the fees allowed in subdivisions (10) and (11) of this section unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document. Upon receipt of a document in proper form and payment of the required filing fee, the Secretary of State shall guarantee the expedited filing of the document."

PART IV. CLARIFICATION OF ARTICLES OF CORRECTION PROCEDURES.

Section 14. G.S. 55-1-24(a) reads as rewritten:

"(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (1) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (2) was defectively executed, attested, sealed, verified, or acknowledged."

Section 15. G.S. 55A-1-24(a) reads as rewritten:

"(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document (i) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged."

Section 16. G.S. 57C-1-24(a) reads as rewritten:

"(a) A domestic or foreign limited liability company may correct a document filed by the Secretary of State if the document (i) contains ~~an incorrect statement~~ a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively ~~executed.~~ executed, attested, sealed, verified, or acknowledged."

Section 17. G.S. 59-206(a) is amended by adding a new subdivision to read:

"(2b) A domestic or foreign limited partnership may correct a document filed by the Secretary of State if the document (i) contains a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged."

PART V. RESTATEMENT OF LIMITED LIABILITY COMPANY ARTICLES OF ORGANIZATION.

Section 18. Article 2 of Chapter 57C of the General Statutes is amended by adding a new section to read:

"**§ 57C-2-22.1. Restated articles of organization.**

(a) A limited liability company may restate its articles of organization at any time with or without member action.

(b) The restated articles of organization may include one or more amendments to the articles. Unless otherwise provided in the articles of organization or a written operating agreement, any amendment requires the unanimous vote of the members. The restated articles of organization may include a statement of the address of the current registered office and the name of the current registered agent of the limited liability company.

(c) A limited liability company restating its articles of organization shall deliver to the Secretary of State for filing articles of restatement that:

(1) Set forth the name of the limited liability company.

(2) Attach as an exhibit thereto the text of the restated articles of organization.

(3) State that the restated articles of organization do not contain an amendment or, if the articles do contain an amendment, that there is an amendment that was approved as required by this Chapter.

(d) Duly adopted restated articles of organization supersede the original articles of organization and all amendments to them.

(e) The Secretary of State may certify restated articles of organization as the articles of organization currently in effect, without including the other information required by subsection (c) of this section."

PART VI. CANCELLATION OF ARTICLES OF DISSOLUTION OF LIMITED LIABILITY COMPANY.

Section 19. Article 6 of Chapter 57C of the General Statutes is amended by adding a new section to read:

"**§ 57C-6-06.1. Cancellation of articles of dissolution.**

After the filing of articles of dissolution by a limited liability company dissolved pursuant to G.S. 57C-6-01(4) because of the happening of an event of withdrawal, the articles of dissolution may be cancelled if, within 90 days after the event of withdrawal, all remaining members agree in writing that the business of the limited liability company should be continued and the limited liability company files articles of cancellation with the Secretary of State. The articles of cancellation shall set forth:

(1) The name of the limited liability company;

(2) The date of the event of withdrawal described in the articles of dissolution;

(3) The date of filing of the company's articles of dissolution;

(4) A statement that within 90 days after the event of withdrawal all remaining members have agreed in writing that the business of the limited liability company may be continued; and

(5) Any other information the members or managers filing the articles of cancellation determine."

Section 20. G.S. 57C-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

Document			Fee
(1)	Articles of organization		$100.00
(2)	Application for reserved name		10.00
(3)	Notice of transfer of reserved name		10.00
(4)	Application for registered name		10.00
(5)	Application for renewal of registered name		10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both		5.00
(7)	Agent's statement of change of registered office for each affected limited liability company		5.00
(8)	Agent's statement of resignation		No fee
(9)	Designation of registered agent or registered office or both		5.00
(10)	Amendment of articles of organization		50.00
(11)	Restated articles of organization without amendment of articles		10.00
(12)	Restated articles of organization with amendment of articles		50.00
(13)	Articles of merger		50.00
(14)	Articles of dissolution		30.00
(15)	~~Articles~~ Cancellation of articles of ~~revocation of~~ dissolution		10.00
(16)	Certificate of administrative dissolution		No fee
(17)	Certificate of reinstatement		No fee
(18)	Certificate of judicial dissolution		No fee
(19)	Application for certificate of authority		200.00
(20)	Application for amended certificate of authority		50.00
(21)	Application for certificate of withdrawal		10.00
(22)	Certificate of revocation of authority to transact business		No fee
(23)	Articles of correction		10.00
(24)	Application for certificate of existence or authorization		5.00
(25)	Annual report		200.00
(26)	Any other document required or permitted to be filed by this Chapter		10.00."

PART VII. AVAILABILITY OF LIMITED LIABILITY COMPANY NAME.

Section 21. G.S. 57C-2-30(f) reads as rewritten:

"(f) The name of a limited liability company dissolved under ~~G.S. 57C-6-03~~ Article 6 of this Chapter may not be used by another limited liability ~~company~~ company, business corporation, nonprofit corporation, or limited partnership ~~until the expiration of two years after the effective date of the dissolution~~ until:

(1) In the case of a dissolution pursuant to G.S. 57C-6-01, the later of (i) the date of filing of articles of dissolution pursuant to G.S. 57C-6-06 or (ii) the expiration of the time within which articles of dissolution of the limited liability company may be canceled pursuant to G.S. 57C-6-06.1; or

(2) In the case of an administrative dissolution pursuant to G.S. 57C-6-03, the expiration of the period within which the limited liability company may be reinstated pursuant to G.S. 57C-6-03, if the limited liability company's period of duration stated in its articles of organization or written operating agreement has not expired,

unless the dissolved limited liability company changes its name to a name distinguishable upon the records of the Secretary of State from the names of other limited liability companies, business corporations, nonprofit corporations, or limited partnerships organized or transacting business in this State."

PART VIII. AUTHORIZATION OF FACSIMILE SIGNATURES FOR LIMITED PARTNERSHIP DOCUMENTS.

Section 22. G.S. 59-204 is amended by adding a new subsection to read:

"(b1) Any signature on any document authorized to be filed with the Secretary of State under any provision of this Article may be a facsimile."

PART IX. MODIFICATION OF DEFINITION OF FOREIGN PROFESSIONAL CORPORATION.

Section 23. G.S. 55B-16(b) reads as rewritten:

"(b) For purposes of this section, 'foreign professional corporation' means a corporation for profit ~~that is~~ that:

(1) Is incorporated under a law other than the law of this ~~State~~ State;

(2) Is incorporated for the sole and specific purpose of rendering professional services of the type that if rendered in this State would require the obtaining of a license from a licensing board pursuant to the statutory provisions referred to in ~~G.S. 55B-2(6)~~ G.S. 55B-2(6); and ~~that (i) has as its shareholders only individuals who are duly licensed, in this State or some other state, to render the same professional services as the corporation, or (ii) is organized for the purpose of rendering professional services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, and has as its shareholders only individuals who are duly licensed, in this State or in another state, to render the same professional services as the corporation or who are nonlicensed employees of the corporation, provided that nonlicensed employees own not more~~

~~than one-third of the total issued and outstanding shares of the corporation, or (iii) is described in G.S. 55B-15.~~

(3) Has as its shareholders only individuals who:

a. Qualify to hold shares of a corporation organized under this Chapter;

b. Are licensed to provide professional services as defined in G.S. 55B-2(6) in a state in which the corporation is incorporated or is authorized to transact business, provided that such professional services are the same as the professional service rendered by the corporation; or

c. Are nonlicensed employees of a corporation rendering services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, provided that all such nonlicensed employees own no more than one-third of the total issued and outstanding shares of such corporation in the aggregate."

PART X. CORRECTION OF DELAYED EFFECTIVE DATE STATUTES FOR LIMITED PARTNERSHIP DOCUMENTS.

Section 24. G.S. 59-201(b) reads as rewritten:

"(b) ~~A~~ Unless a delayed effective date is specified in the certificate of limited partnership, a limited partnership is formed at the ~~time~~ effective time and date of the filing of the certificate of limited partnership in the office of the Secretary of State ~~or at any later time not more than 20 days subsequent to the endorsement of the Secretary of State specified in the certificate of limited partnership if, in either case,~~ if there has been substantial compliance with the requirements of this section."

Section 25. G.S. 59-203 reads as rewritten:

"**§ 59-203. Cancellation of certificate.**

A certificate of limited partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership or at any other time that there are no limited partners. A certificate of cancellation shall be filed in the office of the Secretary of State and set forth:

(1) The name of the limited partnership;

(2) The date of filing of its certificate of limited partnership;

(3) The reason for filing the certificate of cancellation;

(4) The effective date ~~(which shall be a date certain not more than 20 days from the date of filing)~~ of cancellation if it is not to be effective upon the filing of the certificate; and

(5) Any other information the partners filing the certificate determine."

PART XI. REMOVAL OF "CONFORMING TO LAW" LANGUAGE IN REVISED UNIFORM LIMITED PARTNERSHIP ACT.

Section 26. G.S. 59-206(a)(2) reads as rewritten:

"(2) The original document so signed, together with the conformed copy, shall be delivered to the Secretary of State. ~~Unless~~ If the

Secretary finds that it ~~does not conform to law,~~ satisfies the requirements of this Article, the Secretary shall, when the proper fees have been tendered, endorse upon the original the word 'filed' and the hour, day, month and year of the filing thereof and shall file the same in the Secretary's office. The Secretary of State shall thereupon immediately compare the copy with the original and if the Secretary finds that they are identical the Secretary shall make upon the conformed copy the same endorsement which appears on the original and shall attach to the copy a certificate stating that attached thereto is a true copy of the document, designated by an appropriate title, filed in the Secretary's office and showing the date of the filing. The Secretary shall thereupon return the copy so certified to the limited partnership or its representatives. Any documents filed with the Secretary of State pursuant to this Chapter may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Chapter, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of the documents reproduced. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. The authorization to make the corrections shall be confirmed, according to procedures adopted by rule, by the Secretary prior to making the correction."

Section 27. G.S. 59-903(a) reads as rewritten:

"(a) If the Secretary of State finds that an application ~~conforms to law he~~ satisfies the requirements of this Article, the Secretary shall, when all requisite fees have been tendered as in this Article prescribed:

(1) Endorse on the application the word 'filed', and the hour, day, month and year of the filing thereof;

(2) File in ~~his~~ the office the application;

(3) Issue a certificate of authority to transact business in this State to which ~~he~~ the Secretary shall affix the conformed copy of the application; and

(4) Send to the foreign limited partnership or its representative the certificate of authority, together with the conformed copy of the application affixed thereto."

PART XII. SINGLE MEMBER LIMITED LIABILITY COMPANIES.

Section 28. G.S. 57C-2-20(a) reads as rewritten:

"(a) ~~Two~~ One or more persons may organize a limited liability company by delivering executed articles of organization to the Secretary of State for filing."

PART XIII. CORPORATE MERGERS.

Section 29. G.S. 55-11-04 reads as rewritten:

"**§ 55-11-04. Merger ~~of~~ with subsidiary.**

(a) Subject to Article 9, a parent corporation owning at least 90 percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary. Subject to Article 9, a parent corporation owning at least ninety percent (90%) of the outstanding shares of each class of a subsidiary corporation may merge itself into the subsidiary without approval of the shareholders of the subsidiary if the merger is approved by the directors and shareholders of the parent corporation in accordance with G.S. 55-11-01 and G.S. 55-11-03.

(b) The board of directors of the parent shall adopt a plan of merger that sets forth:

(1) The names of the parent and subsidiary; and

(2) The manner and basis of converting the shares of ~~the subsidiary~~ each corporation into shares, obligations, or other securities of the ~~parent~~ surviving or any other corporation or into cash or other property in whole or part.

(c) The parent shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(d) The parent may not deliver articles of merger to the Secretary of State for filing until at least 30 days after the date it mailed a copy or summary of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement. This subsection does not apply to a merger in which the subsidiary was a public corporation before becoming a subsidiary qualifying for a merger under this section and is still a public corporation on the effective date of the merger.

(e) Articles of merger under this section may not contain amendments to the articles of incorporation of the ~~parent~~ surviving corporation (except for amendments enumerated in G.S. 55-10-02).

(f) The provisions of G.S. 55-13-02(c) do not apply to subsidiary corporations that are parties to mergers consummated under this section."

PART XIV. CORPORATE ANNUAL REPORTS TO BE FILED WITH THE DEPARTMENT OF REVENUE.

Section 30.1. G.S. 55-16-22 reads as rewritten:

"**§ 55-16-22. Annual ~~report for Secretary of State.~~ report.**

(a) ~~Each~~ Except as provided in subsections (a1) and (a2) of this section, each domestic corporation ~~except those governed by Chapter 55B,~~ and each foreign corporation authorized to transact business in this ~~State,~~ State shall deliver ~~to the Secretary of State for filing an annual report that sets forth:~~ an annual report to the Secretary of Revenue.

(a1) Each insurance company subject to the provisions of Chapter 58 of the General Statutes shall deliver an annual report to the Secretary of State.

(a2) A domestic corporation governed by Chapter 55B of the General Statutes is exempt from this section.

(a3) The annual report required by this section shall be in a form jointly prescribed by the Secretary of Revenue and the Secretary of State. The Secretary of Revenue shall provide the form needed to file an annual report. The annual report shall set forth all of the following:

(1) The name of the corporation and the state or country under whose law it is ~~incorporated;~~ incorporated.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which its registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of such registered office or registered agent, or ~~both;~~ both.

(3) The address and telephone number of its principal ~~office;~~ office.

(4) The names, titles, and business addresses of its principal ~~officers;~~ officers.

~~(4a) The names and business addresses of its directors; and~~

(5) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(c) ~~The annual report shall be delivered to the Secretary of State each year within 60 days immediately following the last day of the month in which the domestic corporation was incorporated or the foreign corporation received a certificate of authority in this State. Forms required for the filing of the annual report shall be mailed by the Secretary of State to the domestic or foreign corporation at its registered office for the first annual report, then to its principal office for subsequent annual reports.~~ An annual report required to be delivered to the Secretary of Revenue is due by the due date for filing the corporation's income and franchise tax returns. An extension of time to file a return is an extension of time to file an annual report. An annual report required to be delivered to the Secretary of State is due by the fifteenth day of the third month following the close of the corporation's fiscal year.

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in ~~such~~ the annual report.

(f) Expired.

(g) When a statement of change of registered office or registered agent is filed in the annual report, the change shall become effective when the statement is received by the Secretary of State.

(h) If the Secretary of State does not receive an annual report within 120 days of the date the return is due, the Secretary of State may presume that the annual report is delinquent. This presumption may be rebutted by receipt of the annual report from the Secretary of Revenue or by evidence of delivery presented by the filing corporation."

Section 30.2. G.S. 55-1-21(a) reads as rewritten:

"(a) The Secretary of State may promulgate and furnish on request forms ~~for:~~ for the following:

(1) An application for a certificate of ~~existence;~~ existence.

(2) A foreign corporation's application for a certificate of authority to transact business in this ~~State;~~ State.

(3) A foreign corporation's application for a certificate of ~~withdrawal;~~ ~~and~~ withdrawal.

~~(4) The annual report.~~

If the Secretary of State so requires, use of these forms is mandatory."

Section 30.3. G.S. 55-1-28(b)(4) reads as rewritten:

"(4) That its most recent annual report required by G.S. 55-16-22 either has been delivered to the Secretary of ~~State;~~ State or is not delinquent;".

Section 30.4. G.S. 55-14-20(2) reads as rewritten:

"(2) The corporation ~~does not deliver its annual report to the Secretary of State within 60 days after it is due;~~ is delinquent in delivering its annual report;".

Section 30.5. G.S. 55-15-30(a)(1) reads as rewritten:

"(1) The foreign corporation ~~does not deliver its annual report to the Secretary of State within 60 days after it is due;~~ is delinquent in delivering its annual report;".

Section 30.6. G.S. 55-16-01(e)(7) reads as rewritten:

"(7) Its most recent annual report delivered ~~to the Secretary of State under~~ as required by G.S. 55-16-22."

Section 30.7. G.S. 57C-2-23 reads as rewritten:

"**§ 57C-2-23. Annual report for Secretary of State.**

(a) Each domestic limited liability company and each foreign limited liability company authorized to transact business in this State, shall deliver to the Secretary of State for filing an annual ~~report~~ report, in a form jointly prescribed by the Secretary of Revenue and Secretary of State, that sets ~~forth:~~ forth all of the following:

(1) The name of the limited liability or foreign limited liability company and the state or country under whose law it is ~~organized;~~ organized.

(2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the

registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of the registered office or registered agent, or ~~both;~~ both.

(3) The address and telephone number of its principal ~~office;~~ office.

(4) The names and business addresses of its ~~managers; and~~ managers.

(5) A brief description of the nature of its business.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (5) of this subsection. The Secretary of State shall make available the form required to file an annual report.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company or the foreign limited liability company.

(c) The annual report shall be delivered to the Secretary of State ~~each year within 60 days immediately following the last day of the month in which the domestic limited liability company was organized or the foreign limited liability company received a certificate of authority in this State. Forms required for the filing of the annual report shall be mailed by the Secretary of State to the domestic or foreign limited liability company at its registered office for the first annual report, and then to its principal office for subsequent annual reports.~~ by the fifteenth day of the fourth month following the close of the limited liability company's fiscal year.

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report."

Section 30.8. G.S. 57C-3-25(a) reads as rewritten:

"(a) Any person dealing with a limited liability company or a foreign limited liability company may rely conclusively upon its most recent annual report and any amendments ~~thereto filed with~~ to it on file with the Secretary of State ~~pursuant to G.S. 57C-2-23~~ as to the identity of its managers, except to the extent the person has actual knowledge that a person identified therein as a manager is not a manager."

Section 30.9. G.S. 105-228.90(a) reads as rewritten:

"(a) Scope. -- This Article applies to Subchapters I, V, and VIII of this ~~Chapter~~ Chapter, to the annual report filing requirements of G.S. 55-16-22, and to inspection taxes levied under Article 3 of Chapter 119 of the General Statutes."

Section 30.10. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-256.1. Corporate annual report.**

A corporation that files its annual report with the Secretary must pay the amount provided in G.S. 55-1-22 when it files the report. Amounts collected under this section shall be credited to the General Fund as tax revenue. The Secretary must transmit an annual report filed with the Secretary in accordance with G.S. 55-16-22 to the Secretary of State."

Section 30.11. G.S. 105-259 reads as rewritten:

"**§ 105-259. Secrecy required of officials; penalty for violation.**

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

(1) Employee or officer. -- The term includes a former employee, a former officer, and a current or former member of a State board or commission.

(2) Tax information. -- Any information from any source concerning the liability of a taxpayer for a tax, as defined in G.S. 105-228.90. The term includes the following:

a. Information contained on a tax return, a tax report, or an application for a license for which a tax is imposed.

b. Information obtained through an audit of a taxpayer or by correspondence with a taxpayer.

c. Information on whether a taxpayer has filed a tax return or a tax report.

d. A list or other compilation of the names, addresses, social security numbers, or similar information concerning taxpayers.

The term does not include (i) statistics classified so that information about specific taxpayers cannot be ~~identified or (ii)~~ identified, (ii) an annual report required to be filed under G.S. 55-16-22 or (iii) information submitted to the Business License Information Office of the Department of Secretary of State on a master application form for various business licenses.

(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

(1) To comply with a court order or a law.

(2) Review by the Attorney General or a representative of the Attorney General.

(3) Review by a tax official of another state or the Internal Revenue Commissioner of the United States to aid the state or the Commissioner in collecting a tax imposed by this State, the other state, or the United States if the laws of the other state or the United States allow the state or the United States to provide similar tax information to a representative of this State.

(4) To provide a governmental agency or an officer of an organized association of taxpayers with a list of taxpayers who have paid a privilege license tax under Article 2 of this Chapter.

(5) To furnish to the chair of a board of county commissioners information on the county sales and use tax.

(6) To sort, process, or deliver tax information on behalf of the Department of Revenue.

(6a) To furnish the chair of a board of county commissioners a list of claimants that have received a refund of the county sales or use tax to the extent authorized in G.S. 105- 164.14(f).

(7) To exchange information with the Division of Motor Vehicles of the Department of Transportation when the information is needed to fulfill a duty imposed on the Department of Revenue or the Division of Motor Vehicles.

(8) To furnish to the Department of State Treasurer, upon request, the name, address, and account and identification numbers of a taxpayer who may be entitled to property held in the Escheat Fund.

(9) To furnish to the Employment Security Commission the name, address, and account and identification numbers of a taxpayer when the information is requested by the Commission in order to fulfill a duty imposed under Article 2 of Chapter 96 of the General Statutes.

(10) Review by the State Auditor to the extent authorized in G.S. 147-64.7.

(11) To give a spouse who elects to file a joint tax return a copy of the return or information contained on the return.

(11a) To provide a copy of a return to the taxpayer who filed the return.

(11b) In the case of a return filed by a corporation, a partnership, a trust, or an estate, to provide a copy of the return or information on the return to a person who has a material interest in the return if, under the circumstances, section 6103(e)(1) of the Code would require disclosure to that person of any corresponding federal return or information.

(11c) In the case of a return of an individual who is legally incompetent or deceased, to provide a copy of the return to the legal representative of the estate of the incompetent individual or decedent.

(12) To contract with a financial institution for the receipt of withheld income tax payments under G.S. 105-163.6 or for the transmittal of payments by electronic funds transfer.

(13) To furnish the Fiscal Research Division of the General Assembly, upon request, a sample, suitable in character, composition, and size for statistical analyses, of tax returns or other tax information from

which taxpayers' names and identification numbers have been removed.

(14) To exchange information concerning a tax imposed by Subchapter V of this Chapter with the Standards Division of the Department of Agriculture when the information is needed to administer the Gasoline and Oil Inspection Act, Article 3 of Chapter 119 of the General Statutes.

(15) To exchange information concerning a tax imposed by Articles 2A, 2B, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the agency:

a. The North Carolina Alcoholic Beverage Control Commission.

b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.

c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department.

(16) To furnish to the Department of Secretary of State the name, address, tax year end, and account and identification numbers of a corporation liable for corporate income or franchise taxes or of a limited liability company liable for a corporate or a partnership tax return to enable the Secretary of State to notify the corporation or the limited liability company of the annual report filing requirement or that its articles of incorporation or articles of organization or its certificate of authority has been suspended.

(17) To inform the Business License Information Office of the Department of Secretary of State of the status of an application for a license for which a tax is imposed and of any information needed to process the application.

(18) To furnish to the Office of the State Controller the name, address, and account and identification numbers of a taxpayer upon request to enable the State Controller to verify statewide vendor files or track debtors of the State.

(19) To furnish to the North Carolina Industrial Commission information concerning workers' compensation reported to the Secretary under G.S. 105-163.7.

(c) Punishment. -- A person who violates this section is guilty of a Class 1 misdemeanor. If the person committing the violation is an officer or employee, that person shall be dismissed from public office or public employment and may not hold any public office or public employment in this State for five years after the violation."

Section 30.12. Section 30.11 of this act becomes effective September 1, 1997. The remainder of this Part becomes effective January 1, 1998, and applies to tax years ending on or after December 31, 1997, in the case of corporations required to file annual reports with the Secretary of Revenue and to fiscal years ending on or

after December 31, 1997, in the case of corporations and limited liability companies required to file annual reports with the Secretary of State.

Annual reports delivered to either the Secretary of State or the Secretary of Revenue after December 31, 1997, but before January 1, 1999, shall nevertheless be deemed filed with the correct State agency. The Secretary of State shall notify the Secretary of Revenue of reports erroneously filed with the Secretary of State, and the Secretary of Revenue shall notify the Secretary of State of reports erroneously filed with the Secretary of Revenue.

PART XV. EFFECTIVE DATES.

Section 31. Section 1 of this act becomes effective July 1, 1998. Sections 2 and 3 of this act become effective July 1, 1997. Sections 14 through 17, 23, 26, 27, and 31 of this act are effective when the act becomes law. The amendments to G.S. 55-1-22(a)(16) and G.S. 55A-1-22(a)(17), made by Sections 10 and 11 of this act, become effective September 1, 1997. G.S. 57C-1-22(a)(16a), as enacted by Section 12 of this act, becomes effective September 1, 1997. The amendment to G.S. 55-1-22(a)(23), made by Section 10 of this act, becomes effective January 1, 1998, and applies to tax years ending on or after December 31, 1997. Except as otherwise provided, the remainder of this act becomes effective October 1, 1997. Section 4 of this act applies to dissenters' rights created pursuant to G.S. 55-13-02 on or after October 1, 1997. Section 5 of this act applies to proceedings commenced on or after October 1, 1997. Section 5.1 of this act applies to proceedings commenced on or after October 1, 1997, by dissenters to corporate actions that occurred before October 1, 1997. Sections 6 through 13 of this act apply to requests for review of documents on or after that date.

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.

The General Assembly of North Carolina enacts:

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

SESSION 1997

S D

S264-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 264
THIS IS A DRAFT 1-JUL-97 18:03:23
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Liability for Job References. (Public)

Sponsors:

Referred to: Judiciary.

February 27, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE IMMUNITY TO EMPLOYERS WHO DISCLOSE INFORMATION ABOUT AN EMPLOYEE WHEN THE EMPLOYER IS PROVIDING A REFERENCE.

The General Assembly of North Carolina enacts:

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 history or 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 immune from civil liability and is not liable in civil damages for the disclosure or any consequences of the disclosure. This immunity shall not apply when a claimant shows 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 knew or reasonably should have known that the information was false.

(b) For purposes of this section, "job performance" includes the suitability of the employee for future employment and, in the case of a former employee, the reason for the employee's separation.

(c) 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. For the purposes of this section, "employer" also includes a job placement service.

(d) 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.

North Carolina General Assembly
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July 2, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis, Committee Counsel

RE: **SENATE BILL 264-LIABILITY FOR JOB REFERENCES** - Senator Horton
Proposed Committee Substitute

Senate Bill 264 would grant qualified immunity to an employer who gives a job reference on a current or former employee to a prospective employer.

The bill provides that an employer or former employer who discloses information about a current or former employee's job history or performance at the request of a prospective employer or the employee is immune from civil liability for the disclosure of the information or the consequences of the disclosure. The immunity does not apply when the employee shows by a preponderance of the evidence that the information disclosed was in fact false, and that the employer knew or should have known that the information was false. "A preponderance of the evidence" has been held to mean the same as the "greater weight of the evidence" which means that considering all of the evidence, the necessary facts are more likely than not to exist.

"Job performance" under the bill includes the employee's suitability for future employment and the reason for the employee's separation.

Under the bill this qualified immunity also extends to employees and agents of the employer authorized to give this information. Employer also includes a job placement service.

The bill states that it does not affect any privileges or immunities from civil liability under other statutes or available under common law.

The bill becomes effective when it becomes law and applies to causes of action arising on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 264 Amendment No. _____
(to be filled in by Principal Clerk)

Proposed Comm. Sub.
COMMITTEE SUBSTITUTE _____

Rep.)
) Hackney
Sen.)

1 moves to amend the bill on page 2, line 14

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting the line to read:

4 " Section 2. This act becomes effective

5 October 1, 1997 "

6

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SIGNED Hackney

ADOPTED 7-2-97 FAILED _____ TABLED _____

BRW

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. 264 Amendment No. _____
(to be filled in by Principal Clerk)

Proposed Comm. Sub.
COMMITTEE SUBSTITUTE _____

Rep.)
) Shubert
Sen.)

moves to amend the bill on page 2, line 2

( ) WHICH CHANGES THE TITLE

by inserting between the word "for" and the word "future" the words "reemployment and"

ADOPTED 7-3-97 FAILED _____ TABLED _____

SIGNED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
S.B. 264 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.

☐ 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 House committee substitute bill, 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. (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 D

SENATE BILL 264
Proposed Committee Substitute S264-PCS6701

Short Title: Liability for Job References. (Public)

Sponsors:

Referred to:

February 27, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE IMMUNITY TO EMPLOYERS WHO DISCLOSE INFORMATION ABOUT AN EMPLOYEE WHEN THE EMPLOYER IS PROVIDING A REFERENCE.

The General Assembly of North Carolina enacts:

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 history or 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 immune from civil liability and is not liable in civil damages for the disclosure or any consequences of the disclosure. This immunity shall not apply when a claimant shows 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 knew or reasonably should have known that the information was false.

(b) For purposes of this section, 'job performance' includes the suitability of the employee for reemployment and future employment and, in the case of a former employee, the reason for the employee's separation.

(c) 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. For the purposes of this section, 'employer' also includes a job placement service.

(d) 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 becomes effective October 1, 1997, and applies only to causes of action arising on or after that date.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — **July 3, 1997 7:30 A.M.**

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike Blum	PTRF
Natalie Haskins	Charlotte Chamber
Pat Planke	Henley Paper Company
Alan Miles	Barley & Dixon LLP
PERRI MORGAN	NFIB
FRAN PRESTON	NCRMA
John McMillan	Manning, Fulton & Skinner P.A.
Leslie Bevacqua	NCCBI
Nancy Bradley	NCCBI
Ed Powell	Melvin & Powell
DON McConquodale	NCRMA
R. Bly Hall	General Statutes Commission
PAUL STOCK	NC Bankers Assn.
Charles Cromer	NCATL
Sandra Long	Hospice of the Carolinas

1997

HOUSE
JUDICIARY II

MINUTES

MINUTES
HOUSE JUDICIARY II COMMITTEE

July 8, 1997

The North Carolina House of Representatives Judiciary II Committee met on July 8, 1997, at 1:25 P.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Baddour, Bowie, Cansler, Culpepper, Gardner, Goodwin, Hackeny, Russell, Saunders, Shubert and Weatherly. A list of visitors is attached.

The following bills were discussed:

HB-949 IMPROVE CHILD PROTECTION/RECORDS
SB-992 NC BOXING COMMISSION

Representative Gardner was recognized to send forth a proposed committee substitute for House Bill 949 and moved it be adopted for purpose of discussion; motion passed. A copy of the proposed committee substitute and explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Ms. Hayes was recognized to explain the proposed committee substitute and answer questions of committee members.

Representative Gardner provided members with a handout STATE: DSS DIDN'T ASK RIGHT QUESTIONS. A copy of the handout is attached.

Representative Hackney was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Mr. Tom Bennett, Child Fatality Task Force; Mr. Kevin Fitzgerald, Director, DSS; Mr. Ken Eudy, Lobbyist, NC Press Association, and Ms. Deborah Ross ACLU, spoke on the bill.

Representative Gardner moved the amendment be incorporated into a committee substitute bill, with a favorable report as to committee substitute bill #2, unfavorable as to committee substitute bill #1, and be re-referred to the Committee on Appropriations; motion passed.

Representative Neely recognized Representative Cansler to chair the meeting during the presentation of SB-992.

The committee was provided a proposed committee substitute for SB-992. Representative Bowie moved the proposed committee substitute be adopted for purpose of discussion. A copy of the proposed committee substitute is attached.

Mr. Evan Rodewald provided members with a memorandum Gross Receipts Tax on Boxing. A copy of the memorandum is attached.

Representative Neely was recognized to send forth an amendment a moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Shubert was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Bowie moved the amendments be incorporated in a committee substitute bill, with a favorable report as to House committee substitute bill, unfavorable as to original bill, and be re-referred to the Committee on Finance; motion passed.

The meeting was adjourned at 2:20 P.M.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H D

HOUSE BILL 949
Proposed Committee Substitute H949-CSSA-002
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Improve Child Protection/Records. (Public)

Sponsors:

Referred to: Human Resources, if favorable, Judiciary II

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPROVE CHILD PROTECTION BY ALLOWING DISCLOSURE OF CERTAIN RECORDS AND TO APPROPRIATE $100,000 FOR THIS PURPOSE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 7A of the General Statutes is amended by adding the following new section to read:

"§7A-675.1. Disclosure in child fatality or near fatality cases.

(a) The following definitions apply in this section:

(1) 'Child fatality' means the death of a child from suspected abuse, neglect or maltreatment.

(2) 'Near fatality' means a case in which a physician determines that a child is in serious or critical condition as the result of sickness or injury caused by suspected abuse, neglect, or maltreatment.

(3) 'Public agency' means any agency of State government or its subdivisions as defined in G.S. 132-1(a).

(4) 'Findings and information' means a written summary, as allowed by subsections (c) through (f) of this

section, of actions taken or services rendered by a public agency following receipt of information that a child might be in need of protection. The written summary shall include any of the following information the agency is able to provide:

a. The dates, outcomes and results of any actions taken or services rendered;

b. The results of any review by the State Child Fatality Prevention Team, a local child fatality prevention team, a local community child protection team, the Child Fatality Task Force, or any public agency.

c. Confirmation of the receipt of all reports, accepted or not accepted by the county department of social services, for investigation of suspected child abuse, neglect, or maltreatment, including confirmation that investigations were conducted, the results of the investigations, a description of the conduct of the most recent investigation and the services rendered, and a statement of basis for the department's decision.

(b) Notwithstanding any other provision of law and subject to the provisions of subsections (c) through (f), a public agency shall disclose to the public, upon request, the findings and information related to a child fatality or near fatality if:

(1) A person is criminally charged with having caused the child fatality or near fatality, or;

(2) The district attorney has certified that a person would be charged with having caused the child fatality or near fatality but for that person's prior death.

(c) Nothing herein shall be deemed to authorize access to the confidential records in the custody of a public agency, or the disclosure to the public of the substance or content of any psychiatric, psychological, or therapeutic evaluations or like materials or information pertaining to the child or the child's family unless directly related to the cause of the child fatality or near fatality, or the disclosure of information that would

reveal the identities of persons who provided information related to the suspected abuse, neglect, or maltreatment of the child.

(d) Within five working days from the receipt of a request for findings and information related to a child fatality or near fatality, a public agency shall consult with the appropriate district attorney and provide the findings and information unless the agency has a reasonable belief that release of the information:

(1) Is not authorized by subsections (a) and (b);

(2) Is likely to cause mental or physical harm or danger to a minor child residing in the deceased or injured child's household;

(3) Is likely to jeopardize the State's ability to prosecute the defendant;

(4) Is likely to jeopardize the defendant's right to a fair trial;

(5) Is likely to undermine an ongoing or future criminal investigation; or,

(6) Is not authorized by federal law and regulations.

(e) Any person whose request is denied may apply to the appropriate district court for an order compelling disclosure of the findings and information of the public agency. The application shall set forth, with reasonable particularity, factors supporting the application. The district court shall have jurisdiction to issue such orders. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the appellate courts. After the court has reviewed the specific findings and information, in camera, the court shall issue an order compelling disclosure unless the court finds that one or more of the circumstances in subsection (d) exists.

(f) Access to criminal investigative reports and criminal intelligence information of public law enforcement agencies, and confidential information in the possession of the State Child Fatality Prevention Team, the local teams, and the Child Fatality Task Force, shall be governed by G.S. 132-1.4 and 143-578 respectively.

(g) Any public agency or its employees acting in good faith in disclosing information pursuant to this section shall be

immune from any criminal or civil liability that might otherwise be incurred or imposed for such action.

(h) Nothing herein shall be deemed to narrow or limit the definition of 'public records' as set forth in G.S. 132-1(a)."

Section 2. G.S. 7A-675(h) reads as rewritten:

"(h) ~~Nothing in this section shall preclude the necessary sharing of information among authorized agencies.~~ The chief district court judge in each district shall designate by standing order certain agencies in the district as 'agencies authorized to share information'. Agencies so designated shall share with one another, upon request, information that is in their possession that is relevant to any case in which a petition is filed alleging that a juvenile is abused, neglected or dependent, and shall continue to do so until the juvenile is no longer subject to the juvenile jurisdiction of the court. Agencies that may be designated as 'agencies authorized to share information' include local mental health facilities, local health departments, local departments of social services, local law enforcement agencies, local school administrative units, the district's district attorney's office, the Division of Juvenile Services of the Administrative Office of the Courts, and the Office of Guardian ad Litem Services of the Administrative Office of the Courts. Any information shared among agencies pursuant to this subsection shall remain confidential, shall be withheld from public inspection, and shall be used only for the protection of the juvenile. Nothing in this section or any other provision of law shall preclude any other necessary sharing of information among agencies."

Section 3. There is appropriated from the General Fund to the Department of Human Resources the sum of one hundred thousand dollars ($100,000) for the 1997-98 fiscal year for implementing the provisions of this act.

Section 4. This act becomes effective October 1, 1997.

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July 8, 1997

TO: Representative Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: HB949 - Improve Child Protection/Records - Subcommittee PCS

Section 1 of the proposed committee substitute for HB949 would allow the public disclosure of findings and information regarding child fatalities or near fatalities. Upon request, the findings and information would be released unless the public agency believes that one of several exceptions exists. If the records are withheld by the agency, the person making the request may apply for a court order releasing the records.

Section 2 requires the chief district court judge in each judicial district to designate certain agencies that may share information among themselves regarding juveniles under the jurisdiction of the juvenile court in abuse, neglect, and dependency cases.

Section 3 appropriates $100,000 to implement this act.

This bill is effective October 1, 1997.

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State: DSS didn't ask right questions

Investigators missed 'certain critical findings'

BY MARK WINEKA
SALISBURY POST

In examining the abuse deaths of two Rowan children, a special state review team found extensive evidence of limited investigative work, miscommunication, failed documentation, poor after-hours coverage and inadequate supervision by the Rowan County Department of Social Services.

The review team also provided numbers showing that Social Services workers who investigate child abuse and neglect are terribly overloaded, far exceeding the state's recommended standards of cases per month.

In response, a report delivered by the team this morning recommends changing procedures as well as adding staff, resources and training

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for local Social Services employees and the community at large.

The report also takes the state to task for its initial review of the deaths of Budde Lee Clark, Christopher Jones and Trola Miller.

The report delivered this morning said the first review of those deaths "missed certain critical findings."

Complaints about the findings of the state's first investigation of the deaths led N.C. Human Resources Secretary David Bruton, at the direction of Gov. Jim Hunt, to appoint of a second special review team.

Overall, the team found the state has "some unsuspected holes in our safety net for protecting children," said Kevin FitzGerald, state director of Social Services.

Fitzgerald called it "the greatest lesson we have learned" from this second investigation into the deaths of the Rowan County children.

Conducted during the same time period, a separate review by the American Humane Association into North Carolina's fatality review procedure found the state process "too" the important issues.

The American Humane Association calls on the state to design a more comprehensive child fatality review process — something which FitzGerald promised to do.

The review team's report was prepared by Chuck Harris and JoAnn Lamm of the N.C. Division of Social Services, Marcia Herman-Giddens of the N.C. Medical Examiner's Office, Rowan County Health Director John Shaw and Jennifer Tolle of Prevent Child Abuse North Carolina.

The state report found major deviations between the caseload Rowan social workers carry and the state standard of 12.

The number of abuse and neglect investigations being conducted by Rowan investigators ranged from 16 to 27 cases. In March, child protective services investigators received 22 new cases each.

Likewise, Rowan exceeded the state standard for the ratio of supervisors to front-line social workers. The recommended ratio is 1 to 5; Rowan's was 1 to 8 and 1 to 9.

Today's report recommends that Rowan officials give Social Services the resources to meet state-recommended ratios.

In its 10-page report, the six pages to findings related to the Rowan County child fatalities — deaths that occurred in a five-day period from Jan. 31 to Feb. 4. In all three cases, the local Social Services department had investigated earlier allegations of abuse or neglect.

Problems and recommendations identified included:

■ The report cited both a lack of communication and miscommunication between hospital and other medical providers and the Social Service staff. Pertinent information was lost in some cases.

The team suggests that Social Services and local medical providers develop a protocol "to ensure accurate sharing of information and appropriate response times by DSS workers."

The report also calls on Social Services investigators to consistently request and review all pertinent medical records. The report encourages all medical professionals in Rowan County to pursue training in identifying and reporting child abuse and neglect.

■ The review team found evidence that "a number of community members" had reason to suspect abuse and neglect in the children's cases but failed to make a report to Social Services.

The report does not identify

team encourages better community training for professionals who consistently work with children and families. It calls on the Community Child Protection Team to develop a plan to enhance public awareness of the N.C. law requiring anyone who suspects child abuse or neglect to report to Social Services.

■ Social Services should develop a better system for on-call, after-hours coverage.

"Back-up, relief and supervision must be readily available and able to assist in overload situations," the report says.

It may require a special position or compensatory time for Social Services workers who must work daytime hours as well, the report adds.

A written procedure for after-hours reporting should be shared with the individuals and agencies who often make child abuse reports outside of normal agency operating hours, according to the report.

■ Some areas of the intake process in Child Protective Services must be improved.

Rowan Social Services intake forms must be expanded "to ensure the collection of all pertinent information."

■ The focus of the Social Services investigations and assessments were too narrow.

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CONTINUED

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The team says the staff should focus on all aspects of investigations and assessments, "and not just on the reported incident."

■ Social Services' investigations and assessments were too narrow.

The team says the staff should focus on all aspects of a case, "and not just on the reported incident."

It calls on the Social Services investigators to "frequently utilize the expertise of medical, psychological and law enforcement resources in conducting investigations."

■ Social Services investigations failed to interview several key people in the abuse deaths of Budde Lee Clark and Christopher Jones.

■ There's a need for additional resources to support Social Services investigators.

The report recommends that Child Protective Services be given additional clerical support, better computer resources and access to cellular telephones.

■ Social Services staff needed additional training. The report says staff members need to be retrained in the use of risk assessment, child development and discipline techniques.

■ The review found numerous examples of inadequate documentation by Social Services staff. The case record did not clearly document services and activities provided by workers.

In this regard, supervisors need to be held accountable for the thoroughness of records, the report says.

■ Supervision needs to be improved.

The report recommends that supervisors meet regularly with caseworkers and should require frequent status reports. It calls on close daily supervision of case workers with little work experience or record of questionable performance.

On the state review level, the report says that for each of the three cases, one or more standards had not been met and were not identified in the initial review.

The report recommends broadening state reviews beyond the last 12 months of agency involvement, including someone with medical expertise and at least one person outside the Social Services division.

The report also suggests exploring ways to loosen confidentiality restrictions to satisfy the public need for accountability.

Child fatality bills on hold

As May 1 deadline looms in General Assembly, efforts to open records to public sit in committee

BY MARK WINEKA
SALISBURY POST

Local lawmakers intent on opening up child fatality records face an approaching May 1 deadline and a backlog of other bills languishing in committees.

The General Assembly refers to the May 1 deadline as the "crossover" date. If a bill does not affect the state budget and fails to pass either the N.C. Senate or N.C. House by May 1, it dies and would have to be reintroduced no earlier than January 1999.

"Reality is setting in," Rep. Charlotte Gardner, R-Rowan, acknowledging time constraints and a tough legislative fight ahead. "The same questions are going to be raised, no matter what the committee. It's very difficult to find time to talk to people. The pace is so incredible and will be."

Both Gardner and Sen. Betsy Cochrane, R-Davie, introduced legislation in their respective houses last week seeking to improve child protection by requiring better disclosure of records in child fatalities.

"The instances reported in Salisbury and Rowan County have indicated to us that this needed to be done," says Cochrane, who submitted Senate Bill 946. "... We are going to have to work (to beat the deadline)."

For confidentiality reasons, state and local records in the separate deaths of three Rowan County children have been withheld from public inspection, frustrating some local officials and citizens looking for accountability.

The children had been subjects of Rowan Department of Social Services investigations before their deaths.

Post reporting, independent of the initial DSS review into the child fatalities, relied on anonymous sources to document prior abuse in at least two of the cases. The reporting revealed evidence that the DSS failed to act on or seek out critical medical and law enforcement information before the deaths occurred.

In the cases of 6-year-old Budde Lee Clark and 19-month-old Christopher Jones, care givers have been charged with murder. In the other case, 16-year-old Trola Miller was shot and killed during a neighborhood argument.

"There's certainly merit to opening up the process even further to public inspection," says Sen. Roy Cooper, chairman of the Senate Judiciary Committee and a leading legislative voice in opening records of public agencies. "Anything we can do to prevent future child fatalities is important.

"I think public scrutiny would help in that endeavor. The bottom line is that open government inspires more trust from the people and operates more effectively — maybe not as efficiently as it could behind closed doors — but more effectively."

The companion bills would require better disclosure of records only after a child fatality occurs. Those documents that would be made available for public scrutiny would include

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Bills

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medical, hospital, law enforcement, emergency medical service, medical examiner, health, mental health, education and, in particular, social services records.

Cochrane's version says an investigation into the deaths must be complete before the records are opened.

Both bills allow a public agency to seek a court order blocking disclosure of records if they are judged to be a threat to the mental or physical health or safety of a deceased child's family member, or if that information would compromise a criminal investigation.

Gov. Jim Hunt ordered Human Resources Secretary David Bruton to authorize a second, more extensive state review into the Rowan children's deaths after public complaints about an initial DSS review.

The second state investigation acknowledged evidence of limited investigative work, miscommunication, failed documentation, poor after-hours coverage and inadequate supervision by the Rowan DSS.

It also revealed an overloaded caseload for the local DSS employees who investigate child abuse and neglect reports. And it showed serious shortcomings in the way DSS reviewed child fatalities statewide.

Part of the second review team's recommendations called for the loosening of confidentiality restrictions in child fatalities "to satisfy the public's need for accountability."

The bills from Cochrane and Gardner soon followed, with the help of the N.C. Press Association.

The House bill has been forwarded to the Human Resources Committee, to which Gardner belongs.

The Senate bill has gone to the Child and Human Resources Committee, of which Cochrane is a member. She likes its chances of at least being heard in that committee. Earlier in the week, she expressed concern that it would go to the more cumbersome Judiciary Committee, which faces a bigger backlog. In anticipation of that possibility, Cochrane had Judiciary chairman Cooper sign on.

Cooper also is a sponsor of Senate Bill 799, called the Discipline Disclosure Act. It would open public employees' personnel files and make public employees' resumes and letters of recommendation open, as well as records relating to commendations, separation, suspension, demotion, reprimands, warnings and performance evaluations. The files would be open in cases of disciplined employees.

"I think they definitely will be heard," Cooper says of both bills. He notes that his bill faces stiff opposition from the N.C. Association of County Commissioners, the N.C. League of Municipalities and state employees.

"Certainly, both bills will be given a hearing, if they're in my committee," Cooper says from his Rocky Mount office Friday. "When I get back to Raleigh, I'll do what I can to push it (Cochrane's bill) along. It was introduced late, which is somewhat of a problem."

Cochrane says if the bill can't make the crossover deadline she will look for ways to fit it to other bills, possibly as a committee substitute.

Ken Eudy, a lobbyist for the N.C. Press Association, says many legislators often frown on that maneuver, "and someone would jump up and down and say it's a circumvention of the rules."

"It's difficult for that to happen," Eudy adds.

Noting the backlog of legislation, Eudy says the public disclosure bills "have a chance, but it's rough."

"Bills that have a potential for controversy are a lot less likely to pass," he says. "The margins here are so narrow. That also makes it an interesting process."

In the House, the Judiciary II Committee already is considering a bill that would give the Child Fatality Task Force access to the same kind of records.

"I think both of them need to be together," Gardner says of her bill and the one sponsored by Ruth Easterling, D-Mecklenburg.

Gardner's bill ties into that bill but is much broader in scope. The Child Fatality Task Force's bill has been referred to a subcommittee headed by Rep. Joe Hackney, D-Orange.

Gardner has spoken with Hackney, an attorney who has reservations about Easterling's more narrow proposal. Gardner says she explained the need for the law and how the Post's investigation revealed "how folks fell through the cracks in the system."

As of Thursday when the Post contacted Hackney, he was not yet familiar with the Gardner bill.

Gardner plans to ask local attorney Mary Beth Smith to speak with Hackney about the importance of the bill, in case it would end up in Judiciary II. Meanwhile, Easterling supports Gardner's bill.

Gardner questions whether Human Resources is an easier committee than Judiciary II would be for having the bill being reported out.

"I could try and get the bill heard, and that's fine, but that's a tough committee, too," Gardner says.

Gardner suspects her bill promotes an openness concept that many of her fellow legislators, especially attorneys, don't like.

"I will tell you, it's always a fight to open up more of government," says Eudy, the Press Association lobbyist. "Nobody wants to give up that closed door and that cloak easily."

Readers share opinions on money for Social Services

More than 20 readers with widely varying positions called the Salisbury Post last week to talk about funding for the Department of Social Services.

In the wake of the abuse deaths of two Rowan County children, a special state review team determined that the Social Services agency needs more child protective workers and equipment to keep up with the cases they have.

We asked readers if they support spending more tax money for the local child abuse investigation unit, even if that might mean increasing taxes.

Here are some of the responses we received. (The Post does not print responses it cannot verify through follow-up phone calls.)

Denise Jacobs, *Salisbury:* Yes, I agree with spending more money, even if it means an increase in our county taxes, to support DSS if they need more workers and equipment to protect these children. Because you can't put a price on a child's life.

Rae Boger, *China Grove:* Yes, I do support more money for Social Services. And yes, I would go along with a tax increase for that purpose, but I do not think that money should be given to Social Services under the present director. I believe he has mishandled funds as it is apparent with the deaths of three children this past winter. I don't think he is using common sense.

Carolyn Casey, *Salisbury:* Yes, I would most definitely support anything that would save a child's life. they are more important than anything. To not provide the money to take care of the little children of Rowan County is terrible. I think the Rowan County commissioners should be ashamed of themselves.

Kay VanKampen, *Salisbury:* I don't know if I can stand any

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Readers

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more taxes. I'm retired. But I'd love to volunteer. If they can use a volunteer, I'd be glad to help them.

Angela Gillespie, *Salisbury:* I do feel like we do need to spend more money to protect our young people, even if it means increasing our taxes and hiring more people for the Department of Social Services. I think our county commissioners were very eager to .spend money to renovate an old building so they could have nice new offices, but they can't see to spend more money to hire more people for the Department of Social Services.

Ken Walton, *Rockwell:* I do support spending more money for the children because I have this problem with my ex-wife, to a certain extent. I've had to deal with Social Services. They're overworked and understaffed, and if nobody takes care of the children, what have we got left? The children need to be helped. They're little enough that they can't do it on their own. All they do is cry. Nobody realizes the fact that children don't cry because they're happy. They cry because they hurt and we're the ones doing the hurting. And we're supposed to be setting an example for them. They need all the help they can get at Social Services. They really do.

Jeff Warren, *Salisbury:* Certainly, I support spending more money for DSS. It seems that we citizens of Rowan County and Salisbury should certainly be willing to assume our responsibility in what has happened in the recent past. We have not done what many of us knew needed to be done, which is listen to the request and then do something. Doing nothing just perpetuates. Yes, I would support money for DSS, even if it means a tax increase. It's time that we accept our responsibility in the tragedies that have happened, not just the commissioners.

Jane Ketchie, *Salisbury* Yes, I do support spending more tax money for our local unit to protect our children. Yes, even if it would mean increasing taxes.

Troy R. Elliott, *China Grove:* No, we do not need to spend more money. We need to fire the department heads. They're not doing their jobs. There isn't any management in that department. They need to get to work or replace them all. Just throwing tax dollars at the problem won't help. You can see that in other county agencies. Remember Tri-County Mental Health?

John Smith, *Salisbury:* I have a bone to pick with Social Services. I've almost lost a child because of them. I would support spending tax dollars for them, but I think some of the tax dollars should be moved from some of these projects around Salisbury that are useless and put the money toward Social Services. But most of the things wrong with Social Services right now is no communication and no guidelines and the people who work there do not know what they are doing. I point blank asked one of the representatives a couple months ago what his role was in Social Services, and he said there was a variety of things but he wouldn't pinpoint any one. I asked him if he were investigating a case and saw a child being abused or neglected, what would you do? He said, 'It's not my position to tell anybody there. That's not my department.' That really upset me. That's why I almost lost my child, but I would support it if money would be shifted from some of the other projects around here and given to Social Services. But they also need a lot of training.

Christine Smith, *Salisbury:* I think there's no option of spending more money to equip the Social Services department to fight child abuse. What kind of dollar amount do you put on a child's life or safety? If it means increasing taxes, so be it. I don't think there's a price tag you can put on a child's life. There's no reason an innocent child should be abused or neglected for whatever reason. Whatever we can do to help to protect those children is absolutely necessary. We need to train society first off, but there's going to be instances where things are going to happen and children are going to be abused or neglected. No matter how hard you try to better society,it's always going to be there. it's always been there, and it's always going to be there.

Bradley Eagle, *Salisbury:* No, I don't support more money for (Social Services) because there's going to be child abuse no matter what. What they need to do is start doing something to the people to start with. No matter how much tax money they get, it's not going to knock out child abuse.

Carole Young, *Salisbury:* Yes, I would definitely support higher taxes, not only for additional DSS employees but also for the health department and other county agencies. I have worked for DSS for 22 years, and it is time that commissioners took responsibility for their abysmal record of underfunding county agencies. Money that should have been spent for the needs of our all our citizens has been misdirected to frivolities such as our famous baseball stadium. Both Mr. Rowland and Mr. Cohen have demonstrated ignorance beyond belief in how jobs and programs at a social service agency are funded and would be well advised to spend time on the job with us rather than calling for heads to roll.

Jim Christy, *China Grove:* Yes, I support it.

Don Hamilton, *Salisbury:* When an organization of paid professionals is responsible for handling a phase of government and they know their duties, this is their job. When there are shortcomings with responsibility, this responsibility then is appalling management. Good management controls the organization. If they cannot control, we now need new management, not more money to continue bad management. I think what these people are paid for is the job they should do. If they don't, then we need new people to do it. But it all relies on good management.

Richard Spires, *Faith:* My question is this: Would more money spent have made the DSS worker realize there was a problem when he saw bite marks on the child's scrotum and then take different steps instead of just sending him back to his parents where he eventually died. Would money

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have made a difference? Then, of course, I would (favor more for DSS). The fact of the matter is when you have 146 employees and only 7 investigators, something's wrong. The money is not being spent in the proper direction. So DSS needs to look at how it's doing its job and how it can do it more efficiently and get rid of the fat and then spend the money on people who actually investigate and can make the changes.

Peggy Hoffner, *Landis:* I think we, as Rowan County citizens, need to do whatever we have to do to make sure we never let another child die. If it takes more taxes, then so be it. We use tax dollars for everything else. What can be more important than our children? County Commissioners, put our money where your mouths are and get the Department of Social Services the staff they need so this never, ever happens again.

Catherine Robinson, *Gold Hill:* I would support spending more tax money to bring in more staff to the Department of Social Services. You've got people out there killing the next generation of this country. If there's not going to be a stop put to it, then this country is going to be worse off. Yes, I would support that and I hope it goes through.

Burnie Hudsteth, *Rockwell:* No, I do not agree that more money for Social Services will be effective. I've had dealings with members of the Child Protection Unit when I reported some parents who were using crack cocaine while their children were in the home.

It's almost hopeless for a grandparent or a father to get custody of children even when they're in an unsafe environment with two crack cocaine parents, with the attitude of Social Services. They need a shakeup over there. Grandparents or neighbors or anyone else who turn in people for abuse, they're just labeled as trouble makers by Social Services.

They just don't want to deal with it. They said their job was to keep parents together, that being a crack addict didn't matter, the children didn't matter. Even if they had to put parents on welfare, their job was to keep families together, I wrote a lengthy letter to the Salisbury Post several years ago. Nothing came of it.

Freeman: Let's fix process

Medical community wants to work with DSS

BY ROSE POST
SALISBURY POST

A task force on child abuse can't meet soon enough for Jim Freeman.

As director of Rowan Regional Medical Center, he's used to looking for ways to heal people.

And he didn't need a state report to tell him that the medical community and Social Services need to find ways to talk to each other more clearly if they're going to heal abused children and save lives.

Abuse killed two Rowan County children — 6-year-old Budde Clark and 19-month-old Christopher Jones. That's evidence enough.

If medical providers and the Department of Social Services had communicated better, says a state report, investigators could have known the children were at risk for further abuse. And if they had known, would the children still be alive?

Nobody knows the answer.

But a lot of people are worrying about the question — and want to do everything possible to save the lives of the Budde Clarks and the Christopher Joneses of the future.

"We need to educate all the players as to what the process is," says Freeman. "To educate them about what each of our responsibilities are to improve our service. What's the law? What we can and cannot do. How to improve communications.

"And then, quite frankly, we need to hold each other accountable, all the players — the emergency room, DSS, whoever. We need to know what each player is, what we can and can't do — and hold each other accountable."

John Shaw, director of the Rowan County Health Department, also focuses heavily on the word *accountable.*

The state team's first recommendation in review and recommendations following the Rowan County child fatalities presented here two weeks ago says Social Services and medical providers should develop a procedure — they call it a "protocol" — to make sure Social Services

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JAYSON SINGE/SALISBURY POST

END CHILD ABUSE: "Let's do it. Let's move ahead," says Dr. Jack Dribbs of the hospital's emergency medicine department

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gets accurate information quickly and responds appropriately.

"When you put together a protocol," Shaw explains, "you basically set out how each agency will do its job, so putting together the protocol really becomes critical."

Once established, the procedure "spells out what we agree to do — what the hospital agrees to do, what the doctors agree to do, what DSS agrees to do — and that becomes the document of accountability."

Positive force

And a document of accountability, he adds, is a positive force for everyone.

Shaw was on the special state review team appointed when public outrage erupted over the deaths of Clark, Jones and 16-year-old Trola Miller. The questions were loud enough to grab the attention of Gov. Jim Hunt, who asked for the special review.

Shaw's also been asked to be a member of the Rowan County Child Abuse Task Force. He thinks the task force should focus on the state report and reach consensus among all the people and agencies responsible on how each of the recommendations in the report should be carried out.

When he saw the list of people named to the task force, he says, his first thought was, "Each one of these people has a share, a responsibility for protecting children." The task force should help each of them understand where his responsibility starts and ends and where someone else's starts.

"And," he adds, "how we make sure there won't be gaps in the future."

He's as anxious to start moving toward that future as Freeman.

So far no one from the Department of Social Services has contacted either Dr. Jack Kribbs, chairman of the hospital's department of emergency medicine, or Dr. Mark Lins, chairman of the department of pediatrics, or provided them with copies of the state report.

"But I would assume it will happen, and I put in my vote for it," Kribbs says. "Let's do it. Let's move ahead.

"It's too bad it takes bad experiences to do this. But it's more on our minds as a result of these tragedies."

Plan due May 10

Rick Travis, director of the local Social Services department, would not comment personally. In a faxed statement, he said: "Our Improvement Plan is due May 10. We are consulting with the N.C. Division of Social Services and community representatives as we develop the plan. The plan will respond to each recommendation contained in the state's April 10 report.

"We will share the plan with all interested parties when it is finalized. I anticipate that the plan will be released the week of May 5-9."

Kribbs' dealings with Social Services have all been good.

"I have had absolutely no negative interactions at all. I think those folks are overburdened and underpaid."

Most recently he evaluated a child in the emergency department and was troubled because the mother, still an adolescent herself, "paid no attention to the child. She had no interest." She almost dragged the child down the hall for an X-ray.

Kribbs and a nurse decided to call Social Services, they had no evidence the child was physically abused. Someone at Social Services took the report and let him know continued intervention was recommended.

"That's the kind of interaction for the most part — a phone call, verbal interaction, and a report," he says. "Maybe there should be some follow-up, a flag system, maybe a month down the road. I don't have an answer. I can't solve the problem.

"But there clearly needs to be a more effective system — a system of checks and balances."

But he faults no one for that.

"I don't know anybody in the system that doesn't want to do what's right for the child, the patient," he says. But doctors and nurses who see cases like Budde Clark and Christopher Jones might want to meet periodically with Social Services to discuss them or cases like them.

"You can always communicate more effectively if you've met people in person, if you've shook hands. I think that would be a constructive thing to do and I would love to be a part of it."

Dealing with abuse

Doctors have continuous training in dealing with victims of abuse, but "if you keep it on the front burner, you become more aware of it. Child abuse is life threatening. It's a critically important topic."

And in a busy emergency department, he says, "you worry about it. You worry that things are slipping through. You don't hit 100 percent, but you want to hit as close as possible."

Lins, head of the pediatric department, has had no discussions with Social Services either, but he has always been able to contact a Social Services worker for a report and has always received feed back.

"I have not felt any lack of communication or miscommunication," he says. "From what I've read and heard, it does sound like there was some miscommunication or lack of notifying the correct people and follow up from DSS, the medical community and the lay community as well."

He feels the system probably needs someone who tracks reported cases and how they're handled.

"It was a tragedy," he says. "I don't know if it could have been avoided but hopefully it won't occur again."

Says pediatrician Dr. Joe Corpening: "We definitely see more (child abuse) than we saw years ago.

"But we're probably looking for it more than we did years ago. Even if we have one case, we're concerned. The child suffers and you can see death ....

"We call Social Services, and they go from there."

Corpening says he has a great deal of compassion for the Social Services department. "They have a tremendous responsibility and a tremendous overload. They have always worked with us in the past."

The medical community anticipates that will happen now, though none of them has been contacted or provided with copies of the state report.

"Let's fix the process," says Rowan Regional's Jim Freeman. "We need to get in the same room and talk about how to improve this thing. I think all the players are willing to do that. I know the medical people are willing, and I think the DSS people are. It's just a matter of happening, I think.

"It's a real tragic issue and it needs to be dealt with and it's going to take all of us.

"We're ready."

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Child abuse task force to meet May 28

BY ROSE POST
SALISBURY POST

The Rowan County Child Abuse Task Force will meet for the first time Wednesday, May 28, at 7 p.m in the county administrative building at 130 W. Innes St.

Commissioners Steve Blount and Dave Rowland met with Rick Travis, director of Rowan County Social Services, and County Manager Tim Russell this morning to set a date for the first meeting of the group appointed about five weeks ago.

Commissioners named the task force March 17, following a two-hour closed session with state and local representatives of the social services system. At that time, public outrage had motivated Gov. Jim Hunt to appoint a special team to review the deaths of 6-year-old Budde Clark, 19-month-old Christopher Jones and 16-year-old Trola Miller.

Originally, Blount said in a letter asking seven local people to serve on the task force, commissioners thought it "important to capitalize on the high state of public awareness" surrounding the cases and move quickly.

He asked members to respond as soon as possible with ideas on how the group

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Task force

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should be managed, how often it should meet, what subjects should be discussed and other people to add to the group.

However, that decision was changed.

"We were sort of holding off until the state brought back its report," Blount said. "We want to use (the report) as a guideline for things we want to accomplish quickly. Then the task force will live on beyond that to assure we have a high quality child protective service in Rowan County."

The meeting will be open to the public.

"We want the people to come to it," Blount said.

The seven asked initially to serve were: Travis, Sheriff Bob Martin, Salisbury Police Chief Jeff Jacobs, Rowan-Salisbury Schools Superintendent Joe McCann, Rowan Helping Ministries Director Dianne Scott (who's also on the Social Services board), Rowan Regional Medical Center Director Jim Freeman and District Attorney Bill Kenerly.

Others who have been asked, or will be asked include John Shaw, director of the Rowan County Health Department; Chief District Court Judge Anna Mills Wagoner; Elizabeth Cress Poston, Family Crisis Center; Janet McCuley-Blue, Domestic Violence Task Force; Elizabeth Withers Smith, Mary Beth Smith and Police Chiefs Steve Schenk of Spencer, Leon Scales of East Spencer, H. F. Jones of Landis, David Miller of China Grove, Paul Brown of Kannapolis, Danny Kurfees of Cleveland and Clyde Adams of Granite Quarry.

"Others may still be added," Blount said. "We want it to continue to live on. We don't conceive of monthly meetings forever and ever, but initially it would be that active. As we're trying to accomplish those things in the state report, I would think they'd need to meet at least once a month until those things are accomplished. I don't want to determine too much myself. I want this group to determine how to set it up."

Blount said more details of the first meeting will be made public when speakers are confirmed and other details are verified.

JAYSON SINGE/SALISBURY POST

ABUSE RALLY: Junior Asibuo holds sign for sister Mary at rally.

Ministers at vigil pray to keep children safe

BY ROSE POST
SALISBURY POST

If you're in the middle of a community prayer vigil for abused children — and care deeply about their welfare — you barely hear the long whistle as a train lumbers through town.

Or the music pulsating from the big-wheel truck pausing for a light at the corner of Main and Council streets.

If you're in the middle of an outdoor community prayer vigil on the steps of the Community Building and wind whips hair and coat tails and clouds are full of rain, you smile when the setting sun breaks through — was that a sign? — and keep on praying.

The Rev. Johnson K. Asibuo, pastor of Soldiers Memorial AME Zion Church, convened the vigil, he says, "because I have a love of children. I see children as God's gifts to the world, and I think the community has a responsibility in raising the children. I have realized that some of these children need mentors, and the parents themselves, since so many are so young, need parenting skills. And when I kept seeing child abuse in the news, I couldn't take it any more."

He worried, he says, that when the state finished investigating the deaths of three Rowan children, nothing more would be done to prevent more deaths if the local Department of Social Services doesn't get what it needs to do a better job.

Members of his church worried also, and the idea came during a weekly meeting of the church-community relations committee.

"We have walked to raise awareness," he says, "but only God can change the hearts of people, and only God can put love back into families to prevent child abuse. So we decided to follow up the walk with prayer to God for the community and for the child abuse situation."

So five ministers responded to his call. The Rev. Martha Starks of New Testament Word of Faith, prayed for peace and love in the family. The Rev. Nilous Avery of Mt. Zion Baptist prayed for the

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Vigil

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families of children who died of abuse. The Rev. Charles Tillett of Sills Creek AME Zion Church in Mooresville asked God to give county commissioners courage and boldness to find the money for Social Services, for more staff and the equipment they need to automate the system. Finally, the Rev. David William Turner of Tower of Power prayed for the Social Services agency and its staff.

Rick Travis, the local Social Services director, was there to thank them all — and clear up a misunderstanding.

"I feel like I need to lean on someone," he said, "and I can't tell you how it has made me feel."

He thanked people in the community who care enough about children that they are willing to speak out.

And Asibou spoke out.

He has heard, he said, that sometimes when people report abuse and neglect to Social Services, someone at Social Services tells those accused of abuse who reported them.

That should not happen, Travis responded. Names are held in confidence.

"If that in fact happens, please tell me," Travis said.

Essie Hogue, a staff member at the Salisbury VA Medical Center, spoke from the crowd to urge people to ask lawmakers to impose stiffer penalties on child abusers and the media to publicize warning signs of abuse. She also volunteers with the guardian ad litem program, which advocates for children in trouble in the courts.

And when it was all over, Asibuo was happy about the vigil.

"We all agree that Salisbury is a beautiful place to live," he says, "and we don't want our name tarnished as a child abuse city."

In his native Ghana, he says, "children are very precious and valuable. We all say it takes a village to raise a child. I was raised in that system and I know it's true.

"I want Salisbury to be a village that cares about all its children."

How DSS can improve child protection

Some families may need to be split up, and more DSS workers hired, says former N.C. Human Resources secretary

BY PHILLIP J. KIRK JR.
SPECIAL TO THE POST

I am writing this article as a two-time secretary of the Department of Human Resources and as a native of Rowan County who cares deeply about what happens in my home county.

Kirk

As a longtime daily subscriber of the Salisbury Post, I read each and every article about the tragic and sad deaths of three of our county's children. More than once my eyes filled with tears.

Tears for the children who died. Tears for the parents and grandparents and other family members whose relatives died. Tears for the friends who lost children they loved.

But, in all honesty, I also grieved for the overworked and underappreciated social workers and other social services employees whose job responsibilities and results were being challenged.

On the other hand, I have high praise for the reporters at the Salisbury Post. Were it not for their investigative, insightful and honest reporting, these three unfortunate incidents would have been forgotten.

I also experienced concerns for the state employees who did the first "investigation" of Rowan's handling of the tragic abuse and neglect cases. Their work was not as thorough as we expect of state employees. I believe that Secretary David Bruton and Governor Hunt, prodded by well-meaning, sincere citizens of Rowan County, were committed to seeing that a thorough, objective review was done by the appropriate officials.

Obviously, the first review and the ensuing comments by local officials almost completely missed the mark. And the report contributed to the lack of confidence on the part of local citizens in the state's role of policy itself.

Central problem

Equally disturbing was the attitude of secrecy, much of it because of current privacy laws and regulations. Area legislators, especially Reps. Charlotte Gardner and Eugene McCombs and Sen. Betsy Cochrane, are now addressing this deficiency in state law. The public is entitled to know the facts, not rumor, in child abuse and neglect cases, especially when they end up in deaths.

I do, however, share Sen. Jim Phillips' initial concern that this release of all information should not result in unfair criticism of well-meaning DSS employees. I believe the proposed legislation will provide the information the public needs.

What can be learned from these cases?

First and foremost, the report misses the central problem, based upon what I have read in the media. The central problem is the attitude of state and local social services employees that results in too much emphasis being given to keeping families together rather than protecting children. This is due to current state law and regulations and training of social workers which seem to say, "keep families together despite evidence to the contrary." Until this liberal philosophy is changed, I am afraid more tragedies will result.

Second, the Rowan DSS is woefully understaffed, thus causing mistakes to be made. I would urge the board and commissioners to look carefully at providing more front-line workers and very few additional supervisors.

Prevention efforts

Third, we need to look at more prevention programs, especially in the areas of parenting skills training, substance abuse, early childhood education and others.

Fourth, in a general way, I would say careful consideration should be given to implementing the recommendations of the state panel. Action must occur before public interest is lessened too much. More resources need to be devoted to this area. Taxes should be raised as a last resort, but should not be ruled out of the question. Economic growth and small reductions in other areas may provide the necessary funds to do the job.

Finally, I would make a strong pitch for an idea I have been advocating for at least 20 years. Abolish the local departments of social services, mental health, public health and possibly others and create a local department of human services. Do away with the expensive, multiple department heads and all the individual boards which support each department. Replace this expensive and duplicative structure with one human services director and one human services board composed of representatives of all the special interests.

Getting the whole story

While this should not be done solely for financial reasons, it will result in better, more coordinated, more efficient delivery of services to those who need them. Eventually, one common eligibility application could be the result, as could all human services functions being located at one place, thus saving transportation problems for the poor. One case manager could work with a disadvantaged family in order to address all their needs rather than having to deal with so many government employees who often do not have access to the whole story.

Let's be positive about what has happened in Rowan County in the past several months, quit criticizing each other, and take action which will result in tremendous improvements for real people. Good luck.

■

Phillip J. Kirk Jr. is president of North Carolina Citizens for Business and Industry, a Raleigh-based group promoting the concerns of the business community.

'COMMITTED TO EXCELLENCE'

Rowan's test of leadership

Salisbury Post
4/23/97

Signs along Interstate 85 welcome travelers to Rowan County, a county "committed to excellence." Rowan leaders now face the job of living up to that pledge at a time when several county services have fallen well below excellence.

Before county commissioners decide yea or nay on a tax increase, they must consider the scope of need faced by the departments they fund. And they must consider the impact on the county's human capital if they don't turn the situation around.

What's hurting Rowan now is triage's failure to take care of other needs in the meantime.

This is not just about child-abuse deaths. Budde Clark, Christopher Jones and Trola Miller are the most visibly tragic examples of children falling through society's safety net, but they are not the only ones whose potential will never be realized.

Think of those who have not been able to get mental health services at the soon-to-be-dismantled Tri-County Mental Health. Think of the children whose needs are not being fully addressed in our public school system, which ranks 62nd in per-pupil spending statewide and compares even less favorably on some test scores.

Rising tide?

Commissioners in recent years have taken a "triage" approach, investing heavily where they believe county dollars can have the most impact over time. They invested in the Fieldcrest Cannon Stadium (a disappointing gamble so far) and the Summit Corporate Center (a success). Believing that a rising tide lifts all boats, commissioners expect new industry to put more money in county coffers to deal with problems, and put more money into citizens' pockets so they have fewer problems for government to solve.

What's hurting Rowan now is triage's failure to take care of other needs in the meantime. Until economic development starts reaping benefits, other departments have been left with low funding and less-than-standard staffing. And the casualties are mounting up: a tragically overworked Social Services staff, a school system in danger of losing its momentum toward improvement, a mental health system in disarray. The impact reverberates in thousands of Rowan households.

This is not a matter of simple belt-tightening and living without luxuries. It borders on neglect.

Into a new era

So should commissioners approve all the requests from Social Services, even though it could raise the tax rate by 2 cents? Should they rubberstamp the 7-cent bite the school board's budget request would gobble up of the tax rate? Should they give mental health services and the health department a blank check?

No, not automatically. But neither should they go into budget-making season with the attitude that keeping the tax rate steady is *the* top priority. The interstate signs say "excellence," not "cheapness." The growth Rowan is enjoying should boost tax revenues and make some improvements possible, and many citizens earnestly hope commissioners and the county manager will study other ways to bolster the services that mean so much to so many lives. There are worse things that could happen than a tax increase.

Citizens look to county commissioners to lead — to make logical decisions at crucial turning points, and to move the county forward. The people who bravely take on the responsibilities of public office know that's part of the deal. Commissioners, led by Chairman Jim Neely, now face the opportunity to steer Rowan through a period of crisis and into what could be a new era of strength and potential. They should embrace that commitment to excellence and make the most of this moment. The public is behind them.

Child deaths

Area residents in Raleigh to ask for records to be open

BY ROSE POST
SALISBURY POST

Four area residents went to Raleigh this morning to ask state legislators to open child fatality records to help save lives.

Dave Rowland, Mary Beth Smith, Lisa Coley and Elizabeth Cook were scheduled to testify before the Human Relations Committee of the House of Representatives just before noon today.

They were to speak on behalf of a bill titled "An act to improve child protection by requiring better disclosure of child fatality records."

Rep. Charlotte Gardner, a Rowan Republican, introduced the bill in the House last week. Sen. Betsy Cochrane, a Davie County Republican, introduced a similar bill in the Senate last week.

Fighting end-of-the-session deadlines, both women introduced the bills in the wake of the deaths of three Rowan County children — 6-year-old Budde Clark, 19-month-old Christopher Jones and 16-year-old Trola Miller.

All three had been subjects of Rowan County Department of Social Services investigations before their deaths, but local officials and citizens looking for accountability were frustrated when state and local records were

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withheld from public scrutiny because of confidentiality claims.

The bill calls for records to become public when a child dies if neglect or abuse had been reported about the child or the child's family to Social Services or if the child had gotten child protective services within the previous 12 months.

That would include medical and hospital records as well as any records maintained by state, county or local agencies, such as emergency medical services, police, medical examiners, health and mental agencies, schools or Social Services.

But the bill also allows an agency to get a court order to keep information confidential if it would pose a threat to the health or mental health or safety of a member of the family or compromise a criminal investigation.

The four area people were each asked to make an initial statement to the committee and then respond to questions from committee members or others attending the hearing.

Rowland's statement was to concern his role as a Rowan County commissioner responsible for voting on funding for local agencies, including the Department of Social Services.

Coley was to speak from her perspective as a nurse; Smith, an attorney, from her perspective within the legal system and as a concerned citizen who worked with her mother, Elizabeth Smith, to get the attention of Gov. Jim Hunt; and Cook, editor of the Salisbury Post, on how difficult it is to get information which reflects accountability of local agencies when it must come from anonymous sources.

The committee, co-chaired by Julia Howard, a Republican from Davie County, and Marvin Aldridge, a Republican from Pitt County, was scheduled to meet at 11 a.m.

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DSS funding

On another call-in, The Post asked readers if they support more funding for the Department of Social Services to strengthen its child protection unit. We asked if readers support extra money even if means a tax increase. Here are two late comments from readers:

Ray Martin, Salisbury: I do not support spending additional money for this Child Protection Services, the Department of Social Services. They threw too much money down there for Fieldcrest Cannon Stadium and everything, threw it down in Cabarrus when they need it up here. This is coming back on David Treme, blowing our money down there when it should have been up here. He should take care of his home place before he thinks about a bunch of Kannapolis people or Fieldcrest Cannon people using our money.

I definitely do not think that we should spend more money. I do not want more taxes. I'm taxed too much because I'm a senior citizen now. Thousands of us in Rowan County can't afford to pay more taxes because he's already got his pockets full of money. Empty his pockets and use it where it's supposed to be used instead of elsewhere.

Editor's note: Salisbury City Manager David Treme has nothing to do with Fieldcrest Cannon Stadium or the Department of Social Services. Rowan County commissioners decided to build the stadium and control local spending for the Department of Social Services. The county manager is Tim Russell.

John Burns, Salisbury: Every time a social program raises its ugly head, the first and only solution suggested seems to be more tax dollars. Whether it's child abuse, drug abuse, more jails or poor performance in our schools, the only solution advanced is to give us more people and more tax dollars. I think it's time to learn to do more with less. Learn to set priorities. Learn to order priorities. Learn to suggest how to eliminate root causes of problems, deal with some cause-and-effect diagrams. Learn how to do the job right the first time, every time. Critically evaluate what is being done and how it can be improved. I'm not in favor of spending any more tax dollars on any government program until they become much more efficient in what they do and eliminate as much of the waste out of all these programs as can possibly be taken out of it.

Why didn't hospital keep bruised child?

BY ROSE POST
SALISBURY POST

The question surfaced first at a news conference at the Rowan County Department of Social Services.

Why didn't Rowan Regional Medical Center keep 19-month-old Christopher Jones on Jan. 2?

That was a month before he was beaten to death in his home.

But the bruises on his body, his lips, the blood blisters on his face, his head, his bloody nose, his black and blue and "bitten" scrotum disturbed the medical staff. They took pictures, called the social worker on duty that night twice to report suspected child abuse and sound an alarm.

But the social worker was busy on other cases and didn't go to the hospital that night.

A month later — in February — the baby's mother, Sheila Jones, and her boyfriend took him to another hospital. That time it was too late. The baby died of "blun trauma injuries," and th boyfriend, Jeremy Butcher, ha been charged with murder.

A month after that, at the pres conference reviewing socia workers' actions in the case Social Services Director Rich Travis said medical personnel a Rowan Regional Medical Cente could have refused to let Sheil

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Jones take her son home in January. But they didn't, and social workers saw the baby within the legally required 72 hours, he said. By that time, social workers didn't consider his injuries severe enough to remove him from his home.

Could the hospital have held the baby?

Yes, the law allows it. But there are strings.

To do so, the doctor or the hospital administrator must get a court order from the chief district court judge and certify in writing that the child should remain for medical treatment or that it is unsafe for him to return to his parent or caretaker. Copies of the written certification must be attached to the child's record and given to his parent.

As soon as the doctor or hospital administrator gets the authority to keep the child, N.C. Statute 7A-549 says he must contact the Social Services director who should immediately begin an investigation of the case.

But hospital Chief Executive Officer Jim Freeman doesn't know of any time the hospital has used the law to keep a child.

"It's my understanding that the hospital can't do that without having the benefit of an investigation of the home issues and environment issues," he says. Hospital administrators and physicians need to be careful that they not accuse people without significant facts, he adds.

"If you know what the outcome is," he says, "you can always look back and guess this should have been done. But most of the time, we don't know the facts. It is a difficult issue."

And most of the time, doctors say, Social Services workers call back and work with the staff to protect the child.

Dr. Joe Carpening, a pediatrician in Salisbury since 1955, says he has put children with physical injuries in the hospital when he was worried about abuse.

"Then we immediately call Social Services," he says. "We expect them to pick it up. It's their legal hand."

He and his partners at the Salisbury Children's Clinic have had a couple of cases in the past few years in which children were brought to the hospital with fractures.

"We felt very strongly that abuse had occurred. We felt we had medical evidence there was abuse."

There have also been times they've decided the children should not go back to the person who's taken care of them, and they have never had problems working with Social Services.

But it's complicated, says Dr. Jack Kribbs, chairman of the emergency department.

Medical education itself is so overwhelming and the magnitude of information is increasing every day.

"What would probably be better," he says, "would be to have a consultant at your finger tips, a legal consultant who was available" who could advise the doctor on what to do.

Thursday, Lisa Coley, an emergency room nurse at Rowan Regional who is trained in detecting and documenting child abuse, was one of five Rowan County residents who went to Raleigh to tell lawmakers to open Social Services records when a child dies.

And she says she didn't know until after Christopher Jones died that the law gives the hospital the right to keep a child.

"Usually what the doctors do is tell Mom there's some medical reason to keep the child," Coley says, "and keep him on a medical basis."

But Freeman doesn't believe anything is gained by pointing fingers.

"There's enough blame to go around," he says. "I have never discounted that the medical facility does have more responsibility for working with the other team players to resolve this issue in the future. That doesn't help the past children and their families.

"But rather than try to fix blame as to why one person didn't do one thing or the other, let's look to the future as to how we can fix the problem. This law does not solve the problem. We just need to all get in the same room and make sure we know what each other's responsibility is and hold each other accountable and get on with it. We need to look to the future."

"It was a tragedy," says Dr. Mark Lins, chairman of Rowan Regional's pediatric department. "I don't know if it could have been avoided, but hopefully it won't occur again."

"Rather than try to fix blame as to why one person didn't do one thing or the other, let's look to the future as to how we can fix the problem. ... We just need to make sure we know what each other's responsibility is."

— Jim Freeman

SALISBURY POST 4/25/97

Death penalty sought in three murder cases

BY JASON WILLIAMS
SALISBURY POST

State prosecutors hope to send two women and one man to death row for their roles in three unrelated killings which took the lives of two children and a nursing home resident.

The deaths of Budde Lee Clark, 6, Christopher Lee Jones, 19 months, and Ina Mooney Smith, 81, were "heinous, atrocious and cruel" and occurred within a two-week period.

In a fourth and unrelated case, Rowan County Assistant District Attorney Bill Kenerly announced on Wednesday that Elizabeth White, 20, would be tried for second-degree murder in the Feb. 3 shooting death of 16-year-old Trola Miller.

Miller died after being shot outside a housing complex. White is scheduled to go on trial Aug. 11.

Thursday afternoon, accused murderers Robin Gosnell, 40, and Linda Mooney Smith, 30, appeared in Rowan County Superior Court — handcuffed

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Death

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together — for arraignment and to hear whether prosecutors would seek the death penalty.

Jeremy Butcher, 23, also appeared in court for the same reason.

During the hearings:

■ Smith pleaded not guilty to first-degree murder. She allegedly killed her grandmother, Ina Mooney, on Feb. 12. Mooney died in bed at Brian Center Health and Rehabilitation, 635 Statesville Blvd.

Mooney died of asphyxiation. During the arrest, authorities served Smith with a 1990 warrant for possession of stolen goods — a firearm. She pleaded not guilty to that charge, also. Court-appointed attorney Bob Davis is representing her.

■ Gosnell pleaded not guilty to felony child abuse and first-degree murder in the death of her 6-year-old stepson, Budde Clark. Kenerly said the boy died on Jan. 31 in Cleveland from "blunt trauma" and other injuries. He did not elaborate.

Court-appointed attorney Rick Locklear is representing Gosnell.

■ Butcher pleaded not guilty to felony child abuse and first-degree murder in the death of Christopher Jones. Investigators have said Butcher was watching the child of his girlfriend at her home near China Grove. Kenerly said the toddler died from "blunt trauma" injuries and did not elaborate in court.

Tom Thompson and Bays Shoaf are Butcher's court-appointed attorneys.

Smith, Gosnell and Butcher did not make any statements in

In the same hearing, Kenerly and Thompson about obtaining Department of Social Services records in Butcher's case.

Kenerly said Social Services was involved in some child protective complaints at the child's residence a year before the death. Kenerly told Superior Court Judge Henry E. Frye that he would give Thompson "exculpatory" information from those records, or information that might favor the defendant. Thompson said he wanted his own copy and he could decide what information might help his client.

Kenerly wanted a limited number of copies of the file because he did not want the information to find its way into "the newspaper." Kenerly said he's trying to avoid moving the trial outside Rowan County.

Thompson also said that he was interested in privacy and added that he would not be releasing any information.

Prosecutors and the defense have filed motions for the records, but Social Services officials have not responded in writing.

Judge Frye ruled that he would look at the documents next week in chambers and decide what to give each side.

SALISBURY POST 4/25/97

Open child death records,

BY ERICA BESHEARS
SPECIAL TO THE POST

RALEIGH — Five Rowan County residents told members of the House Human Resources Committee Thursday that the state should let the public see records in child fatality cases involving the Department of Social Services.

The committee, which is considering a bill that would make the records public, heard Thursday from Rowan County Commissioner Dave Rowland; Lisa Coley, a nurse at Rowan Regional Medical Center trained in detecting child abuse; attorney Mary Beth Smith; her mother, Elizabeth, also a registered nurse; and Elizabeth Cook, editor of The Salisbury Post.

Opposition to bill

Kevin Fitzgerald, director of the state Division of Social Services, also appeared before the committee to oppose the bill, filed by Rep. Charlotte Gardner, R-Rowan. Fitzgerald worked with a special state review team that investigated the deaths of three Rowan children, all who were known to Social Services workers before they died.

Gardner said she filed the bill after the community expressed concern and outrage over the children's deaths. "This situation brought to light

Rowan residents tell lawmakers

in a big way that we in the General Assembly need to take steps to save children's lives."

Rep. Julia Howard, R-Davie, chairwoman of the House committee, decided that the committee would resume debate next Tuesday morning on the records bill.

Gardner filed the bill on behalf of the N.C. Press Association. Social Services officials and other authorities released few details after the deaths of Budde Lee Clark, 6, Christopher Jones, 19 months, and Trola Miller, 16. Clark and Jones died from abuse, and the Post subsequently quoted sources saying Social Services knew of abuse complaints about the children before they died.

Getting the truth

The Rowan residents testified to how much easier the

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truth about the deaths could have been made known if the records were open.

"The county was turned upside down" by the controversy, Rowland told lawmakers. The inability of Social Services and other officials to publicly discuss how the agency handled the cases has unnecessarily drawn out the time needed to correct the situation.

Mary Beth Smith testified that it shouldn't have taken the work of a newspaper to bring the issue to light. "Had it not been for the persistence ... we would not have detected the areas that needed help," she said.

"... These children are dead. There is no protection issue for that child any more."

Nurse made photos

Coley, a nurse, testified that she had taken photos of one of the children at the hospital and notified the Department of Social Services a month before the child was killed.

The Post reported previously that Social Services workers never interviewed Coley and did not pick up the pictures until the child was beaten a second time and died.

Coley said that open records would show which agencies did their jobs and which did not.

"We can show the public that we are doing what is required," she said.

Elizabeth Smith pointed out that the only people who should object to opening records after the death of a child are those who were negligent in their duties.

"The only people who need to be concerned ... are the ones who are not doing their job," she said. "There's a difference between confidentiality and secrecy."

Elizabeth Smith implored the committee to pass Gardner's bill so child advocates would have another tool to combat child abuse. "We don't have the tools of law," she said. "In House Bill 949, you have the tools in front of you."

Cook spoke about why the Post dug deeper into the story and the roadblocks reporters ran into uncovering the story. She also said the newspaper normally will not use unnamed sources because their credibility is always suspect in readers' eyes. In this case, however, the newspaper allowed an exception because if the overriding question of whether public agencies properly protected those children.

Fitzgerald maintained that the records should stay closed. He said that if Gardner's bill passed, there was a chance North Carolina could lose about $600,000 annually in federal child abuse prevention money because the records would be more open than federal guidelines allow.

Gardner questioned Fitzgerald about the two separate reports on the child fatalities. He answered that the first review looked only at Social Services actions and records. After public pressure surfaced, the department launched a multi-disciplinary review that located problems with the "protection standards that are in place."

In the short discussion of the bill that followed testimony, legislators brought up concerns about when the records would be made public, what harm the records would do to families and what kind of trend the bill could start.

"We have got to be very cautious," said Rep. Joanne Bowie, R-Guilford, who said she was working on a similar bill in the judiciary committee. "It's just a really scary area. I know everyone wants to help

What did the DSS review team find? Here are the answers

Editor: Earlier this month, a state review team released its report on child protection efforts in Rowan County. Here is the complete text of the report:

The deaths of Christopher Jones, Budde Lee Clark and Trola Miller within a five-day period in January-February 1997 captured the attention and heart of the citizens of Rowan County and caused many in the community to question whether all was done to prevent these fatalities.

The North Carolina Division of Social Services conducts a review of the services provided to the family in the event of deaths of certain children who are known to the local Department of Social Services. After the Division reviewed these cases, elected officials, the general public and the media were dissatisfied with the findings, and it was clear the community wanted more information about what had happened and what could be done to prevent further deaths.

Gov. Hunt directed Dr. David Bruton, secretary of the Department of Human Resources, to coordinate the comprehensive review. Dr. Bruton appointed a multidisciplinary team to conduct this review and to make recommendations to improve the functioning of the Rowan County DSS and the Division's child fatality review process. The team was asked to not only review the DSS case records and interview appropriate DSS staff, but also to interview hospital and law enforcement personnel directly involved in the cases and related materials. Dr. Bruton took the additional action of engaging the American Humane Association in a formal analysis of the Division's child protection standards and child fatality review process.

The review team was charged with the following two objectives:

1) Assess the actions of Rowan County Department of Social Services' staff in the three cases; determine compliance with child protection and placement standards; and make recommendations for improved agency functioning; and

2) Evaluate the initial reviews conducted by the N.C. Division of Social Services' staff; determine the integrity of the initial review findings; and make recommendations for improving the review process.

It should be understood that the second review was distinctly different from the initial review in that the review team was comprised in part of professionals from outside of the social services system, looked beyond the Division's initial review, and therefore had the benefit of information and perspectives not incorporated in the Division's initial assessment.

The review team assembled in Rowan County on March 26 and 27, 1997 to respond to this challenge and to ask questions about the deaths of these three children. The team took the challenge seriously in recognition that an estimated 95,000 children are reported to be abused and neglected annually in the state and that there are currently over 12,300 children in the foster care system. The team reviewed reports and records, conducted interviews in person and by telephone, and identified key issues that needed to be addressed.

We acknowledge that the details of the estimated 25-30 children in North Carolina every year who die from child abuse at the hands of their parents and caretakers are all tragic and are all preventable. Many capture the attention and hearts of our citizens, just as the deaths of Christopher, Trola and Budde have done. We are all challenged to harness the energy and emotions generated by these deaths in a commitment to prevent child abuse and neglect before it escalates to the tragedy of a death.

We also want to acknowledge the open attitude of the staff of the Rowan County DSS during our review process. It was evident that the staff viewed this process as a learning opportunity and were eager to hear our feedback. It was also clear that they wanted us to be open and honest in our find-

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The state review team which prepared this report consisted of Chuck Harris and JoAnn Lamm of the N.C. Division of Social Services, Marcis Herman-Giddens of the N.C. Medical Examiner's Office, Rowan County Health Director John Shaw and Jennifer Tolle of Prevent Child Abuse North Carolina.

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ings. We commend them for their dedication and commitment.

Objective One: Access the actions of Rowan County Department of Social Services staff in the three cases; determine compliance with child protection and placement standards; make recommendations for improved agency functioning.

The findings of the review team related to the actions of the Rowan County Department of Social Services encompass three major areas of practice: 1) reporting of suspected child abuse and neglect; 2) investigation/assessment of reported child abuse and neglect; and 3) issues of supervision, staffing and training. The findings are listed below.

Reporting of suspected child abuse and neglect

Finding No. 1: The review team found evidence of both a lack of communication and miscommunication between hospital and other medical providers and Rowan County DSS staff regarding pertinent case information.

Recommendations for No.1:

■ Rowan County Department of Social Services and medical providers should develop a protocol to ensure accurate sharing of information and appropriate response times by DSS social workers, as well as foster open and frequent communications.

■ In conducting protective service investigations, Rowan County DSS staff should consistently request and review all pertinent medical records as provided for in N.C.GS7A-544.

■ Medical professionals providing services to Rowan County families should be encouraged to pursue training in the identification and reporting of child abuse and neglect, becoming active partners in the investigative process.

Finding No. 2: The review team found evidence that a number of community members had reason to suspect abuse and neglect but did not make a report to the Rowan County Department of Social Services.

Recommendations for No. 2:

■ The Community Child Protection Team and/or other representative groups are encouraged to develop an action plan to enhance public awareness in Rowan County of the North Carolina law that requires anyone who suspects child abuse and/or neglect to report the suspected abuse or neglect to the Department of Social Services.

■ Community professionals who work with Rowan County children and families should be encouraged to participate in training on recognizing and reporting child abuse and neglect.

Finding No. 3: The review team identified concerns regarding after-hour Children's Protective Services coverage at the Department of Social Services.

Recommendations for No. 3:

■ The Rowan County DSS should develop a system for on-call, after-hours coverage that allows for adequate workload management and supervision. Back-up relief and supervision must be readily available and able to assist in overload situation. The agency should explore options to ensure sufficient after-hours coverage, including the establishment of a specialized position or compensatory time off for DSS staff who must work daytime hours as well.

■ A written procedure for after-hours reporting should be developed and shared with individuals and agencies who may have the occasion to make reports of child abuse and neglect outside of normal agency operating hours. This procedure should include the proper identification and response by Rowan County DSS staff to high risk situations.

Finding No. 4: The review team identified some areas to improve in the Children's Protective Services intake process used by the Rowan County DSS.

Recommendations for No. 4:

■ The intake forms used by Rowan County Department of Social Services need to be expanded to ensure the collection of all pertinent information. The Division of Social Services has samples for reference.

■ A structured format for the intake interview process needs to be utilized as described in policy.

Investigation/assessment of reported child abuse and neglect

Findings for No. 5: The review team found evidence that the focus of the child protective services investigations/assessments conducted by Rowan County DSS was too narrow.

Recommendations for No. 5:

■ Rowan County Department of Social Services' staff should be required to focus on all aspects of investigation/assessment and not just on the reported incident; DSS staff must conduct comprehensive assessments of family functioning, including safety issues, in both investigation and treatment cases.

■ Rowan County Department of Social Services' staff should more effectively utilize the risk assessment process to assist in service delivery.

■ Rowan County Department of Social Services' staff should frequently utilize the expertise of medical, psychological, and law enforcement resources in conducting investigations.

Finding No. 6: The review team determined that several key individuals were not interviewed by Rowan County DSS staff as part of the investigative process.

Recommendations for No. 6:

■ The Rowan County Department of Social Services should ensure that investigative staff interview all individuals who

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provide care to the child and all individuals who have pertinent information about reported child abuse and neglect; DSS should follow up and utilize all information received at intake.

Finding No. 7: The review indicated a need for additional resources to support the work of front-line Rowan County DSS staff engaged in the demanding work of child protection.

Recommendations for No. 7:

■ The community should ensure Child Medical Examiner and Child Mental Health Evaluation Provider services in Rowan County.

■ Child Protective Services staff should have access to cellular phones to enlist needed assistance from the field.

■ Child Protective Services staff need additional clerical support to enhance documentation and expand service delivery time.

■ The Rowan County DSS should provide computer resources to enhance documentation and improve the transfer of information among agencies.

■ The Community Child Protection Team, Child Fatality Prevention Team, and/or other representative groups should assess the availability of effective abuse/neglect prevention services needed in Rowan County so DSS staff can refer at-risk families.

Supervision, staff and training issues

Recommendations for No. 8:

■ DSS staff need to be retrained on the use of risk assessment tools and processes to assist in making important decisions about the safety of children.

■ The DSS should ensure that all child welfare staff have ongoing access to training that promotes professional competence; this applies to all staff, but particularly to new and inexperienced staff members. This includes attending child protective services, foster care and adoption training provided by the Division of Social Services depending upon work assignments. Team training with representatives of other community agencies is particularly encouraged.

■ DSS staff need training on child development and appropriate discipline techniques.

Finding No. 9: The review team found numerous examples of inadequate documentation of services provided by agency staff. The case record must clearly document services and activities provided by the worker.

Recommendations for No. 9:

■ Training should be provided by the Division of Social Services on proper documentation and record keeping.

■ Supervisors must be held accountable for case documentation and thoroughness of records.

■ Materials contained in case records need to be dated, or date stamped, when received by the agency to facilitate documentation of receipt of critical information.

Finding No. 10: The review team identified some areas in staff supervision within DSS that need improvement.

Recommendations for No. 10:

■ Supervisors need to meet regularly with individual caseworkers for ongoing case planning and oversight of program areas. Supervisors should require frequent status reports on all cases.

■ There must be close, daily supervision of case workers with little work experience or with a record of questionable work performance.

■ DSS management should conduct periodic internal reviews of the agency's child welfare service program.

■ Supervisors need to ensure that documentation occurs in a timely, accurate manner.

■ DSS management needs to exercise leadership in establishing and maintaining interagency agreements, protocols and relationships.

Finding No. 11: Because missed steps, a narrow focus and inadequate documentation can result from work overload, the review team looked at caseworker and caseload ratios. At the time of the review, the caseload size and supervisor/worker ratios showed major deviations from the recommended state standards. The ratio of supervisors to front-line social workers was one-to-eight and one-to-nine as opposed to the recommended ratio of one-to-five. The number of abuse/neglect investigations being conducted by agency staff ranged from 16 to 27 cases. The state standard for investigative worker caseloads is 12. In March 1997, alone, child protective services investigators received approximately 22 new cases each.

Recommendations for No. 11:

■ It is crucial that Rowan County DSS achieve the recommended caseload ratios: No more than 12 investigations being conducted by investigative staff; and no more than 15 substantiated "treatment" cases per staff member; and no more than 15 families, containing no more than 20 children, in foster care and adoptions caseloads.

■ It is crucial that Rowan County DSS achieve the recommended supervisor/worker ratios: No more than five investigative or treatment social workers per supervisor, and no more than six foster care/adoptions social workers per supervisor.

■ Rowan County DSS should ensure that staff with insufficient training and experience have lower caseloads and greater supervision.

■ Rowan County DSS should closely monitor the number of reports of child abuse and neglect over time. It is important that staffing levels not fall behind patterns of increased reports.

Objective Two: Evaluate the initial review conducted by Division staff; determine the integrity of the previous review findings; make recommendations for improving the review process.

The N.C. Division of Social Services has been recognized for having a formal fatality review process in place since 1991. The current review process is a mechanism by which a county Department of Social Services and the Division identify management system and policy issues that inhibit effective child protection.

The current review process is not designed to be a comprehensive investigation of the fatality under study. It is a limited review that focuses on critical protection standards as defined in policy regarding child protective services and child placement services.

The more comprehensive review reported here is much more in depth than the initial Division review. It was anticipated that this review comprising professionals from multiple disciplines and conducting in-depth interviews with persons involved with the cases would provide more information than the initial reviews.

Findings

Our review of the Division's initial reviews on these three deaths found a number of strengths, including certain critical standards identified and useful information regarding the agency's strengths as well as areas for improvement of agency functioning. We

found some critical issues to be appropriately identified. In addition to the Division's initial assessment, we found in each of the three cases one or more additional standards that had not been met and were not identified in the initial review. These included deficiencies in caseload ratios, the lack of interviews with certain persons associated with the child, interviews with the child, and utilization of medical or psychological resources.

In the case of Christopher Jones, the failure to interview all persons with pertinent information resulted in a high-risk situation not being recognized and the resultant lack of appropriate actions to protect the child. This was not detected by the initial state review.

In the case of Budde Clark, the initial review accurately points out that two critical protection standards and a number of other standards were not met. The report indicates that the scope of the agency involvement was far too narrow given the amount of evidence from the record indicating that the child might be jeopardized in aspects of his life other than the nose injury. However, the initial review did not identify the need for a comprehensive medical evaluation to address the broader issue of Budde's general health and safety.

In the case of Trola Miller, the initial review did not indicate the absence of critical information from school officials and foster family members nor the absence of appropriate medical and psychological evaluations.

These observations lead us to conclude that current state reviews are, themselves, too narrow. Because of the current design of the process, important issues were not identified. These included deficiencies in the level of supervision provided to the case workers, lack of attention of the medical information relating to the cases, and the dependence on what appears in writing in the record. The latter is especially important in that we find evidence that critical information in one record had still not been obtained by Rowan County DSS at the time of the initial review.

In summary, even in the limited scope of the current review process, we found the initial review of these three fatalities by the Division of Social Services missed certain critical findings.

Information was available to the Rowan County Department of Social Services that, if obtained and appropriately analyzed, indicated, at least with respect to Budde Clark and Christopher Jones, that these children were at risk of further abuse and neglect.

We recommend that a multi-disciplinary group including professionals outside of the Division of Social Services be appointed to design a more comprehensive child fatality review process. The review team acknowledges that a more comprehensive process will require a commitment of additional financial resources; however, we believe this to be an important investment in the state's efforts to prevent child fatalities. In designing the expanded review process, consideration should be given to the following:

- Broadening the scope of the reviews beyond the last 12 months of agency involvement.
- Broadening the scope of the reviews beyond those items specified on the standards to include any and all areas known to be needed for quality social work practice.
- Including someone with medical expertise and at least one person outside of the Division in the reviews.
- Interviewing certain critical parties such as the workers, their supervisors and others as needed.
- Exploring ways to loosen confidentiality restrictions in order to satisfy the public' need for accountability.
- Strengthening the review of an agency's accuracy in the assignment of risk and use of the risk assessment form as a tool in guiding appropriate service delivery.
- In certain cases, postponing the reviews until complete autopsy findings are available.
- Including important information about the role and involvement of the broader community in protecting children.

Rowan County continues to focus on these three recent tragedies. Mistakes have been identified.

We have learned and are continuing to learn. While conducting this review, the team was encouraged by the positive response in Rowan County. The Board of Social Services and the Department of Social Services' staff cooperated fully and supplied information critical to this review. The local media has responded by informing the community of the circumstances surrounding these tragic deaths. The Board of Commissioners responded by establishing the Child Abuse Task Force. A more informed public has already responded by reporting more suspected neglect and abuse cases.

Implementation of these recommendations must begin with a willingness to change our individual and collective behavior. We have already shown a willingness to re-examine how we have responded in the past and a receptivity to taking a fresh look at how we will respond in the future.

The review team hopes that this report will contribute to the development of both a long-range plan and an immediate action plan that will enhance the safety and well-being of all children in Rowan County and throughout our state.

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Motley crew takes on N.C. Legislature

It wasn't exactly 'Mr. Smith Goes to Washington,' but Raleigh trip opened some eyes

Dave Rowland and I walked down a Raleigh sidewalk and approached an intersection. "Be careful," he warned. "If you trip and fall into traffic, I'll never convince people back home that I didn't push you."

ELIZABETH COOK

Politics does bring about strange alliances sometimes.

Last Thursday morning Rowland, a Rowan County commissioner, spoke along with Mary Beth Smith, Elizabeth Withers Smith, Lisa Coley and me to a legislative committee. The topic was opening up confidential records after a child has died under certain circumstances. The bill aims, in cases of fatal abuse and neglect, to allow the public to review how various agencies served the child, from Social Services to hospitals to schools.

We were a motley crew of the first order: two nurses, a lawyer, an entrepreneur/commissioner and a newspaper person. Rowland and I are not what you would call good friends; I once wrote a column about his politics that will forever make him leery of me (which is probably wise). The two Smiths, as I came to think of them, are as ardently Democratic as Rowland is Republican.

But we came together from different professions and ideologies to address an issue that has become very important to all of us: protecting children.

Controversy surrounding the deaths of three Rowan children in February shone a bright light on several problems, one of which is this: Confidentiality laws prevent the public from getting a clear understanding of how well agencies that protect children function. With child abuse and neglect rates up, and societal changes putting greater pressure on families, the need for a strong, accountable network of agencies to serve those families is greater than ever.

Opening up confidential records is just one facet of improving child protection. It doesn't kick in until after a child has died. And it would affect few children directly: Only a third of the 43 children who died last year of suspected abuse and neglect in North Carolina were known to their local social services department.

But this measure could be an important step towards increasing public accountability for the agencies which deal with children. And it could very well change the way child protective services workers think about the cases of all the children they serve.

The state has a system of Child Fatality Prevention Task Forces and Child Protection Review Teams to study these situations now, but they work under considerable delay. When the state-mandated Rowan Child Fatality Prevention Task Force next meets, it will be dealing with cases that happened a year ago.

Child fatalities deserve a quicker response.

Lobbying for this bill was a lesson in how the political system works. And right now in Raleigh that system is churning in overdrive as lawmakers push to get their favorite bills through at least one house by the May 1 deadline.

So there we were, determined though a bit disoriented, to explain to the House Human Resources Committee why we thought these records should be opened up.

The committee members had just spent several days debating partial birth abortions, so they were in a testy mood. They listened to us but directed most of their questions to Rep. Charlotte Gardner, R-Rowan, who is sponsoring the bill.

The meeting was over almost as soon as it started, adjourned until the committee is ready to take up the issue again at 7:30 a.m. Tuesday, April 29. Charlotte Gardner believes she can get a favorable vote then. I hope so.

The newspaper's job is to cover the legislature, not get involved in it. But the Post has had an unusual role in the debate following these deaths, and I went to explain to the committee how confidentiality laws had hindered our quest to explain to the public what had happened in the cases of 6-year-old Budde Clark, 19-month old Christopher Jones and 16-year-old Trola Miller.

I can recall their names and ages more easily than I can those of my own children — perhaps because these dead children's ages now are frozen in time.

Because of that sad fact, the five of us went to Raleigh and had our say. It was a lot of driving for a little bit of talking, but we did our part. Each of us knows we have a lot more to do to make children safer in Rowan County, each in our different roles.

Speaking of safety, I did make it across that Raleigh street without injury.

So did Dave Rowland.

■

Elizabeth G. Cook is editor of the Salisbury Post.

Through a nurse's eyes

JAYSON SINGE/SALISBURY POST

TRYING TO COPE: Lisa Coley has attended a week-long Sexual Assault Nurse Examiner seminar to prepare.

It hurts to see child abuse up close

BY ROSE POST
SALISBURY POST

Child abuse infected Lisa Coley while she was working in the emergency department at Rowan Regional Medical Center where she's a nurse.

Like an incurable disease. Miserably painful at times. Frightening. Sometimes out of sight. But never gone.

A minute from now, or an hour, or tomorrow, someone could come through the big double doors and into an examining room and often, too often, if she had time, she would cry.

But she never has time for that.

Tears won't help a battered child. So she nurses — cleans a wound, gives a shot, starts an IV. And then she goes for her camera. Maybe that other moment will come when someone must have documentation.

Lisa Coley wasn't born with a passion to do something to ease the pain of abused or neglected children.

"It came from working in the emergency room and seeing the children come in," she says, "from seeing what was happening to them and how they were being treated. And it was completely different from how I thought they should be treated. We see a lot of it — children who have been physically abused, sexually abused, emotionally abused.

"We see everything from the simple things that somebody wouldn't call abuse or

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neglect — an unkempt child, with dirty clothes and sour milk in a bottle —to bruises, broken bones, burns."

Oh, yes, burns.

"We see cigarette burns. We see burns children suffered because they were immersed in hot water. But you have to look at the injury."

Usually the pattern of the burns themselves will reveal the telltale signs, will tell if it was an accident. Was the child kicking and splashing and something happened? Or was he held down in hot water?

Coley didn't know how much she could learn by looking at an injury until last fall when she took the Sexual Assault Nurse Examiner course, known as SANE.

"I had seen lots of sexual abuse," she says, but when she heard about a week-long seminar in Fredericksburg, Va., she went. "And it told me more than I expected. That really got me going as far as wanting to do something and really noticing more things. What the seminar did for me — and the training I've gotten since then — is improve what I've been doing for nine years."

The seminar — 40 hours of clinical work, a written test, several practical examinations and certification — went far beyond sexual assault.

Available in North Carolina for only a year, the training program started in Memphis, Tenn., in 1976 and has resulted in higher conviction rates, better evidence collection and better coordination between hospitals, law enforcement and social service agencies.

Starting the process

Coley knows the system doesn't always work smoothly.

Reports of suspected abuse can be made by anybody — doctor, nurse, patient advocate, secretary.

Social Services workers usually call doctors back if they make the report, but Coley rarely gets a return call.

"That's disheartening when you go to so much trouble in a specific case."

Coley has recommended that emergency room personnel begin calling law enforcement when they call Social Services, as they do now in sexual assault cases. At the moment, no policy or procedure says notify police if it's physical assault — on adult or child.

"Police may be able to do something if DSS can't," she says.

"I think the most important thing we can do is communicate more with each other, work together. It seems like in the past, all the agencies have been doing their own thing and we've been doing our thing, and nobody knows what the others are doing. It comes together as little as possible. It shouldn't be that way. It should be a team effort."

Right now, Coley is one of a handful of nurses who have earned the child abuse certificate in North Carolina. She is qualified to work closely with child and adult victims of physical and sexual assault, help gather medical evidence, take photographs, participate in legal investigations and serve as an expert witness in court.

Since then, she's worked closely with law enforcement officials, the district attorney's office and others involved with abuse issues. She voluntarily wears a pager 24 hours a day and responds quickly to the hospital's emergency department every time she can to help deal with suspected abuse cases.

The training, she says, made her aware that she still has work to do after she's dealt with the child's physical needs. Documentation is needed. And photographs.

"There are things that can be done that weren't done in the past that can help convict people and get these children out of the homes that are so uncomfortable for them," she says. "I'm all for keeping a child with his family. But they shouldn't suffer to stay there."

Problems with parents

Parents often hurt children because they don't know better, she says.

"If we can take a child out of his home and teach the parents how to parent and send him back, then that needs to be done. But if it's just a case of parents not wanting the child, then something has to be done about that."

Child abuse town meeting set

Prevent Child Abuse North Carolina will host a town meeting on Monday, May 5, from 7 to 10 p.m. at the Catawba Valley Community College Auditorium in Hickory. The public is invited to attend and share comments, concerns and suggestions on child abuse prevention with Prevent Child Abuse representatives.

Information gathered at several town meetings in different parts of the state will be used in the development of a state plan on the prevention of child abuse and neglect.

Prevent Child Abuse is working with Gov. Hunt's office and individuals across the state to develop this plan. Public input gathered at the town meetings is crucial for developing the plan's recommendations.

Prevent Child Abuse is the North Carolina Chapter of the National Committee to Prevent Child Abuse.

She's not the only person in Rowan County pleading for something to be done since news of the deaths of 6-year-old Budde Clark and 19-month-old Christopher Jones burst upon the community on the same winter day in February.

Both had been battered in their own homes.

Both had been the subject of earlier investigations by the Child Protective Services Unit of the Rowan County Department of Social Services.

And both deaths crack open the door on the social problems of this day — teen-age pregnancy, fatherless homes, drugs, school dropouts, fragmented and dysfunctional families.

"The system may have dropped the ball in these situations," says Dr. Jack Kribbs, chairman of the emergency department at Rowan Regional Medical Center, "but that doesn't mean any one individual was at fault. Unfortunately, people start to feel threatened. But this is a tragedy that constitutes a real challenge."

The medical staff in the emergency department sees fragmented and dysfunctional families all the time, he says. The mother's the adolescent. The grandmother is the mother.

"That's the background against which these situations occur," Kribbs says. "And *that's* a community issue. I think the family is really falling apart. I think the strength that used to be in the family is not there any more. There are exceptions but ... "

His thought hangs in midair.

"If we could get a renewed emphasis on the strength of the family and find a way as a community to address that, it would head us down the road at least. In a limited sense, it's a medical issue, but in a much broader sense it's a family issue and that's a community issue."

Growing problem

"We definitely see more (child abuse) than we saw years ago," says Dr. Joe Corpening, a pediatrician who founded the Salisbury Children's Clinic. "We're probably looking for it more than we did years ago. We probably didn't think those things existed. Now we all associate it with family breakdown."

Everybody has become accustomed to babies in the hospital's newborn nursery with unmarried mothers who don't know if the boyfriend is going to let the baby have his name, he says.

And he's convinced that the engine driving up the number of abused children — and bring death — is the breakdown in moral values and teen-age pregnancy.

Teen-age pregnancy gives young people responsibility they don't want, he says.

"Every time you have a young unmarried mother, you're creating two or three more strikes against her when she's got one already. It interferes with her education so she drops out of school, has financial problems, no father figure, no home situation. It just breaks down every aspect of moral fiber — and it costs society thousands of dollars every year."

Add drugs to the mix and you've got a prescription for pain. Maybe death.

Lisa Coley thinks drugs are the major culprit, and alcohol is almost as bad.

"Of course, I didn't know there was as much drugs around until I started working down there and seeing it," she says. Now she believes drugs lead parents to leaving their children on the street — or with anybody — while they go find a way to feed their addiction.

How often does the emergency room see injuries that are the result of child abuse?

"Probably a lot more than we actually know," Coley says. "We don't have a whole lot who come in and say, 'I want her checked for abuse. I think Mama's been hurting her' or 'I think Daddy's been hurting him' ... "

She believes she examines an average of about two women a month who might be rape victims and reports results to police. But she's afraid to guess how many child abuse cases come through the hospital a month.

"I would say we get two to three general assault cases a day" — adults and children, she says. "I've noticed a tremendous increase in the nine years I've been there."

She works three nights a week and figures she makes at least one call a month about child abuse to Social Services, but that's not necessarily the total even when she's at work because she's not called in on every suspected case. And three nights a week means she's not around all the other shifts that make up 24-hour days and seven-day weeks.

So is there a lot or a little?

One's too many, say the doctors, who agree the numbers are up.

The state estimates that 95,000 children are reported abused or neglected in North Carolina every year.

And the state team who reviewed how Social Services

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handled the deaths of the children here believe that the estimated 25 to 30 children who die in North Carolina each year at the hands of their parents or caretakers are not only tragic but preventable.

So Coley exults when she sees other members of the medical community going to training classes.

Three more nurses — Amy Webb, Donna Brown and Robin Moose — are enrolled in the next SANE course in September.

"I've already done some photographic things," she says, and the hospital plans to teach all nurses interested to use photographic documentation. "I can sit here all day and tell you how many wounds and bruises this child has, but if I show you a picture, I don't have to say anything. And I don't have to explain to a judge or a jury if it goes to trial."

Others in training

The beginning of this month, she attended a Sexual Assault Summit in Durham and discovered six other people from Rowan were also there — Linda Porter of the Rowan County Sheriff's Department; Karen Barbee and Rory Collins, from the Salisbury Police; Assistant District Attorney Karen Biernacki; Cindy Stevenson, of the Family Crisis Council; and Kathy Bryan, the victim's advocate in the district attorney's office.

The summit was aimed at setting up a county protocol — or procedure — for an interagency sexual and physical assault response team and get them working together.

"It was to set out who was going to call who when," she explains. "If they report to police, do they call me? Do the police take them to the Family Crisis Council? Just how do we work together?"

And they are working together, she says.

"Linda Porter is working on getting a grant for money to put cameras in all the patrol cars in the city and Rowan County. We would also like to have them on the EMS trucks. A lot of times they're the first to respond. They see the scene. Is the house nasty dirty with roaches running all over it? Or is it nice and clean and smells good when DSS visits because they know they're coming?

"And is there drug paraphernalia around or has it been put away? It's important to have cameras out there to get pictures of the initial event, or the place the child is in at the time."

Otherwise, how can Social Services go later and truly evaluate the scene?

Coley recently completed more training, a 40-hour class in Miami on police-medical investigations of deaths.

"It's really forensic nursing," she says. "Basically that means you're combining law and nursing, collecting and preserving evidence so it can't be thrown out because of some little thing and serving as an expert witness in court. It's all extensive documentation."

She's elated so many people are interested.

"You start out with sexual assault nursing and you kind of broaden from there. You go to children's physical assault, adult physical assault, domestic violence cases, but it's hard to expand when there is only one of me."

Now more people are getting training, including nurse Charlie McLaughlin who's interested in forensic nursing.

"The hospital has put a lot of money and support into the training required," Coley says. "By law we have to call DSS if we suspect anything. So if a child's injuries aren't consistent with the mother's story, if the mother says the child fell down and it doesn't look like that's what happened, then we notify DSS. An investigator comes to the hospital and does an initial assessment, which means talking to the family."

And if that's at night, it's not unusual for the social worker on call to ask, "Do I need to come now or can it wait until morning?" she says.

And Coley is sympathetic.

"I know it's because they're on call," she says, "and they don't get the next day off."

And everybody working with abuse needs training.

"A lot of times, we kind of tend to push things back because we don't want to open up a can of worms. But it's important we open up a can and handle it when the worms come out. Sometimes it's hard when they do."

Salisbury Post
4/27/97

OPEN RECORDS CHANGES

Taxpayers need to know

The General Assembly has made welcome progress this week in requiring public officials to open their records to appropriate public scrutiny.

One bill, sent by a committee to the full Senate, would obligate county and city officials to reveal information about economic incentives used to entice new industry. The second measure, approved by the House on Thursday, would provide public access to all mail going to and from the offices of state officials, except for personal letters.

The measure would provide officials with an incentive of their own — to act with appropriate restraint in offering advantages to industry.

The first bill arose in response to a troubling state Supreme Court ruling that packed a one-two punch: First, the court said, local government officials can vote behind closed doors on incentives such as tax breaks, roads and water line extensions. Second, the justices added, no record of the executive session deliberations need to be kept.

Law's failure

That ruling spoke volumes about the crying need to change the law. Voters are completely entitled to know the details of incentives arrangements, which can often be quite substantial, as well as the discussions that led up to them. It would be grossly unfair to allow a law to stand when it bars taxpayers from understanding how county commissioners or city council members came to offer such benefits.

Raleigh lawmakers are awakening to that concern by approving legislation that would remedy this glaring shortcoming in the law. Under a measure that's proceeded to the Senate floor, after public officials have approved or rejected an incentives package, the press and public would be entitled to know how the officials voted in executive session. In addition, it would become mandatory to keep records of the closed-session discussions and then release them to the press and public once a decision was reached on incentives.

By guaranteeing that secret votes and deliberations would eventually become public knowledge, the measure would provide officials with an incentive of their own — to act with appropriate restraint in offering advantages to industry. In addition, because information would be released only after an incentives package was approved, the proposed law would not short-circuit negotiations while they were in progress.

Sen. Fletcher Hartsell, R-Cabarrus, who is also attorney for the Cabarrus County government, serves on the committee that gave this measure a green light.

Correspondence

The other open records measure, approved 103-6 in the House, comes after an unusually raucous exchange between the state's editorial writers and C.D. Spangler, president of the University of North Carolina system. When the News & Observer of Raleigh asked last month to see Spangler's mail, citing his position as an employee of North Carolina taxpayers, Spangler vehemently rejected the request, saying it amounted to pointless snooping.

Under a compromise which the N.C. Press Association helped craft (the NCPA also helped shape the proposal on incentives), public officials would be allowed to remove personal correspondence from their mail before it is released as a public record. This measure would involve not only UNC officials but all state government employees and elected officials.

This change, which now goes before the Senate, rightly underlines the principle that North Carolina taxpayers have a right to know the actions and deliberations of the public employees and elected officials whose salaries they pay. Both of these needed measures throw light on government actions, which unquestionably serves the public interest.

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Other states opening laws

N.C. House committee vote on opening child fatality records due Tuesday

BY ROSE POST
SALISBURY POST

In New York, Elisa's Law wears a 6-year-old's face.

That's how old she was when her mother smashed her head against a concrete wall, killing her, even though many had warned the welfare system that she was being horribly abused by crimes too vile to tell.

But now Elisa's Law is opening records that legislators believe will make people who deal with abused children more accountable for what they do — and what they fail to do.

In Kansas, Cain Baker's grandmother pulls a picture of a smiling face from her wallet everywhere she goes. He was 2 when he was buried with a fat lip, 27 bruises, two broken ribs — and two holes in his small intestine. His mother's boyfriend got a life sentence, but his grandmother and a clinical professor of emergency medicine have aimed their wrath at the Kansas Department of Social and Rehabilitation Services, who had records of his torture. They want to change the law.

Next door in Missouri a 5-year-old girl was murdered in 1993 after authorities failed to keep her safe.

Her story so outraged Missourians that changes were made in the way the state responds to reports of child abuse.

Will outrage over the deaths of 6-year-old Budde Clark and 19-month-old Christopher Jones of Rowan County open confidentiality laws in North Carolina?

Rep. Charlotte Gardner, R-Rowan, and Sen. Betsy Cochrane, R-Davie, are

➤ See **Laws,** Page 10A

States taking action on abuse/neglect records

States with public access to abuse and neglect records include:

- Arizona
- Idaho
- Colorado
- Florida
- New York
- Missouri

States with changes proposed or being discussed:

- Illinois
- Connecticut
- Kansas
- California
- Kentucky

Change rejected:

- Iowa (amendments died in subcommittee in 1996)

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Laws

➤ From Page 1A

trying.

At 7:30 a.m. Tuesday, the House Human Resources Committee will finish discussing a proposed bill to open confidentiality restrictions when children die. If it passes the committee, it will go directly to the floor of the House when it goes into session Tuesday afternoon, so action can be taken by Thursday.

Thursday is the deadline for any bill — not requiring money — to pass either the House or the Senate to remain viable for the rest of this year and next.

If the bill passes the House, "then it's alive and well until the end of the short session next year," she says. If it doesn't even get to the House, it can't be brought up again until January 1999.

"I had a feeling in the committee Tuesday," she says, "that the votes were there to pass the committee, but it will not be a simple bill to put through. Any time you're dealing with confidentiality bills, people get very nervous. It's a concept you have to sell, and it's not an easy sell."

Relatively few states have taken a step to loosen confidentiality restrictions, which were severely tightened after Congress passed the 1980 Adoption Assistance and Child Welfare Act. The federal law says states must make a reasonable effort to return a child to his or her family or risk losing federal money for foster care programs.

The contention is that — short of violent, intentional abuse — the child is better off in his own home. Most efforts to preserve the family include drug and alcohol treatment, parenting classes and anger-control programs.

That disturbs Richard Gelles, director of the Family Violence Research Program at the University of Rhode Island and author of "The Book of David," about a 15-month-old murdered by his mother, who also fractured the skull, leg, arm and ribs of her 6-week old daughter.

"But when David was born, nobody saw the risk," Gelles said.

More and more states are looking at loosening confidentiality restrictions to hold the child protection system accountable in situations like that, says Jane Kirtley, executive director of the Reporters Committee for Freedom of the Press in Arlington, Va.

"But there's a great deal of resistance," she says, "prompted in part by misunderstanding of federal requirements."

She spoke recently to a well-informed group involved with social services issues, but they all thought the federal government would take away their funding if confidentiality restrictions are eased.

It won't.

Congress amended confidentiality requirements in the Child Abuse Prevention and Treatment Act last October, according to Howard Davidson, director of the American Bar Association's Center on Children and the Law in Washington.

Kristen Guillory, a master's degree candidate at the University of North Carolina at Chapel Hill, worked closely with Janet Mason of the Institute of Government on a paper about the need for privacy *and* accountability.

Guillory says the federal rules have changed.

The federal law will now require states to have provisions which allow for public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality," she says.

In child fatality cases, the balance between privacy and accountability tips toward accountability, she says. "It is time for North Carolina to re-examine its statutes and rules concerning public disclosure of Child Protective Services records and information when a

child ... dies," Guillory says.

Adds Kirtley, of the reporters' committee: "Conscientious professionals will tell you the system is broken in most states." The confidentiality law is intended to protect parents, but it's not doing its job.

"It primarily protects those within the system who are failing these children and letting them fall through the cracks. And there's an element of self-interest that comes into play here," Kirtley argues. "The caring professional will want it to be open. In the context of a fatality, privacy is minimal. The best way to keep a system honest is to keep it open."

If the system is working properly, that's no problem, she says. "It should be easily available for public scrutiny." If it's not working properly, "correct it. These are our children."

The less secret, the more protection is afforded to children, adds Leslie Reis, a legal fellow with the Reporters' Committee. "You won't see the kind of situation where there are repeated reports that are repeatedly ignored. If there's some system for a reporter to get the facts, that won't happen."

The Wall Street Journal quoted Jess McDonald, director of Illinois' state welfare department, where restrictions have been loosened.

"The system does better when exposed," he told the Journal. "It says to people, 'If you haven't done the right thing in a case, you can't hide behind confidentiality.' "

But Davidson, of the American Bar Association, says the amended federal law — which is moving states toward greater disclosure — won't solve anything.

The child death review team, known in North Carolina as the Child Fatality Prevention Team, "is more important because what you want is a group of professionals from different disciplines to review these cases and help form policy change," he says.

A team that meets at least once a month, he says, is "far more important than a law that opens up records to the media. A bunch of stories in the newspapers doesn't change the system, but a bunch of professionals that check on the problems and calls attention to them does."

The other thing that changes the system is that in many cases parents are criminally prosecuted. In 77 percent of the cases, parents are the perpetrators.

Any legislation that opens records has to be very carefully crafted to safeguard the privacy of surviving children, he says, but he says he's unaware of any opinion or decision from the federal government that says that states that pass a carefully crafted law opening records will have funds withheld.

Kevin FitzGerald, head of the N.C. Division of Social Services, raised the issue of possible loss of $600,000 in federal money with the House's Human Resources Committee last Thursday.

He says he's now researching other state laws and consulting with division attorneys because "there are implications to this (proposed law) we need to understand. To receive federal funds, there are guidelines we'd have to meet."

North Carolina gets 57,000 reports of abuse and neglect a year and obviously doesn't know which of those cases will result in death. Last year, 18 children died.

The reality, FitzGerald says, is that new laws would have some unintended consequences in the way records are kept, so quality could deteriorate if people who keep them believe they'll be available down the road.

"One of the things I want to understand is what those consequences would be," he says. "I think this is going to require a lot of discussion."

Accountability is built in with the Child Fatality Prevention and Community Child Protection teams, which include people from the various communities and professions and are working all over the state, he says. But the details of those teams' findings are not open to the public.

And he points out that a special team that reviewed the deaths of Budde Clark and Christopher Jones recommended better disclosure of death information and better communication to satisfy the public's need for accountability.

But, he says, "we've got to be sure that any improvements that we make improves how we protect children upstream."

Rowan County Health Director John Shaw was a member of the state review team and is on the Rowan County Child Fatality Prevention Team. The Rowan County team will meet in early May with the Child Protection Team and look at a draft of the response the Department of Social Services will send to the state following its report.

He believes people have a right to know more than they've known in the past, he says, but adds that accountability can be dealt with in a number of ways.

One way is with the kind of team that was brought into Rowan to review what happened when the children were killed here.

It has shown that it works, he says.

The statistics say *something* is needed.

The National Clearinghouse on Child Abuse and Neglect says about 2,000 infants and young children die each year of abuse and neglect. Another 18,000 are permanently disabled each year.

And like Budde Clark and Christopher Jones, half of those who die, says Richard Gelles, director of the family violence research council at the University of Rhode Island, "have previously been reported to child protection agencies."

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Laws

➤ From Page 1A

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How to reach committee members

A bill to open child fatality records will die this week unless the House Human Resources Committee votes Tuesday morning to send the bill to the full House. The House then must approve the bill by Thursday to keep it alive for the rest of the session.

If you feel strongly about the proposal, here are phone numbers of House leaders:

- House Speaker Harold Brubaker, R-Randolph, 919-733-3451.
- Speaker Pro Tem Steve Wood, R-Guilford, 919-733-5807.
- Majority Leader Leo Daughtry, R-Johnson, 919-710-0850.

Here are members of the Human Resources Committee:

Gardner

- Committee Co-chair Julia Howard, R-Davie, 919-733-5904, and Henry Aldridge, R-Pitt, 919-733-5958.
- Charlotte Gardner, R-Rowan and sponsor of the bill, 919-715-3016.
- Liston Ramsey D-Madison, 919-733-5606.
- Gene Wilson, R-Watauga, 919-733-7727.
- Beverly Earle, D-Mecklenburg, 919-715-4466.
- Debbie Clary, R-Cleveland, 919-715-3011.
- Billy Creech, R-Johnson, 919-733-5829.
- Arlie Culp, R-Randolph, 919-733-5865.
- Pete Cunningham, D-Mecklenburg, 919-733-5755.
- Howard Hunter, D-Northampton, 919-733-2962.
- Larry Womble, D-Forsyth, 919-733-5751.
- Nurham Warwick, D-Lee, 919-733-5886.
- John Rayfield, R-Gaston, 919-715-3009.
- Bill Ives, R-Transylvania, 919-733-5784.
- Ruth Easterling, D-Mecklenburg,919-733-5786.
- Alma Adams, D-Guilford, 919-733-5902.
- Joanne Bowie, R-Guilford, 919-733-5853.
- Theresa Esposito, R-Forysth, 919-715-2530.
- Jim Gulley, R-Mecklenburg, 919-733-5860.
- Verla Insko, D-Orange, 919-733-5800.
- Mary McAllister, D-Cumberland, 919-733-5706.
- Martin Nesbitt, D-Buncombe, 919-715-0873.
- Cindy Watson, R-Duplin, 919-715-3015.

Salisbury Post 4/29/97

Pitt DSS 'unacceptable'

GREENVILLE, N.C. (AP) — The director of the Pitt County Department of Social Services' child protection program blames a small staff for a state review that found its performance unacceptable.

The county scored 66.8 percent on its Child Protection Biennial Review, conducted between May and October 1996 by the state Division of Social Services. A preliminary report on the findings was presented to the Pitt County Board of Social Services Monday.

Scores below 74 percent are considered unacceptable, the state has said.

"We knew we did not have enough staff to do all the things the state requires us to do," Director Ed Garrison said. "With what we have to work with, we can't do much better than what we're doing. We're going to have some (additional) staff, and that's going to require the county to spend more money on the Department of Social Services."

➤ See Pitt, Page 12B

Pitt

➤ From Page 1B

The state recommends that an investigator have only 12 cases at a time. One Pitt County worker has 128 cases, said Peggy Chandler, social work program administrator. The recommended supervisor-to-worker ratio is 1 to 5, and of the three Child Protective Services supervisors in Pitt County, none have fewer than six.

In 1996, nine investigators were responsible for 1,039 new cases of child abuse and neglect.

Kevin FitzGerald, director the N.C. Division of Social Services, attended the local DSS meeting Monday and promised state support. Among that support will be a state worker to help Pitt County develop a plan for improvement, he said. State funding for child protective services has not increased in at least three years, he said.

The county's DSS board said it will also appeal to the Pitt County manager and Board of Commissioners for funding to hire additional staff.

Salisbury Post 4/29/97

Bill on child abuse records moves forward

RALEIGH (AP) — The deaths of two Rowan County children within a week earlier this year may change state law by requiring child protection agencies to open their records when child abuse is suspected in a fatality.

The House Human Resources Committee today approved a revised bill that would force records open if someone is charged in a child's death or if anyone reports to the agency that abuse or neglect may have caused the death.

The bill was filed earlier this month after the deaths of two Rowan County children — Budde Clark and Christopher Jones.

"When this bill kicks in, a child is dead as a result of abuse and neglect," bill sponsor Rep. Charlotte Gardner, R-Rowan, said.

The Department of Social Services is commonly barred from discussing child abuse cases because of state confidentiality laws, she said.

Medical, hospital, school, police investigative and other records would have to be open to public scrutiny under the bill.

Rep. Julia Howard, R-Davie, protested that the measure doesn't go far enough. It allows a child-protection agency to withhold records if it believes there is convincing evidence that their release would hurt the mental health or safety of a surviving child in the same household, she noted.

The agency also could keep records closed if their release would jeopardize prosecution or a defendant's right to a fair trial.

District attorneys, not a child-protection agency, should make that decision based on their professional judgement, said Rep. Martin Nesbitt, D-Buncombe.

"The cat's out of the box before the people in charge of the investigation know about it," he said.

The bill next heads to a second committee, which will review the measure's legal im-

➤ See **Records,** Page 12B

Records

➤ From Page 1B

pact. The committee is chaired by Rep. Charles Neely, D-Wake. It must be approved by the full House by Thursday or risk being buried until 1999.

Clark, 6, died Jan. 31 of a blow to the back of the head and Jones, 19 months, died of a fractured skull a few days later. Murder charges were filed against their caregivers, and their deaths resulted in a state review of the Rowan County Department of Social Services.

Salisbury Post 4/29/97

N.C. child abuse and neglect cases top 30,000

ast year, 40 of those hildren were murdered y supervising adults

BY DR. JONATHAN P. SHER
SPECIAL TO THE POST

Your recent coverage of the ıild fatalities in Rowan County as helpful in focusing public tention on how common, and how agic, child abuse and neglect ıve become across our state.

Last year alone, there were ore than 30,000 confirmed vic- ns of child abuse and neglect in ɔrth Carolina. Last year, 40 of ese vulnerable children were murdered by the adults entrusted to raise them. Right now, more than 12,000 young North Carolinians have been forced into spending their childhoods in the custody of county departments of social services because of the inability, or unwillingness, of families to provide anything resembling a safe, good home.

Should DSS do a better job of investigating and intervening in situations where children are in danger? Absolutely. The system for protecting and assisting these vulnerable kids — as most social workers know all too well — is deeply flawed. But blaming DSS workers for family violence is like blaming forest rangers for fires caused by lightning or arson.

Ridiculously high caseloads across our state (in fact, more than twice the recommended level) guarantee that children will not be as well served as they need and deserve. Identifying at-risk kids is only the first step. The greatest challenge now — for all of us, not just DSS — is to quickly find good, permanent homes for abused and neglected children who cannot safely return to their birth parents.

Coincidentally, a potential silver lining in this particular dark cloud appeared earlier this month. A bill has been introduced in the N.C. General Assembly that advances a three-part strategy for solving both the immediate problem of DSS worker overload and the deeper problems within the child welfare system itself. If passed, this legislation would go a long way toward ensuring that tragedies like those in Rowan County become increasingly rare.

Further information on this important state legislation — and how you can help get it passed — is available by writing this address: North Carolina Child Advocacy Institute (Dept L) at 1318 Dale St., Raleigh, NC 27605. The telephone number is (919) 834-6623.

■

Dr. Jonathan P. Sher is president of the N.C. Child Advocacy Institute in Raleigh.

FINDING HOMES FOR CHILDREN

Some hope on horizon

Salisbury Post
4/29/97

Rowan County is not alone in its struggle to provide better child protective services, nor in its efforts to balance those needs with everything else county government has to consider.

Pitt County recently learned its child protection program scored so poorly on a biennial review that the state considers it unacceptable. While the state recommends that each investigator have only 12 cases at a time, one Pitt worker has 128 cases. The county Social Services director says he's not surprised by the finding; county government does not give the agency enough funding to meet state standards.

A bill now before the General Assembly could help counties with this problem, even though it addresses a different area of child welfare. Officially known as "Senate Bill 760/House Bill 943 Foster Care/Adoption Funds," it strives to pump more state funds into foster care and adoption services. That, in turn, could free up more county money for child protection.

Three ways to help

This is the bill that Dr. Jonathan Sher refers to in his column at the bottom of today's editorial page. The measure carries a price tag: $2.8 million in 1997-98 and $5.9 million in 1998-99. But it addresses a need that is crying out across the state: at-risk children who are hurting. Lawmakers should give it serious consideration.

The bill zeroes in on three ways the state can better serve children who have been taken out of their homes:

■ *Increase the number of county foster care and adoption social workers:* The Child Advocacy Institute says large caseloads hinder the ability of social workers to move children from foster care to safe, permanent homes. Foster care costs the children the turmoil of being in temporary placement, and costs the county money to keep them there.

Rowan County currently has a huge adoption backlog, and only one worker to do home studies on 50 families who are willing to adopt. Social Services has requested that county commissioners fund one more adoption worker and one more foster care worker, and has notified the county that its foster care tab will increase some $235,800 next year even without the new positions.

■ *Expand the Families for Kids Initiative:* The Post has written about this public-private partnership program in the past; a demonstration project is under way in Iredell County, funded with the help of the Kellogg Foundation. The program strives to find a permanent home for a child within one year, and also provides support for vulnerable families to prevent children from entering foster care in the first place. The bill would expand the initiative from eight to 16 counties.

■ *Try subsidized guardianship/kinship care in selected counties:* Sometimes when children are taken away from parents because of abuse and neglect, there are other relatives who would take the children in if only they could afford to. Existing guidelines rule out subsidies to relatives in most cases. This bill would allow a monthly subsidy of $220 to kin who have provided temporary but stable care and are willing to assume guardianship. This is a less expensive route than foster care, and a more settling arrangement for the child than being placed with strangers.

Living on the edge

This complex bill requires more thorough explanation than can be given here. But it clearly deserves the attention of citizens and lawmakers who are interested in helping children who live on the edge — insecure, shuffled around, not sure what the next day will bring.

Counties need the state's help serving children who are buffeted by rising poverty rates, increased alcohol and substance abuse, family isolation, community violence, homelessness and disease. The Foster Care/Adoption Funds Bill could greatly strengthen county agencies and change thousands of children's lives for the better.

SALISBURY POST

4/30/97

Compromise saves child records bill

Move to open records of child fatalities survives with some last-second maneuvering

BY ROSE POST
SALISBURY POST

RALEIGH — Thanks to a last-minute compromise, a bill to open child fatality records will live to fight another day.

The bill, sponsored by N.C. Rep. Charlotte Gardner of Rowan County, came within seconds of dying in a House judiciary committee this morning. With time running out and the substitute committee chairman threatening to adjourn the meeting, Rep. Billy Creech of Clayton proposed a compromise: tack on a $100,000 price tag and turn it into a finance bill.

Finance bills can remain alive throughout a session.

The bill — which seeks to open records, particularly social services investigations following a child's death from abuse or neglect — will now go to the House Appropriations Committee, and will be debated before the House this summer.

Had it not been for Creech's proposal, the open records bill could not have resurfaced until January 1998.

Gardner sponsored the bill following the deaths earlier this year of Budde Lee Clark, Christopher Jones and Trola Miller — all Rowan County children who died and had been the subjects of child abuse investigations.

Clark, 6, died from severe head injuries. His stepmother, Robin Gosnell, has been charged with murder and felony child abuse.

Jones, an 19-month-old toddler, also died from head injuries. His mother's former boyfriend, Jeremy Butcher, has been charged with murder and felony child abuse.

Miller, 16, was shot and killed during a confrontation in a Salisbury neighborhood. Elizabeth White has been charged with second degree murder.

The families of all three children had been the subjects of investigations by the Rowan County Department of Social Services.

However, state law has prevented Social Services officials from releasing records and discussing the cases in detail.

Some lawmakers oppose

➤ See **Bill**, Page 4A

Bill

➤From Page 1A

opening records, saying it could make prosecution of criminal cases more difficult and violate families' rights to privacy.

Nonetheless, lawmakers seemed glad to have the opportunity to explore the bill further.

"In our review (of the Rowan cases), it was clear there needs to be improvement, and we're going to have the opportunity to make that improvement," Kevin FitzGerald, chief of the N.C. Division of Social Services said this morning. "My interest is that at the end of the day, we've improved our ability to help children."

News + Observer 4/30/97

RALEIGH

Child-abuse measure gets out of committee

Clergymen and others with knowledge of child abuse would have to tell authorities what they know under a bill approved by a Senate committee. However, attorneys for child-abuse suspects would be exempt.

The bill, which now goes to the full Senate, makes it a misdemeanor for someone who knows about child abuse not to report it.

Supporters say the measure generally would affect teachers, health-care providers and others who have close contact with the child. The bill was modified to exclude passers-by who might witness suspected child abuse.

GREENVILLE

Child-protection program falls short

The director of the Pitt County Department of Social Services' child-protection program blames a small staff for a state review that found its performance unacceptable.

The county scored 66.8 percent on its Child Protection Biennial Review, conducted between May and October 1996 by the state Division of Social Services. A preliminary report on the findings was presented Monday to the Pitt County Board of Social Services.

"We knew we did not have enough staff to do all the things the state requires us to do," Director Ed Garrison said. "With what we have to work with, we can't do much better than what we're doing. We're going to have some [additional] staff, and that's going to require the county to spend more money on the Department of Social Services."

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FROM WIRE REPORTS

Hunt: Open child records

JAMES BARRINGER/SALISBURY POST

DEEP THOUGHT: Joe Hackney of Chapel Hill thinks through options to keep child records bill open with Julia Howard of Davie County.

HURRY: Joe Kiser, R-Lincoln, a former sheriff concerned about law enforcement's role, tries to end committee session before Charlotte Gardner's bill can

Governor, others support opening fatality records

BY ROSE POST
SALISBURY POST

RALEIGH — Gov. Jim Hunt and key legislators in the North Carolina House of Representatives say they want to open child fatality records to protect children.

The legislators demonstrated their support during a tense, dramatic committee meeting Wednesday when they refused to let a bill introduced by Rep. Charlotte Gardner, R-Rowan, die a sudden death.

And an hour later the governor gave it immediate strong support when he was asked about the Gardner bill at the end of a press conference.

"I think that's a good idea," he said, "and I want to commend Rep. Gardner for coming up with it."

She has done a lot of work to protect children, he added.

Gardner sponsored legislation to crack down on deadbeat parents and is now working on a bill to finance treatment for substance abuse for people on public assistance.

Hunt noted that some of the professionals have reservations about opening records, but added, "I think that's a good idea and I look forward to making that the law of this state."

The bill, which got off to a late start in the current session of the General Assembly, would open records following a child's death from abuse or neglect.

Gardner introduced it after two Rowan County children — 6-year-old Budde Lee Clark and 19-month-old Christopher Jones — were beaten to death between Jan. 31 and Feb. 4. Both had been the subject of child abuse investigations by the Rowan County Department of Social Services.

But state and local officials would not discuss the cases until the Post quoted unidentified sources who knew of Social Services' involvement.

And Wednesday, momentum for the bill appeared to be growing among key legislators.

Majority Leader Leo Daughtry has supported Gardner's efforts from the outset

NEEDS STUDY: Kevin FitzGerald wants more study of bill.

committee, threw the life-preserver that saved the bill. Just as time was running out during its hearing by a House judiciary committee, he moved to add a $100,000 appropriation and refer it to a subcommittee for further study.

The surprise action provided a civics lesson to anyone not part of the General Assembly process.

Any bill that does not involve money must pass either the House or Senate and "cross over" to the other house by May 1. If it doesn't make that deadline, the bill dies and can't be proposed again until the next two-year session in January 1999.

Today is crossover day. Gardner's bill No. 949 had to pass two committees — Human Resources and Judiciary II — and the House of Representatives to live.

This week dawned wild with legislators fighting the deadline, negotiating to get their bills approved in quick conferences in the halls, running between committee meetings scheduled for an hour each, back to back. They negotiated from dawn until House and Senate sessions started in mid-afternoon.

Gardner's bill faced its first hurdle in a Human Resources Committee meeting at 7:30 a.m. Tuesday. She knew she had the votes there, but feared opposition in the Judiciary II commit-

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Records

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opened at 10:10 a.m. with 17 members around the big conference room table and Chairman Chuck Neely, R-Wake and a friend of the bill, in charge. Committee members discussed soil and water inspections, waterfront development in Wilmington, poured coffee, sipped orange juice and quietly went out into the hall for conferences. Charlotte Gardner and Julia Howard, R-Davie, a strong supporter of the bill, consulted at the corner of the big table — and the big clock said 10:27 a.m. when Gardner went to the podium to explain the intent of her bill and changes that had been made.

Important issue

"This is a most important issue in our county," she said. The deaths of the children had generated more public concern than any issue in her 12 years in the House, but the effort to look at the record turned up only a report that Social Services had met standards.

And the Social Services' director's response to questions, she said, was always, "I'd love to tell you but confidentiality won't let me do that."

"It was left up to the newspaper," she said, "to uncover the facts" from anonymous sources, which it deplored.

Records, she said, must be opened.

"Nothing will help those children," she said. "They are dead. But we must try to help others."

Discussion flitted from question to question. Who could keep records closed if a criminal action was imminent? What about the problems of a Social Services department with no back up for an on-call worker, no beeper, no cell phone? What about busybodies who have nothing else to do — could they get the records? What about false accusations?

Hugh Stevens, attorney for the N.C. Press Association, said supporters believe the bill will strengthen a system which already encourages people to report problems but often don't. The problem is not that people falsely accuse. The problem, he said, is that they avert their eyes.

"The system failed these children," he said. "We did not have in place a system to protect these children."

ANSWER FOUND: Billy Creech adds price tag and keeps bill alive.

Move to adjourn

The hands on the clock touched 10:50. Joe Kiser, R-Lincoln, a former sheriff concerned about law enforcement's role in the whole thing, had replaced Chuck Neely with the chairman's gavel. Time was running out. He wanted to adjourn.

Kevin Fitzgerald, chief of the N.C. Division of Social Services, who spearheaded a special review of the way Rowan Social Services handled the investigations here, spoke briefly.

"We're not against it," he said, "but it will have drastic implications" and needs study.

Tom Bennett, executive director of the State Fatality Task Force, spoke for the bill. Ruth Easterling, D-Mecklenburg, introduced a similar bill to open records to the Task Force but the bill remains in committee.

"No more time," Kiser repeated.

Joe Hackney, D-Orange, popped in a suggestion.

"Put a $10 fee on it," he said. That would buy time because it would make it a finance bill.

But Gardner, familiar with the finance committee and afraid it would die there like Easterling's bill, said she would resist the fee.

Fern Shubert, R-Union, said the bill needed study, but she didn't want it to die.

"We've got to get out," Kiser repeated.

And Creech offered a solution.

Add an appropriation of $100,000 to the bill, he moved, and send it to a subcommittee for study. That meant it would be a budget bill — and stay alive.

Other motions flew back and forth. But time was up, and Kiser was adamant. Creech's motion passed quickly. It was over. And suddenly everybody was a little shocked and smiling a lot.

Later in his office, Creech said he made his motion because he hadn't had time to look at the bill, "but it was Charlotte's bill." That gave it weight.

"I thought it was important enough to have a fair hearing," he said. "No one wants to see a child abused because we didn't do what we should have done."

It will be looked at in the Appropriations Committee and then sent to Julia Howard's Human Resources Committee again and studied with the Easterling bill.

"I think we could carry the day and have a pretty decent package," he said. "We want the best bill we can get out so we can get a good solid law we can live with."

Hackney, who's known to be concerned about privacy issues, was in his office polishing off lunch of one banana.

He's not against a reasonable solution, he said, and the appropriations committee is a good place for the bill because resources are a big factor in his own Orange County.

"You have to feel for child protection workers," he said. "They have a very hard job."

The recent tax cuts are a big problem, he added. "You have to go back and say, 'What would have saved a child?' and most often the response is, "If we'd had more resources, then the oversight wouldn't have occurred.' "

Howard pleased

Howard, House majority whip and ex-officio member of all committees, was running from one to the other too fast for talk, but she was happy that both bills will be considered together.

So was Tom Bennett.

"I'm very glad the bill has been saved," he said, "and saved in a way the other bill can be looked at."

"I think this is a very important discussion," FitzGerald said, "and this action will let the discussion take place."

Terry Saylor, executive director of the N.C. Press Association, which has worked with the bill, said she hopes everyone in the system will benefit. Social Services will be able to respond and meet needs better. The Child Fatality Task Force will have access to information. And the system will be held accountable for protecting children

Saylor said it was right for a newspaper to raise the issue. Newspapers are the traditional watchdogs of society, she said, "the voice of the voiceless. This is what newspapers are for."

And Gene McCombs, R-Rowan, left no doubt about where he stands.

"I want those records open if something happens to a child," he said. "There was no way for us to find out anywhere what was going on except by calling up (Raleigh). I'm in total support of that, and the way it looks now, it's going to be worked out."

But Charlotte Gardner didn't have time to savor making the deadline and considering the next step.

She hurried off. She had work to do on a day care bill.

■

Elizabeth G. Cook contributed to this story.

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Task force moves up meeting

BY ROSE POST
SALISBURY POST

The Rowan County Child Abuse Prevention Task Force will meet May 13 — two weeks earlier than originally scheduled.

County Commissioner Steve Blount says the date was changed because "we're trying to move as quickly as we can to address the issue."

Commissioners established the task force March 17 "in response to public concerns about our local child abuse prevention efforts," commissioners said in a memo announcing the meeting. Commissioners created the task force following a two-hour closed session with state and local representatives of the social services system.

At that time, public outrage had motivated Gov. Jim Hunt and his top Human Services administrators to appoint a special team to review the deaths of 6-year-old Budde Clark, 19-month-old Christopher Jones and 16-year-old Trola Miller.

Task force members — who represent various agencies and the public at large —will review how the system is supposed to work now, how agencies can communicate better and "how we as a community can be more closely involved with this very critical system."

The first meeting was scheduled for May 28 during the week of the State of the Child Conference, cosponsored by Livingstone College and the Rowan Partnership for Children.

That first meeting was set "to try to make it a full week of activities centered around children," says Blount. "But some folks felt like that was delaying things too long, so we moved it up as quickly as possible."

In a letter to task force members, he explained their roles in greater detail. They will first examine the existing child abuse prevention system, "including all of its complex parts so that we each can understand the tasks and restrictions placed on the others."

The first meeting will include an overview of child abuse in North Carolina and a discussion of the role of various county agencies, including:

- The Rowan County Department of Social Services, by Director Rick Travis and his staff;
- The Rowan County Sheriff's Department, by Sheriff Bob Martin;
- Rowan Regional Medical Center, by Chief Executive Officer Jim Freeman;
- The Rowan-Salisbury Schools, by Superintendent Joe McCann;
- The judicial system, by Chief District Court Judge Anna Mills Wagoner.

They will detail their current reaction to suspected abuse situations and how a case might flow through the system, Blount wrote. A question and answer session will follow.

The second purpose of the task force, which will be explored in future meetings, Blount wrote, "will be to find the weaknesses in the current system and develop suggested solutions to these problems. This may require several meetings and possibly even breaking into subcommittees to complete. At the conclusion of this process, you will be asked to make a public presentation to the board of county

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...ication with students, Morrison said.

"I'm sold on Pfeiffer," she said. "It has a great faculty and staff, and a beautiful campus."

The Pfeiffer faculty — especially criminal justice associate professor Lois Coram, sociology professor Anne Byrd and assistant sociology professor Jo Anne Clayton — earned high marks from Morrison.

"I think they challenge their students to do their best," she said. "I found them to be very supportive and encouraging."

Morrison recommends Pfeiffer as an institution for students who want to earn an associate degree.

"I like the small atmosphere of Pfeiffer," Morrison said. "I like the faculty-student ratio. Everybody is very friendly."

The faculty-student ratio at Pfeiffer is 1 to 12. Pfeiffer offers undergraduate programs and continuing education courses at its Misenheimer campus. Graduate studies and adult studies are offered at the university's Charlotte campus.

Morrison, who lives with husband Arthur outside Lexington, received the Outstanding Criminal Justice Student

Meeting

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commissioners who hopefully will act quickly on your suggestions.

"The final job of this task force," he wrote, "will be to come together periodically to review the overall child abuse prevention system to insure that it continues to meet the high quality standards established by this process."

Commissioner Dave Rowland will lead the wrap-up, focusing on the next meeting, organization and a time frame.

The task force will include 14 members, who differ slightly from the list originally announced. Included are the speakers, Travis, Martin, Freeman, McCann and Wagoner, as well as Salisbury Police Chief Jeff Jacobs; Dianne Scott, executive director of Rowan Helping Ministries and a member of the Social Services board; District Attorney Bill Kenerly; John Shaw, director of the Rowan County Health Department; Elizabeth Cress Patton, Family Crisis Council; Janet McAuley-Blue, Domestic Violence Task Force; Dr. Greg Singer, Ministerial Association; Elizabeth Smith and Mary Beth Smith.

Blount and Rowland are liaisons from the County Commission.

The new group will meet at 7 p.m. in the second floor commissioners' meeting room of the old post office, 130 W. Innes St. The meeting is open to the public, and observers may comment at the end of the meeting.

Point

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ized tests because it required hands-on experiments and written answers.

For example, they used a graph to guess the amount of salt in an unmarked water vessel of water if they have a freshwater sample and a 25 percent salt solution.

Twenty percent of the students nationwide could explain their conclusion, in part because only 28 percent did the

Recent national tests and international comparisons have noted progress in science achievement, but they asked questions differently.

Although the federal government cannot dictate standards, the Education Department clearly hopes that the kinds of questions in this voluntary test will shape the way science is taught.

"This test will go a long way to speeding up the movement to 'do' science by more 'hands on' learning — the type of learning that unleashes the creativity of our young people and gets them

Scalded 6-year-old testifies

Baby sitter goes on trial for burning child in hot water

BY JASON WILLIAMS
SALISBURY POST

Salisbury Post 5/7/97

Doctors in Concord gave the 4½-year-old boy morphine to ease his pain and quiet his screams as they treated him for severe burn injuries on the lower part of his body.

When the boy arrived at the emergency room, skin was peeling from his feet and ankles and he had other injuries to his buttocks and genitals.

This morning, the boy, now 6 and dressed in shorts, stood on a table in Rowan County Superior Court as District Attorney Bill Kenerly pointed to the scars. The prosecutor also picked the child up and walked with him in front of jurors so they could see the boy's bare feet.

The child's care giver, Denise Santos, 43, went on trial this morning, charged with felony child abuse in the December

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Scalding

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1995 scalding.

The boy took the stand first and told jurors how he wet the bed that morning at his home on Jackson Park Road in Kannapolis. Santos lived at the home along with the boy, his twin sister and their paternal aunt and was baby sitting the children that morning.

The boy testified that Santos, after finding the wet clothing, told his sister to run some bath water. The girl apparently inadvertently made the water scalding hot.

The boy testified that he stuck his foot in but immediately jerked it out. Santos, whom the children called Aunt Dena, was somewhere else in the house, and he said he told her the water was too hot.

But, the boy testified, Santos came into the room and held him in the water.

The boy, playing Santos, also reenacted the scene with Kenerly. The child, a kindergarten student, testified for 30 minutes.

A paramedic and at least two nurses also testified that the boy told them Santos held him in the water.

Cabarrus County paramedic Mike Metcalf testified that he arrived at the home about 10:12 a.m. and saw the boy extremely agitated and his skin beginning to peel away in layers. He suffered second- and third-degree burns.

Dianne Kindley, an emergency room nurse, told jurors that the boy was screaming and crying when he arrived at the hospital, and she saw his burned feet immediately.

The boy was later transferred to the burn center at UNC Hospitals in Chapel Hill for treatment.

During the subsequent investigation, officials with the Department of Social Services tested the temperature of the water coming out of the hot tap at 142 degrees.

Santos' attorney, Robert Inge, told jurors in his opening statement that defense evidence will show the boy jumped into the bath water on his own.

Before court testimony, Santos smiled and wiggled her fingers in a wave at the boy.

In 1974, Santos was convicted of second-degree manslaughter in New York in the death of a child. She served less than three years in prison.

In 1986, she was convicted of manufacturing, distributing and dispensing an illegal substance in New Jersey. She spent less than three years in prison before she got paroled.

Santos remains free on a 10,000 bond.

Scalding trial

MARK BRINCEFIELD/SALISBURY POST

BURN VICTIM: District Attorney Bill Kenerly lifts child so jurors can see burn scars.

Burns no accident — doctor

BY JASON WILLIAMS
SALISBURY POST

Scalded in bathtub water, the 4½-year-old black child was left with pink skin on his feet, legs and buttocks.

The burns don't look like an accident, a Chapel Hill burn doctor told jurors Wednesday afternoon.

This morning, the boy's natural mother told jurors that Denise Santos loved the child as her own. However, she said her memory of what her son told her about the burning is a "blur."

"It's been awhile," testified the mother, who does not have custody of the boy, his twin sister or her two other children, 14 and 13.

Prosecutors say Santos, 43, the child's primary care giver, forced the boy to sit in the scalding water because he wet the bed.

The Kannapolis woman, who lived with the children and the children's aunt, is on trial on a charge of felony child abuse.

The boy, now 6, testified on Wednesday morning that Santos held him in the water.

Two weeks after the burning, however, Santos told a Kannapolis police detective that she "never physically held" the boy in the water and "would not hurt" the children on purpose. She said she was going through hell.

But using a slide projector and glossy photographs, Dr. H.D. Peterson, the former director at the UNC Hospital's burn center, testified that the boy's injuries were "forced emersion burns" and there was no evidence of accidental splash marks.

Relying on the burn patterns, Peterson said the boy was obviously restrained in the water. Otherwise, any child would have jumped around, causing splash patterns,

ON TRIAL: Denise Santos listens to testimony in child abuse trial.

Peterson said. Peterson described the injuries to the child's feet, ankles, calves, genitals, and buttocks and talked about the dead skin.

Most of the seven-woman, five-man jury

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Burns

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sat emotionless during the testimony. Peterson further explained that people have a "spinal reflex" to hot items, and the boy could not have consciously held his body in the water and sustain those burns.

Peterson added that no one in the courtroom could do that.

The doctor estimated the boy was immersed for six seconds to sustain those injuries. He was likely held in a compressed position, Peterson said.

Doctors in Chapel Hill used a skin graph from the boy's right thigh to repair his feet and ankles. He remained at the hospital for nearly a month.

Kenerly placed the projector screen to the back of Santos and showed about 15 pictures to jurors. Santos did not turn to see them.

Diane Priolo, a social worker who investigates child abuse complaints at the burn center, testified that the boy would throw temper tantrums and cry. Things grew worse as medical professionals tried to bathe him.

"The whole burn center knew when he was taking a bath," she said.

Priolo told the jury to imagine life in the mind of a 4-year-old child.

His mother was a drug addict. He was placed in foster care and then moved to the home of an aunt, she said.

Priolo said the aunt did not want the children and felt pressured by the Department of Social Services to take them.

After the state rested its case, defense attorney Robert Inge called the maternal aunt to the stand as Santos' first witness.

The 33-year-old aunt said she has known Santos for about 3½ years, and they are involved in a romantic relationship.

The children moved into the home in June 1995, or about 6 months before the Dec. 22 scalding. The aunt received about $232 a month through Aid to Families with Dependent Children and about $300 in food stamps, she said.

Santos cared for the children about 70 percent of the time, since the aunt was working two restaurant jobs and normally left the house on Jackson Park Road about 4:30 a.m. Santos never lost her temper, the aunt said.

The aunt said she spoke with the boy several times at the hospital in Chapel Hill, and he always told her he got into the water himself.

When the boy's natural mother testified, she admitted allowing Santos to see the child at the hospital in Chapel Hill. She said she was not aware that hospital officials had banned Santos from the child's room.

The natural mother said her son asked to see Santos, and Santos was the only person who could get the child to eat.

"My kids loved her like a mother," the 33-year-old natural mother said. She also admitted that she's had an addiction problem all her life. For awhile, she did not know who had custody of her children.

Meanwhile, nine character witnesses testified on behalf of Santos, saying she spent her own money to help the children, took them to church and hugged them. The witnesses never saw any evidence of violence.

About a week after the scalding, Santos gave a statement to Kannapolis Sgt. Jeff Tysinger, however she did not sign it.

Tysinger read the statement in court on Wednesday.

In part, Santos said, "I got a little belt and popped him on the butt and told him to go get ... in the tub. He ran into the bathroom and jumped in the tub. He got in the tub and cried. I told him to sit down and shut up before I gave him something to cry about. I was real stern with his about washing ... I was angry and stern with him ... I went upstairs to get some clothes and I heard him hollering real loud. I knew something was wrong and went back downstairs and found (the boy) laying in the floor peeling. I guess he couldn't take it anymore ..." She dialed 911.

Superior Court Judge Judson D. DeRamus Jr. of Winston-Salem ruled that prosecutors could not bring up Santos' 1974 second-degree manslaughter conviction from New York. In that case, Santos killed 3-year-old Malachi Jackson with a beating.

Kenerly said the boy was killed with an "ad-hoc weapon," though he didn't elaborate.

Santos, then 21, spent less than three years in prison.

DeRamus said he has problems with the New York court documents. For example, the indictment does not have a case number and the computer check police often use to find other cases normally carry disclaimers with them.

"Twenty-three years is pushing it a bit," defense attorney Inge said, adding that prosecutors did not find anyone to speak about the crime.

However, prosecutors can mention Santos's 1986 conviction in New Jersey for manufacturing, distributing and dispensing an illegal substance.

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New Child Abuse Task Force sees problems and finds hope

BY ROSE POST
SALISBURY POST

No one said the names of 6-year-old Budde Clark and 19-month-old Christopher Jones Tuesday night.

But those two dead children were there in the thoughts and words of a sheriff, a judge, a district attorney, a hospital CEO, heads of state and local agencies, when the Rowan County Child Abuse Task Force met Tuesday night for the first time.

The brutal child abuse that killed the children earlier this year drew nearly 40 people representing almost every official and social agency in Rowan County together. Meeting in the County Administrative Offices, they told each other how they handle abuse, talked about changes already taking place and aimed at what must be done to keep it from happening again.

Among changes already occurring are:

■ Closer ties between law enforcement and social services.

■ Rowan County will be added to the national Families for Kids program which focuses on assigning one social work team to families in trouble so they won't be shifted from one case worker to another. The program will get a child into a permanent, stable home within a year.

■ Improved social services procedures for receiving and screening reports of abuse and neglect, better supervisory review and back-up services.

■ CEO Jim Freeman's announcement that recruiting or training a child medical evaluator will be a priority for Rowan Regional Medical Center.

■ State changes in the way it reviews local handling of child fatalities.

"I was afraid we'd spin our wheels. ... But I feel good about what we're going to do. I'm thrilled that changes are taking place."

— Commissioner Dave Rowland

"It's tragic that something like this has brought us closer together," Sheriff Bob Martin said, but the deaths spotlighted the lack of communication between local agencies.

"Since this has occurred," he said, "we have had very productive meetings" with Rick Travis, director of the Rowan County Department of Social Services. Three detectives trained in child abuse and sexual assault are meeting with social workers. "And we're developing a close relationship that's going to work."

Last month, the sheriff's department got 10 calls from Social Services, he said. "Not all resulted in cases of abuse, but it's better to be called" than not.

"We've had some good meetings," he said. "We've criticized them, they've criticized us." They've called a spade a spade, "and now we're all willing and ready to work together."

That was the continuing refrain for three hours as groups invited by commissioners to be part of the task force and interested individuals talked about the tragic increase in violence and what agencies do — and don't do — to protect children.

They want to work together. They've got to work together. And it was apparent they've got plenty to do.

Debbie Hirst, a third grade teacher at Overton Elementary School, sounded one alarm.

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Abuse

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Speaking from the audience, she made it clear that the best policies on handling abuse adopted by the board of education and presented last night by Superintendent Joe McCann don't always filter down.

Though Travis said Social Services responds to every report of child abuse, Hirst said she has personally called DSS seven times and has never received a response, a document, a thank you, a verification.

Instead, she said, she has been treated with great disrespect. "I was hysterical, and they said they were overloaded."

She has never received a call telling her whether the case was being investigated. That complaint reflects others made consistently, though Travis said Social Services responds to every report of child abuse.

If so, Hirst said, they must go to administrators, "not to us. There is a breakdown, a big gap. Teachers are treated like second class citizens."

She asked if confidentiality laws require that return calls go to principals rather than teachers and that teachers not be told?

JoAnn Lamm answered that teachers should get responses and information is not kept from them. Lamm is with the Children's Service Section of the N.C. Department of Social Services. She opened the meeting with an overview of the size of the abuse problem in the nation and the state.

"I would certainly set a top priority to checking out a teacher's concern," county commissioner Dave Rowland said. Neighbors may be vengeful and spouses spiteful, he said, but teachers don't report abuse for those reasons.

Dr. Jack Kribs, chief of the emergency room at Rowan Regional, also spoke from the audience.

"I'd like to see feedback about children who were abused," he said, "so we could look back and see what we could have done."

Elizabeth Smith said she'd like to see greater use of public health nurses in the schools.

Dianne Scott, executive director of Rowan Helping Ministries, noted the absence of a representative of mental health, "and we need someone.

"We need to educate, educate, educate," she said, both the public and each other. "The more we educate each other and work together, the better off we'll be."

And generally, she said, a family's financial situation is the basis of the trouble. "They are families in distress. They don't know what to do next. We need to look at a lot of different angles to know how to help them."

When all the talk was over, a somber but hopeful group was unwilling to leave until a second meeting was scheduled. They want to begin developing specific procedures to deal with child abuse together.

"We need one protocol that applies to all of us," Freeman said, and Judge Anna Mills Wagoner suggested that the next meeting be one to develop procedures together so all services will know what they are.

"We may have some resources to assist you," said Kevin Alexander, head of the N.C. Division of Social Services in Raleigh. "We each need to know the other's business."

The state division wants to help in any way it can, he said, "because the work you can do here is critical for the rest of the state." Every other county is watching. "The reality is Rowan is no better and no worse" than any other county in North Carolina. But what's happening now can become a model for the state.

Alexander also said he believes last week's reply from the Rowan County Department of Social Services to the report of the second state review of the deaths needs to be more specific.

The next meeting was finally scheduled for June 2 at 7 p.m.

"We've just scratched the system tonight," said Commissioner Steve Blount, who was asked by Chairman Jim Neely to call the meeting. "We had problems with communications which we all suspected. ... And now commissioners are looking for advice, to see what we can do."

"There's nothing we're going to do to save every child," Rowland said, "but if everybody comes up with guidelines, if everybody knows the procedures, we're not going to have obvious things slip through the cracks."

After the meeting, he said he was pleased.

"I was afraid we'd spin our wheels. ... But I feel good about what we're going to do. I'm thrilled that changes are taking place."

Presentations about the services offered in Rowan County were made by Tom Brewer, social work program manager at Social Services, on behalf of Director Rick Travis; Wagoner, chief district court judge; Martin, Freeman and McCann, who was accompanied by Linda Freeze, Rowan-Salisbury Schools health director.

Also on the Task Force and participating were Salisbury Police Chief Jeff Jacobs, Scott, District Attorney Bill Kenerly, Sharon Owen, representing Health Director John Shaw, Elizabeth Cress Patton of the Family Crisis Council, attorney Janet McAuley-Blue, attorney Mary Beth Smith, and Elizabeth Smith, a registered nurse. Beth Dixon, attorney with the guardian ad litem program, also described her program.

Salisbury Post 5/14/97

CONFRONTING CHILD ABUSE

Rowan's new beginning

Where happy endings are impossible, you resolve to prevent tragedy from striking again. You look for new beginnings.

So the news coming out of the Rowan County Child Abuse Task Force's first meeting Tuesday night offers hope. Nothing can bring back 6-year-old Budde Clark or 19-month-old Christopher Jones, both killed by child abuse after suspicions of danger were reported. Nor 16-year-old Trola Miller, who eluded the protective system and was felled by a bullet. But state and local officials are taking concrete action and implementing programs to strengthen Rowan's approach to protecting children.

The most exciting news may have come from JoAnn Lamm, head of state child protective services, who announced that Rowan would be added to the Families for Kids program spurred by a Kellogg Foundation grant. Families for Kids takes a team approach to dealing with families in trouble so they get consistent care and attention.

The Sheriff's Office has begun working more closely with Social Services. Hospital CEO Jim Freeman could not be more adamant about his intention to establish clear lines of communication between Rowan Regional Medical Center and Social Services, and to get the county a child medical evaluator. Area agencies will work on a common protocol. No one wants to wait.

As for Social Services itself, the agency has outlined its response to a critical state review-team report. Details about how it intends to improve procedures for receiving and screening abuse reports are yet to come.

The biggest detail, though, rests in county commissioners' hands as they head into the budget season. They question Social Services' need for more money — an awesome case of denial, considering the way understaffing has blown up in their faces. Social Services clearly needs more staff and better technology, in addition to improved procedures. If commissioners fail to own up to that part of the problem, they will hamper this entire process. They will also have an uprising on their hands.

Elected officials want to squeeze money out of Social Services. Gov. Jim Hunt expects Work First savings to fund higher teacher pay — a very worthy cause. Unfortunately, putting more parents to work has not slowed the terrifying rise of child abuse and neglect.

But public awareness and alert agencies will. Through many voices and proposals, the task force delivered its message loud and clear: Rowan County does not accept child abuse. We will not look the other way. We will not let it fall through the cracks. Rowan is building a better child protective system, and we are building it together.

New steps, new hope for DSS

Editor: Between Jan. 31 and Feb. 4 of this year, three Rowan County children — Christopher Jones, Budde Clark and Trola Miller — died within five days of each other. The first two children perished due to child abuse, and the whereabouts of the third, who was part of the Department of Social Services' caseload, was under investigation. A state review team recently analyzed DSS operations and recommended improvements. The local department has responded by issuing a plan, reprinted here in full:

SALISBURY POST 5/18/97

Community/Inter-agency

1. Develop written protocols (procedures) with Rowan Regional Medical Center, Salisbury-Rowan Public Schools, Rowan County Sheriff's Department, Salisbury Police Department, and others re: initial reports of abuse/neglect, response times, sharing of accurate information, obtaining expert opinions, and the manner in which to address inter-agency concerns.
Who: Director, program manager, representatives from Rowan Regional Medical Center, Salisbury-Rowan Schools, law enforcement agencies.
When: May 1997 and ongoing.

2. Arrange training for community professionals (medical, law enforcement, others) in the identification and reporting of child abuse.
Who: DSS, AHEC, Rowan Regional Medical Center, law enforcement agencies.
When: Begin planning June 1997.

3. Increase public awareness of child abuse reporting law.
Who: DSS, Community Child Protection Team, Child Abuse Task Force, Salisbury Post.
When: Ongoing.

4. Contact local pediatricians and local mental health service providers to request assistance in procuring Child Medical Evaluation and Child Mental Health Evaluation Program services in Rowan County.
Who: Director, Community Child Protection Team, Child Abuse Task Force, N.C. Division of Social Services.
When: June 1997.

5. Assess need for child abuse/neglect prevention services in Rowan County and develop strategies for procuring services that are not available currently.
Who: Community Child Protection Team, Child Abuse Task Force, United Way Needs Assessment, Rowan Information & Referral.
When: Immediately and ongoing.

Staff training

1. Train DSS staff to fully understand authority to request information from agencies, and how to do so.
Who: Social work program manager, children's program Representative, CPS Unit supervisors, agency attorney.
When: June 1997 and ongoing.

2. Establish structured format for intake interviews. Expand CPS intake form to ensure all pertinent information is collected. Train all staff, and

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DSS

➤ From Page 1E

retrain on regular basis.
Who: Social work program manager, CPS investigations unit supervisor, children's program representative.
When: May 1997.

3. Staff need training on effective investigatory skills in order to make comprehensive assessments of: family functioning, safety issues, and risks to children. In-service training will be provided on a continuing basis. All new employees will attend state-required training for their particular service area.
Who: Social work program manager, CPS unit supervisors, children's program representative, N.C. Division of Social Services.
When: June 1997 and ongoing.

4. Staff will be trained in the availability of abuse/neglect prevention services so that families can be referred appropriately.
Who: Social work program manager, CPS unit supervisors.
When: July 1997 and ongoing.

5. Training on child development and appropriate discipline techniques will be provided to all child welfare staff.
Who: Social work program manager, children's services supervisors, Rowan County Health Department.
When: August 1997 and ongoing.

6. Staff will be trained on proper documentation and record-keeping. This will include standards for thoroughness and timeliness.
Who: Social work program manager, children's services supervisors, children's program representative.
When: June 1997.

7. Supervisors will ensure that employees with insufficient training and experience are given relatively fewer cases than more experienced staff and that they receive greater supervision until they are adequately trained.
Who: Social work program manager, children's services supervisors.
When: Ongoing.

8. Social work and office support staff will be asked to identify individual professional development needs, and participate in training as indicated.
Who: Children's services staff, supervisors, social work program manager, children's program representative.
When: Ongoing.

Organizational issues

1. Strengthen on-call, after-hours coverage by assigning a social worker responsibility for after-hours, on-call duty on a regular basis. Remaining social work staff will be scheduled for back-up relief on a rotating basis. Ensure that supervision is always accessible via cellular phone.
Who: Social work program manager, children's services supervisors.
When: June 1997 and ongoing.

2. Revise letters to reporters and families to state more clearly the case decisions and actions taken.
Who: Social work program manager, CPS investigations unit supervisor.
When: Already completed.

3. Supervisors will consult with staff, as needed during investigations, conduct individual conferences at least biweekly, participate in case staffings, review case documentation during staffings, and disposition records within three days for cases that are substantiated, and seven days for unsubstantiated cases.
Who: CPS unit supervisors, social work program manager.
When: Immediately and ongoing.

4. Provide cellular phones to CPS staff to ensure access to supervision and other assistance while on-call, after-hours. The on-call supervisor will have a cellular phone also. All supervisors will carry pagers during regular office hours.
Who: Director, social work program manager, children's services supervisors.

When: Immediately.

5. Assess current use of office support staff in Children's Services to determine if duties should be restructured, whether work methods are effective and efficient, and whether additional office support staff needed.
Who: Director, social work program manager, children's services supervisors, county human resources administrator.
When: June 1997.

6. Request additional hardware and software to provide all child welfare staff access to automated case management system, which provides assistance and case documentation and management oversight.
Who: Director, social services board, county manager, information services director, board of county commissioners.
When: April-June 1997.

7. Periodic, internal reviews of child welfare services, including record reviews of open cases, will be conducted. Additionally, the Division of Social Services will conduct formal biennial reviews of these services.
Who: Social work program manager, children's program representative, children's services supervisors, N.C. Division of Social Services.
When: Ongoing.

8. All documents and materials will be dated, or date stamped, upon receipt, prior to being placed in the case record.
Who: Office support staff, social work staff.
When: Immediately and ongoing.

9. Request three new CPS investigators, three new social work supervisor positions, one new foster care social worker, and one new adoptions social worker in order to meet state recommended staffing patterns.

Who: Director, board of social services, county manager, board of county commissioners.
When:April-June 1997.

10. The number of reports of child abuse and neglect will continue to be monitored monthly, and tracked over time, to determine if staffing is sufficient to meet state standards for caseloads.
Who: Director, social work program manager, children's services supervisors, children's program representative.
When: Ongoing.

Coordinating services key to child protection

Salisbury Post
5/16/97

BY TRACY PRESSON
SALISBURY POST

Fighting child abuse requires a three-pronged attack involving social services, law enforcement and the medical community, an investigator told participants Thursday at the Fourth Annual State of the Child Conference.

Calvin D. Jackson, a specialist in gathering crime evidence and board member of Safe-T-Child, described the approach as a "three-legged stool." The stool won't stand without all three legs, Jackson said.

"We have to work together," he said. "That's the only way to handlechild abuse cases. We have to pool our resources. Collectively, we solve the problem."

Jackson's advice hit home. Earlier this year, three children — ranging from 19 months to 16 years in age — died within a week. Two of the children suffered abuse and their care givers stand accused of murder. The third child was shot during a disturbance.

All three children had been subjects of Department of Social Services investigations before their deaths. In one case, Rowan Regional Medical Center had evidence of abuse that a social worker did not see.

"You need to make certain the health people are always included in this," Jackson said.

As a result of the deaths, local agencies have pledged to work more closely.

Jackson, who did not mention the Rowan cases, said the community often pays no attention when Social Services asks

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Services

➤ From Page 1A

for more staff — until a child dies. But it does no good to point fingers of blame when child abuse tragedies occur, he said.

"If we make a mistake, we should learn from it," he said. "You folks are going to get blamed. You do the best you can."

'Violence in Community'

This year's State of the Child Conference, held at Livingstone College, focused on "Violence in the Community." Rowan Partnership for Children and the Inter-Agency Task Force on At-Risk Juveniles sponsored the conference.

About 75 representatives from agencies that serve children attended the conference, which featured group sessions on child abuse, mentoring/parenting, substance abuse and resources for school personnel.

Many left before the wrap-up session so the remaining participants agreed with Social Services director Rick Travis' idea of mailing a ballot of goals to agency representatives. They will vote on three priorities for the coming year.

Dr. Shirley Ritchie, who chairs the Rowan Partnership for Children, said the group should follow Jackson's advice to improve services for children.

"I like the idea of a three-legged stool," Ritchie said. "We've got a real wobbly stool here. We need to fill in the places that are lacking."

Ritchie said the county faces a void in health care for children whose families are poor or served by Medicaid. Private health care providers aren't serving those children, and "the Health Department can't meet all these needs," she said.

State of the Child participants will consider these goals in setting priorities:

- More counseling and treatment for children and families in distress.
- More professional services for children, including medical and dental services.
- A coordinated effort to address substance abuse, often a major factor in child abuse cases.
- A continued attack on teen pregnancy.
- An effort to educate the public on opportunities to mentor children and adults.
- Establishing more mentoring programs.
- Networking between public and private service agencies.
- Increasing public awareness.

Those who attended the child abuse session called for more employees at the Department of Social Services and an automated system to keep track of calls and cases.

They also suggested a support group for child abusers and potential abusers and mentoring programs for parents. Participants said Social Services needs to network with schools and day-care centers.

Parents need help, too

Members of the group focusing on mentoring said the county has programs for youth, but parents also need assistance.

"Parents also need some guidance and support," said Clayton Jones of the Department of Social Services.

Someone working with a family in crisis over an extended period of time could help, Jones said. He said churches are an "untapped tremendous resource." Civic clubs could also participate, Jones said.

A group examining substance abuse also recommended working with children and families to prevent a crisis and break the cycle. A lot of tax dollars support substance abusers in jail, said Sharon Owen of the Rowan County Health Department.

Resources for school personnel

Another group looked at resources for school personnel in working with children. Cindy Stevenson of Family Crisis Service said many children who live at the homeless shelter and battered women's shelter attend Overton Elementary School. Those children need special programs, she said.

Someone suggested assigning a social worker to the school.

Dr. Marlene Anthony, executive director of the Rowan Partnership, said Gov. Jim Hunt has asked the legislature to add $1 million to $1.5 million in Smart Start funds to help pre-school children.

Rowan folks are currently working on a Smart Start plan.

Shirley Gray of the Department of Social Services suggested a Child Advocacy Council to coordinate efforts of different agencies.

Ritchie said the county needs that coordination, a computer system to tie agencies together and a publication to inform people who work with children.

Finding services

She said the Partnership for Children hopes to start a child care resource and referral service with Smart Start funds. That effort would help parents find services but could also help coordinate agencies, Ritchie said.

Last year, State of the Child Conference participants decided to focus on teen pregnancy prevention, mentoring programs and health concerns of young children.

The Adolescent Pregnancy Prevention Council added three classes for parents to teach them how to deal with their children concerning sexual issues. Teen pregnancy cases increased from 340 in 1994 to 359 in 1995, the most recent figures available.

The Salisbury YMCA started the Adopt a Youth mentoring program for children ages 6 to 15. The goal is to prevent at-risk children from getting into trouble, but the program needs volunteers.

The Partnership for Children plans to start a Parents as Teachers program to help new parents and a Community Voices program, which will identify leaders in all areas of the county to work with families.

Health services for children haven't improved, Owen reported. Smart Start funds may help recruit more health care providers to serve children, she said.

"We'd like to see more generalists and a pediatric dentist," Owen said. "It's our responsibility as a community to provide these services so we can have healthy children who grow up to be productive adults."

Salisbury Post 5/17/97.

DSS can't perform duties without enough staff

DSS employees made that point in a letter two years ago

BY PAUL C. LUCAS
SPECIAL TO THE POST

It has been several months since the day I read about the death of little Jordan Bradshaw (Budde Clark). Since that day, I have often thought about the happy and energetic child I met approximately two years ago in the performance of my duties as a Child Protective Services investigator for the Rowan County Department of Social Services.

Since Jordan's death, there have been countless articles written about this little boy and the events surrounding his death. These articles for the most part have centered on pointing fingers and blaming DSS for not protecting Jordan. I have read statements from county commissioners casting blame on DSS social workers for not doing an adequate job as well as the community blaming DSS for this child's death.

I have yet to hear anyone place the responsibility for Jordan's death where it belongs. That responsibility belongs with the murderer.

Could DSS or anyone have done anything to prevent Jordan's death? I don't know. What I do know is that a tragic event such as this was predicted in a letter written and signed by the very social workers (including myself) that the county commissioners and the public are now accusing of not doing an adequate job. This letter was written approximately two years ago, pleading for help and given to the director of DSS. A report from the state also finds that Rowan County Child Protective Services Unit is understaffed.

My question is, why is this being ignored by the county commissioners? Since the death of the three Rowan County children there has been no addition to the staff at DSS. In fact, we have lost two social workers, one of which had over 20 years of experience, and a supervisor has been demoted. Does this improve the services DSS is able to provide to the families they serve? Someone is missing the point of this lesson.

The individuals who work in Child Protective Services are the most dedicated people I have ever worked with. These men and women do a thankless job that is constantly scrutinized. They live in constant fear that an incident such as this is going to happen. These individuals do the best they can in horrible conditions with an unmanageable caseload. When they ask for help, they are denied, and when a horrible incident such as Jordan's death occurs, they are blamed.

Without additional staff in the Child Protective Services Unit, Rowan County will again read about the death of a child in the Salisbury Post due to child abuse. Let us hope that this prediction does not come true.

•

Paul C. Lucas lives in Salisbury.

Records bill: 'Now or never'

Bill to open reports of child deaths could be in trouble

BY ROSE POST
SALISBURY POST

The clock could be running out on the idea of opening records to the public in cases where a child dies of abuse or neglect.

Rep. Charlotte Gardner, R-Rowan, who proposed opening records after two Rowan children died from abuse earlier this year, is scrambling to find a compromise to save the bill she introduced in the House.

Gardner is motivated by the deaths of 6-year-old Budde Clark and 19-month-old Christopher Jones between Jan. 31 and Feb. 4. The Rowan County Department of Social Services had received reports of abuse about both children before they were killed, but the department would not discuss the cases until the Post quoted unidentified sources about the agency's involvement.

Gov. Jim Hunt has praised Gardner's bill and said he hopes it becomes the law of the state. But Gardner is once again concerned about delays.

"It's now or never," she told the Post after spending Monday trying to work out a plan to add the cost of a review team

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Records

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to the bill as it now stands.

"I'm expecting we'll be putting the budget together by next week," she said. "It will go before the whole appropriations committee."

And some form of the bill she introduced to the House must be in the appropriations bill, she said, "or there's no hope at all."

The bill, House Bill 949, has faced sudden death before when it bogged down in a House judiciary committee. On April 30, bills not involving appropriations had to have passed either the House or Senate to remain alive for the rest of the session — and even next year.

Life preserver

But as the deadline neared, Rep. Billy Creech, a co-chairman of the appropriations committee, threw a life preserver by adding a $100,000 appropriation and referring it to a subcommittee for study. The subcommittee was supposed to look at Gardner's open records bill and another proposed by the N.C. Child Fatality Task Force to allow agencies to share records for study.

But days became weeks, and no subcommittee was appointed to do the study.

Gardner asked Rep. Chuck Neely, R-Wake, chairman of the judiciary II committee, why.

He apologized — somehow, it had fallen through the cracks — and appointed a committee, including Rep. Joe Hackney, D-Orange and chairman; Gardner; Joni Bowie, R-Guilford; Joe Kiser, R-Lincoln; and Fern Shubert, R-Union.

But Gardner was disappointed at its size and make-up and feared the bill could fail.

Compromise

So Monday she investigated a compromise. She went to Kevin FitzGerald, director of the N.C. Division of Social Services, to get figures on the cost of an independent group — like the team that reviewed the Rowan County deaths — investigating every time a child dies from abuse or neglect.

"I'm going to put an appropriation in the budget that will cover the cost for a team like that to go in," she said, "and their information would be made public."

She expects to get the figures today along with a recommendation on who will be on the team.

In the meantime, she says, she hopes the subcommittee will meet and discuss her bill as it now stands — and that option.

She said FitzGerald will speak to the committee in favor of opening information.

"He feels other areas in the state can benefit," Gardner said. "With 40 or more children a year dying in North Carolina of abuse, there is a chance to make changes in the system that will make a difference in children's lives. That's what it's all about."

She says the work of a review team would not duplicate the work of the State Child Fatality Task Force. The Task Force must wait for state autopsies and its investigations are usually delayed a year or more after a death.

"I think the trail gets mighty cold when you wait that long," Gardner said. "The concern is not there as it was initially, and the ability to make a change is more difficult the more distance you put between the death and review by a team."

Related issues

Gardner believes the two concepts — a review team and the task force — are related and need to be discussed together.

"But I don't have the luxury to wait to see what's going to happen," she said. "Kevin FitzGerald is very anxious to see this happen. He became a believer when he saw what transpired in Rowan County."

The process, she said, needs change.

The special subcommittee is also supposed to study the N.C. Child Fatality Task Force bill — House Bill 151 — which authorizes the task force to review death or maltreatment of children and allows the chief district court judge to designate agencies that can share information.

Tom Bennett, executive director of the state task force, hasn't taken a firm position on Gardner's proposal to open records.

"The guiding star is the welfare of the child and the brothers and sisters still in the home," he says. "Whatever we need to do to protect those children is what we need to do. If that means full disclosure, fine. If that means a certain degree of confidentiality, that's also fine."

The problem before the subcommittee, he says, will be balancing privacy and public accountability.

"Both could potentially be important to the safety of the child," he said.

Ken Eudy, lobbyist for the N.C. Press Association, says Gardner's bill as it now stands would be a significant change from the way child protective records are now handled.

"And any time you have a significant change proposed, it's a real challenge," he says.

"The members of the subcommittee that I know are very concerned that in trying to make a process better that they have thought through all the consequences, including the unforeseen consequences. I think they're obliged to do that. They're an incremental body. They do not do wholesale, sweeping changes, so they're going to move slowly, deliberately."

He said his concern is that the committee will resurrect the task force bill which had died in committee, and that it will be the one that will go through. But he believes that the task force reports are limited and late.

Child abuse, he said, "needs serious sunshine, serious debate, and the way you accomplish that is to make them public records, so citizens can look at the circumstances" under which children die.

The subcommittee ought to take a look at what is appropriate, he said. How can a community like Rowan be assured that the Department of Social Services, the hospital, Emergency Medical Services did the right thing?

"Not so much to find fault," he said. "It's too late for that child, but to make sure the system is working to protect children in the future."

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Members of the subcommittee and their House telephone numbers are:

Chairman Joe Hackney, D-Orange, 733-5752; Joni Bowie, R-Guilford, 733-5853; Charlotte Gardner, R-Rowan, 715-3017; Joe Kiser, R-Lincoln, 733-5803; and Fern Shubert, R-Union, 733-5771.

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Gardner: a positive step

Work begins on opening child fatality records

BY ROSE POST
SALISBURY POST

Opponents of a bill to open records in fatal child abuse cases are worried about the "great frenzy out there," one lawmaker said Thursday.

Once records are opened, newspapers will splash them across the front pages, destroy reputations and accuse parents of heinous crimes, Rep. Joni Bowie, R-Guilford, told fellow members of a committee studying the bill proposed by Rowan Rep. Charlotte Gardner.

"It's over, folks. You can't go back," Bowie said.

But Hugh Stevens, general counsel with N.C. Press Association who also represents the Salisbury Post, said, "Our interest is concentrated on cases in which the systems fail a child," to find out where and how they failed.

"The problem is the confidentiality laws keep you from looking at what happened," said Stevens, whose wife is a child abuse expert with the Guardian Ad Litem pro-

➤ See **Gardner,** Page 4A

JAMES BARRINGER/SALISBURY POST

OPPONENTS: Representatives Joni Bowie and Charlotte Gardner discuss different views.

JAMES BARRINGER/SALISBURY POST

OPEN RECORDS: Attorney Hugh Stevens, flanked by Chuck Harris, left, and Tom Bennett, says records must be opened when systems fail children.

Gardner

➤ From Page 1A

gram. Secrecy can hide errors or prevent people who want to discuss what happened from doing so.

The hope is to loosen the law enough in specific cases, he said, to try to prevent that kind of case from happening again — and a number of states have already done so.

"We're trying to prevent confidentiality laws from preventing people from knowing what has happened," Stevens told the House appropriations subcommittee. Loosening the laws can produce a much better understanding of what happened through nobody's fault.

Change the system

Several members of the subcommittee said changes should be made in the child protection system.

"I believe we can work something out," said Ruth Easterling, D-Mecklenburg. "It's hopeful." Easterling had also introduced a bill enabling the N.C. Child Fatality Task Force to get access to confidential records. Until Thursday's meeting, Easterling's bill appeared technically dead because a subcommittee of Rep. Joe Hackney, D-Orange, and Bowie had not acted on it.

The new subcommittee — of Hackney, Gardner, Bowie, Joe Kiser, R-Lincoln, and Fern Shubert, R-Union — has been asked to see if the two bills can be rolled into one. Kiser and Shubert did not attend Thursday's meeting.

Kevin FitzGerald, director of the N.C. Division of Social Services, attended part of the meeting and said the comments "sounded like a pretty constructive discussion."

"It was pretty positive," Gardner said as the meeting ended. "I feel a real effort for consensus."

Added Stevens, the press association attorney: "It's sort of like cooking collards. It takes patience."

Subcommittee Chairman Hackney suggested that the group meet again next week and hurried off to another committee meeting. The rest stayed to talk about issues which had been raised and scheduled another meeting to continue their discussion next Wednesday. Gardner expects the subcommittee will probably meet again next Thursday.

"People need time to work on it," she said.

Review team funding

She needs time to put $160,000 into the House budget bill for a special review team for the state — like the special state-appointed team which reviewed the abuse deaths of two Rowan County children.

Budde Clark, 6, and Christopher Jones, 19 months, died on the same weekend in late January, and Clark's stepmother and Jones' baby sitter have been charged with murder. The Department of Social Services investigated child abuse complaints involving both children, and the special state review team determined that the system broke down in a number of ways.

What Rowan discovered, Gardner told the subcommittee, was that the Child Fatality Task Force cannot get immediate action that is "absolutely necessary" because it must wait for an autopsy. And autopsies can take up to a year to get.

If Rowan hadn't moved quickly — under pressure from the media and child advocates — what happened to the two children in Rowan would have been old news, she said. "The trail gets cold."

They got attention because people complained to Gov. Hunt, he asked for a report on what happened, a special team came to Rowan to find out and produced a 13-page report.

And that whole report was public, she said, not just a cover letter like an initial review of local actions routinely done by state officials. The first report found few problems and provided few details.

The second investigation was more thorough because the state put extra people on it, Gardner said. "They would like to do this" on all fatality cases. "And they're estimating 60 of them next year."

50 cases reviewed

Chuck Harris, who heads children's services for state Social Services, said the department reviewed 50 cases last year, expects 55 this year and, with the continuing growth of abuse deaths, anticipates 60 next year. And the state learned a lot from the review done in Rowan.

"It certainly worked for us," Gardner said. Rowan got the report quickly, the information is valid and it's working. Rowan is already using it, other counties are looking at it, commissioners are adding three child protection workers and local agencies are developing a written procedure for working closer together.

Hackney asked if the intent was to circumvent his subcommittee, making yesterday's meeting unnecessary.

No, Gardner said.

"The budget is being put together now," she said. "My interest was not in circumventing the committee but in getting the money in." And her interest is not in a witch hunt but in preventing children from dying.

Elizabeth Cook, Salisbury Post editor, said the way the stories unfolded pointed up the need to do something promptly — quicker than the Child Fatality Task Force now moves. The investigation also showed the need for more social workers and for the public to see how Social Services did its job.

Many questions were raised and some solutions suggested during and after Thursday's meeting, including: Should the bill deal with public or private agencies or both? How much of the information will be made public? When? Who can ask for information? And when?

And when the meeting ended, Ken Eudy, lobbyist for the N.C. Press Association, must have been thinking about Budde Clark and Christopher Jones.

"You can't talk about this in theory," he said. "You have to talk about it in practical, real life experience."

Others taking part were Tom Bennett, executive director of the N.C. Child Fatality Prevention Task; Verla Insko, D-Orange, for the Task Force; Susan Hayes, attorney in the research division of the legislative legal staff; Dave Gordon, assistant attorney general with the human resources regional office for child welfare service in Greenville; Deborah Ross, attorney with the American Civil Liberties Union; Jane Gray, deputy attorney general for policy and planning who represented the State Bureau of Investigation in the Task Force discussions before the meeting.

WAYNE HINSHAW/SALISBURY POST

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Eliza Moss, when he was still a child influenced him for all the years.

"My mother died when I was 11, and my daddy when I was 12," he says, "and white folks and black folks both raised me." During the school year, he lived with an older brother and felt like one of his children, and during the summers he moved over to live with Miz Roxie Kluttz and her husband, Mose.

➤ See Moss, Page 3B

Officials react to budget

BY WESLEY YOUNG
SALISBURY POST

John Shaw can't complain.

As director of Rowan County's Health Department, Shaw is looking forward to moving health services into the former Brendle's building the county bought last week.

But as other officials look over the county budget, some wonder how they can persuade the county to slip some extra money their way.

"We appreciate the support they have given us and we hope it will continue," Schools Superintendent Dr. Joe McCann said, trying to put the best face on a budget that may force him to make cutbacks — even cut jobs — if it's adopted.

The school system wanted an extra $1.4 million to keep existing programs in place, plus another $1.7 million to make the system better. But County Manager Tim Russell's budget calls for spending an extra $817,000 for programs at Rowan-Salisbury Schools.

The Board of Commissioners has yet to approve the budget. Commissioners discuss spending on Wednesday and Thursday, then hold a public hearing June 2.

McCann expects he'll be talking to county commissioners before the final decision.

"We want them to be aware of the distinct possibility that we will reduce services in some areas," McCann said. "If this is the funding level, that is a distinct possibility."

Rick Travis, director of Social Services, hopes to make another pitch for positions the county manager is not recommending after a year in which two children died of abuse and statewide attention focused on his department.

Russell says Travis should get three new child abuse investigators and one new supervisor in the child abuse section. Russell got requests for 21 new positions across county government but turned most down.

Travis wants another four positions: a foster care worker, an adoption worker and two more supervisors.

"The eight positions we asked for are the number required for the agency to meet state-recommended workload standards," Travis said. "The county manager has a responsibility to take all the needs of the county into account when putting the budget together, so he is trying to balance competing needs and interests."

Travis said he hopes to show county leaders extra revenue from the state that would allow him to add new positions without the county footing all of the bill.

Travis said he wants to work extra hard to find money for the adoption worker not in the county manager's budget.

"We have a number of children in foster care, and a significant percentage are eligible for adoption," Travis said. "We have only one social worker doing adoption — not only trying to find homes for

Budget

➤ From Page 1B

children but also having to do the home studies on families wanting to adopt.

"Because of the increase in the number of child abuse reports, we have removed more children from their homes in the last three months, so that the foster care caseload has increased about 10 percent," Travis said.

Meanwhile, the Economic Development Commission is looking at a big cut in their appropriation: from nearly $200,000 to about $55,000.

It's not that the county doesn't want the agency to do its job. Russell says in his budget statement that the agency should use up most of the cash reserves it has put aside — nearly an entire year's budget.

"You are not hearing me quarrel about it," said Rufus Honeycutt, chairman of the EDC board. "We want to do what we can because we have the interest of the county at heart."

Honeycutt said the money was put aside with the idea the agency might invest in a building to attract industryt.

Now that the county has an industrial park with a speculative building going up, "if we can reduce and help that much, we are not going to quarrel," Honeycutt said.

Shaw said the county's purchase of the Brendle's building shows the board is committed to "address needs that have been outstanding for a number of years."

"We have purchased an outstanding parcel of land and a shell of a building," Shaw said. "What will go in that shell will have to be completely designed. We have to take a fresh look at what our needs are."

And since the building is so large — more than three times the size of the existing Health Department building — Shaw said the county will be able to place other human services offices in the building.

If schools have to cut the budget, McCann said, programs like remediation and enrichment may have to bear the brunt of the blow.

The fate of such programs "will be part of the question that the board will attempt to answer" if the county doesn't give more to the schools, McCann said.

Utility increases alone may add $355,000 to costs, McCann said, because this will be the first year in which all schools are air-conditioned. Plus, the school system must match expected state teacher salary increases.

When they talked about money for schools, commissioners complained that schools aren't doing enough about discipline. Commissioners wondered whether the money is well-spent on programs that help a relatively small number of troubled students.

McCann said the alternative school may have small numbers, but it "affects the learning environment for a significant number of our students."

"We are trying to make a better learning environment for all our students by having those options available," McCann said.

■ 1st Methodist yard wins China Grove honors

CHINA GROVE — The town's Beautification Committee picked the grounds of First United Methodist Church at 110 W. Church St. as the Yard of the Month for May.

The church has done extensive landscaping around its three-building complex, planting more than 150 trees, shrubs and flowers.

Lloyd Drye designed the landscape and led the planting. Lee Weathers and Andrew Deal prepared the soil for grass. Kenneth Deal did the tractor work. More than 15 other church members helped with the landscaping project.

The China Grove Beautification Committee recently planted a bed of flowers at the church and dedicated it in memory of John DeMarcus and in honor of Jamima DeMarcus. First Methodist members, both were charter members of the Beautification Committee and active in its projects for the past 24 years.

The Rev. Sally Langford dedicated the flower bed.

Boy Scout Troop 375 recently picked up litter along two miles of U.S. 29-A, which the Beautification Committee adopted. Twenty-three Scouts participated in picking up 18 large bags of trash.

Shirley Morton is president of the Beautification Committee. Martha Rudisill is treasurer.

building falls on car

HIGH POINT (AP) — A man escaped injury when a two-story brick building collapsed on top of his car after the car spun around and hit the building.

Paul Brayton, 55, of Lexington, slammed into the front of the RJ Socks outlet store after he was spun around in a minor accident in front of the building.

Brayton managed to open the passenger's side door of his 1994 Bentley and escape.

Both the car's air bags deployed, but the car's frame didn't cave in under the weight of the structure's bricks.

"It's a good strong car," he said.

Six people inside the outlet store also escaped injury — they happened to be in the back of the two-story storefront.

■ Man shot and killed after minor car accident

CHARLOTTE (AP) — A man died on Saturday after he was shot in the head Friday night trying to flee the scene of a minor car accident.

Jaime Tirso, 24, apparently backed his pick-up into the car of Wendell Lloyd, 19, about 11 p.m. Friday night at an east Charlotte townhouse complex.

As Tirso tried to drive off, Lloyd pulled out a gun and fired several shots at Tirso's truck, said Charlotte-Mecklenburg police duty captain Randy Johnson. Tirso was hit once in the back of the head, he said.

After being shot, Tirso ran his truck through the wall of a townhouse in the complex. Six people were inside but none of them were hurt, Johnson said.

Tirso was taken to Carolinas Medical Center where he died on Saturday.

Lloyd was arrested at the scene and charged with assault. After Tirso died, Johnson said the charge would be changed to murder.

■ House, acre of land burn in brush fire

A wooden house was destroyed by fire and about one acre of land was burned near the 6200 block of South Main Street on Saturday afternoon.

About 2 p.m., firefighters received a call about the fire across the street from Fender Benders. Bostian Heights Fire Chief Larry Weaver said a vacant house was destroyed and about three-fourths of an acre singed. Fire officials had the fire under control in about one hour.

Services: Graveside, 2 p.m., Monday, Thyatira Presbyterian Cemetery, conducted by Rev. James Foil.

Visitation: After the service in the church fellowship hall.

Linn-Honeycutt Funeral Home, China Grove, is in charge.

Sue Harrison Hartsell

ALBEMARLE — Beatrice "Sue" Thompson Harrison Hartsell, 76, 415 Graham St., died Saturday (May 24, 1997) at her residence.

Born Sept. 21, 1920, in Stanly County, she was the daughter of the late Lee P. and Annie Mills Thompson. She retired from American & Efird Mill Co. and was a member of Laural Street Baptist Church.

Her first husband, James W. Harrison, died in 1966; her second husband, Charles T. Hartsell, died in 1991.

Survivors include sons James A. Harrison, Granite Quarry, Robert L. Harrison, Albemarle, Kenneth B. Harrison, New London, Jeffery L. and William H. Harrison, both of Albemarle; daughters Vickie H. Shank, Richfield, Ellen H. Hatley, Norwood, Diane H. Chance, New London; brother Lee P. Thompson, China Grove; 22 grandchildren; and 15 great-grandchildren.

Services: 3 p.m., Monday, Stanly Funeral Home Memorial Chapel, conducted by the Rev. Charles Bowers and the Rev. Jessie Dennis. Burial, Fairview Memorial Park.

Visitation: 7-9 tonight at the funeral home.

Memorial: Hospice of Stanly County, 960 N. First, St., Albemarle, N.C. 28001.

Reporting deaths

The Post gets obituary information from funeral homes. Funeral homes should fax information to 639-0003 or call Debbie Miller at 633-8950 for more information.

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DSS board confident of director

BY WESLEY YOUNG
SALISBURY POST

After four months of controversy, Social Services board members say they still have great confidence in the job performance of Director Rick Travis.

Tuesday, the Social Services board agreed that a positive job evaluation of Travis done in December is just as valid today, after months of public scrutiny over how his department handled the investigation of two child fatalities.

"After all we've been through, this is still how we feel," board member Dianne Scott said during the meeting. "This is still a current review."

County administration had asked the Social Services board for a review of Travis' job performance, in preparation for merit pay increases to be granted when the new budget goes into effect July 1.

Instead of working up a new job review, Social Services board members decided the

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DSS

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favorable report they made in December — before the controversy erupted — would do just fine.

"I think he deserves a medal," board member Lee Piper said after the meeting, when asked how the controversy affected her opinion of Travis' job performance. She noted that Travis was "attacked personally" but always responded by keeping "the level of discussion at a practical, pragmatic level."

During the months following the deaths of Budde Lee Clark, 6, and 19-month-old Christopher Lee Jones, Social Services has faced not one but two state investigations of how the department performed its job. Along the way, County Commissioner Dave Rowland charged Travis with failing to properly review how his department had handled the child abuse investigations.

The second state review said Social Services missed critical information showing the two children were at further risk of abuse. The state also issued a list of recommendations for improvements, which Travis is beginning to carry out.

"It is good to have the confidence of the board, having gone through such a difficult period," Travis told the Post after Tuesday's meeting. "It is natural to have self-doubts. I appreciate the vote of confidence."

Travis said that if anything, his board members were in a better position during the months of controversy than before, to see how he handled his department.

Board member Jeanne Misenheimer said Travis has done an excellent job leading the department. Although Travis' earlier job review was favorable, she said that in light of the subsequent controversy, "I would multiply that ten times."

Misenheimer said Travis kept the board well informed about what was going on and that he tried to cooperate with everyone as his department came under close watch.

For the earlier review, Social Services board members talked to people in the department and in other parts of the state who were familiar with Travis' work, Piper and Misenheimer said.

"We couldn't find anybody that would say anything bad about him at all," Piper said, adding that Travis is "respected statewide" and that the staff feel their director's support.

Piper called Travis "a fantastic leader, working continually to improve everything."

County OKs abuse investigators, cuts parent training

BY WESLEY YOUNG
SALISBURY POST

Beefed-up child protection was *in*, but a training program for parents was *out* as county commissioners talked about helping children during Wednesday's budget session.

No decisions were final, but commissioners tentatively approved three new child-abuse investigators for the Department of Social Services, along with an extra supervisor for the troubled agency's child-protection section.

Later, commissioners eliminated from the budget altogether a donation to the Rowan Partnership for Children, a nonprofit agency which operates the Partners in Learning Center at Catawba College.

The agency wanted $75,000 to start a parent training program. Advocates argued the new program would help prevent future child abuse.

Social Services Director Rick Travis faced close grilling from commissioners trying to improve services without raising taxes. In the end, Travis appeared to get new positions but not as many as he originally requested, including a second supervisory position.

Travis repeatedly insisted the county cannot simply move employees around within the department — at no cost — and come up with a needed adoptions worker — one the county doesn't plan to pay for but which board members believe the county needs.

Travis's chief critic on the board, Commissioner Dave Rowland, didn't believe such a job swap was impossible.

"I am not going to vote for (new social services positions) unless you can come up with at least one person to do adoptions," Rowland said.

Commissioner Newton Cohen didn't believe it, either.

"I want you to set priorities," Cohen told Travis. "You can't tell me adoption is number 141 (in priority) and that you have 140 (employees) there."

After a lot of discussion, commissioners instructed Travis to try to find the extra position within existing staff. Later, Travis told the Post he doesn't know how he'll do that.

The problem arises from the complex funding methods used in social services, Travis indicated to commissioners. Different programs rely on different combinations of federal and local money.

Travis figured that the county *could* add a position with existing money, but at great cost: for instance, eliminating *three* child-support enforcement workers could allow the hiring of *one* extra abuse investigator, *if* the county also chipped in $24,000.

Even with three new investigators and a new supervisor, Travis told the board he won't be meeting the 5-to-1 ratio of workers to supervisors the state recommends. Board Chairman Jim Neely and Cohen suggested the state ratios were unrealistic for Rowan and that experienced workers shouldn't need such close supervision.

But two child fatalities this winter — both attributed to alleged child abuse — make Travis want close supervision of his workers.

"I want to know if there is a breakdown," Travis said. "I want to know if there is a

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County

➤ From Page 1C

worker getting behind. To me, it is sort of insurance. As manager, I want assurance that the quality is good."

What Neely wanted was assurance from Travis that the county would be able to keep any more children from dying. But Travis said he could never give that kind of guarantee, "just like Sheriff (Bob) Martin can't tell you there won't be any more bank robberies or homicides."

Although Travis said he could shift workers from child abuse treatment to investigation, "if all we do is say that a child has been abused, and don't do anything about it, what good is that?"

Rowland told commissioners he is committed to improving child protection but wants Travis to make changes.

"I just want to see some cooperation from Rick," Rowland said.

That prompted a challenge from Commissioner Steve Blount, a defender of Travis.

"If Rick comes back and says that he can't find (an extra job)," Blount asked Rowland, "do you assume that he is being uncooperative or that he can't find it?"

Blount complained that commissioners were willing to accept the state's conclusion faulting the county for not doing more, but unwilling to carry out the report's call for more staff and supervision to carry out the job.

Blount returned to the fray when commissioners discussed a request from the Partnership for Children for a "Parents as Teachers" program giving advice to new mothers on child-rearing. The Partnership received $50,000 in county money last year and wanted $75,000 in the coming year. The county manager recommended $50,000 for the agency.

Blount called the program preventive, but Cohen blasted the request and suggested cutting the money altogether.

"This is a classic example of someone who, once they get their hand in the coffer, wants to keep it there," Cohen said.

Rowland endorsed a complete cut as well, saying the money saved could pay for an adoptions worker if needed.

Blount called Rowland and Cohen "two scrooges" — he said it with a smile — and gave up his push for the money.

In addition to trying to find an adoptions worker slot within existing staff, commissioners want Travis to check out the possibility of farming out adoption services privately.

Salisbury Post 5/29/97

SALISBURY POST 5/31/97

Prevention program could nip child abuse early

Backers still trying to sell Parents as Teachers program

BY TRACY PRESSON
SALISBURY POST

Rowan Partnership for Children officials don't plan to lobby county commissioners to reconsider $75,000 for parent training. But they say that money could help prevent child abuse and neglect.

County Manager Tim Russell recommended $50,000 for the Parents as Teachers program, which would send trained mentors to help parents of preschoolers.

But county commissioners cut the program from the budget after objections from Newton Cohen and Dave Rowland.

A $75,000 allocation to the partnership would have met the 5 percent matching funds the county may need for an estimated $1.5 million in state money for Smart Start, a program to make sure children start school healthy and ready to learn.

Gov. Jim Hunt will be in Salisbury for a town meeting Monday afternoon to discuss early childhood education with 75 selected business, community and government leaders as well as parents and child care providers.

Jim Neely, chairman of the county commissioners, received an invitation to the meeting at the Partners in Learning Center at Catawba College.

Dr. Shirley Ritchie, chairperson of the local Partnership for Children, said commissioners turned down a program that has received good results in other places.

The Rowan-Salisbury Schools previously offered Parents as Teachers on a limited basis, but had to cut the program because of a lack of funds.

The program starts with trained mentors contacting new parents in the hospital after a child's birth and later visiting their homes to provide training and resources for raising healthy children.

"We're naturally disappointed because we chose a program we felt had the best chance to deal with some of the problems that exist before child abuse comes to forefront," Ritchie said.

Two Rowan County children died earlier this year as a result of child abuse. County commissioners have approved four more employees in child protection for the Department of Social Services.

Ritchie said the Parents as Teachers program could save the county money in the future on personnel to fight child abuse.

"We see that this opportunity to prevent what happens to children if parents don't take their responsibility and understand child rearing was lost in their denial," Ritchie said. "It's going to become more and

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Prevention

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more necessary to fund the investigators and police officers who deal with it on the other end. We see this as absolutely necessary if we're ever going to make any real inroads to the problem."

Ritchie thinks the county could use some of its fund balance for the $75,000.

"If the county has funds they have stashed away for a rainy day, we feel the rainy day has arrived," she said. "And we are in crisis in this county. We've spent several years studying the needs. We think this program would use the funds in a good way."

Child abuse tragedies have happened because the county hasn't funded similar programs, Ritchie said.

"There's a lack of understanding of child development and families are under a lot of stress," she said. "This program provides mentors to work with families to give them instruction on parenting and help them manage stress."

The N.C. General Assembly hasn't decided on expansion of Smart Start, which currently provides 43 counties with services to improve the lives of preschool children. Rowan County received $100,000 in planning money this fiscal year and could get $1.5 million for programs in 1997-98.

Dr. Marlene Anthony, executive director of the Partnership for Children, submitted Rowan's Smart Start proposal to the state on Friday.

The local partnership will have to come up with 5 percent in matching funds — privately if county commissioners don't change their mind about the $75,000 allocation.

"We thought it would be fitting for the county to support us to that degree since we're going to be accessing state funds," Ritchie said. "By trying to hold the status quo, we are putting ourselves behind."

Salisbury Post 5/30/97

IMPROVING CHILDREN'S LIVES

Action and prevention

You might have been laughed out of the room a year ago if you'd suggested that Rowan County commissioners would stand on the verge of adding three child protection investigators and a supervisor to the Social Services payroll today. County departments seldom get that many new positions in one fell swoop.

But Rowan County seldom gets hit by the kind of tragedy that it knew this past winter. Within five days, three children who had come to the attention of Social Services died, two from abuse. The public quickly concluded what an outside review team eventually documented: Social Services suffered from understaffing, a need for revised procedures and a host of other problems.

In that light, the four positions in the proposed county budget prove to be essential — really, a minimal response, considering the department's request for a total of seven new people. The state has strongly recommended that Rowan add more supervisors, but commissioners are resisting. Rowan desperately needs a stronger system for detecting and treating child abuse. Commissioners appear committed to building it — but only to a point.

Those needs stated, here's a bid to take the concern over children's welfare another step further. Instead of just focusing on treating the results of abuse and neglect, the county also should invest in prevention.

That's where the Rowan Partnership for Children comes in. The nonprofit organization requested $75,000 from the county to operate Parents as Teachers, a program that sends educators into the home after a baby is born to serve as mentors and models to the parents.

County Manager Tim Russell recommended $50,000 for the program in his no-tax-increase budget, but commissioners axed it, apparently inspired by these words of wisdom from Newton Cohen: "This is a classic example of someone who, once they get their hands in the coffer, wants to keep it there." Dave Rowland threw in an "amen" of sorts.

That kind of thinking has prevented Rowan County from coming up with a full-scale assault on the problems of child abuse and neglect. As the budget stands now, it gives Social Services a half-solution in child protection and slams the door in the face of a nonprofit agency that's trying to help children. Is that really what the majority of commissioners want for Rowan County? Is it the way Rowan citizens want to treat the problems of abuse and neglect?

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Autopsy backs up abuse reports in child's death

Medical examiner's work shows Budde Clark suffered continuing abuse

BY ROSE POST
SALISBURY POST

Four months after Budde Lee Clark died of severe blows to his head and his lifeless body was put in a bathtub to make it look as though he had drowned, an autopsy verifies that the 6-year-old had been brutally beaten for a long time.

The first paragraph of the 12-page report of the autopsy performed by the state medical examiner in Chapel Hill lists more than 27 new — and old — bruises and abrasions on his face and scalp alone. So many more cover the rest of his body that it is impossible to get an accurate total of the number of injuries he suffered — or when.

Citing blunt force injuries to the head as the cause of his death on Jan. 31, the first page of the autopsy just released summarizes those injuries as:

- Multiple contusions and abrasions of his face and scalp;
- Moderate brain swelling;
- Acute brain hemorrhage;
- Bruising of the brain;
- And necrosis, or death, of an area of the brain stem.

In addition, the autopsy showed:

- Multiple contusions and abrasions of his chest and arms and legs;
- Healing fractures of his sixth and seventh ribs;
- Wasting of the muscles in his extremities;
- Thymic involution, which means that the thymus gland in his chest had shrunk, which is an indication of stress in a child;
- Rectal prolapse, which means his rectum was protruding from his body;
- And acute and chronic bronchitis.

The major thrust of the autopsy, said Dr. John Butts, the state's chief medical examiner, is that Budde Clark was "covered up with scrapes and bruises, and, as in any case where a child is regarded to be battered, a variety of various injuries, scrapes, tears, cuts, bruises and internal injuries that can't be explained by an accident."

Generally, he said, in cases such as this, the injuries are not only of different ages but are more numerous "than you can account for by a kid running into something or falling down, so you have to have multiple incidents to explain."

The most significant injuries in terms of causing Budde Lee Clark's death, he said, "are the blows to his head, indicating he was hit with something or ran into something, and the bleeding over the brain — that's the most significant."

Butts went through the autopsy, performed by Dr. Karen Chancellor, who was out of the country when it was released, during a telephone interview with the Post, commenting as he turned pages.

"There are an awful lot of injuries here," he said. "Mul-

➤ See Autopsy, Page 6A

QUOTE OF THE WEEK

Lee Piper, a member of the board of directors for the Rowan County Department of Social Services, praised Rick Travis, the DSS director, for his handling of the agency as it has coped with the controversy following three child deaths this year. Her comment: *"I think he deserves a medal."*

Autopsy

➤ From Page 1A

tiple injuries above and beyond anything you might expect a child to encounter in his normal play activity."

As children and as parents, he said, everyone sees children "run into things, have things fall on them, occasionally catapult off a bicycle, but generally we survive childhood injuries with minor scars. When you see a whole host of injuries, simply beyond what can be explained by any other trauma — certainly the examination shows the child died of trauma, and he would certainly fit our definition of a battered child. The evidence of episodes of injuries over a period of time fit what we call battering."

Budde Lee Clark died five days before 19-month-old Christopher Jones also died of child abuse. The autopsy for the toddler has not yet been completed.

But their deaths led to charges of murder against Budde Clark's stepmother, Robin Gosnell, and Christopher Jones' baby sitter, Jeremy Butcher.

And public outrage prompted Gov. Jim Hunt and his top Human Services administrators to look at what happened here. As a result of the findings of the review team that came to Rowan, changes are now being made in social services procedures here and on the state level. And the General Assembly is now considering legislation to open records in cases of fatal child abuse.

Rick Travis, director of the Rowan County Department of Social Services, who has refused to speak directly with the reporter assigned to the story since the review team's report, was asked by fax if he had any comment on the autopsy, how many times and when complaints were made relating to Budde Lee Clark after he was put into the custody of Lee and Robin Gosnell and how many times and when social workers visited him during that period.

Travis responded by fax that "the only 'complaint' received originated 6/25/96. The last visit occurred in November, 1996 — prior to 12/5/96 closure of the case by DSS." That was less than two months before Budde Lee Clark's death. He did not say how many times social workers saw the child before the case was closed.

Neither Budde Lee Clark's father, Lee Gosnell, who has moved from Cleveland to Salisbury, nor his mother, Pam Bradshaw, could be reached for comment.

But his grandparents, who have talked openly about the difficulty they had seeing him while he was alive and concerns about a nose injury in which the septum was removed one nostril, were not surprised that the autopsy verifies long-time abuse.

"Finally," said his paternal grandmother, Louise Manning, "I know that everything I have been thinking, believing in my heart is true. I couldn't prove it, but it's proven now. We thought it but the truth has come out."

Her thoughts immediately turned to her own inability to intervene — and her anger erupted.

"There was nothing I could do," she said. "I was forbidden" to go on the property of the Cleveland home to see her grandson by his stepmother, Robin Gosnell. "All I can say is I hope God punishes her. God's going to punish her — if she did it."

The child's maternal grandmother, Jane Bradshaw, said nothing in the autopsy can surprise her. "Nothing can be any worse than what I've heard. I don't think it can be any worse than I think it is."

Her husband, Jimmy Bradshaw, said he knew his grandson was being abused for a long time.

"I'm assuming probably well over a year," he said, "and if I was a betting man, I would say it's been going on since they had that child."

His daughter, Pam Bradshaw, lost custody of her son, then known as Jordan Bradshaw, in March, 1995, to his father, Lee Gosnell. Gosnell sought custody after the Rowan Department of Social Services stepped up its push to get "deadbeat dads" to pay back child support. Before that, he had almost nothing to do with the child, according to the child's mother and grandparents.

After the custody hearing, the child lived with the Gosnells, who changed their own names to Clark and his to Budde Lee Clark.

At the time of his death, the autopsy report said he was 40 inches long and weighed 35 pounds, and the doctor's summary and interpretation of the findings noted that he was small for his age.

In addition to body diagrams, the autopsy included written descriptions and results of external, internal and microscopic examinations as well as X-rays that revealed the rib fractures; blood tests that revealed no alcohol, cocaine or morphine; and a statement of the collection of evidence required by a sexual assault test. It was turned over to the Cleveland Police Department on Feb. 1, and the state lab did not do a rape analysis.

Authorities do that kind of analysis, Butts said, but added that "certainly an injury to the rectum or penis of boy or the vagina of a girl has to be considered as possible sexual abuse. We haven't stated there was sexual abuse. All we stated was there was an injury or abnormality regarding the rectum. You can get a prolapse for other reasons but it certainly was unusual."

Butts also commented on possible cigarette burns, which sources had said were evident on the child's body before the autopsy was released.

Butts said any abrasion or scrap of the right size could have been the blistering of a cigarette. "And there were other things and marks on the body that might have been burns."

"The measurements of many of the abrasions listed in the autopsy are an exact fit for a burning cigarette," said an emergency medical technician, who reviewed the autopsy but asked that her name not be used.

The autopsy also includes numerous indications that the abuse took place over a long period of time.

Butts pointed to the two rib fractures that were healing and the wasting of the child's muscles.

"That obviously predates the fresh injuries he had," the doctor said.

The examination also noted fresh and old bleeding over the surface of the brain inside the head, he said. That probably related to an old head injury.

The same can be said about the use of the word "chronic" and the word "resolving," in relation to the necrosis of the brain since resolving means the brain is trying to heal itself.

That's a repeated finding in the summary.

"Internal examination reveals further evidence of remote and recent head injury," Chancellor wrote, concluding that "numerous injuries to the body are present and are in various stages of healing, some being recent while others are chronic injuries."

The cause of the microscopic findings of dead tissue in the brainstem is unclear, she says. However, their nature is ischemic, which means a failure of the blood supply, Butts said, and most likely the result of some previous episode.

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CASE CLOSED TOO EARLY

Battering unnoticed?

SALISBURY POST 6/2/97

Someone who suspected Budde Lee Clark was being abused tipped off the Rowan County Department of Social Services last June. An investigation ensued, and a social worker paid a final visit to the home in November. On Dec. 5, the department officially closed his case.

Budde Clark

Two months later, 6-year-old Budde Lee Clark was dead.

The facts that the Rowan DSS slowly shares with the public about this death are as damning as the autopsy report from the N.C. Medical Examiner's Office. Budde died from blows to the head around Jan. 31, but the autopsy proves he had long been a victim of battering and abuse that his immediate family somehow shielded from others' eyes.

Even the Department of Social Services'.

Old head injuries. Dead tissue in his brain stem. Broken ribs that were healing. Bruises and scrapes all over his body. Signs of possible sexual abuse or other odd injuries.

And, in a boy who was rambunctious and sturdy when his father won custody away from his mother, wasting of muscle in his arms and legs.

You might feel better not knowing the sad details of Budde Lee Clark's torturous life and death. But no person of conscience could gloss over his demise without calling for justice — stepmother Robin Gosnell will be tried in 1998 for murder — and for serious corrections to the child protection system in Rowan County.

Reform is on the way. A thorough state review has highlighted weaknesses in the Rowan system that could bring improvements statewide. County commissioners have appointed a task force to unite all the forces that can detect and treat child abuse. (The task force holds its second meeting tonight.) Commissioners may allocate DSS four new employees and $100,000 for new technology — not as much as the department wanted, but a giant leap ahead of what it has had.

And the public has been reminded that the responsibility for reporting child abuse rests with *everyone*, not just relatives.

Unfinished business remains — and much of it must transpire out of the public's view. DSS Director Rick Travis says no one has been fired or demoted for the handling of this case or the Christopher Jones case. The signs that seem so clear in hindsight were not evident at the time, he has said.

That personnel issue rests solely with Travis and his loyal board of directors. But as commissioners put the finishing touches on the county budget, one fact rings out: Having the right employees is just as important as having enough employees. A hundred new workers would fall short if even one or two lack adequate training, exercise poor judgment or care little about children like the late Budde Lee Clark.

Reporting abuse gets teacher in trouble

BY ROSE POST
SALISBURY POST

Overton Elementary teacher Debbie Hirst told the Rowan County Child Abuse Task Force Monday night that her job was threatened after she spoke out a month ago about the problems she had reporting abuse.

"I caught tremendous flak," she said. "I came tonight to say I'm not at liberty to say any more. I don't want to lose my job."

Last month she told the Task Force that she had called the Rowan County Department of Social Services seven times to report abuse and never got a response.

But she got an immediate response the following day from her administrator, who told her she had to go through a supervisor who would decide if a suspicion of abuse was "worthy" of a report.

Superintendent Joe McCann, sitting in front of Hirst in the County Administrative Offices, listened and told the group school policies are a matter of record.

Overton Principal Mary Frances Edens could not be reached for comment this morning.

The school policy says: "All employees have a legal responsibility and all school employees have a moral responsibility to report all instances of suspected child abuse or neglect to the appropriate school authorities.

"All reports of suspected child abuse or neglect shall be forwarded to a designated governmental agency for investigation and action as may be appropriate."

But Hirst, a tenured teacher, said that's the biggest problem. "That's the bomb that's ticking," she said. "I should have the right to call whoever I want to call. That's the law, but that's not the reality."

"What she's saying is very true," agreed Arnold Chamberlain, a local businessman who identified himself as a volunteer guardian ad litem. "That's reality."

Attorney Mary Beth Smith and Rowan Helping Ministries Director Dianne Scott agreed that teachers must be allowed to make reports.

The teacher, Smith said, is the one who sees the imprint of a belt buckle on a child's head. Social workers need to talk to that teacher when investigating reports.

"She's the only one who's going to see that child day after day," Scott agreed. She wants managers at Rowan Helping Ministries to tell her they're making a report but to call themselves.

McCann said he sees no reason to keep Social Services from talking to teachers.

The policies, he said, have been reviewed as recently as the past two weeks. If anything else is happening, "we need to follow through."

"Between now and the next meeting," Commissioner Dave Rowland asked him, "will you look into her situation and find out why her job is on the line?"

"I will," McCann said.

Discussion last night indicated other Rowan County agencies are already talking more to each other — and opening more doors.

"I'm pleased with the communication we're developing," said Jim Freeman, chief operating officer at Rowan Regional Medical Center. "Right at the beginning that's what we said we had to do, that we've got to make sure we can communicate." Last night, he felt like that was happening.

So did Rowland.

"We saw some additions to the hospital policies and some change in the school system," Rowland said. McCann's response to Hirst, he added,

➤ See **Abuse**, Page 12B

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Abuse

➤ From Page 1B

should give teachers more confidence about making reports.

Nearly 40 representatives of most Rowan County agencies split into two groups. One focused on the criminal justice system, including law enforcement, the courts and the district attorney's office, and all agencies made up the second group. Social Services officials met with both.

They discussed procedures they each follow, how they should connect with each other and changes they must make to combat child abuse.

"We can write all the protocols we want to write," Judge Anna Mills Wagoner said, but for them to do any good, they must be followed. And the immediate need, she added, is "to find out where the systems come together."

More are coming together. Previously, the hospital contacted only Social Services in cases of suspected abuse, Freeman said. Now they will also contact the sheriff's department. He agreed with Rowland's suggestion that hospital officials make a second contact if 30 minutes pass without a response.

The hospital defines abuse and neglect from a medical standpoint and would be glad to train other people to recognize the signs, Freeman said.

Hirst suggested the Task Force consider training resource officers in middle and high schools and DARE officers in elementary schools because they have authority. She also suggested mandatory training for all teachers and adding a statement on abuse to school handbooks.

Repeatedly Task Force members reminded themselves that everybody, including the public, has a responsibility to report abuse and neglect and that any procedure must have checks and balances. They also want to review the system regularly to make sure it's working.

County Commissioner Steve Blount scheduled another meeting June 30 at 5:15 p.m.

SALISBURY POST 6/3/97

County swaps worker for adoptions slot

BY WESLEY YOUNG
SALISBURY POST

Social Services will swap a worker in foster care for one in adoptions, under a plan the Rowan County Board of Commissioners approved Monday.

Rick Travis, director of Social Services, told commissioners he could live with the swap because he hopes the state will approve money he can later use for the lost foster care worker.

"The lines between foster care and adoption are blurring," Travis said. "If we focus on adoption, I hope the state provides money for staff."

Board Chairman Jim Neely wanted to know if it was better to keep a worker in foster care or adoptions.

"It is six of one and half-dozen of another," Travis told commissioners, who had insisted last week that he find an adoptions worker from existing staff. "When you take the foster care person and put them on adoptions, less attention will be placed on children in foster care."

The county has a backlog of adoption cases waiting for home studies, so Travis had asked for an additional worker. Travis had also asked the board for an extra foster care worker, saying the staff handles a caseload of 30 each, when the state recommends 20.

Under the plan Travis presented Monday, the foster care staff will drop from five to four, and handle an average of 37 children each. But Travis said state money may make things better down the road.

The N.C. House budget includes $2.2 million statewide for adoptions and foster care workers, Travis said. The measure, part of a series of child welfare system improvements cosponsored by Rep. Charlotte Gardner, R-Rowan, has passed the human resources appropriations subcommittee.

"We won't be doing all we could for foster care, but with the prospect of foster care state funds, I can live with that," Travis said. "To assign someone to adoptions will hurt the foster care staff, but I feel good about the prospect of state money by October."

Commissioners unanimously approved the plan. In the same motion, the board approved adding the three child abuse investigators and one supervisor they'd already agreed on.

Travis had requested eight positions in all, citing state guidelines for how many workers he should have and the number of supervisors he should have. Commissioners rejected money for two supervisory positions — one in child abuse prevention — that Travis had requested, along with funds for an additional foster care worker and an adoptions worker.

For more on budget decisions facing county commissioners, see **Page 12B.**

JAMES BARRINGER/SALISBURY POST

AT JUVENILE COURT: Amy Collins, left, talks with guardian Tonya Cornelius about a case.

Guardians give kids a chance

HANDS FULL: Beth Dixon holds her daughter, Susannah, while preparing a motion for a hearing.

Program lets volunteers speak out for abused, neglected children

BY ROSE POST
SALISBURY POST

A woman and a teen-ager looked at each other outside the juvenile courtroom in Rowan County's Justice Center on a recent Tuesday, their faces as cloudy as the heavy gray skies beyond the window.

"All she wanted," the woman told Amy Collins and Beth Dixon, "is a foster family for two years."

A foster family with a mother and a father who want her. Food. A safe place to sleep. Friends to talk to.

That's a little less than most teen-agers want.

But it's more than this little girl on the brink of becoming a woman ever got from her own parents.

Now, she's in the custody of the Rowan County Department of Social Services and living at a group home. On Tuesday, a judge, a social worker and the child's own advocate argued about plans for her to spend the summer with a parent in a distant city. The same parent who didn't want her and sent her here, to live with her other parent in Rowan County. That parent didn't want her either — and "dumped" her into the files of the Rowan County Department of Social Services.

And maybe, someday, she'll decide that was the best thing that ever happened to her because she was assigned to that child advocate, known as a guardian ad litem.

Though the person often feels more like a guardian angel to a child, the phrase literally means "guardian of the case" and refers to 43 volunteers in Rowan County who are legally appointed by a

➤ See **Guardians,** Page 8A

CONTINUED

Guardians

➤ From Page 1A

judge to speak for an ever-increasing army of abused and neglected children.

The program began here 11 years ago with three guardians who were advocates for 25 children. Last year 46 served 127 children. The number of guardians are down a little right now, but the number of children is up — more than 140 children in 79 families.

Last Monday guardians represented seven children in three cases before Judge David Wilson in the regular session of juvenile court for abused and neglected children. Two children in a fourth case didn't have a guardian; there just aren't enough.

Wilson put two children from one family into permanent homes with relatives; a third child remains in foster care.

The other four remain in limbo. Two cases were continued until parents are tried on criminal charges in another court. And children in the other case have to remain in temporary care because Social Services can't find their mother.

When the court emptied, deputy clerk Brenda Stephenson shook her head.

"When I first started this job," she said, "I cried."

Sometimes she still does.

A day later, after a special hearing before Judge Anna Mills Wagoner, the guardian and the teen-ager finally cried when they said goodbye for the summer. (Because the rules of confidentiality are so strict, court officials wouldn't allow the Post to name the guardian for fear of identifying the child.)

The day hadn't turned out the way they hoped for a girl nobody wants —even though her guardian did the best she could.

"I didn't think she should go back home for the summer," the guardian says. "I didn't think she was ready. I didn't think the environment was right. And I didn't think she had received the services ordered by the court or would get them."

And that meant she needed to go back to court and say so.

"That's my job," she says.

Granting legal power

Guardians ad litem are an "equal party" to all court proceedings with the parents and the Department of Social Services, explains Collins, district administrator for the guardian ad litem program in Rowan and Cabarrus Counties. "Any of the three have the right to file a motion to ask the court for a hearing any time they see fit. Parents may feel like they're ready to have custody again. We may feel services aren't being provided."

The guardians, she says, are given the legal power to make sure the children get the services the court orders and, for that reason, are often called the "watchdogs of the court."

So, upset about what had not been done or wasn't being done, the guardian talked to Collins and Beth Dixon, the program's attorney.

The judge wouldn't have had to look at this case again until March, 1998, Dixon says, but the guardian, who'd been working with the girl for two years, was deeply concerned.

The girl had abused alcohol and needs special classes and supervision. But the guardian was worried that her social worker had not arranged for someone to work with her in that distant city.

"She didn't want her to go some place and not be able to get some treatment," Dixon says.

Well over a year ago, the judge had ordered a psychological examination of the girl, but in court Tuesday, the social worker said they had two previous psychiatric exams and that was enough.

"One was old," Dixon says. The other dealt with a specific

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question that offered no pertinent information. "There never had been a psychological assessment."

That was important, she says. "A psychological examination is an important tool to determine what the needs of the child are and what services can meet those needs. That's what our mandate is. That's what our program is designed to do.

"We filed the motion, and then it was done. It was one of the things that got accomplished the day before court. I believe that if the guardian had not filed the motion, it would not have been accomplished."

When they filed that motion, the guardian went to work. She had to speak up for a child that society was ready to forget.

"I can ask any of her providers — counselors, the police department, mental health — what they've done. No one's exempt from me," she says, "because I'm working for the court, doing an independent investigation for that child.

"So that's what I did. Boom, boom, boom!"

She asked the questions, gathered the information and wrote a report for the court.

Readying report

With only 12 days, including six working days, from the time Dixon filed the motion until the court date, the guardian worked non-stop — and her report was ready when the judge sat down behind the bench.

And Social Services had reacted quickly after the guardian filed her motion.

In those 6 working days:

- She finally had the psychological examination.
- The social worker contacted the department of social services in the city where the teen is going and got a promise that a social worker would contact the girl every other day.
- The social worker is finding out what substance abuse resources are available for her.
- A procedure has been set up for her social worker here to keep in close contact by calling her every other day.
- And the judge has ordered another review in a month, including the stipulation that if her parent wants to regain legal custody, he also must appear.

But none of that was the foster home the girl and the guardian really want.

After the hearing, Dixon and the frustrated guardian walked out of the courtroom to break the news to a frightened girl who looked like a child, despite clunky grown-up shoes and a stylish haircut.

"But all we had to say was we're going back to court," Dixon told both of them, "and we got a lot accomplished."

And that's the purpose of the program.

Neither parents who don't parent or social workers who are overworked are the guardian's concern. The child is. A lot of children are. In 1996 Collins and Dixon, the only paid employees in the program, took part in 210 court hearings in Rowan County representing abused or neglected children.

"And that's not counting the cases that we are prepared to go forward with or that were continued," Collins says. "We're only involved in cases where Social Services has petitioned the court alleging abuse or neglect. We're appointed at the time they bring the case to court."

The law requires Social Services to investigate complaints.

"They investigate, try to make reasonable efforts to keep the family together, offer services," she says. "But in some cases the situation is so dire or the child is in danger, so they file petitions with the court."

About 5 percent of all abuse complaints get into court.

"We don't always agree" with Social Services, Collins says, "but we sort of agree to dis-

➤ See **Guardian**, Page 9A

Guardian

➤ From Page 8A

agree. We're looking out for that child."

More guardians are always needed, she says. Dates for the next training session have not yet been established, though it will probably take place in August.

Volunteers complete a form, and then Collins interviews them, checks their references and does a criminal check.

"We want to insure that these folks are interested, mature, honest, have good judgment — and a genuine concern for the kids," she says.

The training requires 25 hours.

"It's a big commitment. We want people who are interested and committed for at least a year. Any less time wouldn't be worthwhile for them or the child. And we like them to commit themselves for the life of the case, so the child would have only one guardian."

She stresses that it's not a Big Brother program.

"Guardians don't provide services. They assess needs and see that needs are met. If a child needs a Big Brother, the guardian gets a Big Brother. They don't take children to McDonald's just for fun, to form a friendship, but they may take them out to eat in the course of gathering information. They do not do transportation, but they make a social worker aware there's a need for transportation."

And she's convinced nobody should become a guardian ad litem who doesn't love the job and the children.

"You do get discouraged some days," she says, "but then something great happens, and it's all worthwhile."

Another guardian ad litem Tonya Cornelius heard students talking about the program when she was at the University of North Carolina at Charlotte.

"I figured I would look into it when I got home." That was May 1993. Now a victim of lupus, she's unable to work full time but substitutes as a teacher when she can and volunteers with the children's department at her church. And she's a guardian.

"My heart is with kids," she says. "They're all born with the right to go as far as they can in life, and neglect and abuse shouldn't be there."

Right now she's working with several cases, including a teen mother who has a new baby and isn't sure she can care for her child, a child who has built up a lot of anger against his parents and another bright child who understands her mom has a drug problem — and forgives her.

And she's convinced she'll make a difference in their lives.

"I don't intend to let this program go."

Neither does the teen-ager's guardian who's still looking for a foster home and worried about a frightened girl in a faraway city.

"Nothing has been done for her to satisfy me as a guardian ad litem," she says, "and I learned from it. You have to do more, twice as much, three times as much, but I'm willing to do that for the sake of these children. I just want to know that they have an opportunity ..."

Salisbury Post 6/9/97

WHEN PLACING A CHILD

Checking backgrounds

You wouldn't expect social workers to place children with a woman convicted of killing another child.

But a law restricting background checks laid that very trap for the Rowan County Department of Social Services, according to Director Rick Travis. Because state law does not allow his agency to use state or national data banks to check a person's criminal record, social workers placed young twins in a home occupied by Denise Santos — convicted in 1974 of manslaughter. Santos was living with the twins' aunt. While the aunt was not at home one day, Santos seriously burned one of the twins by immersing him in scalding water. A Rowan County jury convicted her of felony child abuse for the crime.

Her previous convictions did not come to light until she was charged for the scalding. She also had a drug conviction. Yet she was acting as caretaker for two small children while their aunt was at work.

The story can't end here. If state law is really so misguided as to prevent social workers from doing thorough background checks, lawmakers must fix it. They've certainly been on that bent. In the past few years, the General Assembly has taken every opportunity to not only *allow* background checks, but also in some cases to *require* them. That's the case with school teachers and day-care workers. It would be more than logical to add to the list those people who take in children as "voluntary placements" from Social Services, and their live-ins.

Rowan County District Attorney Bill Kenerly suggests that such checks could be handled through the National Crime Information Center. It's hard to imagine a better use of such a resource.

SALISBURY POST 6/11/97

Legislation would make failure to report child abuse a crime

RALEIGH (AP) — Forcing neighbors, relatives — even clergy — to turn in suspected child abusers could save young lives, according to a lawmaker who says failure to report child abuse should be a crime.

The Senate has approved a bill that could result in criminal charges for clergy, doctors and day-care workers who do not report child abuse. The measure hit a snag Tuesday with members of a House judiciary committee, who formed a subcommittee to study the issue.

State law now requires anyone who knows about child abuse to report it to authorities. The new measure would back that obligation by allowing prosecutors to seek criminal punishments for those who do nothing.

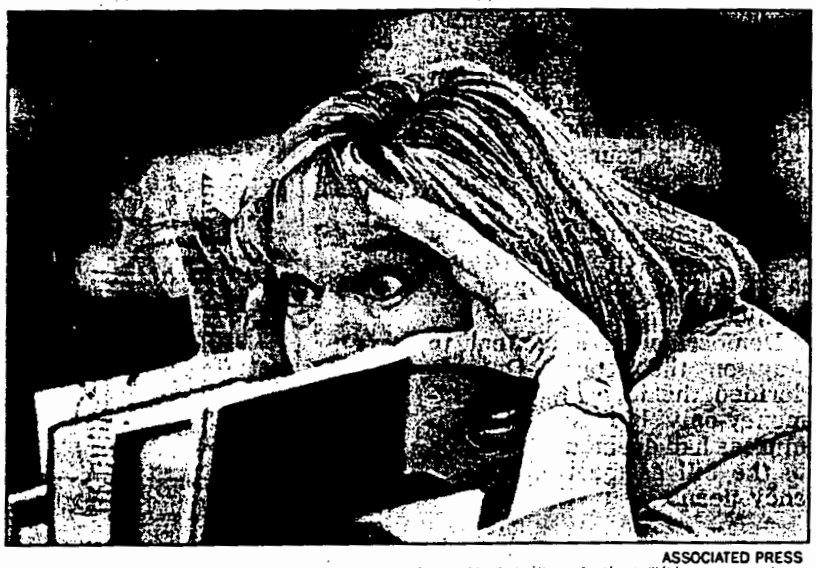
Sen. Leslie Winner's bill would make anyone who fails to report abuse subject to a $200 fine.

"We all know that child abuse deaths do not happen the first time there is child abuse," Winner, D-Mecklenburg, told the House committee.

Winner said the current law requiring reporting of child abuse is widely ignored.

"It shows the problem of having laws that have no consequences," she said.

The only exemption from the reporting requirement allowed under the Senate version is for an attorney representing someone charged with child abuse.



ASSOCIATED PRESS

THE EYES HAVE IT: Rep. Connie Wilson, R-Mecklenburg, becomes expressive as she talks to one of her seatmates during Tuesday's floor session of the N.C. House in Raleigh.

The subcommittee will consider whether to create exceptions for religious leaders to whom child abusers confess their conduct. It also will consider making the penalty tougher.

Failing to report abuse ought to be comparable to driving with a revoked license, said Rep. Robert Hensley, D-Wake. That would increase the sentence from up to 10 days of community service to up to 45 days, in addition to a fine.

Last year, 43 children in North Carolina died from abuse and neglect, said Thomas Vance Bennett of the North Carolina Child Fatality Task Force. Deaths from neglect might include situations in which children died in a fire after being left home alone, Bennett said.

The number of deaths due to abuse and neglect increased from 28 in 1994 to 40 in 1995, according to the North Carolina Child Health Report Card, issued by child advocates in October.

There were 17,772 confirmed reports of child abuse in 1995, compared to 18,397 in 1994.

News + Observer 6/11/97

RALEIGH

Panel to study child-abuse bill

A Senate-approved bill that could mean a $200 fine for clergy, doctors and day-care workers who do not report child abuse hit a snag Tuesday with House lawmakers.

The Judiciary Committee formed a subcommittee to decide whether to create exceptions for religious leaders to whom child abusers confess their conduct.

State law now requires anyone who knows about child abuse to report it to authorities.

The measure would back that obligation by allowing prosecutors to seek criminal punishments for those who do nothing.

The proposal aims at preventing deaths from abuse by forcing neighbors and family members to turn in an abuser sooner.

FROM WIRE REPORTS

SALISBURY POST 6/12/97

DSS, guardians aren't rivals in helping children

BY EMMANUEL DOLO
SPECIAL TO THE SALISBURY POST

In the June 8, 1997 edition of the Salisbury Post, Rose Post wrote a story, perhaps a public relations and/or marketing piece captioned, "Guardians give kids a chance." This article portrayed the Guardian Ad Litem (GAL) program as a repository of "guardian angels," while it demonized the Department of Social Services. Even worse, the story distorted facts and contained errors.

In my response, I will attempt to refute these misrepresentations and falsehoods. Nonetheless, I will fulfill my sworn obligation to protect the confidentiality of the child in question. I will also not reduce my credibility to the level of others whose aim is to win the favor of the public at our expense. But to allow the Post to get away with such unprofessional conduct is simply to be part of its smear campaign against the devoted men and women who work for the Department of Social Services.

Let me address the misrepresentations and errors. At no time did I state that the "two previous psychiatric exams were enough." The claim that "nobody wants" this child is another falsehood. Representatives of DSS and other agencies involved with this case have spent sleepless nights and long days pursuing the interests of this child. I have had 46 collateral contacts with others, including the mother and other agencies on the child's behalf since taking over the case in October of 1996. I have also had eight face-to-face contacts with this child, who lives in a distant county.

The mother is in contact with the youth via phone at least twice a week. Moreover, the mother has not relented in seeking custody of the child. The child has had three visits with the mother without incident. The mother met all the requirements for the child to return home for the long term following an approved home study by the distant state's DSS. Indeed, to imply that the mother, DSS staff and others related to the case do not have the interest of the child at heart is simply a slap in the face.

In addition, the claim that services were not arranged for the child in a distant city is equally false. The home study which confirmed that the child could return home forms a part of an intervention plan that includes soliciting the assistance of the distant DSS to arrange needed services for the child. Specifically, verbal contacts were made with the distant DSS as a preliminary attempt to initiate this effort. This was followed by a formal request through the interstate process, a discussion which occurred at this hearing. All of these interventions preceded the motion filed by the GAL program. Therefore, the suggestion that "things got accomplished" only in the aftermath of the motion filed by the GAL program is ludicrous and without merit.

Social workers are equally advocates for children. To pit two agencies which are primarily concerned with promoting the well-being of children against each other, as this article did, is an attempt to hatch a rivalry which serves one and only one purpose: to sell newspapers and win acclaim. Worse, it created a situation which is likely to make those of us at DSS suspicious of the motives of our peers at the GAL program.

Nonetheless, we at DSS wish to conduct ourselves in accordance with the code of ethics of our profession. More crucial, we consider our colleagues at the GAL program as partners, rather than rivals, and hope they consider us as such. Sadly, the harm has been done, and the actual victim here is the child, not the adults. Perhaps, we can get past that, and make the interest of the child the prime focus of our respective energies and interventions.

Emmanuel Dolo works for the Rowan County Department of Social Services.

SEEING BRUISES OR NEGLECT?

Report abuse — or else

Salisbury Post 6/12/97

A bill before the state legislature brings home the fact that everyone has responsibility for protecting children — a *legal* responsibility.

State law already requires anyone who knows about child abuse to report it to authorities. A bill under consideration now would back that up with a $200 fine. This means criminal punishment for those who see the bruises, the injuries, the signs of neglect, yet do nothing.

The law would apply to neighbors, friends, ministers, day-care providers, doctors — anyone except an attorney bound by client confidentiality. (A House subcommittee is considering exempting religious leaders.) It would not allow anyone to believe, "That's none of my business," and look away.

Calls not made

North Carolina leaders are awakening to the escalating problems of horribly mistreated children. Deaths due to abuse and neglect increased from 28 in 1994 to 40 in 1995, according to the N.C. Child Health Report Card issued by child advocates in October. The number of confirmed reports of child abuse, though, dropped from 18,397 in 1994 to 17,772 in 1995.

Children's advocates worry about the calls that don't get made. Of the 43 children who died of abuse and neglect in the state last year, about two-thirds had never been brought to the attention of local social workers.

Yet, as Sen. Leslie Winner, D-Mecklenburg, says: "We all know that child abuse deaths do not happen the first time there is child abuse." They happen after a pattern of escalating abuse, a pattern that must be stopped.

Paired with another piece of legislation introduced by Rep. Charlotte Gardner, R-Rowan, this bill could effectively strengthen the safety net North Carolina provides for children in trouble. Gardner is seeking to open records in cases where children have died of abuse or neglect even after they have been brought to Social Services' attention. Together, the two pieces of legislation could bring more children to the attention of child protection workers, and offer some public accountability in cases where those workers' efforts weren't able to prevent tragic outcomes.

Rowan tragedies prevented?

The penalty bill might have saved two little boys who died of abuse in Rowan County early this year. Though in each case Social Services had received at least one report which it checked out, a state team later made this finding: "The review team found evidence that a number of community members had reason to suspect abuse and neglect but did not make a report to the Rowan County Department of Social Services."

The team recommended that Rowan develop an action plan to enhance public awareness of the reporting law. Attaching a penalty to the failure to report would certainly help get people's attention.

The proposed penalty gives force to this fact: When you see signs of abuse or neglect, your first thought should be about protecting the child, not about fears of appearing nosy or intrusive. State law clearly says child abuse is everyone's business, and soon it may also say this: If you don't report what you see and later authorities discover that fact, you will be punished.

Salisbury Post 6/16/97

Examiner calls toddler's death 'suspicious'

The Rowan County medical examiner says the Sunday afternoon death of a 2-year-old Salisbury boy is suspicious.

During an examination of the child's body, officials at Rowan Regional Medical Center observed signs of trauma to the child, Dr. Gary Fink said.

DeMallon Eljuhnn Krider of 902 E. Lafayette St. was a student at Home Child Care Centers of Salisbury. His mother, Tamanchis, could not be reached for comment this morning.

Fink said an autopsy scheduled for today should reveal more details about the toddler's death. Salisbury police, who have filed a routine report, would not comment until the official results of the autopsy were in.

SALISBURY POST 6/17/97 page 1 of 2

Child dies of head injuries; police rule homicide

BY JOHN PATTERSON
SALISBURY POST

Salisbury Police this morning ruled the death of a 2-year-old Salisbury toddler a homicide after a preliminary autopsy revealed the child died of head trauma.

DeMallon

A police officer found DeMallon El-Juhnn DeMallon Krider unresponsive just before 1 p.m. Sunday on the floor of an upstairs bedroom at his 902 E. Lafayette St. apartment.

The State Medical Examiner's office in Chapel Hill found bruises and other marks that indicate abuse, reports stated.

The boy's mother, Tamanchies Krider, told the Post that she had only regained custody of her youngest son a few months ago. And the Rowan County Department of Social Services confirmed that it had received a report of neglect against Krider just a week ago.

Rick Travis, director of the local Social Services department, said two social workers had visited Krider's home and seen the child on June 10, five days before he died. Social Services' investigation was continuing when the toddler died, Travis said in a written statement.

State officials said this morning that a team will arrive in Rowan Wednesday to review Social Services' handling of the case.

Earlier this year, a special state review team found a number of problems with Social Services' actions in the death of two other children — Budde Clark and Christopher Jones.

"We'll be on this one with a full review consistent with the one we just completed," FitzGerald told the Post this morning. Staff members were already scheduled to be here to work on "a corrective action plan" relating to the abuse deaths of Clark, 6, on Jan. 31 and Jones, 19 months, on Feb. 4.

FitzGerald said he doesn't know how long the review will take. "I'll be in a better position to say that after my staff reports to me tomorrow," following the visit to Rowan, he said. "I would expect the results will be open."

DeMallon's brother, DeLondon Eltran Krider, 4, also lived with Krider. However, sources said DeLondon has been placed in the care of his grandmother, whose name was unavailable.

Monday afternoon, Krider, 26, said she did not harm her son. "I didn't ever neglect him or anything," she said. "I knew I had the chance to get him back, and I wasn't going to mess that up."

Krider was with her son when authorities arrived at the Lafayette Street apartment. Krider told a Post reporter that DeMallon had been sick and dehydrated for several days.

She said she took her son to Rowan Regional Medical Center June 9 to seek treatment for dehydration.

"I couldn't take care of him," she said. "He was pouring with sweat. He drank all of the fluid that I gave him."

On Sunday, before she called 911, Krider said the toddler began vomiting again.

"He was throwing up everything that I gave him," she said. "He usually hugs me when he sleeps with me in the bed, but

➤ See Child, Page 4A

Salisbury Post 6/17/97 page 2 of 2.

Child

From Page 1A

he was just balled up Sunday afternoon when I woke up. He didn't give me time."

Krider gave birth to DeMallon while in prison, serving time for violating probation on an assault with a deadly weapon charge. She said the state immediately gave custody of her youngest child to a local guardian.

Krider admits she is a recovering cocaine addict.

"I got with the wrong crowd," Krider said. "The drug dealers just pulled me down. I couldn't get custody back of DeMallon until I quit using cocaine."

According to Krider, she was rewarded custody of her son three months ago, after she "came clean."

Citing confidentiality laws, Travis, the local Social Services director, said he could not reveal the actual date the child was returned to Krider.

In a written statement to the Post, Travis said his agency received a report of possible neglect of the toddler on June 9. The abuse report listed concerns about Krider's ability to care for her son because another child had bitten him, Travis said.

The next day, Social Services' workers went to the two-story Lafayette Street apartment to examine the child, take photographs and interview Krider. The investigation was still in progress when DeMallon died Sunday, Travis said.

Rowan Regional spokesman Phil Whitesell confirmed that hospital officials called Social Services on June 9 — the day Krider brought DeMallon in for what the mother called "fever and weakness." The hospital told Social Services about other injuries to DeMallon, Whitesell said this morning.

One source said hospital officials held the child for six hours.

However, Social Services did not come to Rowan Regional on June 9, Whitesell said.

"After an examination by our physicians, we instructed our staff to call DSS," Whitesell said. "Because the child's injuries were not life-threatening, however, the child was treated and released."

Whitesell said the hospital's patient advocate contacted Social Services three days later — on June 12 — to see if Social Services had contacted the family. "We just wanted to follow up on the patient," he said.

Salisbury Police Capt. Mark Wilhelm said he's not aware of the hospital or Social Services calling law enforcement officials before Sunday.

Meanwhile, Travis said the N.C. Division of Social Services will conduct a comprehensive review of DeMallon's death as quickly as possible.

The state assigned the team to review the earlier Rowan deaths after child advocates appealed directly to Gov. Jim Hunt. The team investigated the deaths of Clark, Jones and Trola Miller, a 16-year-old who died of a random gunshot. Three people have been charged with murder as a result of those deaths.

That review was the first time an outside team was brought here to review practices and the results were released to the public. Its review found evidence of limited investigate work, miscommunication, failed documentation and other concerns and included recommendations for changes.

The state's visit here Wednesday was to work on the plan for those changes.

Rep. Charlotte Gardner, R-Rowan, who has introduced legislation to open records in child fatalities, has also sponsored a bill which will establish state review teams similar to the one which studied the cases here.

Staff writer Rose Post contributed to this article.

Salisbury Post 6/17/97

Not again

Add another name to the list: Budde Clark. Christopher Jones. Trola Miller. And now, DeMallon El-Juhnn Krider.

On Sunday, 2-year-old DeMallon became the fourth Rowan child in five months to die of suspected abuse or neglect *after* Social Services had been alerted that something may be amiss.

On June 9, hospital personnel who saw DeMallon in the emergency room called Social Services to report suspicions of abuse or neglect. Social Services did not go to the hospital. DeMallon went home. On June 15, as Social Services' investigation was in progress, he died.

Preliminary examination reveals a head injury killed the boy. Whoever inflicted that injury should be brought to justice.

But any thinking person would also have to raise questions about Social Services' handling of this case — questions that Director Rick Travis says confidentiality laws prevent him from answering. The department is just weeks away from getting additional positions and equipment that commissioners have promised in their 1997-98 budget.

Fortunately, a state review team is on its way to study this case and report findings. Team members probably never thought they'd be returning to Rowan so soon. Perhaps the frequency of these tragedies will tell them something that paperwork and interviews cannot.

Mother charged with murd

State team probing 4th death

BY JOHN PATTERSON
SALISBURY POST

A 26-year-old recovering cocaine addict was charged Tuesday afternoon with murdering her 2-year-old son.

Court records also show that Tamanchies Krider was HIV-positive and served time in prison for ignoring a judge's order to get counseling about the communicable disease. Her 2-year-old was born in prison.

Krider is the third person charged with murdering a child in Rowan County this year. In a fourth case, 16-year-old Trola Miller was shot to death in a fracas at a public housing complex.

State officials say Rowan now accounts for almost 25 percent of all child abuse deaths in the state this year. A state official said, however, that other counties have had more child abuse deaths in other years Wake County had five child abuse homicides in 1996 and Cumberland had six.

Nonetheless, the deaths have brought intense scrutiny on the Rowan County Department of Social Services, which had investigated abuse complaints related to all four children before they were killed.

State officials were expected here this morning to begin reviewing Social Services' actions in the latest child death.

A spokesman for Gov. Jim Hunt said Hunt is concerned about this fourth child fatality in Rowan.

"This child did not have to die and it's clear that we need to do more to protect children in Rowan County," said Sean Walsh, the governor's press secretary. "The governor wants to get to the bottom of this immediately and take whatever action is necessary to ensure the safety of children."

Hunt was out of the office this morning, but Walsh said the governor had been following the Rowan situation.

The only question, Walsh

➤ See Mother, Page 7A

CHARGED WITH MURDER: Tamanchies Krider, center, is escorted by officers J.D. Barber, left, and Shelia Lingle.

'We need to clean house' — Rowla

BY ROSE POST
SALISBURY POST

Shocked members of the Child Abuse Task Force divided sharply in their reaction Tuesday to news that a fourth child known to the Rowan County Department of Social Services has died violently within the past six months.

County Commissioner Steve Blount and Jim Freeman, head of Rowan Regional Medical Center, believe the task force has already opened lines of communication between local agencies and everything that could have been done to prevent the death of 2-year-old DeMallon El-Juhnn Krider was done.

But Commissioner Dave Rowland disagrees. He believes the time has come to "clean house" at the Rowan County Department of Social Services.

"I was baling hay on my tractor and I heard (the news that the toddler's mother had been arrested) on my radio," he said, "and I had a fit."

He was numb, he said, when he saw the story of the child's death in the paper.

"I could not believe it. How could this happen? How could anybody come up and say we don't have a problem now? It's time for drastic changes. I think we need to clean house. We're losing a kid every other month, and if that statement was correct — that the hospital called DSS and held that child for six hours and nobody bothered to show up — we need to replace a lot of people."

Rowland said he's angry.

"Every time I turn, I hear there's no problem at DSS. The DSS board gives Rick Travis (the director) a high recommendation. Here a third child in six months was beaten to death. If that's not a serious problem in their organization, what will they look at as a serious problem? I'm hot. Where does it end?"

His words reflect those of two outspoken child advocates — attorney Mary Beth Smith and her mother, Elizabeth Smith, who focused Gov. Jim Hunt's attention on the earlier child deaths in Rowan County. The women say changes must be made in the Rowan County Department of Social Services, beginning with Director Rick Travis.

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JAYSON SINGLETON/SALISBURY POST

HOME: DeMallon Krider lived with mom at 902 E. Lafayette St.

Probation officer suspected ab

BY ROSE POST
SALISBURY POST

Authorities had received abuse reports about both of Tamanchies Krider's sons days before the youngest boy died of a head injury.

A Rowan County probation officer reported suspected abuse of Krider's 4-year-old son in early June to the Department of Social Services and the Salisbury Police Department.

Days later, on June 9, Rowan Regional Medical Center called Social Services about the treatment of Krider's other son, 2-year-old DeMallon El-Juhnn Krider.

The hospital released DeMallon, and Social Services was still investigating the complaint when DeMallon died Sunday.

Krider was charged with his murder Tuesday.

But neither the Rowan County Department of Social Services nor the Salisbury Police Department has resolved the abuse report about the older boy.

Wayne Kenny, judicial district manager for probation and parole for
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➤ See P

CONTINUED

Mother

➤ From Page 1A

said, is what action is needed. "That's exactly why the state DSS people are there, to begin to get to the bottom of this."

Krider was taken before a Rowan County magistrate Tuesday and charged with the death of DeMallon El-Juhnn Krider. Krider had only regained custody of the child in early May.

With her head down and handcuffed, Krider declined comment while being led to the Rowan County Detention Center, where she is being held without bond.

Krider made a statement to police, but Police Capt. Mark Wilhelm would not elaborate.

Krider gave birth to DeMallon while serving time at the Correctional Center for Women in Raleigh.

WAYNE HINSHAW/SALISBURY POST

Tamanchies Krider

Court records say that Krider is HIV-pnsitive and was sent to prison for violating an isolation order issued by the Rowan County Department of Health.

She failed to attend three consecutive, court-ordered counseling sessions on the risks of HIV transmission — a violation of North Carolina's communicable disease law.

According to court records, Krider was convicted twice — in June 1988 and April 1992 — of assault with a deadly weapon, a misdemeanor. Both times Krider was sentenced to probation.

Krider brought DeMallon to Rowan Regional Medical Center on June 9 for treatment of a fever and weakness. But the hospital noticed other injuries, including bite marks and bruises, and called the Rowan County Department of Social Services.

Social Services Director Rick Travis said two social workers went to Krider's apartment at 902 E. Lafayette St. the next day, interviewing the mother and photographing DeMallon's injuries. The workers left the child with his mother and were still investigating when the child died Sunday afternoon.

A preliminary autopsy showed DeMallon died of an injury to his head.

Wilhelm said authorities are also investigating bite marks found on the toddler's body.

Police took Krider to a local dentist Tuesday afternoon to make dental impressions. Her dental impressions will be compared to the bite marks on DeMallon's body.

"I'm going to make a trip to Chapel Hill today (Wednesday) to see if the bite marks on DeMallon's body match the dental records we get from (Tamanchies) Krider," Wilhelm said. "The state medical examiner's office will make that final determination."

Rowland

➤ From Page 1A

The figures do not include 16-year-old Trola Miller, who was killed by a random gunshot during the same period — Jan. 31-Feb. 4 — in which Budde Clark, 6, and Christopher Jones, 19 months, also died.

Though she, too, was known to the Rowan County Department of Social Services, her death was not abuse, Herman-Giddens said. But Rowan's three abuse deaths this year make it the only county in the state with more than one in 1997.

"But that can be just a fluke," she says.

This morning, Herman-Giddens, a member of the special team that reviewed the first two abuse deaths, said she was "sorry to hear about what's happened and very concerned."

Typically, she said, the number of deaths from abuse are so small that comparisons can't be made, and Rowan is not the only place they happen.

"Other counties have had the same number of deaths" in past years, she said, "but for whatever reason, the press and the public have not gotten involved. So it's not like you're the only place. There just wasn't a big outcry."

In 1996, Wake County had five child abuse deaths and Cumberland had six.

Better communication

Steve Blount, who serves as co-chairman of the Rowan Child Abuse Task Force with Dave Rowland, says he believes Rowan Regional Medical Center and DSS are communicating better than ever.

"And it's unfortunate that it didn't prevent the child's death," he said, "but hopefully (further investigation) will show that all groups, including the criminal justice system, did all they could to prevent this."

Similarly Freeman, the hospital's chief operating officer, said, "The tragedy is that another child loses his life."

But he believes the emergency room staff acted with "an overabundance of caution" and did what was "reasonable and reasonably expected for anyone to do" when they saw 2-year-old DeMallon Krider a week before he was killed.

But Elizabeth Smith disagrees.

"I'm not surprised" it happened, she says, "but I am sickened. DSS has been in denial from the beginning."

She asks why the hospital didn't call the Sheriff's Office when Tamanchies Krider took her baby to the hospital on June 9, a week before he was killed and abuse was suspected.

"The safety net was there. It's in place," she says. "Why was it not used?"

"If there is a reason to keep the family from leaving," Freeman says, "the Sheriff's Office would be appropriate in handling that because they've got the ability to act instantly.

"But the physician felt there was enough reason — out of an overabundance of caution — to alert DSS, and that was done. The child was looked at from head to toe. There were examinations and they were found to be negative, and DSS was notified. So I commend the emergency room physician for picking up on the concern."

The task force has suggested that the hospital call the Sheriff's Office, he says, "but that is not part of our protocol. We are in the process of resolving that to be included as part of our protocol.

"But it doesn't have to be written for us to use good common judgment if that's necessary. Under these conditions and these circumstances, there was not a reason to do any more than what was done."

No excuse

Elizabeth Smith disagrees with that and also points out that Social Services has told the task force it now has back-up personnel and pagers. She's seen program manager Tom Brewer wearing one at task force meetings.

"Why weren't both used and the child seen immediately?" she asks. Social Services has no excuse for not having responded to the hospital and for the hospital not to have called law enforcement at the same time they called DSS.

"If that was not done, why not? I don't care how much money you throw at a situation, unless the judgment is appropriate it's not going to make any difference," Elizabeth Smith said. "I think good judgment has been lacking."

If Social Services Director Rick Travis "has not done what he can do, it's up to us to make some changes in the department."

She got at least half a dozen calls after 9 o'clock Tuesday night expressing the same outrage, she says.

Regardless of what the child's mother said, Mary Beth Smith says, Social Services knew the baby was "a very high risk child who had been back in the care of his mother only a very short time. And if you get a call about possible abuse of a child you know to be at high risk that more appropriate reaction should have been taken. This is three children. The question I'm left with is: How many children does it take? How many?"

She says her biggest fear is how many children are being tortured every day and live — and don't make headlines.

Freeman says he feels like "there was an overabundance of caution" on the part of the emergency room staff at the hospital when the 2-year-old was brought in on June 9, a week before he was killed.

The child did not present "a classical child abuse case," he said. "There were bruises on the child, and there were bite marks, which appeared to be child-sized marks. The mother told the physician that the child had been roughhousing with other children, and what the physician saw in the bruises and the bite marks was consistent with what the mother was saying."

The child was in the hospital six hours, he said. The mother and child waited about 1½ hours to see the physician. "The rest of that time was waiting on the results of the examination and with DSS on the telephone. I don't know what component of that time is attributable to what."

After the physician listened to the mother, who said the child had fever and weakness, he extended his examination significantly and decided to report the case to Social Services because of the bite marks, the bruises and the discussion with the mother. All test results were negative. The doctor told the mother he was contacting Social Services and she did not object.

"And they didn't take the child away," he says, "so I think that the course of action developed on June 9 was — at that time — based on facts and information and was a reasonable course. The tragedy is the child is dead. And the tragedy is that I wish all of us had insight to know when those tragedies are going to happen. That's frustrating. What could we have done? What should we have done? We have agonized over this. There's only one word for it — tragic.

"I'm sure there are people who will be of the opinion that we should have done more. If we knew then what we know now, we would have done more.

"If we could have only known what we know now, lots of folks would have done more."

Abuse

From Page 1A

She was given probation misdemeanor assault with a deadly weapon charge in 1992. Supervision has been extended, and she has been seen regularly by the officer, Kenny said.

She was placed on probation on Aug. 17, 1994, and is under supervision for two misdemeanor shoplifting charges that occurred on June 27, 1994.

She was paroled from prison after serving time for ignoring a judge's order to get health counseling because she is HIV-positive.

A source told the [illegible]st the

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➤ From Page 1A

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A source told the Post the probation officer was making a regular visit to Krider when the mother said something that led the officer to suspect abuse of her older son.

The officer made an appointment for the child at the Children's Clinic.

The mother became angry, the source said, and did not take the child for the appointment.

That prompted the probation officer to call Social Services.

The probation officer has described Krider as having an explosive personality, the source says. The officer had concerns about the children being returned to the mother, feeling they were safer in the foster home.

Salisbury Police Capt. Mark Wilhelm confirmed police are still investigating the probation officer's report as a possible assault against DeMallon's brother. Wilhelm said police also called Social Services, but he did not know what actions Social Services had taken on the report.

The alleged assault involved Krider's 4-year-old son and another 4-year-old, Wilhelm said.

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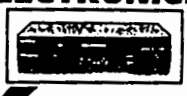

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SALISBURY POST 6/19/97

LOGICAL NEXT STEP

Wise call for review

Rick Travis, director of the Rowan County Department of Social Services, has wisely invited a state administrative review team to come in and examine how he and others are running the department.

The unusual string of child deaths here calls for nothing less. In a five-month period, three young children have been murdered, all after or during a child protective services investigation by Social Services. And a teen who had been in the agency's custody was hit by a random, fatal shot.

While a couple of other counties had similar numbers last year — Wake had five child abuse deaths, Cumberland County had three — they have much larger populations.

Something is amiss in Rowan County, and the rush to judgment has focused on Travis and Social Services. How could they allow a cocaine-addicted mother with HIV and a string of infractions even while she was in prison to regain custody of a child? What action did Social Services take after a probation officer and a doctor raised red flags about how her children were being treated? Confidentiality laws may prevent us from ever knowing.

Rather than jump to conclusions, though, the public should applaud this call for a broad, objective, administrative review and demand that it be expedited. Citizens want action, but they need the facts first.

Don't doubt the intensity of such a review. State officials are just as irate as Rowan citizens are about these repeated tragedies. The deaths raise troubling questions about North Carolina's ability to protect its most vulnerable citizens.

Travis puts it well: "The questions are legitimate. ... Where I hope it's headed is that they'll look at the larger program and identify if there are problems, whether it's with Rick Travis or anybody else."

Exactly. Let's get on with it.

SALISBURY POST 6/19/97

Responsibility

I have some questions.

How many children in Rowan County are going to be murdered before someone does something about the Department of Social Services? I was in management for years, and if I knowingly had an employee who got killed or injured by my knowledge, I could have been held responsible. Just like the man at the chicken plant where all the people burned up. If a bartender sells someone too many drinks and the person goes out and gets in a wreck, the bartender can be convicted.

How can DSS know that a child is in danger and they walk free? Are they above our law? Where are the little ones' rights?

— DONNIE BENSON
Cleveland

Another child is dead

In the Salisbury Post edition dated June 17, 1997, the headline read, "Another child dies in Rowan County." How many more children must die before the entire Social Services Department, including the director, is replaced?

I noticed that the state officials are going to investigate again. The first time they found a number of problems. One source said that hospital officials held the child for six hours. Just where was one social worker, or was everyone too busy to go the hospital to check this out? Also, I would like to know where the two special deputies of the Sheriff's Office were, since they could not go out there?

Again, I would like to see the entire department replaced. That is how badly I feel about the four children who have been killed.

— KYLE B. CORRIHER
Landis

SALISBURY POST
6/20/97

Abuse call came during DSS workday

Rowland questions agency's response

BY JASON WILLIAMS
AND KIM MASON
SALISBURY POST

A hospital call warning of a threat to DeMallon Krider came to the Department of Social Services about 4 p.m. June 9. But the agency did not respond until the next day.

Social Services Director Rick Travis shocked the latest Rowan Child Fatality Review team this morning with that revelation.

His remarks stunned several people in the room, including county commissioner Dave Rowland. Rowland questioned how Social Services wouldn't have a plan during regular office hours.

"I guess the child would have been better off after hours," child advocate Mary Beth Smith said. "If they don't have anybody available during the day, there's a tremendous breakdown."

Rowland said he would speak with Travis today during an emergency commissioner's meeting.

The Post has reported previously that six days before DeMallon Krider died, hospital officials called Social Services about possible abuse. Travis told state officials this morning that the hospital call came during office hours on June 9, but his agency didn't respond that day.

"We didn't have any investigators right there and should have found somebody," Travis said during the meeting. "We could have made extra effort to round someone up and send them to the hospital."

But those actions were not a violation, Travis said. State rules say the agency has 24 hours to respond to abuse and 72 hours to a neglect complaint. If a case is "life or death," the agency can take a child from a home for 12 hours before going to a judge.

This morning, Travis said the hospital called about DeMallon Krider, 2, about 4:05 p.m. that Monday. A source has told the Post that a nurse called first to report "suspected abuse," and a doctor called a second time when told Social Services couldn't come. (See related article.)

Investigators that Monday were in court or in the field and not available. However, the worker who took the call from the hospital should have paged somebody, Travis said.

Two Social Services employees were at the house the next day and responded in the

➤ See Call, Page 6A

Call

➤ From Page 1A

time frame required by state rules, Travis said.

On June 15, while Social Services was still investigating the complaint, DeMallon died. Salisbury Police charged the child's mother, Tamanchies Krider, 26, with his murder Tuesday. She is jailed without bond.

Meanwhile, state officials have launched two intensive reviews of DeMallon's death and Social Services' day-to-day operations. DeMallon is the fourth child to die this year who had been the subject of abuse complaints and Social Services' investigations.

This morning, a five-member child fatality review team started work investigating DeMallon Krider's death. Of those five, four worked on the earlier death reviews.

The team will release its findings on July 7.

Two state employees, Jane Smith and Jane Malpass, are working exclusively with Social Services to monitor day-to-day operations.

Smith and Malpass are conducting triple checks with intake calls about abuse or neglect. Normally, a worker would take the call. And if a report is not substantiated, the supervisor and the worker would sign a form in agreement.

Now, Smith and Malpass will check behind those two.

Smith and Malpass have discovered some assignment discrepancies when the supervisor is not available at the time of the call.

Kevin FitzGerald, head of the state's Division of Social Services, said that Smith and Malpass will remain in Rowan as long as necessary.

The women will also re-examine Social Services' entire case load and will review cases identified as "high-risk."

And the work to protect the children in Rowan will be "vigilant," FitzGerald said.

As for Travis's comment about the phone call He was responding to a question about the department's backup procedures on calls after hours.

Charlotte Gardner, R-Rowan, said she was surprised that the call came in during hours. She said that with all the "concentration on after hours maybe regular hours have fallen through the cracks."

Meanwhile, FitzGerald said that his agency will also conduct a separate administrative review of Travis and his entire agency. The review will be conducted after the child fatality team gets its findings.

Hospital suspected abuse six days before child died

Salisbury Post
6/20/97

BY ROSE POST
SALISBURY POST

Six days before a 2-year-old toddler was killed, hospital officials clearly told the Department of Social Services they "suspected abuse" — not just neglect — of the child, a source familiar with the investigation says.

But a Social Services official told a hospital worker no protective services worker was available and the backup person could go to the hospital only if the case was "a matter of life or death."

When told of Social Services' response, a doctor repeated the call — and got the same answer. The Social Services worker said everyone was either "in the field" or in court on other juvenile cases and repeated that a backup worker could only respond in case of "life or death."

DeMallon Krider died six days later.

The source says the reports to Social Services — and the responses — are part of the written record that is part of the criminal investigation into DeMallon's death. His mother, Tamanchies Krider, has been charged with murder and is in the Rowan County Detention Center.

In recent days, officials debating Social Services actions in the case have questioned whether or not the hospital report reflected *abuse* or *neglect*, a less serious threat to life.

In a statement issued Thursday, Social Services Director Rick Travis said the 2-year-old died while his department was investigating "alleged neglect by the child's mother."

Today Travis did not respond to written questions from the Post concerning the hospital's report to Social Services.

The source says "it was

➤ See **Hospital**, Page 6A

Hospital

➤ From Page 1A

reported to DSS as a possible abuse case" on June 9. No pictures were made at that time, but the report refers to bruising and bite marks.

Social Services told the hospital, the source says, that the agency would investigate the following day. Law requires reports of abuse to be investigated within 24 hours and reports of neglect within 72 hours. Social workers may remove a child from the home for 12 hours if they find the situation life threatening. Legal action is required to keep a child longer.

The source was critical of the delay because the mother's record of crimes and drug abuse showed that the child was in a high risk situation. The source believes Social Services should have had the authority to remove DeMallon from the home.

A Post reporter asked Jim Freeman, chief executive officer of Rowan Regional Medical Center, on Wednesday if the hospital had reported abuse or neglect.

"It's not absolutely marked in the record as to which it was," he said, "but it's clear that while this child" was not "a clear cut, classical abuse situation," the physician's concern for abuse grew as he examined the child.

"It's clear in my mind that he wanted some attention from DSS as an abuse case," Freeman said.

Freeman confirmed the child was at the hospital for six hours that day. The mother and child waited about 1½ hours to see the physician.

"The rest of that time was waiting on the results of the examination and with DSS on the telephone," Freeman said.

At the end of the six hours, Tamanchies Krider left with her child.

Travis, Social Services director, said two social workers went to Krider's apartment at 902 E. Lafayette St. on Tuesday, June 10, interviewed the mother and photographed the injuries. The workers left the child with his mother and were still investigating when the child died Sunday afternoon.

Hospital officials photographed injuries to the child's body when emergency workers brought the toddler back Sunday. The source said the pictures showed "numerous bruises, deep burgundy bruises. ... "

Sometimes bruises are not as obvious on a black dark child, the source said. "These were so deep, you didn't have to look hard to see them."

He had minor lacerations to the head, the source said, and what "looked like a steam iron burn on his forearm. You could see the marks made by the holes in the bottom of the iron. The bruises ranged anywhere from the size of your fist or larger all over his arms, his back, his stomach, his legs, everywhere. Two dozen or more."

Seeing the bruises continues to trouble the source. "Every child deserves a chance to live and know the fullness of life," the source said. "I just can't imagine" anyone hurting a child like that when the child "is not big enough to try to run or do anything for self-defense."

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'Major' disparity in facts

Commissioners await state review in sorting DSS handling of complaint; Social Services board backs Travis

BY WESLEY YOUNG AND JASON WILLIAMS
SALISBURY POST

County commissioners say a state review panel will have to solve a "major discrepancy" surrounding Social Services' handling of a child protection complaint it received before toddler DeMallon Krider's violent death.

The board met with Social Services Director Rick Travis and other agency employees for well over an hour Friday afternoon.

But when the board came out of the closed session, Commissioner Steve Blount delivered a terse announcement that the board must still learn "whether the report to the hospital from DSS was a neglect case or an abuse case."

Travis says Krider died about a week after child protection workers began investigating a report of neglect that a Rowan Regional Medical Center hospital worker made to his department June 9.

Social workers did not visit the Krider home until June 10 — an allowable lapse of time for a report of neglect, but not if the report was one of abuse.

However, sources familiar with the investigation have told the Post that a hospital worker made a report of abuse to Social Services, and that a doctor followed up the call when the Social Services employee said no one would come unless it was a "matter of life or death."

"If it was neglect, they probably acted in a timely manner," Commissioner Newton Cohen told the Post after Friday's meeting was over. "If it does turn out to be abuse, it is pretty serious. So far as I am concerned, I am not going to prejudge it, and wait for the review."

That's what all commissioners were saying Friday. Blount, who's defended Social Services, and Commissioner Dave Rowland, the department's chief critic on the board, for once found themselves agreeing.

"So much hinges on how it was turned in," Rowland said. "A second call (the one made by the doctor) would certainly tell you there was some distress.

"If a hospital calls and says that it is abuse, there is no justification for not showing up."

Earlier on Friday, Social Services board members gave Travis a vote of confidence after a coming from their own closed session with the agency director.

The Social Services board, not the county Board of Commissioners, has direct authority over Travis.

Board chairwoman Irene Goodlett said board members have faith in Travis and the agency. Goodlett later told the Post that

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Facts

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Travis was "as good as any director in the state," and that the director worked hard to manage the agency.

"You know we are understaffed," she said.

Goodlett declined further comment about Krider's death until a state fatality review team concludes its findings on July 7.

On Friday, the five-member state team began interviews in the child's death. The mother, Tamanchies Krider, 26, has been charged with murder.

The child fatality review marks the third time that state officials have come to Rowan County to see how Social Services handled a child protection investigation before the death of a child. Two state employees, Jane Smith and Jane Malpass, are also working with the agency on a day-to-day basis.

And Travis has asked for a top-level review of how well he and his child protection staff do their jobs.

Rowland has called for "cleaning house" at Social Services if it turns out the hospital made a report of abuse. Friday, Rowland said he has confidence that the state review team that's coming in will get to the bottom of the matter.

During the closed session, Blount told the Post Friday, he learned from Social Services workers that they "have looked at their official records and the hospital official records, and from that perspective, it was a report of neglect.

"Apparently someone (at the hospital) .... thought it was abuse and thought they were not getting a response from DSS," Blount added, referring to reports in the Salisbury Post concerning the hospital's efforts to get a social worker to come see the child.

Although Social Services received the hospital call during business hours June 9, Travis told the county Child Fatality Review team Friday morning, no investigators were on hand and his agency did not respond that day.

Social workers did investigate the Krider home situation starting June 10. The Post asked Rowland what they found after he came out of the closed session.

"Their (Social Services') stance was that there was nothing they could see that would substantiate taking out that child," Rowland said.

Rowland and Blount also agreed that officials apparently followed the guidelines when they gave custody of the boy to his mother in May. Court records say Krider has two prior misdemeanor assault convictions, and that she gave birth to DeMallon while an inmate at the Correctional Center for Women in Raleigh. She had been sent to prison for violating a health department isolation order issued because of her HIV-positive condition.

"You can't say they did anything wrong" after looking at the custody record, Rowland said. "For some reason, our .... court system wants to remove a child only as a last resort."

Travis would not talk specifics, but said that in general, Social Services is required to make "diligent effort to reunite children and parents."

"What that means is that you give the parent clear explanation of what they should do to gain custody of the child back," Travis said.

For instance, if a parent had a drug problem, they would have to be under treatment. Bad conditions at home would have to be corrected. And so forth.

Rowland and Cohen attended Friday's Social Services meeting, but Cohen left when the board went into closed session.

With Frank Tadlock, the board's Social Services' liaison, not able to make the meeting, Rowland made a bid to stay in the room. But the board split 2-2 on that motion, with Goodlett and board member Jeannie Misenheimer voting against allowing Rowland to attend. Board members Lee Piper and Dianne Scott voted to let Rowland into the meeting.

Rowland said later he agreed to leave because of the tie vote.

Meanwhile, Travis said the latest child fatality issue has workers in his department "second- and third-guessing themselves" and feeling under great pressure to be "perfect." In February, staffers received psychological "debriefing," and some employees received individual counseling.

Commissioner Cohen said a lot depends on the outcome of the state review.

"If the paper stories are accurate, Social Services are in trouble," Cohen said, referring to the flap over whether abuse or neglect was reported. "If the paper story proves to be wrong, they probably aren't in trouble."

SALISBURY POST 6/21/97

Child abuse, government and responsibility

BY PHILLIP HATFIELD
SPECIAL TO THE POST

The death of a child anywhere, anytime, under any circumstances is one too many. I can think of no greater loss to our families, our community and ultimately our nation than when a child dies from abuse. However, as I have personally observed events at the May and June meetings of the Rowan County Child Abuse Task Force and read the numerous statements, editorials and articles in the media, I have began to consider whether our collective expectations of the state, county and even city governments aren't somewhat unrealistic.

It is true that the various law enforcement, social services and public health care agencies are mandated to "protect the children" as those organizations go about the business of providing their respective professional services, but I am concerned that we have allowed the responsibility to prevent child abuse to begin and end there.

In any homicide, sexual offense, drug-related crime or, for that matter, simple burglary, the responsibility does not entirely belong to the government — it belongs to the perpetrator. In other words, the person who committed the crime. I do not believe it is logical for anyone — not the families, friends or government agencies — to accept the blame for the commission of a crime. This is the responsibility of the offender. We have de-focused on this simple fact in the wake of the four recent child homicides in Rowan County.

There are literally volumes of psychological research on record which have addressed the problems of criminal behavior from a variety of clinical, theoretical and even political perspectives. However, one principle that has remained clear and consistent is that it is difficult, if not impossible, to predict with 100 percent accuracy any type of criminal behavior, especially homicidal behavior. If this weren't the case, then there would be no evidence of recidivism, or repeat offenses, when criminals are released from prison or placed on probation. Virtually anyone can produce a litany of statistics to demonstrate that is a major problem. Most statisticians agree that the best predictor of future behavior is past behavior; however, if a parent does not have a pattern or prior criminal record of homicide, there is not always convincing evidence that can predict whether they will ever murder, even if they have assaulted someone, including a child.

This is important to understand because in no manner am I implying that assault is not a serious problem. Rather, I am saying that the presence of assaultive behavior does not necessarily predict homicide. Therefore, it would be very difficult for any professional to accurately predict and control that kind of violence.

Consider the many other cases of assault or physical child abuse that have doubtlessly occurred but have *not* resulted in homicide. You have to ask yourself, what made that particular situation different? What made it easier for the offender to cross that boundary to actually take a child's life this time?

The answer to that question will not lend itself well to quick, easy or well intentioned answers. We cannot say that it was simply drugs, alcohol, or even that the social services, law enforcement or medical communities were fully responsible. Each of the four homicides in Rowan County represent four unique situations, and I doubt that any one of those family circumstances developed overnight. Several people, including families and friends, saw the problems long before the professionals were notified, and so did the perpetrators.

We must consider the actual offender the responsible party and carefully examine our own behavior to ensure that as private citizens we are doing our part. By this I mean that we must begin to hold each other accountable as friends, neighbors, co-workers, etc. and to get involved when we suspect child abuse before the situation gets out of control. Likewise, we must add some balance to our perspective and not engage in blaming each other for the sake of diffusing the responsibility.

At the same time we should expect accountability from our public and private agencies involved with families and children. It is foolish to rely upon political rhetoric without action, or to continue to expect the government to fix the problems in our families and communities without our active involvement. Uncle Sam can be a great friend, but I don't want him taking charge of our families.

That task belongs first to the private citizens of Rowan County. We should accept the responsibility.

■

Philip Hatfield is a psychologist in private practice in Salisbury, working with children and families, and also a child mental health examiner for Rowan County.

A TROUBLED LIFE

WAYNE HINSHAW/SALISBURY POST

Tamanchies Krider

May 25, 1970
Born at Rowan Regional Medical Center. (Some law enforcement records show 1971.)

August 1986
Enrolled as freshman at Salisbury High School. Dropped out quickly. Previously attended Knox Middle School.

June 1988
Charged with assault with a deadly weapon for allegedly stabbing a woman with a knife. Later convicted.

Freshman in high school

May 21, 1992
Convicted of assault with a deadly weapon for stabbing another woman with a knife.

Jan. 13, 1993
Gives birth to DeLondon Eltran Krider at Rowan Hospital.

Sept. 23, 1993
16-year-old over a crack cocaine deal, according to police.

Aug. 17, 1994
Charged with shoplifting.

Sept. 15, 1994
Convicted of violating public health law for ignoring order to get HIV counseling. Sentenced to 2 years in prison.

Sept. 16, 1994
Admitted to prison.

DeMallon Krider, 2

Dec. 7, 1994
Gives birth to DeMallon El-Juhnn Krider. Child goes to foster parent.

Sept. 14, 1996
Released from prison. Cited for 11 infractions while in prison.

May 7, 1997
Regains custody of DeMallon.

June 3, 1997
Her probation officer reports possible abuse of Krider's older son, DeLondon, to Social Services and police department.

June 9, 1997
Krider takes DeMallon to Rowan Regional emergency room for fever and weakness. Hospital officials notice bites and cuts and call Social Services.

June 10, 1997
Social workers visit Krider's apartment to interview her and see DeMallon.

June 15, 1997
Krider's sister calls 911, and officers find DeMallon on bedroom floor. Declared dead at Rowan Regional.

Under arrest

Mother blurts out: 'Guilty'

Woman's statement inadmissible as evidence

BY JOHN PATTERSON
SALISBURY POST

Tamanchies Krider showed little emotion this morning as she stood in Rowan County District Court and said she was guilty of murdering her 2-year-old son.

Her statement doesn't carry any legal significance. She didn't have an attorney and was only answering a prosecutor's procedural question. But the words shocked people working in the courtroom.

Dressed in an orange jump suit from the Rowan County Detention Center, Krider made her first appearance on charges of murdering DeMallon El-Juhnn Krider. Judge David Wilson appointed Marshall Bickett as Krider's attorney, and she will remain in jail without bond until her next court appearance.

Sitting in the courtroom, pulled there out of anger and disbelief, the dead boy's former foster mother, Doris Boyd, could only shake her head — and fight back tears — as she heard the word "guilty" come from Krider's mouth.

Later, outside the courtroom, Boyd gingerly held an 8- by 10-inch photograph of the toddler.

"She (Tamanchies) said she would never hurt him," Boyd said. "I didn't get the feeling that things might be wrong — that she might have hurt him — until after all this happened."

The state gave Boyd custody of DeMallon on Dec. 12, 1994, just five days after the toddler was born at Wake County Medical Center. At the time, Krider was at the N.C. Women's Correctional Center in Raleigh, serving a two-year prison term for violating North Carolina's communicable disease law.

Boyd, who was forced to return the toddler to Krider May 7, said she visited Krider on June 8 and noticed bruises and scratches on the toddler.

A day later, officials say, Krider took him to Rowan Regional Medical Center for fever and weakness. Hospital officials also noticed the injuries and called the Department of Social Services.

"I saw the left side of his head, and it was badly bruised," Boyd said. "His right hand was scratched, and his forehead was bruised as well. She kept telling me that another child was beating him up. I really and truly thought that her (Krider) sister's child did it. But now I realize that another child couldn't have put those marks on him."

Boyd said she called Social Services and begged them to give custody of the child back to her.

"I asked Social Services why I couldn't keep him," Boyd said. "I would have put that child in my will. He would have been taken care of."

A registered nurse, Boyd said she was rarely allowed to see DeMallon after she returned him to Krider.

"She (Krider) was scared about me," Boyd said. "She wouldn't let me near him. When I saw him that day (June 8), she wouldn't let me hold him, even though he recognized my name. He was calling for me, but she said she didn't have time to let me play with him."

Travis: Look at me and DSS

BY ROSE POST
SALISBURY POST

Rowan County's director of Social Services wants the state to look at how well he and his department protect children.

But Rick Travis said this morning he has no intention of resigning.

"If I thought that my resignation would insure no more children were murdered," Travis told the Post, "my letter would be in the hands of the board right now."

His comment was reaction to a firestorm of outrage following news Sunday of the murder of the fourth child under Social Services' investigation this year.

Simultaneously, questions about the deaths in Rowan County are being raised at all levels of government, from Gov. Jim Hunt to members of the General Assembly, the secretary of Human Resources, chiefs of state divisions and local county commissioners.

During 24 hours of rapid fire developments:

■ Governor Jim Hunt called Rowan Rep. Charlotte Gardner to ask what he could do to help. Serious questions and concerns were expressed by Dr. David Bruton, Secretary of Human Resources, and Kevin FitzGerald, director of the N.C. Division of Social Services.

■ A state child welfare worker with more than 25 years of experience was dispatched to Salisbury to work with Rowan County to make sure that all steps necessary are taken to assure the protection of children.

■ The same state review team that investigated the deaths of Budde Clark, 6, Christopher Jones, 19 months, and Trola Miller, 16, was being assembled to come to Rowan Friday to find out what happened here that led to the death of 2-year-old DeMallon El-Juhnn Krider on Sunday. The child's mother, Tamanchies Krider, has been charged with murder and is now in Rowan County jail.

■ And DSS director Travis issued a statement asking for an "administrative review" of himself and his department.

"It is fair to question my leadership," he said in the written statement. "The citizens of Rowan County need to have confidence in their employees, and I believe an administrative review is the right thing to do. A review would provide answers to the public's questions."

At least three people — County commissioner Dave Rowland, attorney Mary Beth Smith and her mother, longtime child advocate Elizabeth Smith — questioned Travis' leadership and whether he should continue to head the department after news of the child's death.

Travis said this morning he doesn't resent the talk about his resignation.

But, he added, he's not convinced that he is doing something so poorly that it has influenced social workers to do their jobs improperly. The administrative review, he said, is one way to get another perspective.

Travis declined to comment on the Krider case, but referred to it in his statement, noting that the child died while Social Services was conducting an investigation into the alleged neglect by the child's mother.

"My staff and I are shocked, and deeply saddened, by the child's death. The N.C. Division

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"If I thought that my resignation would insure no more children were murdered, my letter would be in the hands of the board right now."

— Rick Travis, DSS director

Dave Rowland, who told the Post Wednesday it was "time to clean house" at the Social Services Department.

time this year a young child has died after Social Services had been warned of a problem in the home.

Social Services "is saying it was neglect, not abuse" that hospital officials reported.

to me like this is another situation where it would have not been prevented, no matter

Travis

➤ From Page 1A

of Social Services will conduct a comprehensive review of the department's handling of the case and will make public its findings.

"I believe that it is quite appropriate for people in Rowan County to question the performance of the department, given the child fatalities in the past four months. I know that I would be asking questions, even if I had no connection to DSS.

"State child fatality reviews examine individual situations," he continued, "and draw conclusions. But these reviews do not necessarily look at the 'big picture.' For that reason, I strongly urge the Board of Social Services and the Board of Commissioners to request that the N.C. Division of Social Services conduct an Administrative Review of Children's Services in Rowan County DSS, which would include a review of how programs are operated, and the management of these programs."

At the same time Travis released his statement, state Social Services director FitzGerald issued a statement that his division had dispatched Jane H. Smith, director of program operations for the state children's services section, to Salisbury today "at the invitation of Rowan County Department of Social Services."

Jane Smith, he said, "is a seasoned child welfare supervisor who understands all aspects of protective services, foster care and adoption."

The purpose of her assignment, he added "will be to assure that all necessary steps to protect children are taken. Specifically, she will monitor and consult with Rowan County to see that every case involving a child in custody is reviewed and that the appropriate second party reviews of all incoming calls are in place. She will report directly to Chuck Harris, chief of children's services for the N.C. Division of Social Services, and to me."

FitzGerald said she will remain in Rowan until the job is finished. "And I don't know how long that's going to be."

Harris said Jane Smith has "more than 25 years of experience at the county level, at the regional level and the state level, so she is thoroughly professional and just as knowledgeable as she can be. Her role is to work with the county and to provide the assurances that the steps are taken."

At the same time Harris was rounding up the state review team which came to Rowan in March to find out what happened in the deaths of the other three children between Jan. 31 and Feb. 4.

Harris was replaced on the committee by Melinda Hamrick, assistant director for local support in the N.C. Division. Harris was scheduled to be in charge of a major meeting of 19 counties in Raleigh Friday.

Other members of the review team are John Shaw, director of the Rowan County Health Department; Dr. Marcia Herman-Giddens, of the state medical examiners office; Jennifer Tolle, executive director of Prevent Child Abuse North Carolina; and JoAnn Lamm, director of child welfare policy in the Children's Services Section of the state division.

They will begin work with an entrance interview in Salisbury at 9 a.m. Friday at the Department of Social Services.

"They'll probably be there for the day," FitzGerald said. "What we're probably looking at is a report about July 7 — it takes about two weeks to complete this — and the report will be public."

Harris said, "They'll be talking to law enforcement, emergency room, and emergency response people who went out to the home. As we look at the record and talk to those people, we might identify other folks we need to talk to. We've got to set those (interviews) up today. This is real fast track work and we hope everybody will be available."

If the team needs to return, he added, they will.

Rep. Charlotte Gardner had an appointment with Harris this afternoon to discuss the situation in Rowan.

She told the Post this morning that the governor had called her Wednesday.

"He wanted to know what he could do to help. I said it's too early to assess it. We'll have to see what kind of findings we come up with this time."

Gardner said she's been told the whole N.C. Department of Human Services was in shock with what happened in Rowan.

"Dr. David Bruton said, 'This has just got to stop.' " she said, adding that she found the situation here "incredible."

"I think they've tried to do everything they could from here to help," Gardner said. "I'm beginning to get questions like, 'What are you all doing in Rowan County?' Certainly nobody wants anything like this to happen, but we've been in the spotlight recently what with

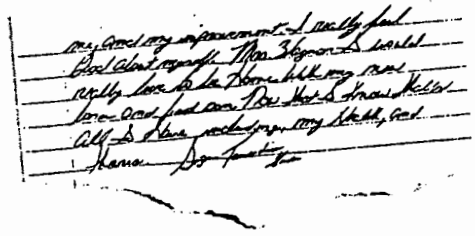
Mother wrote to judge for release

While she was still in prison, Tamanchies Krider wrote to Chief District Court Judge Anna Mills Wagoner, asking for her help in getting her freedom. Here is the letter as she wrote it:

12-19-94

This letter is coming from Tamanchies Krider, whom you found guilty Sept. 15, 1994. It was about a Health Violation. Well, I have had my baby. Also, my cd4 (white cell) counts has went up. I'm very sorry for my crime. I really didn't know how serious and helpful it was to the baby and I, I truly understand and will also go by the rules that my county and state has me under. I would like to know could you let, the doctor or someone know when I can be-release. I will really make sure I will go to every appointment I am assigned to go to. I will make sure my son will get to his appointments. Right now he is found negative. Thanks to you and God. I really has improve far as my health is concern. Mrs. Wagnor, I would love to here from you concerning me, and my improvement. I really feel good about myself. Mrs. Wagnor, I would really love to be home with my new born and first son. Now that I know that's all I have including, my health, and there's.

—Tamanchies Krider



A history

Tamanchies Krider

BY JASON WILLIAMS
SALISBURY POST

Tamanchies Krider owed the teen-ager money for crack cocaine.

Back on Sept. 23, 1993, Salisbury Police say, the pair crossed paths at Village Variety, a convenience store at 727 Hopkins St. When Allen Leonard, four days shy of turning 17, asked Krider for his $20, Krider said she would get to him later.

Then, according to Salisbury Police Capt. Mark Wilhelm, Leonard hit Krider in the face and shot her in the left side with a .25-caliber handgun.

Police charged Leonard with assault with a deadly weapon to inflict serious injury, possession of a stolen firearm and possession of a firearm by someone under 18.

After the shooting, Krider spent one day at Rowan Regional Medical Center. Her bill came to $2,649.65. When Krider didn't pay, hospital authorities took her to court and won a judgement.

Krider may never get the chance to pay that bill. She's in the Rowan County Detention Center charged with murdering her 2-year-old son, DeMallon Krider.

Since her son died Sunday, more and more details of Krider's life are emerging, showing a history of hurting others or being hurt. This month alone, she was nearly evicted and the father of her first child went to prison for violating his probation.

Cocaine problems

Krider acknowledges she is a recovered cocaine addict. She's also HIV-positive.

In 1994, officials with the Rowan County Health Department learned that she was pregnant. When she failed to heed counseling sessions about HIV, the virus that leads to AIDS, health officials recommended that the Salisbury woman go to prison to protect herself, the public and her unborn son.

Since 1993, Rowan County Health Director John Shaw has written four so-called "isolation orders" regulating the behavior and health risks of people with communicable diseases. Two cases dealt with tuberculosis and another case dealt with tuberculosis and HIV, Shaw said Wednesday afternoon.

"She was a young woman who needed help and was struggling with a drug addiction," Shaw said about Krider.

Land once destined for homes will help restore Everglades

EVERGLADES NATIONAL PARK, Fla. (AP) — It might sound like a swindle, but for those looking to restore the Everglades, $50 million is a good price to pay for some choice swampland.

Vice President Al Gore on Tuesday announced the

off hungry mosquitoes and 90-degree heat. "This area we are going to be able to acquire ... has the highest level of diversity of life in the entire state of Florida."

The land purchased is home to the endangered Florida panther, black bear and orchids

U.S. demands

WASHINGTON (AP) — A move in Congress to link payment of the U.S. debt to the United Nations to major reform of the organization is causing concern among the 184 other member states, Secretary-General Kofi Annan says.

ROWAN MANTRA: DO THE LEAST

Wrong message

Salisbury Post
6/22/97

The difference between abuse and neglect seems like a mighty thin thread from which to hang the Rowan County Department of Social Services' professional reputation.

And, as the controversy grows, Rowan County's reputation hangs by a thread, also.

If 2-year-old DeMallon Krider's condition at Rowan Regional Medical Center on June 9 was reported as child abuse, according to state regulations, Social Services failed its duty by not sending a social worker to the hospital immediately.

If his situation was reported as neglect, however, the department was meeting standards to wait and send investigators to his house the next day.

All this sounds like bureaucratic nit-picking in light of the final facts: DeMallon died on June 15, in the midst of a Social Services investigation, and his mother has been charged with murder. Regardless of what was communicated or miscommunicated on June 9, the more crucial questions revolve around what happened on the 10th and thereafter. What did child protection investigators find during their visit to DeMallon's home, and are the final stages of child abuse so rapid and unpredictable that they detected no threat to the child?

Somehow the message seems to have gone through the Rowan Department of Social Services to do only the minimum — to meet legal requirements instead of going the extra mile or inch to protect children. Do the least.

That is the message that comes across each time Social Services explains its handling of individual cases. When the hospital called with concerns about DeMallon around 4 p.m. on that Monday, whoever took the call said investigators were not available. It was a working day; Social Services employs more than 140 people. But no one could go see DeMallon at that moment and talk to the doctor.

Knowing all that has gone on in the past six months, you'd expect Social Services to be especially sensitive to calls from the hospital and get someone out there right away — without screening the call through an abuse vs. neglect checklist. But that's a moral judgment, not a legal requirement.

Is DSS Director Rick Travis to blame for this kind of response? Has he sent the "do the least" message through the Social Services department he heads?

Or has Rowan County government sent the "do the least" message — to Social Services and other county departments? County commissioners have kept Social Services perennially under-staffed. Even after three child deaths earlier this year, they approved only about half of the new child protection positions Social Services requested, and funding for the slots won't be available until July 1. Social Services was just as short-staffed on June 9 as it was on Jan. 31.

In addition to the loss of young lives, Rowan has suffered another tragedy during this controversy: the battering of the department as a whole. Because Social Services cannot share specific details about these cases, doubt is cast over the entire department.

The state reviews of the Krider case and of the department's administration cannot proceed fast enough. But the reviews must

Salisbury Post
6/22/97

Toddler will get funeral

The phone rings, and she's there. No hello. No preliminaries. Just the question, a dagger piercing the heart.

ROSE POST

"Is anybody *doing* anything about a funeral?" my friend asks. "Somebody's got to get that baby in the ground."

She has no children herself, no tie to 2-year-old DeMallon Krider, whose mother beat him to death a week ago today, whose tiny body was sent off to Chapel Hill for an autopsy and brought back to a funeral home here to wait until ....

To wait.

His mother's in jail now, charged with murder.

No father

He had no father on Father's Day. No father to play with him, protect him, save him. No father now to bury him.

But he had friends he didn't know he had. My friend who worried about him, and Essie Hogue and her friends.

Essie is a nurse at the Salisbury VA Medical Center and a guardian ad litem who volunteers to help protect children after her working hours.

She knows what can happen to babies.

And she knows no funeral is free. No matter how much the funeral home cuts the cost. No matter how brief the graveside service. No matter how small the coffin.

And, like my friend, she knew somebody had to get that baby in the ground.

Word spread

So she talked to her friends, and they talked to their friends, and people at the hospital — from every level of the staff — reached into their pockets.

"One doctor just pulled out her checkbook and wrote her check out for $100," Essie says. "Others got on the telephone — Maria Hall, Beverly Hall, Sharon Macavina, Costella Arnold — they called churches and the NAACP and people they knew. We raised $1,300 in 24 hours.

"Can I say I didn't believe it?" Essie asked. "No, I can't. I can say, 'Yes! I do believe it!' I can say, 'Thank you, God. Thank you, God. Thank you, thank you, thank you, God!'

"And somebody called around and got a gravesite for the baby to be buried in, and my daughter, Tracey, went out and picked up money that people gave.

"And I think it's beautiful that the community is coming together to do this. Without any questions. Just reaching in their pockets and doing this."

Memorial fund

Doing enough so a graveside service has been scheduled for Tuesday at 4 o'clock at Oakwood Cemetery.

Doing enough so they hope they'll cover the bare out-of-pocket expenses Rowan Funeral Service is charging.

Doing enough so they can talk about setting up a Krider Baby Memorial Fund with any extra money that comes in, a fund that will make sure that other tiny bodies won't have to wait in a funeral home.

Doing enough to bury DeMallon Krider nicely.

But not doing enough to keep Essie Hogue from asking the question that jabs pain through her heart: How could we have come together as a community to prevent this from happening? How can we now?

SALISBURY POST 6/22/97

SALISBURY POST 6/23/97

Admit mistakes, revamp DSS system

BY BETSY C. ROSADO
SPECIAL TO THE POST

I was deeply saddened to read of yet another child dead in Rowan County this year, but I am also greatly disappointed in the lost opportunity to try and prevent more tragic loss of life among our children. We cannot save every life, but we can do much, much better if we take a few simple steps.

■ 1) The people in the agencies involved must stop concentrating on deflecting blame and admit that something has gone wrong. You must admit you have a problem before you can begin attempts to solve it. There must be an atmosphere in which all employees can acknowledge mistakes that were made, painful though this will be.

■ 2) Each incident must be reviewed with an open and objective analysis of the systemic problems that conspired to allow these all too human mistakes to occur. No one is perfect, and awareness of this and weaknesses in the system can help to create new, stronger systems that are less likely to fail.

■ 3) Create a continuing, open monitoring system in which small systemic problems, errors, and solutions can be worked out before they snowball into the kind of tragedy that is repeating itself in our county.

Amidst all the accusations and blaming, denials and excuses, real responsibility gets lost. All agencies and political leaders involved do have the responsibility and the power to correct mistakes and prevent more tragedy. The state of North Carolina, Rowan Department of Social Services, Rowan Regional Medical Center, Salisbury Post and our political leaders must leave behind the empty blame and denial game and move forward toward an honest attempt at preventing the same mistakes from repeating themselves again. It will take great courage to really do things differently, but we owe it to the memory of these children we have lost and to the future of the community we serve.

Betsy C. Rosado, a Salisbury resident, is trained in social work.

SALISBURY POST 6/26/97

Mother indicted

DA has not decided if he will seek death penalty

A grand jury returned an indictment Monday accusing Tamanchies Krider of murdering her 2-year-old son.

Rowan County District Attorney Bill Kenerly will announce at a later hearing whether he intends to seek the death penalty for the 26-year-old Salisbury woman.

Kenerly is seeking the death penalty for two other Rowan County residents charged earlier this year with killing children in their care.

On June 15, paramedics were called to Krider's apartment at 902 E. Lafayette St. and found her son DeMallon El-Juhnn Krider on the floor of a bedroom. He was declared dead at Rowan Regional Medical Center, and the state medical examiner's office issued a preliminary ruling that the child died on head trauma.

In early June, Krider's probation officer had called the Department of Social Services and the Salisbury Police Department to investigate possible abuse of the woman's 4-year-old son, DeLondon.

Six days before DeMallon died, Krider brought her son to Rowan Regional Medical Center for "fever and weakness." But officials at the hospital noticed bite marks and bruises on the toddler and called the Department of Social Services twice.

Social Services workers visited Krider's apartment and saw her and the child the following day. They decided to leave the toddler in the care of his mother, and his subsequent death prompted state officials to launch several reviews of Social Services' actions.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 949 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Hackney
Sen.)

moves to amend the bill on page 3, line 39

( ) WHICH CHANGES THE TITLE

by rewriting the line to read as follows:

"in disclosing or declining to disclose information pursuant to this section shall be."

SIGNED Hackney

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

X Committee Substitute for
H.B. 949 A BILL TO BE ENTITLED AN ACT TO IMPROVE CHILD PROTECTION BY REQUIRING BETTER DISCLOSURE OF CHILD FATALITY RECORDS.

☐ 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 #2, which changes the title, unfavorable as to committee substitute bill #1, and recommendation that the committee substitute bill #2 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. (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

H D

HOUSE BILL 949
Committee Substitute Favorable 4/29/97
Proposed Committee Substitute H949-PCS6305

Short Title: Improve Child Protection/Records. (Public)

Sponsors:

Referred to:

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO IMPROVE CHILD PROTECTION BY ALLOWING DISCLOSURE OF CERTAIN RECORDS AND TO APPROPRIATE ONE HUNDRED THOUSAND DOLLARS FOR THIS PURPOSE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 7A of the General Statutes is amended by adding the following new section to read:

"**§ 7A-675.1. Disclosure in child fatality or near fatality cases.**

(a) The following definitions apply in this section:

(1) 'Child fatality' means the death of a child from suspected abuse, neglect, or maltreatment.

(2) 'Near fatality' means a case in which a physician determines that a child is in serious or critical condition as the result of sickness or injury caused by suspected abuse, neglect, or maltreatment.

(3) 'Public agency' means any agency of State government or its subdivisions as defined in G.S. 132-1(a).

(4) 'Findings and information' means a written summary, as allowed by subsections (c) through (f) of this section, of actions taken or services rendered by a public agency following receipt of information that a child might be in need of protection. The written summary shall include any of the following information the agency is able to provide:

a. The dates, outcomes, and results of any actions taken or services rendered.

b. The results of any review by the State Child Fatality Prevention Team, a local child fatality prevention team, a local community child protection team, the Child Fatality Task Force, or any public agency.

c. Confirmation of the receipt of all reports, accepted or not accepted by the county department of social services, for investigation of suspected child abuse, neglect, or maltreatment, including confirmation that investigations were conducted, the results of the investigations, a description of the conduct of the most recent investigation and the services rendered, and a statement of basis for the department's decision.

(b) Notwithstanding any other provision of law and subject to the provisions of subsections (c) through (f) of this section, a public agency shall disclose to the public, upon request, the findings and information related to a child fatality or near fatality if:

(1) A person is criminally charged with having caused the child fatality or near fatality; or

(2) The district attorney has certified that a person would be charged with having caused the child fatality or near fatality but for that person's prior death.

(c) Nothing herein shall be deemed to authorize access to the confidential records in the custody of a public agency, or the disclosure to the public of the substance or content of any psychiatric, psychological, or therapeutic evaluations or like materials or information pertaining to the child or the child's family unless directly related to the cause of the child fatality or near fatality, or the disclosure of information that would reveal the identities of persons who provided information related to the suspected abuse, neglect, or maltreatment of the child.

(d) Within five working days from the receipt of a request for findings and information related to a child fatality or near fatality, a public agency shall consult with the appropriate district attorney and provide the findings and information unless the agency has a reasonable belief that release of the information:

(1) Is not authorized by subsections (a) and (b) of this section;

(2) Is likely to cause mental or physical harm or danger to a minor child residing in the deceased or injured child's household;

(3) Is likely to jeopardize the State's ability to prosecute the defendant;

(4) Is likely to jeopardize the defendant's right to a fair trial;

(5) Is likely to undermine an ongoing or future criminal investigation; or

(6) Is not authorized by federal law and regulations.

(e) Any person whose request is denied may apply to the appropriate district court for an order compelling disclosure of the findings and information of the public

agency. The application shall set forth, with reasonable particularity, factors supporting the application. The district court shall have jurisdiction to issue such orders. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the appellate courts. After the court has reviewed the specific findings and information, in camera, the court shall issue an order compelling disclosure unless the court finds that one or more of the circumstances in subsection (d) of this section exist.

(f) Access to criminal investigative reports and criminal intelligence information of public law enforcement agencies, and confidential information in the possession of the State Child Fatality Prevention Team, the local teams, and the Child Fatality Task Force, shall be governed by G.S. 132-1.4 and G.S. 143-578 respectively.

(g) Any public agency or its employees acting in good faith in disclosing or declining to disclose information pursuant to this section shall be immune from any criminal or civil liability that might otherwise be incurred or imposed for such action.

(h) Nothing herein shall be deemed to narrow or limit the definition of 'public records' as set forth in G.S. 132-1(a)."

Section 2. G.S. 7A-675(h) reads as rewritten:

"(h) ~~Nothing in this section shall preclude the necessary sharing of information among authorized agencies.~~ The chief district court judge in each district shall designate by standing order certain agencies in the district as 'agencies authorized to share information'. Agencies so designated shall share with one another, upon request, information that is in their possession that is relevant to any case in which a petition is filed alleging that a juvenile is abused, neglected, or dependent, and shall continue to do so until the juvenile is no longer subject to the juvenile jurisdiction of the court. Agencies that may be designated as 'agencies authorized to share information' include local mental health facilities, local health departments, local departments of social services, local law enforcement agencies, local school administrative units, the district's district attorney's office, the Division of Juvenile Services of the Administrative Office of the Courts, and the Office of Guardian ad Litem Services of the Administrative Office of the Courts. Any information shared among agencies pursuant to this subsection shall remain confidential, shall be withheld from public inspection, and shall be used only for the protection of the juvenile. Nothing in this section or any other provision of law shall preclude any other necessary sharing of information among agencies."

Section 3. Of the funds appropriated from the General Fund to the Department of Human Resources for the Division of Social Services, the sum of one hundred thousand dollars ($100,000) for the 1997-98 fiscal year is to be used to implement the provisions of this act.

Section 4. This act becomes effective October 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

S992-PCSRG-001
PROPOSED COMMITTEE SUBSTITUTE
SENATE BILL 992
THIS IS A DRAFT 11-JUN-97 18:15:40
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: NC Boxing Commission. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS RELATED TO THE NORTH CAROLINA BOXING COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-651 reads as rewritten:

"§ 143-651. Definitions.

~~As used in this Article:~~ The following definitions apply in this Article:

(1) ~~'Amateur' means a~~ Amateur. -- A person who is not and has never received or competed for any purse or other article or thing of value for participating in a match.

(2) ~~'Announcer' means any~~ Announcer. -- Any person who engages in the act of announcing a boxing match.

(3) ~~'Boxer' means any~~ Boxer. -- Any person who engages as a participant in a boxing match.

(4) ~~'Boxing match' means a~~ Boxing match. -- A match where the participants engage in the use of full

contact boxing techniques (using the fist only), and where the object of a match is to win by decision, knockout (KO), or ~~technical knockout (TKO), and shall include kickboxing matches as defined in this section.~~ technical knockout (TKO).

(5) ~~'Commission' means the~~ Commission. -- The North Carolina State Boxing Commission.

(6) ~~'Contest' means a~~ Contest. -- A boxing match in which the participants strive ~~earnestly~~ to win.

(7) ~~'Contestant' means any~~ Contestant. -- Any person who engages as a participant in a boxing match.

(8) ~~'Exhibition' means a~~ Exhibition. -- A boxing match where the participants display their boxing skills and technique without necessarily striving to win.

(9) ~~'Judge' means a~~ Judge. -- A person who has a vote in determining the winner of any match or contest.

(10) ~~'Kickboxer' means any~~ Kickboxer. -- Any person who engages as a participant in a kickboxing match.

(11) ~~'Kickboxing match' means a~~ Kickboxing match. -- A match in which the participants engage in full contact martial arts fighting techniques using the hands and the feet, and where the object of the match is to win by decision, knockout (KO), or technical knockout (TKO).

(12) ~~'Licensee' means any~~ Licensee. -- Any person, club, corporation, organization, or association to whom a license has been issued pursuant to the provisions of this Article.

(13) ~~'Manager' means any person, including an officer of a corporate manager and a managing partner of a partnership manager,~~ Manager. -- Any person who controls or administers the boxing affairs of any contestant, and who:

a. By contract, agreement, or other arrangement with any person undertakes or has undertaken to represent in any way the interest of the contestant in any professional boxing contest in which the boxer is to participate as a contestant, and is entitled under that contract, agreement, or arrangement to receive

monetary or other compensation for his services, without regard to the sources of the ~~compensation, except that the~~ compensation. The term 'manager' shall not be construed to mean any attorney licensed to practice in this State whose participation in the activities is restricted solely to ~~his~~ representing the interests of a professional boxer as ~~his client;~~ a client.

b. Directs or controls the professional boxing activities of any professional ~~boxer; or~~ boxer.

c. Receives or is entitled to receive a percentage of the gross purse or gross income of any professional boxing contest.

(14) ~~'Match' means any~~ Match. -- Any boxing or kickboxing contest or exhibition, and includes any event, engagement, sparring or practice session, show or program where the public is admitted and in which there is intended to be physical contact, whether an exhibition or contest. This definition does not include training or practice sessions when no admission is charged.

(15) ~~'Matchmaker' means a~~ Matchmaker. -- A person through whom matches are arranged for participants and who otherwise assists participants in procuring engagement dates for boxing.

(16) ~~'Natural person' means an~~ Natural person. -- An individual.

(17) ~~'Participant' means any~~ Participant. -- Any person who engages in a match or exhibition and performs as a boxer.

(18) ~~'Person' means an~~ Person. -- An individual, group of individuals, business, corporation, limited liability company, partnership, or any other individual or collective entity.

(19) ~~'Physician' means an~~ Physician. -- An individual licensed to practice medicine in this State.

(20) ~~'Professional' means any person who has received or competed for any purse or other article or thing of~~

~~value for participating in a boxing match.~~ Professional. -- Any person who is licensed as a professional boxer under the Federal Professional Boxing Safety Act of 1996.

(21) ~~'Promoter' means any person, including an officer of a corporate promoter and a managing partner of a partnership promoter,~~ Promoter. -- Any person who produces, arranges, stages, holds, or gives any match in North Carolina involving a professional participant.

(22) ~~'Referee' means the~~ Referee. -- The official who shall enter and remain in the ring for the duration of a match and shall enforce the rules and maintain order in the ring.

(23) ~~'Ring official' means any~~ Ring official. -- Any person who performs an official function for the duration of a match.

(23a) Sanctioned amateur. -- A person who competes in a sanctioned amateur match.

(23b) Sanctioned amateur match. -- Any boxing or kickboxing match regulated by an amateur sports organization that has been recognized and approved by the North Carolina Boxing Commission.

(24) ~~'Second' means any~~ Second. -- Any person who will work or be present in the corner of a participant for the duration of a match.

(25) ~~'Timekeeper' means any~~ Timekeeper. -- Any person who will operate the clock or watch for the duration of a match for the purpose of keeping the official time of the match.

(25a) Toughman contestant. -- Any person who competes in a toughman event.

(25b) Toughman event. -- An elimination program of matches in which (i) the contestants are not professional boxers, (ii) the finalist receives a purse or other article of value, (iii) the participants engage in the use of full contact boxing techniques, and (iv) the

object of each match is to win by decision, knockout (KO), or technical knockout (TKO).

(26) ~~'Ultimate warrior match' means a~~ Ultimate warrior match. -- A match where the ~~participants~~ use any combination of boxing, kicking, wrestling, ~~hitting,~~ punching, or other combative, contact techniques and which combination of techniques is not specifically authorized by and conducted pursuant to this Article."

Section 2. G.S. 143-652 reads as rewritten:

"**§ 143-652. State Boxing Commission.**

(a) Creation. -- The North Carolina State Boxing Commission is created within the Department of the Secretary of State to regulate in North Carolina live boxing and kickboxing matches, whether ~~professional or~~ professional, amateur, sanctioned amateur, or toughman events, ~~in North Carolina.~~ in which admission is charged for viewing, or the contestants compete for a purse or prize of value greater than twenty-five dollars ($25.00). The Commission shall consist of five voting ~~members~~ members, one nonvoting member, and two nonvoting advisory members. All the members shall be residents of North ~~Carolina.~~ Carolina and shall meet requirements for membership under the Professional Boxing Safety Act of 1996. The members shall be appointed as follows:

(1) One voting member shall be appointed by the Governor for an initial term of two years.

(2) One voting member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121.

(3) One voting member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year.

(4) Two voting members shall be appointed by the Secretary of State. One shall serve for an initial term of three years, and the other shall serve for an initial term of two years.

(5) One nonvoting member shall be apppointed by the Tribal Council of the Eastern Band of the Cherokee for an initial term of three years.

~~(5)~~ (6) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

~~(6)~~ (7) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

The nonvoting member appointed pursuant to subdivision (5) of subsection (a) of this section may serve on the Commission only if an agreement exists and remains in effect between the Tribal Council of the Eastern Band of the Cherokee and the Commission authorizing the Commission to regulate professional boxing matches within the Cherokee Indian Reservation as provided by the Professional Boxing Safety Act of 1996.

The two nonvoting advisory members appointed pursuant to subdivisions (6) and (7) of subsection (a) of this section shall advise the Commission on matters concerning the health and physical condition of boxers and health issues relating to the conduct of exhibitions and boxing matches. They may prepare and submit to the Commission for its consideration and approval any rules that in their judgment will safeguard the physical welfare of all participants engaged in boxing.

Terms for all members of the Commission except for the initial appointments shall be for three years.

The Secretary of State shall designate which member of the Commission is to serve as chair. A member of the Commission may be removed from office by the Secretary of State for cause. Each member before entering upon the duties of a member shall take and

subscribe an oath to perform the duties of the office faithfully, impartially, and justly to the best of the member's ability. A record of these oaths shall be filed in the Department of the Secretary of State.

(b) Vacancies. -- Members shall serve until their successors are appointed and have been qualified. Any vacancy in the membership of the Commission shall be filled in the same manner as the original appointment. Vacancies for members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. A vacancy in the membership of the Commission other than by expiration of term shall be filled for the unexpired term only.

(c) Meetings. -- Meetings of the Commission shall be called by the ~~chair~~ Executive Director, chair, or by any two members of the Commission, and meetings shall be held at least quarterly. Any three voting members of the Commission shall constitute a quorum at any meeting. Action may be taken and motions and resolutions adopted by the Commission at any meeting by the affirmative vote of a majority of the members of the Commission present at a meeting at which a quorum exists. Any or all members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in the meeting by this means is deemed to be present in person at the meeting.

(d) Rule-Making Authority of the Commission. -- The Commission shall have the exclusive authority to approve and issue rules submitted by the Executive Director for the regulation of the conduct, promotion, and performances of live ~~boxing~~ boxing, kickboxing, sanctioned amateur, amateur, and toughman matches and exhibitions in this State. The rules shall be issued pursuant to the provisions of Chapter 150B of the General Statutes and may include, without limitation, the following subjects:

(1) Requirements for issuance of licenses and permits required by this Article.
(2) Regulation of ticket sales.
(3) Physical requirements for contestants, including classification by weight and skill.
(4) Supervision of matches and exhibitions by licensed physicians and referees.
(5) Insurance and bonding requirements.

(6) Compensation of participants and licensees.
(7) Contracts and financial arrangements.
(8) Prohibition of dishonest, unethical, and injurious practices.
(9) Facilities.
(10) Approval of sanctioning amateur sports organizations.
(11) Procedures and requirements for compliance with the Professional Boxing Safety Act of 1996.

(e) Compensation. -- None of the members of the Commission shall receive compensation for serving on the Commission. However, members of the Commission may be reimbursed for their expenses in accordance with the provisions of Chapter 138 of the General Statutes.

(f) Staff Assistance. -- The Secretary of State shall hire a person to serve as Executive Director of the Commission and shall provide staff assistance to the ~~Commission.~~ Executive Director. The Executive Director may train and contract with independent contractors for the purpose of regulating and monitoring events, issuing licenses, collecting fees, and enforcing rules of the Commission. The Executive Director may initiate criminal background checks on persons requesting to work as independent contractors for the Commission or persons applying to be licensed by the Commission."

Section 3. G.S. 143-653 reads as rewritten:

"**§ 143-653. Ultimate warrior matches prohibited.**

Ultimate warrior matches, whether the participants are professionals or amateurs, are prohibited. No person shall promote, conduct, or engage in ultimate warrior matches. This section shall not preclude ~~boxing and kickboxing as regulated in this Article or~~ professional wrestling."

Section 4. G.S. 143-654 reads as rewritten:

"**§ 143-654. Licensing and permitting.**

(a) License and Permit Required. -- It is unlawful for any person to act in this State as an announcer, contestant, judge, manager, matchmaker, promoter, referee, timekeeper, or second unless the person is licensed to do so under this Article. It is unlawful for a promoter to present a match in this State unless the promoter has a permit issued under this Article to do so. The

Commission has the exclusive authority to issue, deny, suspend, or revoke any license or permit provided for in this Article.

(b) License. -- ~~A license issued under this Article must be renewed annually on or before January 1.~~ All licenses issued under this Article shall be valid only during the calendar year in which they are issued, except contestant licenses shall be valid for one year from the date of issuance. A license for an announcer, contestant, judge, matchmaker, referee, timekeeper, or second shall be issued only to a natural person. A natural person shall not transfer or assign a license or change it into another name. A license for a manager or promoter may be issued to a corporation or partnership; provided, however, that all officers or partners shall submit an application for individual licensure, and only those officers or partners who are licensed shall be entitled to negotiate or sign contracts. The addition of a new officer or partner during the license period shall necessitate the filing of an application for individual licensure by the new officer or partner.

An applicant for a license shall file with the Commission the appropriate nonrefundable fee and any forms, documents, medical examinations, or exhibits the Commission may require in order to properly administer this Article. The information requested shall include the date of birth and social security number of each applicant as well as any other personal data necessary to positively identify the applicant and may include the requirement of verification of any documents the Commission deems appropriate. A person may not participate under a fictitious or assumed name in any match unless the person has first registered the name with the Commission.

(c) Surety Bond. -- An applicant for a promoter's license must submit, in addition to any other forms, documents, or ~~exhibits,~~ exhibits requested by the Commission, a surety bond payable to the Commission for the benefit of any person injured or damaged by (i) the promoter's failure to comply with any provision of this Article or any rules adopted by the Commission or (ii) the promoter's failure to fulfill the obligations of any contract between or among licensees related to the holding of a boxing event. The surety bond shall be issued in an amount to be no less than five thousand dollars ($5,000). The amount of the surety bond shall be negotiable upon the sole discretion of the

Commission. All surety bonds shall be upon forms approved by the Secretary of State and supplied by the Commission.

(d) Permit. -- A permit issued to a promoter under this Article is valid for a single match. An applicant for a permit shall file with the Commission the appropriate nonrefundable fee and any forms or documents the Commission may require."

Section 5. G.S. 143-655 reads as rewritten:

"**§ 143-655. Fees; State Boxing Commission Revenue Account.**

(a) License Fees. -- The Commission shall collect the following license fees:

Announcer	$50.00
Contestant	$25.00
Judge	$50.00
Manager	$100.00
Matchmaker	$200.00
Promoter	$300.00
Referee	$50.00
Timekeeper	$50.00
Second	$25.00.

The annual license renewal fees shall ~~not exceed~~ be the same as the initial license fees.

(b) Permit Fees. -- The Commission ~~may establish a fee schedule for permits issued under this Article. The fees may vary depending on the seating capacity of the facility to be used to present a match. The fee may not exceed the following amounts:~~ shall collect the following permit fees:

Seating Capacity	Fee Amount
Less than 2,000	$100.00
2,000 -- 5,000	$200.00
Over 5,000	$300.00.

(c) State Boxing Commission Revenue Account. -- There is created the State Boxing Commission Revenue Account within the Department of the Secretary of State. Monies collected pursuant to the provisions of this Article shall be credited to the Account and applied to the administration of the Article."

Section 6. G.S. 143-656 reads as rewritten:

"**§ 143-656. Contracts and financial arrangements.**

Any contract between ~~a boxer and any other licensee~~ licensees and ~~any contract involving~~ related to a boxing match or exhibition held or to be held in this State must meet the

requirements of administrative rules as set forth by the Commission. Any contract which does not satisfy the requirements of the administrative rules shall be void and unenforceable. All contracts shall be in writing."

Section 7. G.S. 143-657 is repealed.

Section 8. Article 68 of Chapter 143 of the General Statutes is amended by adding the following new section:

"**§ 143-657.1. Sanctioned amateur matches.**

In addition to the other applicable provisions of this Article, a sanctioned amateur match shall be conducted pursuant to the rules of the sports organization sanctioning the boxing match or exhibition."

Section 9. G.S. 143-658 reads as rewritten:

"**§ 143-658. Violations.**

(a) Civil Penalties. -- The ~~Commission~~ Executive Director may issue an order against a licensee or other person who willfully violates any provision of this Article, imposing a civil penalty of up to five thousand dollars ($5,000) for a single violation or of up to twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings. No order under this subsection may be entered without giving the licensee or other person 15 days' prior notice and an opportunity for a contested case hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes.

(b) Criminal Penalties. -- A willful violation of any provision of this Article shall constitute a Class 2 misdemeanor. The Secretary of State may refer any available evidence concerning violations of this Article to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings.

The attorneys employed by the Secretary of State shall be available to prosecute or assist in the prosecution of criminal cases when requested to do so by a district attorney and the Secretary of State approves.

(c) Injunction. -- Whenever it appears to the ~~Commission~~ Executive Director that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of this Article or any rule or order hereunder, the ~~Commission~~ Executive Director may ~~in its discretion~~ bring an action in any court of competent jurisdiction to enjoin those

acts or practices and to enforce compliance with this Article or any rule or order issued pursuant to this Article.

(d) Enforcement. -- For purposes of enforcing this Article, the Department of the Secretary of State's law enforcement agents have statewide jurisdiction. These law enforcement agents may assist local law enforcement agencies in their investigations and may initiate and carry out, in coordination with local law enforcement agencies, investigations of violations of this Article. These law enforcement agents have all the powers and authority of law enforcement officers when executing arrest warrants."

Section 10. Notwithstanding any other statute to the contrary, the North Carolina Boxing Commission may adopt temporary rules to implement the provisions of Article 68 of Chapter 143 of the General Statutes within six months of the effective date of this act. Any temporary rules shall be adopted in accordance with the provisions of Chapter 150B of the General Statutes.

Section 11. This act is effective when it becomes law.

North Carolina General Assembly
Legislative Services Agency

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July 8, 1997

MEMORANDUM

TO: Representative Charles Neely

FROM: Evan Rodewald E.R.

RE: Gross Receipts Tax on Boxing

This memo provides additional information on what a nine percent (9.0%) increase in the gross receipts tax on boxing, kickboxing and toughman events could raise.

Assumptions

Neither the Department of Revenue nor the Boxing Commission has any data on how much revenue the current three percent (3.0%) tax on fights generates. Our estimates of what a 9.0% tax increase could generate are based on rough projections from the Boxing Commission, which are based on the following assumptions:

- About 60 fights will be held in North Carolina in Fiscal Year 1997-98.
- About 70% of these fights will be toughman fights, and about 30% will be professional fights.
- The average attendance at fights is between 600 and 800.
- Toughman tickets usually sell for $8.00 in advance, and $10.00 at the event.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

- Professional tickets usually sell for $20.00 in advance, and $25.00 at the event.
- Because we do not know how a 9.0% increase in the tax will effect ticket sales, for the sake of simplicity, we assume that the increase will have no effect on ticket sales. If this assumption is incorrect, revenues from the tax increase may be lower than our estimates.
- Because we have no data on compliance with the tax, we assume that fight promoters would comply. Again, if this assumption is incorrect, revenues from the tax increase may be lower than our estimates.

Estimate

Based on the assumption listed above, we estimate that a 9.0% increase in the gross receipts tax on fight events would generate between $42,000 and $56,000.

Although these estimates are based on the best information available, we consider them rough projections.

Please let me know if you have any questions.

ER:djb

cc: Warren Plonk
Richard Bostic
Martha Harris
Tim Hovis

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 992

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

S992-ALCX-6/30 Page 1 of __

Date_____, 199__

Comm. Sub. [ ]
Amends Title [YES]

moves to amend the bill on page 1, line 3,
by rewriting the line to read:
"~~BOXING~~ COMMISSION AND TO INCREASE THE GROSS RECEIPTS TAX ON BOXING, KICKBOXING, AND TOUGHMAN EVENTS.";

and on page 12, lines 11 and 12,
by inserting the following between those lines:
"Section 10. Article 2 of Chapter 105 of the General Statutes is amended by adding a new section to read:
'§ 105-37.2. Amusements -- Boxing.

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

(1) Boxing match. -- Defined in G.S. 143-651.
(2) Kickboxing match. -- Defined in G.S. 143-651.
(3) Toughman event. -- Defined in G.S. 143-651.

(b) License Tax. -- Every person engaged in the business of giving, offering, or managing any boxing match, kickboxing match, or toughman event for which an admission is charged shall pay an annual license tax of fifty dollars ($50.00) for each place where a match or event is held.

(c) Gross Receipts Tax. -- In addition to the tax levied in subsection (b) of this section, the taxpayer shall pay an additional tax on the gross receipts of the business at the rate of twelve percent (12%). If the entertainment for which the taxpayer charges admission includes both an event described in subsection (b) of this section and other entertainment or amusement otherwise taxable under G.S. 105-37.1 or G.S. 105-38, the tax levied in this section applies to the combined entertainment and the taxes levied in G.S. 105-37.1 and G.S. 105-38 do not apply.

The gross receipts tax is due on the 10th day of the month following the month in which the gross receipts accrue. Every person liable for the gross receipts tax shall, on or before the due date, prepare and render a return on a form prescribed by the Secretary. The return shall state the total gross receipts derived in the preceding month from taxable entertainments and shall include any other information required by the Secretary. The annual license

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 992

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

S992-ALCX-6/30 Page 2 of __

tax levied in subsection (b) of this section is an advance payment of the gross receipts tax levied in this subsection.

(d) Local Tax. -- Counties may not levy any license tax on the business taxed under this section. Municipalities may levy a license tax not in excess of one-half the license tax levied in subsection (b) of this section.'

Section 11. G.S. 105-109.1 reads as rewritten:

'**§ 105-109.1. Interest.**

The taxes on gross receipts levied in G.S. ~~105-37.1(a) and G.S.~~ 105-37.1(a), 105-37.2(c), and 105-38(f), the tax on installment paper dealers levied in G.S. 105-83(b), and the tax on publishers of newsprint publications levied in G.S. 105-102.6, shall bear interest at the rate established under G.S. 105-241.1(i) from the time the taxes were due until the taxes are paid.'"

and by renumbering the remaining sections accordingly;

and on page 12, line 19,
by rewriting the line to read:

Section 13. Sections 10 and 11 of this act become effective October 1, 1997, and apply to entertainments presented on or after that date. The remainder of this act is effective when it becomes law."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED 7-8-97 FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 992 Amendment No. _____

Proposed Comm Sub. (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Shubert
Sen.)

1 moves to amend the bill on page 1, line 9

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the words "is not" and

4 substituting ~~[illegible]~~

5 "is not receiving or competing for"

6

7

8

9

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11

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19

SIGNED Fern H Shubert

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
S.B. 992 A BILL TO BE ENTITLED AN ACT AMENDING THE LAWS RELATED TO THE NORTH CAROLINA BOXING 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 House committee substitute bill, which changes the title, unfavorable as to original bill and recommendation that the House 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. (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 D

SENATE BILL 992
Proposed Committee Substitute S992-PCS1858

Short Title: NC Boxing Commission. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS RELATED TO THE NORTH CAROLINA BOXING COMMISSION AND TO INCREASE THE GROSS RECEIPTS TAX ON BOXING, KICKBOXING, AND TOUGHMAN EVENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-651 reads as rewritten:

"**§ 143-651. Definitions.**

~~As used in this Article:~~ The following definitions apply in this Article:

(1) ~~'Amateur' means a~~ Amateur. -- A person who is not receiving or competing for and has never received or competed for any purse or other article or thing of value for participating in a match.

(2) ~~'Announcer' means any~~ Announcer. -- Any person who engages in the act of announcing a boxing match.

(3) ~~'Boxer' means any~~ Boxer. -- Any person who engages as a participant in a boxing match.

(4) ~~'Boxing match' means a~~ Boxing match. -- A match where the participants engage in the use of full contact boxing techniques (using the fist only), and where the object of a match is to win by decision, knockout (KO), or ~~technical knockout (TKO), and shall include kickboxing matches as defined in this section.~~ technical knockout (TKO).

(5) ~~'Commission' means the~~ Commission. -- The North Carolina State Boxing Commission.

(6) ~~'Contest' means a~~ Contest. -- A boxing match in which the participants strive ~~earnestly~~ to win.

(7) ~~'Contestant' means any~~ Contestant. -- Any person who engages as a participant in a boxing match.

(8) ~~'Exhibition' means a~~ Exhibition. -- A boxing match where the participants display their boxing skills and technique without necessarily striving to win.

(9) ~~'Judge' means a~~ Judge. -- A person who has a vote in determining the winner of any match or contest.

(10) ~~'Kickboxer' means any~~ Kickboxer. -- Any person who engages as a participant in a kickboxing match.

(11) ~~'Kickboxing match' means a~~ Kickboxing match. -- A match in which the participants engage in full contact martial arts fighting techniques using the hands and the feet, and where the object of the match is to win by decision, knockout (KO), or technical knockout (TKO).

(12) ~~'Licensee' means any~~ Licensee. -- Any person, club, corporation, organization, or association to whom a license has been issued pursuant to the provisions of this Article.

(13) ~~'Manager' means any person, including an officer of a corporate manager and a managing partner of a partnership manager,~~ Manager. -- Any person who controls or administers the boxing affairs of any contestant, and who:

a. By contract, agreement, or other arrangement with any person undertakes or has undertaken to represent in any way the interest of the contestant in any professional boxing contest in which the boxer is to participate as a contestant, and is entitled under that contract, agreement, or arrangement to receive monetary or other compensation for his services, without regard to the sources of the ~~compensation, except that the~~ compensation. The term 'manager' shall not be construed to mean any attorney licensed to practice in this State whose participation in the activities is restricted solely to ~~his~~ representing the interests of a professional boxer as ~~his client;~~ a client.

b. Directs or controls the professional boxing activities of any professional ~~boxer; or~~ boxer.

c. Receives or is entitled to receive a percentage of the gross purse or gross income of any professional boxing contest.

(14) ~~'Match' means any~~ Match. -- Any boxing or kickboxing contest or exhibition, and includes any event, engagement, sparring or practice session, show or program where the public is admitted and in which there is intended to be physical contact, whether an

exhibition or contest. This definition does not include training or practice sessions when no admission is charged.

(15) ~~'Matchmaker' means a~~ Matchmaker. -- A person through whom matches are arranged for participants and who otherwise assists participants in procuring engagement dates for boxing.

(16) ~~'Natural person' means an~~ Natural person. -- An individual.

(17) ~~'Participant' means any~~ Participant. -- Any person who engages in a match or exhibition and performs as a boxer.

(18) ~~'Person' means an~~ Person. -- An individual, group of individuals, business, corporation, limited liability company, partnership, or any other individual or collective entity.

(19) ~~'Physician' means an~~ Physician. -- An individual licensed to practice medicine in this State.

(20) ~~'Professional' means any person who has received or competed for any purse or other article or thing of value for participating in a boxing match.~~ Professional. -- Any person who is licensed as a professional boxer under the federal Professional Boxing Safety Act of 1996.

(21) ~~'Promoter' means any person, including an officer of a corporate promoter and a managing partner of a partnership promoter,~~ Promoter. -- Any person who produces, arranges, stages, holds, or gives any match in North Carolina involving a professional participant.

(22) ~~'Referee' means the~~ Referee. -- The official who shall enter and remain in the ring for the duration of a match and shall enforce the rules and maintain order in the ring.

(23) ~~'Ring official' means any~~ Ring official. -- Any person who performs an official function for the duration of a match.

(23a) Sanctioned amateur. -- A person who competes in a sanctioned amateur match.

(23b) Sanctioned amateur match. -- Any boxing or kickboxing match regulated by an amateur sports organization that has been recognized and approved by the North Carolina Boxing Commission.

(24) ~~'Second' means any~~ Second. -- Any person who will work or be present in the corner of a participant for the duration of a match.

(25) ~~'Timekeeper' means any~~ Timekeeper. -- Any person who will operate the clock or watch for the duration of a match for the purpose of keeping the official time of the match.

(25a) Toughman contestant. -- Any person who competes in a toughman event.

(25b) Toughman event. -- An elimination program of matches in which (i) the contestants are not professional boxers, (ii) the finalist receives a purse or other article of value, (iii) the participants

engage in the use of full contact boxing techniques, and (iv) the object of each match is to win by decision, knockout (KO), or technical knockout (TKO).

(26) ~~'Ultimate warrior match' means a~~ Ultimate warrior match. -- A match where the participants use any combination of boxing, kicking, wrestling, hitting, punching, or other combative, contact techniques and which combination of techniques is not specifically authorized by and conducted pursuant to this Article."

Section 2. G.S. 143-652 reads as rewritten:

"**§ 143-652. State Boxing Commission.**

(a) Creation. -- The North Carolina State Boxing Commission is created within the Department of the Secretary of State to regulate in North Carolina live boxing and kickboxing matches, whether ~~professional or~~ professional, amateur, sanctioned amateur, or toughman events, ~~in North Carolina.~~ in which admission is charged for viewing, or the contestants compete for a purse or prize of value greater than twenty-five dollars ($25.00). The Commission shall consist of ~~five~~ six voting members and two nonvoting advisory members. All the members shall be residents of North ~~Carolina.~~ Carolina and shall meet requirements for membership under the Professional Boxing Safety Act of 1996. The members shall be appointed as follows:

(1) One voting member shall be appointed by the Governor for an initial term of two years.

(2) One voting member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121.

(3) One voting member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year.

(4) Two voting members shall be appointed by the Secretary of State. One shall serve for an initial term of three years, and the other shall serve for an initial term of two years.

(5) One member shall be appointed by the Tribal Council of the Eastern Band of the Cherokee for an initial term of three years.

~~(5)~~ (6) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the North Carolina Medical Society, which shall nominate two licensed physicians for the position.

~~(6)~~ (7) One nonvoting advisory member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate for an initial term of one year, in accordance with G.S. 120-121, from nominations made by the

North Carolina Medical Society, which shall nominate two licensed physicians for the position.

The member appointed pursuant to subdivision (5) of subsection (a) of this section may serve on the Commission only if an agreement exists and remains in effect between the Tribal Council of the Eastern Band of the Cherokee and the Commission authorizing the Commission to regulate professional boxing matches within the Cherokee Indian Reservation as provided by the Professional Boxing Safety Act of 1996.

The two nonvoting advisory members appointed pursuant to subdivisions (6) and (7) of subsection (a) of this section shall advise the Commission on matters concerning the health and physical condition of boxers and health issues relating to the conduct of exhibitions and boxing matches. They may prepare and submit to the Commission for its consideration and approval any rules that in their judgment will safeguard the physical welfare of all participants engaged in boxing.

Terms for all members of the Commission except for the initial appointments shall be for three years.

The Secretary of State shall designate which member of the Commission is to serve as chair. A member of the Commission may be removed from office by the Secretary of State for cause. Each member before entering upon the duties of a member shall take and subscribe an oath to perform the duties of the office faithfully, impartially, and justly to the best of the member's ability. A record of these oaths shall be filed in the Department of the Secretary of State.

(b) Vacancies. -- Members shall serve until their successors are appointed and have been qualified. Any vacancy in the membership of the Commission shall be filled in the same manner as the original appointment. Vacancies for members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. A vacancy in the membership of the Commission other than by expiration of term shall be filled for the unexpired term only.

(c) Meetings. -- Meetings of the Commission shall be called by the ~~chair~~ Executive Director, chair, or by any two members of the Commission, and meetings shall be held at least quarterly. Any three voting members of the Commission shall constitute a quorum at any meeting. Action may be taken and motions and resolutions adopted by the Commission at any meeting by the affirmative vote of a majority of the members of the Commission present at a meeting at which a quorum exists. Any or all members may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in the meeting by this means is deemed to be present in person at the meeting.

(d) Rule-Making Authority of the Commission. -- The Commission shall have the exclusive authority to approve and issue rules for the regulation of the conduct, promotion, and performances of live ~~boxing~~ boxing, kickboxing, sanctioned amateur, amateur, and toughman matches and exhibitions in this State. The rules shall be

issued pursuant to the provisions of Chapter 150B of the General Statutes and may include, without limitation, the following subjects:

(1) Requirements for issuance of licenses and permits required by this Article.
(2) Regulation of ticket sales.
(3) Physical requirements for contestants, including classification by weight and skill.
(4) Supervision of matches and exhibitions by licensed physicians and referees.
(5) Insurance and bonding requirements.
(6) Compensation of participants and licensees.
(7) Contracts and financial arrangements.
(8) Prohibition of dishonest, unethical, and injurious practices.
(9) Facilities.
(10) Approval of sanctioning amateur sports organizations.
(11) Procedures and requirements for compliance with the Professional Boxing Safety Act of 1996.

(e) Compensation. -- None of the members of the Commission shall receive compensation for serving on the Commission. However, members of the Commission may be reimbursed for their expenses in accordance with the provisions of Chapter 138 of the General Statutes.

(f) Staff Assistance. -- The Secretary of State shall hire a person to serve as Executive Director of the Commission and shall provide staff assistance to the ~~Commission.~~ Executive Director. The Executive Director may train and contract with independent contractors for the purpose of regulating and monitoring events, issuing licenses, collecting fees, and enforcing rules of the Commission. The Executive Director may initiate criminal background checks on persons requesting to work as independent contractors for the Commission or persons applying to be licensed by the Commission."

Section 3. G.S. 143-653 reads as rewritten:

"**§ 143-653. Ultimate warrior matches prohibited.**

Ultimate warrior matches, whether the participants are professionals or amateurs, are prohibited. No person shall promote, conduct, or engage in ultimate warrior matches. This section shall not preclude ~~boxing and kickboxing as regulated in this Article or~~ professional wrestling."

Section 4. G.S. 143-654 reads as rewritten:

"**§ 143-654. Licensing and permitting.**

(a) License and Permit Required. -- It is unlawful for any person to act in this State as an announcer, contestant, judge, manager, matchmaker, promoter, referee, timekeeper, or second unless the person is licensed to do so under this Article. It is unlawful for a promoter to present a match in this State unless the promoter has a permit issued under this Article to do so. The Commission has the exclusive authority to issue, deny, suspend, or revoke any license or permit provided for in this Article.

(b) License. -- ~~A license issued under this Article must be renewed annually on or before January 1.~~ All licenses issued under this Article shall be valid only during the calendar year in which they are issued, except contestant licenses shall be valid for one year from the date of issuance. A license for an announcer, contestant, judge, matchmaker, referee, timekeeper, or second shall be issued only to a natural person. A natural person shall not transfer or assign a license or change it into another name. A license for a manager or promoter may be issued to a corporation or partnership; provided, however, that all officers or partners shall submit an application for individual licensure, and only those officers or partners who are licensed shall be entitled to negotiate or sign contracts. The addition of a new officer or partner during the license period shall necessitate the filing of an application for individual licensure by the new officer or partner.

An applicant for a license shall file with the Commission the appropriate nonrefundable fee and any forms, documents, medical examinations, or exhibits the Commission may require in order to properly administer this Article. The information requested shall include the date of birth and social security number of each applicant as well as any other personal data necessary to positively identify the applicant and may include the requirement of verification of any documents the Commission deems appropriate. A person may not participate under a fictitious or assumed name in any match unless the person has first registered the name with the Commission.

(c) Surety Bond. -- An applicant for a promoter's license must submit, in addition to any other forms, documents, or ~~exhibits,~~ exhibits requested by the Commission, a surety bond payable to the Commission for the benefit of any person injured or damaged by (i) the promoter's failure to comply with any provision of this Article or any rules adopted by the Commission or (ii) the promoter's failure to fulfill the obligations of any contract between or among licensees related to the holding of a boxing event. The surety bond shall be issued in an amount to be no less than five thousand dollars ($5,000). The amount of the surety bond shall be negotiable upon the sole discretion of the Commission. All surety bonds shall be upon forms approved by the Secretary of State and supplied by the Commission.

(d) Permit. -- A permit issued to a promoter under this Article is valid for a single match. An applicant for a permit shall file with the Commission the appropriate nonrefundable fee and any forms or documents the Commission may require."

Section 5. G.S. 143-655 reads as rewritten:

"**§ 143-655. Fees; State Boxing Commission Revenue Account.**

(a) License Fees. -- The Commission shall collect the following license fees:

Announcer	$50.00
Contestant	$25.00
Judge	$50.00
Manager	$100.00
Matchmaker	$200.00
Promoter	$300.00
Referee	$50.00

Timekeeper	$50.00
Second	$25.00.

The annual license renewal fees shall ~~not exceed~~ be the same as the initial license fees.

(b) Permit Fees. -- The Commission ~~may establish a fee schedule for permits issued under this Article. The fees may vary depending on the seating capacity of the facility to be used to present a match. The fee may not exceed the following amounts:~~ shall collect the following permit fees:

Seating Capacity	Fee Amount
Less than 2,000	$100.00
2,000 -- 5,000	$200.00
Over 5,000	$300.00.

(c) State Boxing Commission Revenue Account. -- There is created the State Boxing Commission Revenue Account within the Department of the Secretary of State. Monies collected pursuant to the provisions of this Article shall be credited to the Account and applied to the administration of the Article."

Section 6. G.S. 143-656 reads as rewritten:

"**§ 143-656. Contracts and financial arrangements.**

Any contract between ~~a boxer and any other licensee~~ licensees and ~~any contract involving~~ related to a boxing match or exhibition held or to be held in this State must meet the requirements of administrative rules as set forth by the Commission. Any contract which does not satisfy the requirements of the administrative rules shall be void and unenforceable. All contracts shall be in writing."

Section 7. G.S. 143-657 is repealed.

Section 8. Article 68 of Chapter 143 of the General Statutes is amended by adding the following new section:

"**§ 143-657.1. Sanctioned amateur matches.**

In addition to the other applicable provisions of this Article, a sanctioned amateur match shall be conducted pursuant to the rules of the sports organization sanctioning the boxing match or exhibition."

Section 9. G.S. 143-658 reads as rewritten:

"**§ 143-658. Violations.**

(a) Civil Penalties. -- The ~~Commission~~ Executive Director may issue an order against a licensee or other person who willfully violates any provision of this Article, imposing a civil penalty of up to five thousand dollars ($5,000) for a single violation or of up to twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings. No order under this subsection may be entered without giving the licensee or other person 15 days' prior notice and an opportunity for a contested case hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes.

(b) Criminal Penalties. -- A willful violation of any provision of this Article shall constitute a Class 2 misdemeanor. The Secretary of State may refer any available

evidence concerning violations of this Article to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings.

The attorneys employed by the Secretary of State shall be available to prosecute or assist in the prosecution of criminal cases when requested to do so by a district attorney and the Secretary of State approves.

(c) Injunction. -- Whenever it appears to the ~~Commission~~ Executive Director that a person has engaged or is about to engage in an act or practice constituting a violation of any provision of this Article or any rule or order hereunder, the ~~Commission~~ Executive Director may ~~in its discretion~~ bring an action in any court of competent jurisdiction to enjoin those acts or practices and to enforce compliance with this Article or any rule or order issued pursuant to this Article.

(d) Enforcement. -- For purposes of enforcing this Article, the Department of the Secretary of State's law enforcement agents have statewide jurisdiction. These law enforcement agents may assist local law enforcement agencies in their investigations and may initiate and carry out, in coordination with local law enforcement agencies, investigations of violations of this Article. These law enforcement agents have all the powers and authority of law enforcement officers when executing arrest warrants."

Section 10. Article 2 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-37.2. Amusements -- Boxing.**

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

(1) Boxing match. -- Defined in G.S. 143-651.

(2) Kickboxing match. -- Defined in G.S. 143-651.

(3) Toughman event. -- Defined in G.S. 143-651.

(b) License Tax. -- Every person engaged in the business of giving, offering, or managing any boxing match, kickboxing match, or toughman event for which an admission is charged shall pay an annual license tax of fifty dollars ($50.00) for each place where a match or event is held.

(c) Gross Receipts Tax. -- In addition to the tax levied in subsection (b) of this section, the taxpayer shall pay an additional tax on the gross receipts of the business at the rate of twelve percent (12%). If the entertainment for which the taxpayer charges admission includes both an event described in subsection (b) of this section and other entertainment or amusement otherwise taxable under G.S. 105-37.1 or G.S. 105-38, the tax levied in this section applies to the combined entertainment and the taxes levied in G.S. 105-37.1 and G.S. 105-38 do not apply.

The gross receipts tax is due on the 10th day of the month following the month in which the gross receipts accrue. Every person liable for the gross receipts tax shall, on or before the due date, prepare and render a return on a form prescribed by the Secretary. The return shall state the total gross receipts derived in the preceding month from taxable entertainments and shall include any other information required by the Secretary. The annual license tax levied in subsection (b) of this section is an advance payment of the gross receipts tax levied in this subsection.

(d) Local Tax. -- Counties may not levy any license tax on the business taxed under this section. Municipalities may levy a license tax not in excess of one-half the license tax levied in subsection (b) of this section."

Section 11. G.S. 105-109.1 reads as rewritten:

"**§ 105-109.1. Interest.**

The taxes on gross receipts levied in G.S. ~~105-37.1(a) and G.S.~~ 105-37.1(a), 105-37.2(c), and 105-38(f), the tax on installment paper dealers levied in G.S. 105-83(b), and the tax on publishers of newsprint publications levied in G.S. 105-102.6, shall bear interest at the rate established under G.S. 105-241.1(i) from the time the taxes were due until the taxes are paid."

Section 12. Notwithstanding any other statute to the contrary, the North Carolina Boxing Commission may adopt temporary rules to implement the provisions of Article 68 of Chapter 143 of the General Statutes within six months of the effective date of this act. Any temporary rules shall be adopted in accordance with the provisions of Chapter 150B of the General Statutes.

Section 13. Sections 10 and 11 of this act become effective October 1, 1997, and apply to entertainments presented on or after that date. The remainder of this act is effective when it becomes law.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

July 8, 1997 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Edd Bason & crew	UNC-TV
Karen Adams	Governor's office
Bernard Allen	SOS
Rose Post	Salisbury Post
Shawnee Ramsome	DSS
Kevin FitzGerald	DSS
Thomas V. Bennett	NCCFTF
Jane B. Gray	DOJ
Ken Ewing	Capital Strategies
Megan Manley	NC Child Advocacy Institute
Paula A. Stoll	Covenant w/ NC's Children
Helen Lyons	Meck. Co. DSS
J Spurgeon Lennard Jr.	Sec. of State - Boxing Commission
Kelly	ACLU-NC
Deborah Ross	ACLU-NC

MINUTES
HOUSE JUDICIARY II COMMITTEE

July 9, 1997

The North Carolina House of Representatives Judiciary II Committee met on July 9, 1997, at 11:20 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Decker, Russell, and Weatherly. A list of visitors is attached.

The following bills were discussed:

SB-60 CLARIFY LEFT-TURN RULES
SB-372 TIME LIMITS FOR FOREIGN SERVICE

Senator Winner was recognized to explain SB-60 and answer questions of committee members. A copy of the bill and bill explanation prepared by Ms. Susan Hayes, Committee Counsel, are attached.

Representative Baddour was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Russell moved the amendment be incorporated into a committee substitute bill, with a favorable report as to House committee substitute bill, unfavorable as to original bill; motion passed.

Ms. Anne Winner, North Carolina Bar Association, was recognized to explain SB 372 and answer questions of committee members. A copy of the bill and bill explanation prepared by Tim Hovis and Walker Reagan, Staff Attorneys, are attached.

Representative Baddour was recognized to send forth an amendment and moved it be adopted; motion passed. A copy of the amendment is attached.

Representative Russell moved the amendment be incorporated into a committee substitute bill, with a favorable report as to House committee substitute bill, unfavorable as to Senate committee substitute bill; motion passed.

The meeting was adjourned at 12 noon.

Respectfully submitted,

Representative Charles B. Neely, Jr., Chairman

Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 1

SENATE BILL 60

Short Title: Clarify Left-Turn Rules. (Public)

Sponsors: Senator Winner.

Referred to: Transportation.

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE RULES FOR MAKING LEFT TURNS ON VARIOUS ROADWAYS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-153(b) reads as rewritten:

"(b) Left Turns. -- The driver of a vehicle intending to turn left at any intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of ~~such~~ that vehicle, and, after entering the intersection, the left turn shall be made so as to leave the intersection in a lane lawfully available to traffic moving in ~~such~~ the direction upon the roadway being entered. ~~Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.~~

When making a left turn, the following rules apply:

(1) When a vehicle on a one-way street makes a left turn onto a one-way street, with the traffic moving from the driver's right to the driver's left, the turn shall be initiated from the leftmost available lane of travel into the leftmost available lane of travel;

(2) When a vehicle on a one-way street makes a left turn onto a two-way street, the turn shall be initiated from the leftmost available lane of travel into the leftmost available lane of travel to the right of the center line with traffic moving from the driver's right to the driver's left;

(3) When a vehicle on a two-way street makes a left turn onto a one-way street, with traffic moving from the driver's right to the

driver's left, the turn shall be initiated from the leftmost available lane of travel to the right of the center line into the leftmost available lane of travel; and

(4) When a vehicle on a two-way street makes a left turn onto a two-way street, the turn shall be initiated from the leftmost available lane of travel to the right of the center lane to the leftmost available lane of travel to the right of the center line, with traffic moving from the driver's right to the driver's left."

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

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July 9, 1997

TO: Representative Charles B. Neely, Jr, Chairman
House Judiciary II Committee

FROM: Susan L. Hayes, Committee Counsel

RE: SB60 - Clarify Left-Turn Rules

SB60 amends the motor vehicle laws to clarify that left turns should always be made from the leftmost lane into the leftmost lane designated for that direction of travel.

This act is effective when it becomes law.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE July 9, 1997

S. B. No. 60 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) Baddour
Sen.)

1 moves to amend the bill ~~on~~ from page 1, lines 13 @
2 ( ) WHICH CHANGES THE TITLE through page 2, line 8
3 by _____
4 deleting those lines.
5 _____
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____

SIGNED _____

ADOPTED 7-9-97 FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

☐ Committee Substitute for
S.B.60 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE RULES FOR MAKING LEFT TURNS ON VARIOUS ROADWAYS.

☐ 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 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S D

SENATE BILL 60
Proposed House Committee Substitute S60-PCS1860

Short Title: Clarify Left-Turn Rules. (Public)

Sponsors:

Referred to:

February 6, 1997

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE RULES FOR MAKING LEFT TURNS ON VARIOUS ROADWAYS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-153(b) reads as rewritten:

"(b) Left Turns. -- The driver of a vehicle intending to turn left at any intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of ~~such~~ that vehicle, and, after entering the intersection, the left turn shall be made so as to leave the intersection in a lane lawfully available to traffic moving in ~~such~~ the direction upon the roadway being entered. ~~Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.~~"

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 2

SENATE BILL 372
Judiciary Committee Substitute Adopted 4/30/97

Short Title: Time Limits for Foreign Service. (Public)

Sponsors:

Referred to:

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND, FOR SERVICE IN A CIVIL ACTION UPON A DEFENDANT LOCATED OUTSIDE THE UNITED STATES, THE TIME LIMITS REGARDING THE SECURING OF AN ENDORSEMENT UPON THE ORIGINAL SUMMONS OR THE SUING OUT OF AN ALIAS OR PLURIES SUMMONS WHEN THE DEFENDANT IS NOT SERVED WITHIN THE TIME ALLOWED FOR SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 4(d) reads as rewritten:

"(d) Summons -- Extension; endorsement, alias and pluries. -- When any defendant in a civil action is not served within the time allowed for service, the action may be continued in existence as to such defendant by either of the following methods of extension:

(1) The plaintiff may secure an endorsement upon the original summons for an extension of time within which to complete service of process. Return of the summons so endorsed shall be in the same manner as the original process. Such endorsement may be secured within 90 days after the issuance of summons or the date of the last prior endorsement, or

(2) The plaintiff may sue out an alias or pluries summons returnable in the same manner as the original process. Such alias or pluries summons may be sued out at any time within 90 days after the date

of issue of the last preceding summons in the chain of summonses or within 90 days of the last prior endorsement.

Provided, in tax and assessment foreclosures under G.S. 47-108.25 and G.S. 105-374, the first endorsement may be made at any time within two years after the issuance of the original summons, and subsequent endorsements may thereafter be made as in other actions; or an alias or pluries summons may be sued out at any time within two years after the issuance of the original summons, and after the issuance of such alias or pluries summons, the chain of summonses may be kept up as in any other action.

Provided, for service upon a defendant in a place not within the United States, the first endorsement may be made at any time within two years after the issuance of the original summons, and subsequent endorsements may thereafter be made at least once every two years; or an alias or pluries summons may be sued out at any time within two years after the issuance of the original summons, and after the issuance of such alias or pluries summons, the chain of summonses may be kept up as in any other action if sued out within two years of the last preceding summons in the chain of summonses or within two years of the last prior endorsement.

Provided, further, the methods of extension may be used interchangeably in any case and regardless of the form of the preceding extension."

Section 2. This act is effective when it becomes law and applies to actions commenced on or after that date.

North Carolina General Assembly
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May 13, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman,
House Judiciary II Committee

FROM: Tim Hovis and O. Walker Reagan, Staff Attorneys

RE: **Senate Bill 372 - Time Limits For Foreign Service (Second Edition)-**
Senator Odom

Senate Bill 372 amends the time that a civil summons, or an alias and pluries summons, can remain valid when the defendant is located outside of the United States. This bill is a recommendation of the North Carolina Bar Association.

This bill amends the Rules of Civil Procedures, G.S. 1A-1, Rule 4(d), which governs the extension of time to serve summons and alias and pluries summons in civil cases. Under current law, to extend the time within which a summons may be served, a plaintiff must secure an endorsement on the original summons, or sue out an alias and pluries summons, within **90 days** of the last summons or endorsement.

Under this bill, **for service upon a defendant not within the United States,** an endorsement may be made or an alias and pluries summons may be sued out at any time within **two years** of the original summons and every two years thereafter. The summons may then be kept up if within two years of the last preceding summons or endorsement, another summons is sued out.

This bill would become effective when it becomes law and would apply to actions begun on or after that date.

Rule 4. Process.

(a) *Summons - Issuance; who may serve.* - Upon the filing of the complaint, summons shall be issued forthwith, and in any event within five days. The complaint and summons shall be delivered to some proper person for service. In this State, such proper person shall be the sheriff of the county where service is to be made or some other person duly authorized by law to serve summons. Outside this State, such proper person shall be anyone who is not a party and is not less than 21 years of age or anyone duly authorized to serve summons by the law of the place where service is to be made. Upon request of the plaintiff separate or additional summons shall be issued against any defendants. A summons is issued when, after being filled out and dated, it is signed by the officer having authority to do so. The date the summons bears shall be prima facie evidence of the date of issue.

(b) *Summons - Contents.* - The summons shall run in the name of the State and be dated and signed by the clerk, assistant clerk, or deputy clerk of the court in the county in which the action is commenced. It shall contain the title of the cause and the name of the court and county wherein the action has been commenced. It shall be directed to the defendant or defendants and shall notify each defendant to appear and answer within 30 days after its service upon him and further that if he fails so to appear, the plaintiff will apply to the court for the relief demanded in the complaint. It shall set forth the name and address of plaintiff 's attorney, or if there be none, the name and address of plaintiff. If a request for admission is served with the summons, the summons shall so state.

(c) *Summons - Return.* - Personal service or substituted personal service of summons as prescribed by Rule 4(j)(1) a and b must be made within 30 days after the date of the issuance of summons, except that in tax and assessment foreclosures under G.S. 47-108.25 or G.S. 105-374 the time allowed for service is 60 days. When a summons has been served upon every party named in the summons, it shall be returned immediately to the clerk who issued it, with notation thereon of its service.

Failure to make service within the time allowed or failure to return a summons to the clerk after it has been served on every party named in the summons shall not invalidate the summons. If the summons is not served within the time allowed upon every party named in the summons, it shall be returned immediately upon the expiration of such time by the officer to the clerk of the court who issued it with notation thereon of its nonservice and the reasons therefor as to every such party not served, but failure to comply with this requirement shall not invalidate the summons.

(d) *Summons - Extension; endorsement, alias and pluries.* - When any defendant in a civil action is not served within the time allowed for service, the action may be continued in existence as to such defendant by either of the following methods of extension:

(1) The plaintiff may secure an endorsement upon the original summons for an extension of time within which to complete service of process. Return of the summons so endorsed shall be in

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the same manner as the original process. Such endorsement may be secured within 90 days after the issuance of summons or the date of the last prior endorsement, or

(2) The plaintiff may sue out an alias or pluries summons returnable in the same manner as the original process. Such alias or pluries summons may be sued out at any time within 90 days after the date of issue of the last preceding summons in the chain of summonses or within 90 days of the last prior endorsement.

Provided, in tax and assessment foreclosures under G.S. 47-108.25 and G.S. 105-374, the first endorsement may be made at any time within two years after the issuance of the original summons, and subsequent endorsements may thereafter be made as in other actions; or an alias or pluries summons may be sued out at any time within two years after the issuance of the original summons, and after the issuance of such alias or pluries summons, the chain of summonses may be kept up as in any other action.

Provided, further, the methods of extension may be used interchangeably in any case and regardless of the form of the preceding extension.

(e) *Summons - Discontinuance.* - When there is neither endorsement by the clerk nor issuance of alias or pluries summons within the time specified in Rule 4(d), the action is discontinued as to any defendant not theretofore served with summons within the time allowed. Thereafter, alias or pluries summons may issue, or an extension be endorsed by the clerk, but, as to such defendant, the action shall be deemed to have commenced on the date of such issuance or endorsement.

(f) *Summons - Date of multiple summonses.* - If the plaintiff shall cause separate or additional summonses to be issued as provided in Rule 4(a), the date of issuance of such separate or additional summonses shall be considered the same as that of the original summons for purposes of endorsement or alias summons under Rule 4(d).

(g) *Summons - Docketing by clerk.* - The clerk shall keep a record in which he shall note the day and hour of issuance of every summons, whether original, alias, pluries, or endorsement thereon. When the summons is returned, the clerk shall note on the record the date of the return and the fact as to service or non-service.

(h) *Summons - When proper officer not available.* - If at any time there is not in a county a proper officer, capable of executing process, to whom summons or other process can be delivered for service, or if a proper officer refuses or neglects to execute such process, or if such officer is a party to or otherwise interested in the action or proceeding, the clerk of the issuing court, upon the facts being verified before him by written affidavit of the plaintiff or his agent or attorney, shall appoint some suitable person who, after he accepts such process for service, shall execute such process in the same manner, with like effect, and subject to the same liabilities, as if such person were a proper officer regularly serving process in that county.

(h1) *Summons - When process returned unexecuted.* - If a proper officer returns a summons or other process unexecuted, the plaintiff or his agent or attorney may cause service to be made

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by anyone who is not less than 21 years of age, who is not a party to the action, and who is not related by blood or marriage to a party to the action or to a person upon whom service is to be made. This subsection shall not apply to executions pursuant to Article 28 of Chapter 1 or summary ejectment pursuant to Article 3 of Chapter 42 of the General Statutes.

(i) *Summons - Amendment.* - At any time, before or after judgment, in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to substantial rights of the party against whom the process issued.

(j) *Process - Manner of service to exercise personal jurisdiction.* - In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process within or without the State shall be as follows:

(1) Natural Person. - Except as provided in subsection (2) below, upon a natural person:

a. By delivering a copy of the summons and of the complaint to him or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

(2) Natural Person under Disability. - Upon a natural person under disability by serving process in any manner prescribed in this section (j) for service upon a natural person and, in addition, where required by paragraph a or b below, upon a person therein designated.

a. Where the person under disability is a minor, process shall be served separately in any manner prescribed for service upon a natural person upon a parent or guardian having custody of the child, or if there be none, upon any other person having the care and control of the child. If there is no parent, guardian, or other person having care and control of the child when service is made upon the child, then service of process must also be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

b. If the plaintiff actually knows that a person under disability is under guardianship of any kind, process shall be served separately upon his guardian in any manner applicable and appropriate under this section (j). If the plaintiff does not actually know that a guardian has been appointed when service is made upon a person known to him to be incompetent to have charge of his affairs, then service of process must be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

(3) The State. - Upon the State by personally delivering a copy of the summons and of the

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complaint to the Attorney General or to a deputy or assistant attorney general or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or to a deputy or assistant attorney general.

(4) An Agency of the State. -

a. Upon an agency of the State by personally delivering a copy of the summons and of the complaint to the process agent appointed by the agency in the manner hereinafter provided or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to said process agent.

b. Every agency of the State shall appoint a process agent by filing with the Attorney General the name and address of an agent upon whom process may be served.

c. If any agency of the State fails to comply with paragraph b above, then service upon such agency may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General, or to a deputy or assistant attorney general.

d. For purposes of this rule, the term "agency of the State" includes every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(5) Counties, Cities, Towns, Villages and Other Local Public Bodies. -

a. Upon a city, town, or village by personally delivering a copy of the summons and of the complaint to its mayor, city manager or clerk or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its mayor, city manager or clerk.

b. Upon a county by personally delivering a copy of the summons and of the complaint to its county manager or to the chairman, clerk or any member of the board of commissioners for such county or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its county manager or to the chairman, clerk, or any member of this board of commissioners for such county.

c. Upon any other political subdivision of the State, any county or city board of education, or other local public district, unit, or body of any kind (i) by personally delivering a copy of the summons and of the complaint to an officer or director thereof, or (ii) by personally delivering a copy of the summons and of the complaint to an agent or attorney-in-fact authorized by appointment or by statute to be served or to accept service in its behalf, or (iii) by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii).

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d. In any case where none of the officials, officers or directors specified in paragraphs a, b and c can, after due diligence, be found in the State, and that fact appears by affidavit to the satisfaction of the court, or a judge thereof, such court or judge may grant an order that service upon the party sought to be served may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or any deputy or assistant attorney general of the State of North Carolina, or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina.

(6) Domestic or Foreign Corporation. - Upon a domestic or foreign corporation:

a. By delivering a copy of the summons and of the complaint to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the office; or

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service or [of] process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director or agent to be served as specified in paragraphs a and b.

(7) Partnerships. - Upon a general or limited partnership:

a. By delivering a copy of the summons and of the complaint to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf, or by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf, or by leaving copies thereof in the office of such general partner, attorney-in-fact or agent with the person who is apparently in charge of the office.

b. If relief is sought against a partner specifically, a copy of the summons and of the complaint must be served on such partner as provided in this section (j).

(8) Other Unincorporated Associations and Their Officers. - Upon any unincorporated association, organization, or society other than a partnership:

a. By delivering a copy of the summons and of the complaint to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society, or by leaving copies thereof in the office of such officer, director, managing agent or member of the governing body with the person who is apparently in charge of the office; or

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon

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such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent or member of the governing body to be served as specified in paragraphs a and b.

(9) Service upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. § 1608.

(j1) *Service by publication on party that cannot otherwise be served.* - A party that cannot with due diligence be served by personal delivery or registered or certified mail may be served by publication. Except in actions involving jurisdiction in rem or quasi in rem as provided in section (k), service of process by publication shall consist of publishing a notice of service of process by publication once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is believed by the serving party to be located, or if there is no reliable information concerning the location of the party then in a newspaper circulated in the county where the action is pending. If the party's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the party at or immediately prior to the first publication a copy of the notice of service of process by publication. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence. Upon completion of such service there shall be filed with the court an affidavit showing the publication and mailing in accordance with the requirements of G.S. 1-75.10(2), the circumstances warranting the use of service by publication, and information, if any, regarding the location of the party served.

The notice of service of process by publication shall (i) designate the court in which the action has been commenced and the title of the action, which title may be indicated sufficiently by the name of the first plaintiff and the first defendant; (ii) be directed to the defendant sought to be served; (iii) state either that a pleading seeking relief against the person to be served has been filed or has been required to be filed therein not later than a date specified in the notice; (iv) state the nature of the relief being sought; (v) require the defendant being so served to make defense to such pleading within 40 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of the first publication of notice, or the date when the complaint is required to be filed, whichever is later, and notify the defendant that upon his failure to do so the party seeking service of process by publication will apply to the court for the relief sought; (vi) in cases of attachment, state the information required by G.S. 1-440.14; (vii) be subscribed by the party seeking service or his attorney and give the post-office address of such party or his attorney; and (viii) be substantially in the following form:

NOTICE OF SERVICE OF PROCESS BY PUBLICATION

STATE OF NORTH CAROLINA _____ COUNTY

In the _____ Court

[Title of action or special proceeding] To [Person to be served]:

Take notice that a pleading seeking relief against you (has been filed) (is required to be filed not later than _____, 19____) in the above-entitled (action) (special proceeding). The nature of the relief being sought is as follows: (State nature.)

You are required to make defense to such pleading not later than (_____, 19____) and upon your failure to do so the party seeking service against you will apply to the court for the relief sought.

This, the _____ day of _____, 19____

_____ (Attorney) (Party)

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_____ (Address)

(j2) *Proof of service.* - Proof of service of process shall be as follows:

(1) Personal Service. - Before judgment by default may be had on personal service, proof of service must be provided in accordance with the requirements of G.S. 1-75.10(1).

(2) Registered or Certified Mail. - Before judgment by default may be had on service by registered or certified mail, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of G.S. 1-75.10(4). This affidavit together with the return receipt signed by the person who received the mail if not the addressee raises a presumption that the person who received the mail and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode. In the event the presumption described in the preceding sentence is rebutted by proof that the person who received the receipt at the addressee's dwelling house or usual place of abode was not a person of suitable age and discretion residing therein, the statute of limitation may not be pleaded as a defense if the action was initially commenced within the period of limitation and service of process is completed within 60 days from the date the service is declared invalid. Service shall be complete on the day the summons and complaint are delivered to the address.

(3) Publication. - Before judgment by default may be had on service by publication, the serving party shall file an affidavit with the court showing the circumstances warranting the use of service by publication, information, if any, regarding the location of the party served which was used in determining the area in which service by publication was printed and proof of service in accordance with G.S. 1-75.10(2).

(j3) *Service in a foreign country.* - Unless otherwise provided by federal law, service upon a defendant, other than an infant or an incompetent person, may be effected in a place not within the United States:

(1) By any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) If there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

a. In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

b. As directed by the foreign authority in response to a letter rogatory or letter of request; or

c. Unless prohibited by the law of the foreign country, by

1. Delivery to the individual personally of a copy of the summons and the complaint and,

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upon a corporation, partnership, association or other such entity, by delivery to an officer or a managing or general agent;

2. Any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) By other means not prohibited by international agreement as may be directed by the court.

Service under subdivision (2)c.1. or (3) of this subsection may be made by any person authorized by subsection (a) of this Rule or who is designated by order of the court or by the foreign court.

On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service. Proof of service may be made as prescribed in G.S. 1-75.10, by the order of the court, or by the law of the foreign country.

Proof of service by mail shall include an affidavit or certificate of addressing and mailing by the clerk of court.

(j4) *Process or judgment by default not to be attacked on certain grounds.* - No party may attack service of process or a judgment of default on the basis that service should or could have been effected by personal service rather than service by registered or certified mail. No party that receives timely actual notice may attack a judgment by default on the basis that the statutory requirement of due diligence as a condition precedent to service by publication was not met.

(j5) *Personal jurisdiction by acceptance of service.* - Any party personally, or through the persons provided in Rule 4(j), may accept service of process by notation of acceptance of service together with the signature of the party accepting service and the date thereof on an original or copy of a summons, and such acceptance shall have the same force and effect as would exist had the process been served by delivery of copy and summons and complaint to the person signing said acceptance.

(k) *Process - Manner of service to exercise jurisdiction in rem or quasi in rem.* - In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for the exercise of jurisdiction in rem or quasi in rem as provided in G.S. 1-75.8, the manner of service of process shall be as follows:

(1) Defendant Known. - If the defendant is known, he may be served in the appropriate manner prescribed for service of process in section (j), or, if otherwise appropriate section (j1); except that the requirement for service by publication in (j1) shall be satisfied if made in the county where the action is pending and proof of service is made in accordance with section (j2).

(2) Defendant Unknown. - If the defendant is unknown, he may be designated by description and process may be served by publication in the manner provided in section (j1), except that the requirement for service by publication in (j1) shall be satisfied if made in the county where the action is pending and proof of service is made in accordance with section (j2).

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NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 372

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

S372-ARG-001 Page 1 of __

Date_____,1997

Comm. Sub. [Yes]
Amends Title [Yes]
Second Edition

moves to amend the bill on page 1, line 7,
by rewriting the line to read:
"ALLOWED FOR SERVICE AND TO VALIDATE NOTARIAL ACTS PERFORMED BY
CERTAIN NOTARIES BEFOER JUNE 1, 1997.";

and on page 2, line 19-20,
by inserting the following between those lines:
"Section 2. G.S. 10A-16(d), as amended by S.L. 1997-19,
reads as rewritten:
'(d) This section applies to notarial acts performed before
~~December 31, 1996.~~ June 1, 1997.'".

and on page 2, line 9, by rewriting the line to read:
"Section 3. Section 1 of this act becomes effective October 1, 1997.
The remaining sections of this act are effective when they become
law."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

X Committee Substitute for
S.B. 372 A BILL TO BE ENTITLED AN ACT TO AMEND, FOR SERVICE IN A CIVIL ACTION UPON A DEFENDANT LOCATED OUTSIDE THE UNITED STATES, THE TIME LIMITS REGARDING THE SECURING OF AN ENDORSEMENT UPON THE ORIGINAL SUMMONS OR THE SUING OUT OF AN ALIAS OR PLURIES SUMMONS WHEN THE DEFENDANT IS NOT SERVED WITHIN THE TIME ALLOWED FOR SERVICE.

☐ 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. (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 D

SENATE BILL 372
Judiciary Committee Substitute Adopted 4/30/97
Proposed Committee Substitute S372-PCS2785

Short Title: Time Limits for Foreign Service. (Public)

Sponsors:

Referred to:

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND, FOR SERVICE IN A CIVIL ACTION UPON A DEFENDANT LOCATED OUTSIDE THE UNITED STATES, THE TIME LIMITS REGARDING THE SECURING OF AN ENDORSEMENT UPON THE ORIGINAL SUMMONS OR THE SUING OUT OF AN ALIAS OR PLURIES SUMMONS WHEN THE DEFENDANT IS NOT SERVED WITHIN THE TIME ALLOWED FOR SERVICE AND TO VALIDATE NOTARIAL ACTS PERFORMED BY CERTAIN NOTARIES BEFORE JUNE 1, 1997.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 4(d) reads as rewritten:

"(d) Summons -- Extension; endorsement, alias and pluries. -- When any defendant in a civil action is not served within the time allowed for service, the action may be continued in existence as to such defendant by either of the following methods of extension:

(1) The plaintiff may secure an endorsement upon the original summons for an extension of time within which to complete service of process. Return of the summons so endorsed shall be in the same manner as the original process. Such endorsement may be secured within 90 days after the issuance of summons or the date of the last prior endorsement, or

(2) The plaintiff may sue out an alias or pluries summons returnable in the same manner as the original process. Such alias or pluries

summons may be sued out at any time within 90 days after the date of issue of the last preceding summons in the chain of summonses or within 90 days of the last prior endorsement.

Provided, in tax and assessment foreclosures under G.S. 47-108.25 and G.S. 105-374, the first endorsement may be made at any time within two years after the issuance of the original summons, and subsequent endorsements may thereafter be made as in other actions; or an alias or pluries summons may be sued out at any time within two years after the issuance of the original summons, and after the issuance of such alias or pluries summons, the chain of summonses may be kept up as in any other action.

Provided, for service upon a defendant in a place not within the United States, the first endorsement may be made at any time within two years after the issuance of the original summons, and subsequent endorsements may thereafter be made at least once every two years; or an alias or pluries summons may be sued out at any time within two years after the issuance of the original summons, and after the issuance of such alias or pluries summons, the chain of summonses may be kept up as in any other action if sued out within two years of the last preceding summons in the chain of summonses or within two years of the last prior endorsement.

Provided, further, the methods of extension may be used interchangeably in any case and regardless of the form of the preceding extension."

Section 2. G.S. 10A-16(d), as amended by S.L. 1997-19, reads as rewritten:

"(d) This section applies to notarial acts performed before ~~December 31, 1996.~~ June 1, 1997."

Section 3. Section 1 of this act becomes effective October 1, 1997. The remaining sections of this act are effective when they become law.

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

July 9, 1997 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alan Miles	Barley & Dixon LLP
Bill Scogin	NCBA
Bill Rustin	UAB
Anne Dinnen	NCBA

MINUTES
HOUSE JUDICIARY II COMMITTEE

July 10, 1997

The North Carolina House of Representatives Judiciary II Committee met on July 10, 1997, at 11:45 A.M. at Representative Neely's Chamber desk. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Bowie, Creech, Gardner, Hackney, Hensley, Sutton, Weatherly, and Wilkins.

The following bill was discussed:

HB-1059 CAMA/Urban Waterfront Redevelopment

Representative Wright was recognized to explain the Senate Committee Substitute and answer questions of committee members. A copy of the bill is attached.

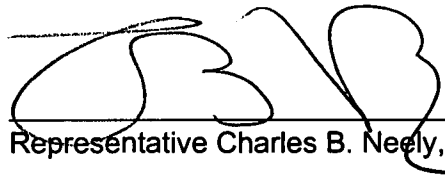
Representative McComas spoke in support of the bill.

Mr. Bill Hollman, Lobbyist, and Mr. Richard Rogers, Department of Environment, Health and Natural Resources, spoke on the bill.

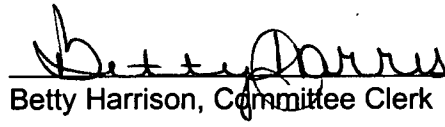
Representative Creech moved that the House concur; motion passed.

The meeting was adjourned at 11:55 A.M.

Respectfully submitted,



Representative Charles B. Neely, Jr., Chairman



Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H 3

HOUSE BILL 1059
Committee Substitute Favorable 4/28/97
Senate Commerce Committee Substitute Adopted 7/8/97

Short Title: CAMA/Urban Waterfront Redevelop. (Public)

Sponsors:

Referred to:

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE COASTAL AREA MANAGEMENT ACT TO ALLOW CERTAIN TYPES OF REDEVELOPMENT WITHIN URBAN WATERFRONTS THAT HISTORICALLY HAVE A PATTERN OF URBAN-LEVEL DEVELOPMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-120.2. Permits for urban waterfront redevelopment in historically urban areas.**

(a) Notwithstanding any other provision of law, any person may apply to the Commission for a permit for major development granting permission to use the person's land for a nonwater dependent use that is otherwise prohibited by rules, standards, or limitations prescribed by the Commission, or orders issued by the Commission, pursuant to this Article. The procedure to apply for the permit shall be as provided by G.S. 113A-119.

(b) Notwithstanding G.S. 113A-120(a), the Commission shall grant a permit for nonwater dependent development in public trust areas designated pursuant to G.S. 113A-113(b)(5) if the following criteria are met:

(1) The land is waterfront property located in a municipality.

(2) The land has a history of urban-level development as evidenced by any of the following:

a. The land is a historic place that is listed, or has been approved for listing by the North Carolina Historical Commission, in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966.

b. The land is a historical, archaeological, and other site owned, managed, or assisted by the State of North Carolina pursuant to Chapter 121 of the General Statutes.

c. The land has a central business district zoning classification, or any other classification that may be designated as acceptable by the Commission.

(3) The proposed development is sponsored in part or in whole by the local jurisdiction in which the development would be located for the purpose of significantly increasing public access consistent with the Coastal Area Management guidelines.

(4) The municipality in which the activity would occur has determined that the development will not have a significant adverse impact on the environment.

(5) The development as requested is consistent with a local urban waterfront development plan, local development regulations, public access plans, and other applicable local authority.

(c) Except as otherwise provided by this section, all other provisions of this Article apply to a permit applied for under this section, including the provisions of G.S. 113A-120(b1) and (b2)."

Section 2. G.S. 113A-120(b1) reads as rewritten:

"(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this ~~section,~~ section or of G.S. 113A-120.2, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

(1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to any activity governed by this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article or with

other federal and State laws, regulations, and rules for the protection of the environment."

Section 3. This act is effective when it becomes law.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

X Committee Substitute for
H.B. 1059 A BILL TO BE ENTITLED AN ACT TO AMEND THE COASTAL AREA MANAGEMENT ACT TO ALLOW CERTAIN TYPES OF REDEVELOPMENT WITHIN URBAN WATERFRONTS THAT HISTORICALLY HAVE A PATTERN OF URBAN-LEVEL DEVELOPMENT.

☐ 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.

X **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
HOUSE JUDICIARY II COMMITTEE

July 23, 1997

The North Carolina House of Representatives Judiciary II Committee met on July 23, 1997, at 8:30 A.M. in Room 421 of the Legislative Office Building. Representative Neely, Chairman, called the meeting to order.

Those in attendance were Representatives Neely, Kiser, Baddour, Bowie, Cansler, Culpepper, Gardner, Goodwin, Hackeny, McMahan, Russell and Sutton. A list of visitors is attached.

The following bills were discussed:

HB-438 SECURITIES/INVESTMENT ADVISERS ENFORCEMENT
HB-439 SECURITIES/INVESTMENT ADVISERS/AB

Senator Reeves was recognized to present a proposed committee substitute for SB-439. Representative Culpepper moved the proposed committee substitute be adopted for purpose of discussion; motion passed. A copy of the bill, bill explanation prepared by Tim Hovis and O. Walker Reagan, Staff Attorneys, and the proposed committee substitute are attached.

Mr. David Massey, Secretary of State's Office, was recognized to explain the bill and answer questions of committee members.

Mr. Dan Applewhite, Lobbyist, and Ms. Marguerite Bateman, Associate General Counsel, Investment Company Institute, spoke in support of the bill and answered questions of committee members.

Representative Goodwin moved for a favorable report as to House committee substitute bill and recommendation that the committee substitute bill be re-referred to the Committee on Finance; motion passed.

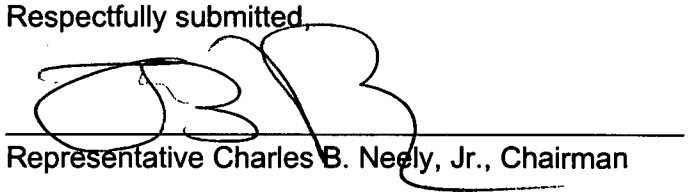
Senator Reeves was recognized to present SB-438. A copy of the bill and bill explanation prepared by Tim Hovis and O. Walker Reagan, Staff Attorneys, are attached.

Mr. David Massey, Secretary of State's Office, was recognized to explain the bill and answer questions of committee members.

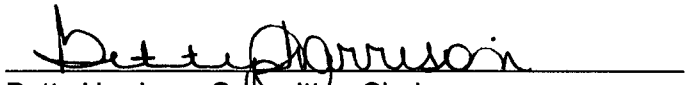
Representative Goodwin moved for a favorable report; motion passed.

The meeting was adjourned at 9:20 A.M.

Respectfully submitted,



Representative Charles B. Neely, Jr., Chairman



Betty Harrison, Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S 3

SENATE BILL 439*
Commerce Committee Substitute Adopted 4/10/97
Third Edition Engrossed 5/22/97

Short Title: Securities/Investment Advisers/AB. (Public)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT TO CONFORM THE NORTH CAROLINA SECURITIES ACT AND THE INVESTMENT ADVISERS ACT TO THE NATIONAL SECURITIES MARKETS IMPROVEMENT ACT OF 1996.

The General Assembly of North Carolina enacts:

I. Securities

Section 1. G.S. 78A-2(2)d.1. reads as rewritten:

"1. The security is exempted under subdivisions (1), (2), (3), (4), (5), (7), (9), (10), (11), (13), or (14) of G.S. 78A-16, or the transaction is exempted under G.S. 78A-17, and such exemption has not been denied or revoked under G.S. 78A-18, or the transaction is in a security covered under federal law, or".

Section 2. G.S. 78A-2(9) reads as rewritten:

"(9) 'Salesman' means any individual other than a dealer who represents a dealer in effecting or attempting to effect purchases or sales of securities. 'Salesman' does not include an individual who represents (i) an issuer in effecting transactions in a security described in sub-subdivision (2)d. of this section or a security covered under federal law, provided no commission or other special remuneration is paid or given directly or indirectly for soliciting any prospective purchaser in this State; or (ii) a dealer in

effecting transactions in this State limited to those transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934 [15 U.S.C. § 78o(h)(2)]. A partner, executive officer, or director of a dealer, or a person occupying a similar status or performing similar functions, is a salesman only if he otherwise comes within this definition."

Section 3. G.S. 78A-2 is amended by adding a new subdivision to read:

"(11a) 'Security covered under federal law' means any security that is a covered security under Section 18(b) of the Securities Act of 1933 [15 U.S.C. § 77r(b)] or rules or regulations adopted under that section. 'Security covered under federal law' does not include a security for which a fee required by this Article has not been paid and promptly remedied following written notification from the Administrator to the issuer of the nonpayment or underpayment of the fee."

Section 4. Effective October 10, 1999, G.S. 78A-2(11a), as enacted by Section 3 of this act, reads as rewritten:

"(11a) 'Security covered under federal law' means any security that is a covered security under Section 18(b) of the Securities Act of 1933 [15 U.S.C. § 77r(b)] or rules or regulations adopted under that section. ~~'Security covered under federal law' does not include a security for which a fee required by this Article has not been paid and promptly remedied following written notification from the Administrator to the issuer of the nonpayment or underpayment of the fee.~~"

Section 5. G.S. 78A-17(16) reads as rewritten:

"(16) Any offer to purchase or to sell or any sale or issuance of a ~~security~~ security, other than a security covered under federal law, pursuant to a plan approved by the Administrator after a hearing conducted pursuant to the provisions of ~~G.S. 78A-30 of this Chapter.~~ G.S. 78A-30."

Section 6. The title to Article 4 of Chapter 78A reads as rewritten:

"ARTICLE 4.

"Registration and Notice Filing Procedures of Securities."

Section 7. G.S. 78A-24 reads as rewritten:

"**§ 78A-24. Registration requirement.**

It is unlawful for any person to offer or sell any security in this State unless (i) it is registered under this ~~Chapter or~~ Chapter, (ii) the security or transaction is exempted under G.S. 78A-16 or 78A-17 and such exemption has not been denied or revoked under ~~G.S. 78A-18.~~ G.S. 78A-18, or (iii) it is a security covered under federal law."

Section 8. G.S. 78A-30(d) reads as rewritten:

"(d) The Administrator's authority under this section shall extend to the issuance or the delivery of securities or ~~the delivery of~~ other consideration:

(1) By any corporation organized under the laws of this State; or

(2) In any transaction which is subject to the registration or qualification requirements of this Chapter or which would be so subject except for the availability of an exemption under G.S. 78A-16 or ~~78A-17 or by reason of G.S. 78A-2(8)(f).~~ 78A-17, by reason of G.S. 78A-2(8)(f), or by reason that the security is a security covered under federal law."

Section 9. Article 4 of Chapter 78A of the General Statutes is amended by adding a new section to read:

"**§ 78A-31. Securities covered under federal law.**

(a) The Administrator, by rule or order, may require the filing of any of the following documents with regard to a security covered under Section 18(b)(2) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(2)]:

(1) Prior to the initial offer of the security in this State, all documents that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, together with a consent to service of process signed by the issuer and with the payment of a notice filing fee of one-tenth of one percent (1/10 of 1%) of the maximum aggregate offering price at which the securities covered under federal law are to be offered in this State, but the notice filing fee shall not be less than twenty-five dollars ($25.00) or more than one thousand six hundred dollars ($1,600).

(2) After the initial offer of the security in this State, all documents that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, which shall be filed concurrently with the Administrator.

(3) A report of the value of securities covered under federal law that are offered or sold in this State.

(b) With regard to any security that is covered under Section 18(b)(4)(D) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(4)(d)], the Administrator, by rule or order, may require the issuer to file a notice on SEC Form D [17 C.F.R. § 239.500] and a consent to service of process signed by the issuer no later than 15 days after the first sale of the security in this State. The Administrator may, by rule, establish a fee to recover costs for filing required by this section, not to exceed one hundred fifty dollars ($150.00).

(c) The Administrator, by rule or order, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933, with respect to a security covered under Section 18(b)(3) or (4) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(3) or (4)]. The Administrator may, by rule, establish a fee to recover costs for any filing required under this section, not to exceed one hundred fifty dollars ($150.00).

(d) The Administrator may issue a stop order or a cease and desist order suspending the offer and sale of a covered security except a covered security under

Section 18(b)(1) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(1)], if the Administrator finds that (i) the order is in the public interest, and (ii) there is a failure to comply with any condition established under this section.

(e) The Administrator, by rule or order, may waive any of the requirements set by this section."

Section 10. G.S. 78A-38 reads as rewritten:

"**§ 78A-38. Post-registration provisions.**

(a) Every registered dealer shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the Administrator by rule ~~prescribes.~~ prescribes, except as provided by Section 15 of the Securities Exchange Act of 1934 [15 U.S.C. § 78o]. ~~All records so required shall be preserved for three years unless the Administrator by rule prescribes otherwise for particular types of records.~~

(b) Every registered dealer shall file such financial reports as the Administrator by rule ~~prescribes.~~ prescribes, except as provided by Section 15 of the Securities Exchange Act of 1934 [15 U.S.C. § 78o].

(c) If the information contained in any document filed with the Administrator is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under G.S. 78A-36(b).

(d) All the records referred to in subsection (a) of this section are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the Administrator, within or without this State, as the Administrator deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the Administrator, insofar as he deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934."

Section 11. G.S. 78A-49(d) reads as rewritten:

"(d) The Administrator may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, unless the security or transaction is exempted by G.S. 78A-16 or 78A-17 (except 78A-17(9), (17)) and such exemption has not been denied or revoked under ~~G.S. 78A-18.~~ G.S. 78A-18 or is a security covered under federal law."

Section 12. G.S. 78A-63(a) reads as rewritten:

"(a) Sections 78A-8, 78A-10, 78A-24, 78A-31, 78A-36(a), and 78A-56 apply to persons who sell or offer to sell when (i) an offer to sell is made in this State, or (ii) an offer to buy is made and accepted in this State."

Section 13. G.S. 78A-63(f) reads as rewritten:

"(f) Every applicant for registration under this Chapter and every issuer who proposes to offer a security in this State through any person acting on an agency basis in the common-law sense shall file with the Administrator, in such form as he by rule prescribes, an irrevocable consent appointing the Administrator or his successor in

office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which arises under this Chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the Administrator, but it is not effective unless (i) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his address on file with the Administrator, and (ii) the plaintiff's affidavit of compliance with the subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows."

II. Investment Advisers

Section 14. G.S. 78C-2 reads as rewritten:

"**§ 78C-2. Definitions.**

When used in this Chapter, the definitions of G.S. 78A-2 shall apply along with the following, unless the context otherwise requires:

(1) 'Investment adviser' means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. 'Investment adviser' also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. 'Investment adviser' does not include:

a. An investment adviser representative or a person excluded from the definition of investment adviser representative pursuant to G.S. 78C-2(3)c.;

b. A bank, savings institution, or trust company;

c. A lawyer, accountant, engineer, or teacher whose performance of any such services is solely incidental to the practice of his profession;

d. A dealer or its salesman whose performance of these services is solely incidental to the conduct of its business as a dealer and who receives no special compensation for them;

e. A publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

f. A person solely by virtue of such person's services to or on behalf of any 'business development company' as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 provided the business development company is not an 'investment company' by reason of Section 3(c)(1) of the Investment Company Act of 1940, as both acts were in effect on June 1, 1988;

g. A personal representative of a decedent's estate, guardian, conservator, receiver, attorney in fact, trustee in bankruptcy, trustee of a testamentary trust, or a trustee of an inter vivos trust, not otherwise engaged in providing investment advisory services, and the performance of these services is not a part of a plan or scheme to evade registration or the substantive requirements of this Chapter;

h. A licensed real estate agent or broker whose only compensation is a commission on real estate sold;

i. An individual or company primarily engaged in acting as a business broker whose only compensation is a commission on the sale of a business;

j. An individual who, as an employee, officer or director of, or general partner in, another person and in the course of performance of his duties as such, provides investment advice to such other person, or to entities that are affiliates of such other person, or to employee benefit plans of such other person or its affiliated entities, or, with respect to such employee benefit plans, to employees of such other person or its affiliated entities;

k. Any person who is exempt from registration under the Investment Advisers Act of 1940 by operation of Section 203(b)(3) of said act or by operation of any rule or regulation promulgated by the United States Securities and Exchange Commission under or related to said Section 203(b)(3) provided that any reference in this sub-subsection to any statute, rule or regulation shall be deemed to incorporate said statute, rule or regulation (and any statute, rule or regulation referenced therein) as in effect on June 1, 1988;

l. An employee of a person described in subdivision b., e., f., g., h., or j. of G.S. 78C-2(1) acting on behalf of such person within the scope of his employment;

m. An investment adviser who is covered under federal law as defined in subdivision (4) of this section.

~~m.~~ n. Such other persons not within the intent of this subsection as the Administrator may by rule or order designate.

(2) 'Investment Advisers Act of 1940' means the federal statute of that name as amended before or after the effective date of this Chapter.

(3) 'Investment adviser representative' means any partner, officer, director (or a person occupying a similar status or performing similar functions) or other individual ~~employed by or associated with an investment adviser, except clerical personnel, who:~~ except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered or required to be registered under this Chapter, or who has a place of business located in this State and is employed by or associated with an adviser excluded under the definition of 'investment adviser covered under federal law', and who:

a. Makes any recommendations or otherwise renders advice regarding securities directly to clients,

b. Manages accounts or portfolios of clients,

c. Determines which recommendations or advice regarding securities should be given; provided, however if there are more than five such persons employed by or associated with an investment adviser, who do not otherwise come within the meaning of G.S. 78C-2(3)a., b., d., or e., then only the direct supervisors of such persons are deemed to be investment adviser representatives under G.S. 78C-2(3)c.,

d. Solicits, offers or negotiates for the sale of or sells investment advisory services, unless such person is a dealer or salesman registered under Chapter 78A of the General Statutes and the person would not be an investment adviser representative except for the performance of the activities described in G.S. 78C-2(3)d., or

e. Directly supervises investment adviser representatives as defined in G.S. 78C-2(3)a., b., c. (unless such investment adviser representatives are already required to register due to their role as supervisors by operation of G.S. 78C-2(3)c.), or d. in the performance of the foregoing activities.

(4) 'Investment adviser covered under federal law' means any adviser who is (i) registered under Section 203 of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-3]; or (ii) excluded from the

status or performing similar functions, or any person directly or indirectly controlling the investment adviser;

(4) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(5) The applicant's financial condition and history; and

(6) Any information to be furnished or disseminated to any client or prospective client.

If no denial order is in effect and no proceeding is pending under G.S. 78C-19, registration becomes effective at noon of the 30th day after an application is filed. The Administrator may by rule or order specify an earlier effective date, and he may by order defer the effective date until noon of the 30th day after the filing of any amendment. Registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, executive officer, or director, or a person occupying a similar status or performing similar functions.

(a1) The Administrator may require investment advisers covered under federal law to file with the Administrator any documentation filed with the Securities and Exchange Commission as a condition of doing business in this State. This subsection does not apply to investment advisers covered under federal law whose only clients are those described in G.S. 78C-16(a)(2).

(b) Every applicant for initial or renewal registration shall pay a filing fee of two hundred dollars ($200.00) in the case of an investment adviser, and forty-five dollars ($45.00) in the case of an investment adviser representative. When an application is denied or withdrawn, the Administrator shall retain the fee.

(c) A registered investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

(c1) Every person acting as an investment adviser covered under federal law in this State shall pay an initial filing fee of two hundred dollars ($200.00) and a renewal notice filing fee of two hundred dollars ($200.00).

(d) The Administrator may by rule establish minimum net capital requirements not to exceed one hundred thousand dollars ($100,000) for registered investment advisers, subject to the limitations of Section 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80(b)-18a], which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not.

(e) The Administrator may by rule require registered investment advisers who have custody of or discretionary authority over client funds or securities to post surety bonds in amounts up to one hundred thousand dollars ($100,000), subject to the limitations of Section 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80(b)-18a], and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any investment adviser whose minimum net capital, which may be

defined by rule, exceeds one hundred thousand dollars ($100,000). Every bond shall provide for suit thereon by any person who has a cause of action under G.S. 78C-38 and, if the Administrator by rule or order requires, by any person who has a cause of action not arising under this Chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time limitations of G.S. 78C-38(d)."

Section 19. G.S. 78C-18 reads as rewritten:

"**§ 78C-18. Post-Registration provisions.**

(a) Every registered investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books and records as the Administrator by rule ~~prescribes.~~ prescribes, except as provided by Section 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80(b)-18a].

All records so required shall be preserved for three years unless the Administrator by rule prescribes otherwise for particular types of records.

(b) With respect to investment advisers, the Administrator may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the Administrator in his discretion, information furnished to clients or prospective clients of an investment adviser pursuant to the Investment Advisers Act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement.

(c) Every registered investment adviser shall file such financial reports as the Administrator by rule ~~prescribes.~~ prescribes, except as provided by Section 222 of the Investment Advisers Act of 1940 [15 U.S.C. § 80(b)-18a].

(d) If the information contained in any document filed with the Administrator is or becomes inaccurate or incomplete in any material respect, the registrant or an investment adviser covered under federal law shall promptly file a correcting ~~amendment~~ amendment, if the document is filed with respect to a registrant or when the amendment is required to be filed with respect to an investment adviser covered under federal law, unless notification of the correction has been given under G.S. 78C-16(b).

(e) All the records referred to in subsection (a) of this section are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the Administrator, within or without this State, as the Administrator deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the Administrator, insofar as he deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934."

Section 20. G.S. 78C-46(b) reads as rewritten:

"(b) Every applicant for registration under this Chapter shall file with the Administrator, in such form as he by rule prescribes, an irrevocable consent appointing the Administrator or his successor in office to be his attorney to receive

service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which arises under this Chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the Administrator, but it is not effective unless (i) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his last address on file with the Administrator, and (ii) the plaintiff's affidavit of compliance with the subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows."

Section 21. Sections 4 and 15 of this act become effective October 10, 1999. The remainder of this act becomes effective October 1, 1997. Sections 1 through 13 of this act apply to securities offered or sold and to persons who offer or sell securities on or after the applicable effective date of each of these sections. Sections 14 through 20 of this act apply to advisory business conducted on or after the applicable effective date of each of these sections.

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July 22, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman
House Judiciary II Committee

FROM: Tim Hovis and O. Walker Reagan, Staff Attorneys

RE: **SENATE BILL 439 - CONFORM SECURITIES AND INVESTMENT ADVISORS LAW TO FEDERAL LAW -**(Third Edition) Senator Reeves

Senate Bill 439 amends the North Carolina Securities Act to conform North Carolina law with 1996 changes made in federal securities laws involving the registration of securities dealers and sellers, and investment advisers. This bill is a recommendation of the Secretary of State's office.

The National Securities Markets Improvement Act of 1996 preempts state regulation of certain "covered securities" with federal securities registration. Under this law the states retain investigative and enforcement authority with respect to securities fraud and deceit. The law also allows the states to require "notice" filings of the federal securities filings with the state and permits the states to continue to charge filing and registration fees for these securities. The new federal law also exempts from Securities Exchange Commission (SEC) registration investment advisors subject to state regulation unless they manage at least $25 million in assets and serve as advisers to certain federally registered investment companies. For those investment advisers subject to SEC registration the states still have the right to require "notice filings" and registration fees, and may also investigate fraud and deceit. The law also limits recordkeeping, capital, or bonding requirements to no more than those required in the state where the investment adviser has its principal place of business. The law exempts from state registration advisers who do not have a place of business in the state and who have fewer than 6 clients who were residents of the State for the preceding 12-month period.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Senate Bill 439 amends NC law to conform to those matters still within the control of the State, and to exempt those matters on which federal law preempts state law.

Sections 1, 2 and 3 involve amendments to definitions to distinguish matters subject to state regulation and those subject to federal regulation. Section 3 amends effective October 1, 1999 the definition amended in Section 2, because federal law give the states three years to regulate securities otherwise exempt when the issuer fails file the required notice and pay the required state fees.

Section 6 spells out the notice filing registration requirements for securities that are exempt from state regulation, including the fees that the Secretary of State may charge. This section also includes the authority to require the securities issuer to consent to service of process in this State and to issue a stop order for an issuer who fails to comply with this section.

Sections 7 through 10 make conforming changes to other related statutes.

Sections 11 and 12 involve amendments to definitions of investment advisers to make clear which advisers are regulated by state law and which advisers are not. Section 12 amends effective October 1, 1999 the definition amended in Section 11, because federal law gives the states three years to regulate advisers otherwise exempt when the advisor fails to register and pay the required state fees.

Section 14 specifies that all investment advisers transacting business in the State must register unless they are exempt under federal law and those advisers exempt under federal law must still make a notice filing and pay the appropriate fees.

Sections 15, 16, and 17 make conforming changes to other related statutes.

The bill becomes effective October 1, 1997 except for Sections 3 and 12 which will amend sections 2 and 11 once the 3-year enforcement overlap period expires.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 439*
Commerce Committee Substitute Adopted 4/10/97
Third Edition Engrossed 5/22/97
Proposed House Committee Substitute S439-PCS7838

Short Title: Securities/Investment Advisers/AB. (Public)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT TO CONFORM THE NORTH CAROLINA SECURITIES ACT AND THE INVESTMENT ADVISERS ACT TO THE NATIONAL SECURITIES MARKETS IMPROVEMENT ACT OF 1996.

The General Assembly of North Carolina enacts:

I. Securities

Section 1. G.S. 78A-2(2)d.1. reads as rewritten:

"1. The security is exempted under subdivisions (1), (2), (3), (4), (5), (7), (9), (10), (11), (13), or (14) of G.S. 78A-16, or the security is a security covered under federal law, or the transaction is exempted under G.S. 78A-17, ~~and such exemption has not been denied or revoked under G.S. 78A-18,~~ or the transaction is in a security covered under federal law, and such exemption has not been denied or revoked under G.S. 78A-18, or".

Section 2. G.S. 78A-2(2) is amended by adding a new sub-subdivision to read:

"g. An individual who represents an issuer in effecting transactions in a security described in sub-subdivision (2)d. of this section or a security covered under federal law,

provided no commission or other special remuneration is paid or given directly or indirectly for soliciting any prospective purchaser in this State."

Section 3. G.S. 78A-2(9) reads as rewritten:

"(9) 'Salesman' means any individual other than a dealer who represents a dealer in effecting or attempting to effect purchases or sales of securities. 'Salesman' does not include an individual who represents a dealer in effecting transactions in this State limited to those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(h)(2)). A partner, executive officer, or director of a dealer, or a person occupying a similar status or performing similar functions, is a salesman only if ~~he~~ that person otherwise comes within this definition."

Section 4. G.S. 78A-2 is amended by adding a new subdivision to read:

"(11a) 'Security covered under federal law' means any security that is a covered security under section 18(b) of the Securities Act of 1933 (15 U.S.C. § 77r(b)) or rules or regulations adopted under that section."

Section 5. G.S. 78A-17(16) reads as rewritten:

"(16) Any offer to purchase or to sell or any sale or issuance of a ~~security~~ security, other than a security covered under federal law, pursuant to a plan approved by the Administrator after a hearing conducted pursuant to the provisions of ~~G.S. 78A-30 of this Chapter.~~ G.S. 78A-30."

Section 6. The title to Article 4 of Chapter 78A reads as rewritten:

"ARTICLE 4.

"Registration and Notice Filing Procedures of Securities."

Section 7. G.S. 78A-24 reads as rewritten:

"**§ 78A-24. Registration requirement.**

It is unlawful for any person to offer or sell any security in this State unless (i) it is registered under this ~~Chapter or~~ Chapter, (ii) the security or transaction is exempted under G.S. 78A-16 or 78A-17 and such exemption has not been denied or revoked under ~~G.S. 78A-18.~~ G.S. 78A-18, or (iii) it is a security covered under federal law."

Section 8. G.S. 78A-30(d) reads as rewritten:

"(d) The Administrator's authority under this section shall extend to the issuance or the delivery of securities or ~~the delivery of~~ other consideration:

(1) By any corporation organized under the laws of this State; or

(2) In any transaction which is subject to the registration or qualification requirements of this Chapter or which would be so subject except for the availability of an exemption under G.S. 78A-16 or ~~78A-17 or by reason of G.S. 78A-2(8)(f).~~ G.S. 78A-17, by reason of G.S. 78A-2(8)f., or by reason that the security is a security covered under federal law."

Section 9. Article 4 of Chapter 78A of the General Statutes is amended by adding a new section to read:

"**§ 78A-31. Notice filings for securities covered under federal law.**

(a) The Administrator, by rule or order, may require the filing of any of the following documents with regard to a security covered under section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(2)):

(1) Prior to the initial offer of the security in this State, all documents that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, or, in lieu thereof, a form prescribed by the Administrator, together with a consent to service of process signed by the issuer and with the payment of a notice filing fee of one-tenth of one percent (1/10 of 1%) of the maximum aggregate offering price at which the securities covered under federal law are to be offered in this State, but the notice filing fee shall not be less than twenty-five dollars ($25.00) or more than one thousand six hundred dollars ($1,600).

(2) After the initial offer of the security in this State, all documents that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, or, in lieu thereof, a form prescribed by the Administrator, which shall be filed concurrently with the Administrator.

(3) A report of the value of securities covered under federal law that are offered or sold in this State.

(4) A notice filing pursuant to this section shall expire on December 31 of each year or some other date not more than one year from its effective date as the Administrator may by rule or order provide. A notice filing of the offer of securities covered under federal law that are to be offered for a period in excess of one year shall be renewed annually by payment of a renewal fee of one hundred dollars ($100.00) and by filing any documents and reports that the Administrator may by rule or order require consistent with this section. The renewal shall be effective upon the expiration of the prior notice period.

(5) A notice filed in accordance with this section may be amended after its effective date to increase the securities specified as proposed to be offered. An amendment becomes effective upon receipt by the Administrator. Every person submitting an amended notice filing shall pay a fee calculated in the manner specified in subdivision (1) of this subsection and a filing fee of fifty dollars ($50.00) with respect to the additional securities proposed to be offered.

(b) With regard to any security that is covered under section 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(4)(d)), the Administrator, by rule or order, may require the issuer to file a notice on SEC Form D (17 C.F.R. § 239.500) and a consent to service of process signed by the issuer no later than 15 days after the first sale of the security in this State. The Administrator may, by rule, establish a fee to recover costs for filing required by this section, not to exceed one hundred fifty dollars ($150.00).

(c) The Administrator, by rule or order, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933, with respect to a security covered under section 18(b)(3) or (4) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(3) or (4)). The Administrator may, by rule, establish a fee to recover costs for any filing required under this section, not to exceed one hundred fifty dollars ($150.00).

(d) The Administrator may suspend the offer and sale of a covered security, except a covered security under section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(1)), if the Administrator finds that (i) the order is in the public interest, and (ii) there is a failure to comply with any condition established under this section.

(e) The Administrator, by rule or order, may waive any of the requirements set by this section."

Section 10. G.S. 78A-38 reads as rewritten:

"**§ 78A-38. Post-registration provisions.**

(a) Every registered dealer shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the Administrator by rule ~~prescribes.~~ prescribes, subject to the limitations of section 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78o). ~~All records so required shall be preserved for three years unless the Administrator by rule prescribes otherwise for particular types of records.~~

(b) Every registered dealer shall file such financial reports as the Administrator by rule ~~prescribes.~~ prescribes, subject to the limitations of section 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78o).

(c) If the information contained in any document filed with the Administrator is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under G.S. 78A-36(b).

(d) All the records referred to in subsection (a) of this section are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the Administrator, within or without this State, as the Administrator deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the Administrator, insofar as he deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934."

Section 11. G.S. 78A-49(d) reads as rewritten:

"(d) The Administrator may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, unless the security or transaction is exempted by G.S. 78A-16 or 78A-17 (except 78A-17(9), (17)) and such exemption has not been denied or revoked under ~~G.S. 78A-18.~~ G.S. 78A-18 or the security is a security covered under federal law or the transaction is with respect to a security covered under federal law."

Section 12. G.S. 78A-63(a) reads as rewritten:

"(a) Sections 78A-8, 78A-10, 78A-24, 78A-31, 78A-36(a), and 78A-56 apply to persons who sell or offer to sell when (i) an offer to sell is made in this State, or (ii) an offer to buy is made and accepted in this State."

Section 13. G.S. 78A-63(f) reads as rewritten:

"(f) Every applicant for registration under this Chapter and every issuer who proposes to offer a security in this State through any person acting on an agency basis in the common-law sense shall file with the Administrator, in such form as he by rule prescribes, an irrevocable consent appointing the Administrator or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which arises under this Chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the Administrator, but it is not effective unless (i) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his address on file with the Administrator, and (ii) the plaintiff's affidavit of compliance with the subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows."

II. Investment Advisers

Section 14. G.S. 78C-2 reads as rewritten:

"**§ 78C-2. Definitions.**

When used in this Chapter, the definitions of G.S. 78A-2 shall apply along with the following, unless the context otherwise requires:

(1) 'Investment adviser' means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. 'Investment adviser' also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to

others for compensation and as a part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. 'Investment adviser' does not include:

a. An investment adviser representative or a person excluded from the definition of investment adviser representative pursuant to G.S. 78C-2(3)c.;

b. A bank, savings institution, or trust company;

c. A lawyer, accountant, engineer, or teacher whose performance of any such services is solely incidental to the practice of his profession;

d. A dealer or its salesman whose performance of these services is solely incidental to the conduct of its business as a dealer and who receives no special compensation for them;

e. A publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

f. A person solely by virtue of such person's services to or on behalf of any 'business development company' as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 provided the business development company is not an 'investment company' by reason of Section 3(c)(1) of the Investment Company Act of 1940, as both acts were in effect on June 1, 1988;

g. A personal representative of a decedent's estate, guardian, conservator, receiver, attorney in fact, trustee in bankruptcy, trustee of a testamentary trust, or a trustee of an inter vivos trust, not otherwise engaged in providing investment advisory services, and the performance of these services is not a part of a plan or scheme to evade registration or the substantive requirements of this Chapter;

h. A licensed real estate agent or broker whose only compensation is a commission on real estate sold;

i. An individual or company primarily engaged in acting as a business broker whose only compensation is a commission on the sale of a business;

j. An individual who, as an employee, officer or director of, or general partner in, another person and in the course of performance of his duties as such, provides investment advice to such other person, or to entities that are affiliates

of such other person, or to employee benefit plans of such other person or its affiliated entities, or, with respect to such employee benefit plans, to employees of such other person or its affiliated entities;

k. Any person who is exempt from registration under the Investment Advisers Act of 1940 by operation of Section 203(b)(3) of said act or by operation of any rule or regulation promulgated by the United States Securities and Exchange Commission under or related to said Section 203(b)(3) provided that any reference in this sub-subsection to any statute, rule or regulation shall be deemed to incorporate said statute, rule or regulation (and any statute, rule or regulation referenced therein) as in effect on June 1, 1988;

l. An employee of a person described in subdivision b., e., f., g., h., or j. of G.S. 78C-2(1) acting on behalf of such person within the scope of his employment;

m. An investment adviser who is covered under federal law as defined in subdivision (4) of this section.

~~m.~~ n. Such other persons not within the intent of this subsection as the Administrator may by rule or order designate.

(2) 'Investment Advisers Act of 1940' means the federal statute of that name as amended before or after the effective date of this Chapter.

(3) 'Investment adviser representative' ~~means~~ means, with respect to any investment adviser registered under this Chapter, any partner, officer, director (or a person occupying a similar status or performing similar functions) or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:

a. Makes any recommendations or otherwise renders advice regarding securities directly to clients,

b. Manages accounts or portfolios of clients,

c. Determines which recommendations or advice regarding securities should be given; provided, however if there are more than five such persons employed by or associated with an investment adviser, who do not otherwise come within the meaning of G.S. 78C-2(3)a., b., d., or e., then only the direct supervisors of such persons are deemed to be investment adviser representatives under G.S. 78C-2(3)c.,

d. Solicits, offers or negotiates for the sale of or sells investment advisory services, unless such person is a dealer or salesman registered under Chapter 78A of the General Statutes and the person would not be an investment

adviser representative except for the performance of the activities described in G.S. 78C-2(3)d., or

e. Directly supervises investment adviser representatives as defined in G.S. 78C-2(3)a., b., c. (unless such investment adviser representatives are already required to register due to their role as supervisors by operation of G.S. 78C-2(3)c.), or d. in the performance of the foregoing activities.

With respect to any person that is registered or required to be registered under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-3), 'investment adviser representative' means any person who is defined as an 'investment adviser representative' pursuant to rules or regulations adopted or promulgated by the Securities Exchange Commission pursuant to the Investment Advisers Act of 1940, and who has a place of business located in the State.

(4) 'Investment adviser covered under federal law' means any adviser who is registered with the Securities and Exchange Commission under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-3)."

Section 15. The title to Article 3 of Chapter 78C reads as rewritten:

"ARTICLE 3.

"Registration and Notice Filing Procedures of Investment Advisers and Investment Adviser Representatives."

Section 16. G.S. 78C-16 reads as rewritten:

"**§ 78C-16. Registration and notice filing requirement.**

(a) It is unlawful for any person to transact business in this State as an investment adviser ~~or as an investment adviser representative~~ unless:

(1) ~~He~~ The person is ~~so~~ registered under this Chapter;

(2) ~~His~~ The person's only clients in this State are investment companies as defined in the Investment Company Act of 1940, other investment advisers, investment advisers covered under federal law, dealers, banks, trust companies, savings institutions, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars ($1,000,000), and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the Administrator; or

(3) ~~He has no place of business in the State and during any period of 12 consecutive months does not direct business communications into this State in any manner to more than 10 clients, other than those specified in subdivision (2), whether or not he or any of the persons to whom the communications are directed is then present in the State; or~~ The person has no place of business in this State,

and during the preceding 12-month period has had not more than five clients, other than those specified in subdivision (2) of this subsection, who are residents of the State.

~~(4) He is an investment adviser representative employed by or associated with an investment adviser exempt from registration under subdivisions (2) or (3), above.~~

(a1) It is unlawful for any person to transact business in this State as an investment adviser representative unless:

(1) The person is registered under this Chapter; or

(2) The person is an investment adviser representative employed by or associated with an investment adviser exempt from registration under subdivision (2) or (3) of subsection (a) of this section; or

(3) The person is an investment adviser representative employed by or associated with an investment adviser covered under federal law that is exempt from the notice filing requirements of G.S. 78C-17(a1).

(b) ~~It is unlawful for any investment adviser required to be registered to employ or associate an investment adviser representative unless the investment adviser representative is registered under this Chapter. The registration of an investment adviser representative is not effective during any period when he is not employed by or associated with an investment adviser registered under this Chapter. When an investment adviser representative begins or terminates employment or association with an investment adviser, the investment adviser shall promptly notify the Administrator.~~ It is unlawful for any person required to be registered as an investment adviser under this Chapter to employ an investment adviser representative unless the investment adviser representative is registered under this Chapter. The registration of an investment adviser representative is not effective during any period when the investment adviser representative is not employed by (i) an investment adviser registered under this Chapter; or (ii) an investment adviser covered under federal law who has made a notice filing pursuant to the provisions of G.S. 78C-17(a1). When an investment adviser representative begins or terminates employment or association with an investment adviser who is registered under this Chapter, the investment adviser shall notify promptly the Administrator. When an investment adviser representative begins or terminates employment or association with an investment adviser covered under federal law, the investment adviser representative shall, and the investment adviser may, notify promptly the Administrator. No investment adviser representative may be registered with more than one investment adviser or investment adviser covered under federal law unless each of the investment advisers which employs or associates the investment adviser representative is under common ownership or control.

(c) Every registration or notice filing expires December 31st of each year unless renewed.

(d) It is unlawful for any investment adviser covered under federal law to conduct advisory business in this State unless the investment adviser covered under federal law complies with the provisions of G.S. 78C-17(a1)."

Section 17. G.S. 78C-17 reads as rewritten:

"**§ 78C-17. Registration and notice filing procedures.**

(a) An investment adviser, or investment adviser representative may obtain an initial or renewal registration by filing with the Administrator or ~~his~~ the Administrator's designee an application together with a consent to service of process pursuant to G.S. 78C-46(b). The application shall contain whatever information the Administrator by rule requires concerning such matters as:

(1) The applicant's form and place of organization;
(2) The applicant's proposed method of doing business;
(3) The qualifications and business history of the applicant; in the case of an investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the investment adviser;
(4) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;
(5) The applicant's financial condition and history; and
(6) Any information to be furnished or disseminated to any client or prospective client.

If no denial order is in effect and no proceeding is pending under G.S. 78C-19, registration becomes effective at noon of the 30th day after an application is filed. The Administrator may by rule or order specify an earlier effective date, and he may by order defer the effective date until noon of the 30th day after the filing of any amendment. Registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, executive officer, or director, or a person occupying a similar status or performing similar functions.

(a1) The Administrator may require investment advisers covered under federal law to file with the Administrator any documentation filed with the Securities and Exchange Commission as a condition of doing business in this State. This subsection does not apply to (i) an investment adviser covered under federal law whose only clients are those described in G.S. 78C-16(a)(2), or (ii) an investment adviser covered under federal law who has no place of business in this State, and during the preceding 12-month period has had not more than five clients, other than those described in G.S. 78C-16(a)(2), who are residents of this State. A notice filing under this section may be renewed by (i) filing documents required by the Administrator and filed with the Securities and Exchange Commission, prior to the expiration of the notice filing, and (ii) paying the fee required under subsection (b1) of this section. A notice filed under this section may be terminated by the investment adviser by

providing the Administrator notice of the termination, which shall be effective upon receipt by the Administrator.

(b) Every applicant for initial or renewal registration shall pay a filing fee of two hundred dollars ($200.00) in the case of an investment adviser, and forty-five dollars ($45.00) in the case of an investment adviser representative. When an application is denied or withdrawn, the Administrator shall retain the fee.

(b1) Every person acting as an investment adviser covered under federal law in this State shall pay an initial filing fee of two hundred dollars ($200.00) and a renewal notice filing fee of two hundred dollars ($200.00).

(c) A registered investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

(d) The Administrator may by rule establish minimum net capital requirements not to exceed one hundred thousand dollars ($100,000) for registered investment advisers, subject to the limitations of section 222 of the Investment Advisers Act of 1940 (15 U.S.C. § 80(b)-18a), which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not.

(e) The Administrator may by rule require registered investment advisers who have custody of or discretionary authority over client funds or securities to post surety bonds in amounts up to one hundred thousand dollars ($100,000), subject to the limitations of section 222 of the Investment Advisers Act of 1940 (15 U.S.C. § 80(b)-18a), and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any investment adviser whose minimum net capital, which may be defined by rule, exceeds one hundred thousand dollars ($100,000). Every bond shall provide for suit thereon by any person who has a cause of action under G.S. 78C-38 and, if the Administrator by rule or order requires, by any person who has a cause of action not arising under this Chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time limitations of G.S. 78C-38(d)."

Section 18. G.S. 78C-18 reads as rewritten:

"**§ 78C-18. Post-registration provisions.**

(a) Every registered investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books and records as the Administrator by rule ~~prescribes.~~ prescribes, subject to the limitations of section 222 of the Investment Advisers Act of 1940 (15 U.S.C. § 80(b)-18a).

All records so required shall be preserved for three years unless the Administrator by rule prescribes otherwise for particular types of records.

(b) With respect to investment advisers, the Administrator may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the Administrator in his discretion, information furnished to clients or prospective clients of an investment adviser pursuant to the Investment Advisers Act

of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement.

(c) Every registered investment adviser shall file such financial reports as the Administrator by rule ~~prescribes.~~ prescribes, subject to the limitations of section 222 of the Investment Advisers Act of 1940 (15 U.S.C. § 80(b)-18a).

(d) If the information contained in any document filed with the Administrator is or becomes inaccurate or incomplete in any material respect, the registrant or an investment adviser covered under federal law shall promptly file a correcting ~~amendment~~ amendment, if the document is filed with respect to a registrant or when the amendment is required to be filed with the Securities and Exchange Commission with respect to an investment adviser covered under federal law, unless notification of the correction has been given under G.S. 78C-16(b).

(e) All the records referred to in subsection (a) of this section are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the Administrator, within or without this State, as the Administrator deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the Administrator, insofar as he deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934."

Section 19. G.S. 78C-46(b) reads as rewritten:

"(b) Every applicant for registration under this Chapter shall file with the Administrator, in such form as he by rule prescribes, an irrevocable consent appointing the Administrator or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which arises under this Chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the Administrator, but it is not effective unless (i) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his last address on file with the Administrator, and (ii) the plaintiff's affidavit of compliance with the subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows."

Section 20. This act becomes effective October 1, 1997. Sections 1 through 13 of this act apply to securities offered or sold and to persons who offer or sell securities on or after the applicable effective date of each of these sections. Sections 14 through 19 of this act apply to advisory business conducted on or after the applicable effective date of each of these sections.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

X Committee Substitute for
S.B. 439 A BILL TO BE ENTITLED AN ACT TO CONFORM THE NORTH CAROLINA SECURITIES ACT AND THE INVESTMENT ADVISERS ACT TO THE NATIONAL SECURITIES MARKETS IMPROVEMENT ACT OF 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 ☐

☐ 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, unfavorable as to Senate committee substitute bill and recommendation that the committee substitute bill be re-referred to the Committee on Finance.

☐ 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 2

SENATE BILL 438
Commerce Committee Substitute Adopted 4/8/97

Short Title: Securities/Investment Advisers Enforcement. (Public)

Sponsors:

Referred to:

March 20, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ENFORCEMENT PROCEDURES RELATED TO THE REGISTRATION OF SECURITIES AND TO INVESTMENT ADVISERS AND TO ESTABLISH THE CONFIDENTIALITY OF RECORDS RELATING TO CRIMINAL INVESTIGATIONS AND ENFORCEMENT PROCEEDINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 78A-39(a)(2) reads as rewritten:

"(2) That the applicant or registrant or, in the case of a dealer, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the dealer:

a. Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; or

b. Has willfully violated or willfully failed to comply with any provision of this Chapter or a predecessor law or any rule or order under this Chapter or a predecessor law or any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act of 1940, or the Commodity Exchange Act; or

c. Has been convicted, within the past 10 years, of any misdemeanor involving a security or any aspect of the securities business, or any felony; or

d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business; or

e. Is the subject of an order of the Administrator denying, suspending, or revoking registration as a dealer or salesman; or

f. Is the subject of an order entered within the past five years by the securities administrator of any state or by the Securities and Exchange Commission denying or revoking registration as a dealer or salesman, or the substantial equivalent of those terms as defined in this Chapter, or is the subject of ~~an~~ a final order ~~of the Securities and Exchange Commission~~ suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order; but (i) the Administrator may not institute a revocation or suspension proceeding under subdivision (2)f of subsection (a) more than one year from the date of the order relied on, and (ii) ~~he~~ the Administrator may not enter an order under subdivision (2)f of subsection (a) on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order under this section; or

g. Has engaged in dishonest or unethical practices in the securities business; or

h. Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the Administrator may not enter an order against a dealer under this paragraph without a finding of insolvency as to the dealer; or

i. Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in subsection (b)."

Section 2. G.S. 78A-39(c) reads as rewritten:

"(c) The Administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the Administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that within 15 days after the

receipt of a written request the matter will be set down for hearing. If no ~~hearing is requested~~ request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of the order upon the applicant or registrant and ~~none~~ no hearing is ordered by the Administrator, the order ~~will~~ shall become final and remain in effect ~~until~~ unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination."

Section 3. G.S. 78A-46(a)(1) reads as rewritten:

"(1) May make ~~such public or private investigations~~ any investigation within or outside of this State as ~~he~~ the Administrator deems necessary to determine whether any person has violated or is about to violate any provision of this Chapter or any rule or order hereunder, or to aid in the enforcement of this Chapter or in the prescribing of rules and forms hereunder,".

Section 4. G.S. 78A-47(b)(2) reads as rewritten:

"(2) If the Administrator makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under G.S. 78A-47(b)(1), the Administrator may issue a temporary cease and desist order. Upon the entry of a temporary cease and desist order, the Administrator shall promptly notify in writing the person subject to the order that such order has been entered, the reasons therefor, and that within 20 days after the receipt of a written request from such person the matter shall be set down for hearing to determine whether or not the order shall become permanent and final. If no ~~hearing is requested~~ request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of the order upon the person subject to the order and ~~none~~ no hearing is ordered by the Administrator, the order shall become final and remain in effect ~~until~~ unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after giving notice of an opportunity for a hearing to the person subject to the order, shall by written findings of fact and conclusion of law, vacate, modify, or make permanent the order."

Section 5. G.S. 78A-50 reads as rewritten:

"**§ 78A-50. Administrative files and opinions.**

(a) A document is filed when it is received by the Administrator.

(b) The Administrator shall keep a register of all applications for registration and registration statements which are or have been effective under this Chapter and all denial, suspension, or revocation orders which have been entered under this chapter. The register shall be open for public inspection.

(c) The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules as the Administrator prescribes.

(c1) The files and records of the Administrator relating to criminal investigations and enforcement proceedings undertaken pursuant to this Chapter are subject to the provisions of G.S. 132-1.4.

(c2) The files and records of the Administrator relating to noncriminal investigations and enforcement proceedings undertaken pursuant to this Chapter shall not be subject to inspection and examination pursuant to G.S. 132-6 until the investigations and proceedings are completed and cease to be active.

(c3) Any information obtained by the Administrator from any law enforcement agency, administrative agency, or regulatory organization on a confidential or otherwise restricted basis in the course of an investigation or proceeding undertaken pursuant to this Chapter shall be confidential and exempt from G.S 132-6 to the same extent that it is confidential in the possession of the providing agency or organization.

(d) Upon request and at such reasonable charges as ~~he~~ the administrator prescribes, the Administrator shall furnish to any person photostatic or other copies (certified under ~~his~~ the seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this Chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(e) The Administrator ~~in his discretion~~ may honor requests from interested persons for interpretative opinions. When an exemption is claimed in writing, cites the section relied upon, and is considered eligible upon the showing made, a 'no action' letter will be furnished upon request and upon the payment of a fee of one hundred fifty dollars ($150.00)."

Section 6. G.S. 78C-2 is amended by adding a new subdivision to read:

"(5) 'Person' means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government."

Section 7. G.S. 78C-19(c) reads as rewritten:

"(c) The Administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the Administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an investment adviser representative, that it has been entered and of the reasons therefor and that within 15 days after the receipt of a written request the matter will be set down for hearing. If no ~~hearing is requested~~ request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of the order upon the applicant or registrant and ~~none~~ no hearing is ordered by the Administrator, the order ~~will~~ shall become final and remain in effect ~~until~~ unless it is modified or vacated by the Administrator. If a hearing is

requested or ordered, the Administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination."

Section 8. G.S. 78C-27(a)(1) reads as rewritten:

"(1) May make ~~such public or private investigations~~ any investigation within or outside of this State as ~~he~~ the Administrator deems necessary to determine whether any person has violated or is about to violate any provision of this Chapter or any rule or order hereunder, or to aid in the enforcement of this Chapter or in the prescribing of rules and forms hereunder;".

Section 9. G.S. 78C-28(b)(2) reads as rewritten:

"(2) If the Administrator makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under G.S. 78C-28(b)(1), the Administrator may issue a temporary cease and desist order. Upon the entry of a temporary cease and desist order, the Administrator shall promptly notify in writing the person subject to the order that such order has been entered, the reasons therefor, and that within 20 days after the receipt of a written request from such person the matter shall be set down for hearing to determine whether or not the order shall become permanent and final. If no ~~hearing is requested~~ request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of the order upon the person subject to the order and ~~none~~ no hearing is ordered by the Administrator, the order shall become final and remain in effect ~~until~~ unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after giving notice of an opportunity for a hearing to the person subject to the order, shall by written findings of fact and conclusion of law, vacate, modify, or make permanent the order."

Section 10. G.S. 78C-31 reads as rewritten:

"§ 78C-31. Administrative files and opinions.

(a) A document is filed when it is received by the Administrator.

(b) The Administrator shall keep a register of all applications for registration which are or have been effective under this Chapter and all denial, suspension, or revocation orders or similar orders which have been entered under this chapter. The register shall be open for public inspection.

(c) The information contained in or filed with any registration, application, or report may be made available to the public under such rules as the Administrator prescribes.

(c1) The files and records of the Administrator relating to criminal investigations and enforcement proceedings undertaken pursuant to this Chapter are subject to the provisions of G.S. 132-1.4.

(c2) The files and records of the Administrator relating to noncriminal investigations and enforcement proceedings undertaken pursuant to this Chapter shall not be subject to inspection and examination pursuant to G.S. 132-6 until the investigations and proceedings are completed and cease to be active.

(c3) Any information obtained by the Administrator from any law enforcement agency, administrative agency, or regulatory organization on a confidential or otherwise restricted basis in the course of an investigation or proceeding undertaken pursuant to this Chapter shall be confidential and exempt from G.S. 132-6 to the same extent that it is confidential in the possession of the providing agency or organization.

(d) Upon request and at such reasonable charges as ~~he~~ the Administrator prescribes, the Administrator shall furnish to any person photostatic or other copies (certified under ~~his~~ the seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this Chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(e) The Administrator ~~in his discretion~~ may honor requests from interested persons for interpretative opinions upon the payment of a fee of one hundred fifty dollars ($150.00)."

Section 11. This act becomes effective October 1, 1997, and applies to administrative proceedings commenced on or after that date.

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July 22, 1997

MEMORANDUM

TO: Rep. Charles B. Neely, Jr., Chairman,
House Judiciary II Committee

FROM: Tim Hovis and O. Walker Reagan, Staff Attorneys

RE: **SENATE BILL 438 - SECURITIES/INVESTMENT ADVISERS ENFORCEMENT** -(Second Edition) Senator Reeves

The Proposed Committee Substitute for Senate Bill 438 would amend the NC Securities Act and the Investment Advisors Act by clarifying when a hearing on an order issued by the Secretary of State may be requested, and making clear that records of criminal investigations conducted by the Secretary under these acts are not public records as any other criminal investigation, and civil investigation records are not public records until the investigations are finished.

Sections 1 through 5 of the bill amend parts of the **NC Securities Act**. Section 1 allows the Secretary to deny, suspend, or revoke the registration of a securities dealer when a final order suspending or expelling the dealer from the national securities organizations is entered. Sections 2 and 4 will make the Secretary's order final unless a request for hearing, other responsive pleading, or submission is made within 30 business days of receipt of the notice of the order by the dealer. Section 5 makes it clear that the provisions of G.S. 132-1.4 (a copy is attached) which exempts criminal investigative records from the public records law applies to investigations under this Act by the Secretary. This section also provides that noncriminal investigation records shall not be subject to public access until the matter is completed and ceases to be active. Additionally, this section makes clear that confidential information obtained from other law enforcement, administrative, or regulatory agencies retains its confidentiality with the Secretary.

Sections 6 through 10 would make similar changes to parts of the **Investment Advisers Act**. Section 6 adds a definition of person to the Act. Sections 7 and 9 will make the Secretary's order denying or suspending the investment advisers registration final unless a request for hearing, other responsive pleading, or submission is made within 30 business days of receipt of the notice of the order by the advisor.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Section 10 provides the same exemptions from the public records law for investigations under the Investment Advisers Act as does Section 5 of the bill.

Actions by the Secretary of State under many of these sections are civil administrative proceedings, normally seeking to stop actions in violation of the law. While certain violations of both the NC Securities Act and the Investment Adviser Act are punished as Class I felonies, the administrative actions, primarily as cease and desist orders, are often used in situations where violations are initiated out of state and where obtaining criminal jurisdiction would be more difficult.

This bill would become effective October 1, 1997, and would apply to proceedings commenced on or after that date.

1997 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report from standing committee is presented:
By Representative **Neely** for the Committee on **Judiciary II.**

X Committee Substitute for
S.B. 438 A BILL TO BE ENTITLED AN ACT TO AMEND THE ENFORCEMENT PROCEDURES RELATED TO THE REGISTRATION OF SECURITIES AND TO INVESTMENT ADVISERS AND TO ESTABLISH THE CONFIDENTIALITY OF RECORDS RELATING TO CRIMINAL INVESTIGATIONS AND ENFORCEMENT PROCEEDINGS.

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. (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

VISITOR REGISTRATION SHEET

HOUSE JUDICIARY II — Name of Committee

July 23, 1997 — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Marguerite Bateman	Investment Co. Institute 1401 H. St, N.W., Washington, D.C.
Dan Applewhite	Investment Co. Institute/ Wyrick Robbins Yates & Ponton LLP 4101 Lake Boone Trail Raleigh, NC 27607
Bernard Allen	Secy. of State
Rodney Maddox	Sec. of State Office
David Mowery	" "